



Civil Resolution Tribunal

Date Issued: October 4, 2019

File: ST-2019-002395

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 3380 v. Vorberg*, 2019 BCCRT 1163

B E T W E E N :

The Owners, Strata Plan LMS 3380

APPLICANT

A N D :

Adam Vorberg

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The respondent, Adam Vorberg (owner), owns strata lot 42 in the applicant strata corporation, The Owners, Strata Plan LMS 3380 (strata). The strata says the owner parks his vehicles outside the boundaries of his designated parking stall in violation of the bylaws.

2. The strata wants the tribunal to order the owner to comply with the parking bylaws requiring him to park his vehicles within the boundaries of his designated parking stall. The owner says he has not breached the parking bylaws, so there is no need for the tribunal to make such an order.
3. The owner is self-represented and the strata is represented by M.H., who I presume is a council member.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims under section 121 of the Civil Resolution Tribunal Act (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The tribunal must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the tribunal's process has ended.
5. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The tribunal may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
7. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
8. Under section 123 of the CRTA and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

9. The issue in this dispute is whether the tribunal should order the owner to comply with the parking bylaws requiring him to park his vehicles within the boundaries of his designated parking stall.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the strata must prove its claim on a balance of probabilities. This means the tribunal must find it is more likely than not that the strata's position is correct.
11. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
12. The strata was created in 1998. The standard bylaws in the Strata Property Act (SPA) apply, and the strata has filed numerous bylaw amendments over the years with the Land Title Office (LTO). In May 2018 the strata filed consolidated bylaws with the LTO. The following bylaws are relevant to this dispute and came into force in March 2015:

Bylaw 3200 Parking Stalls:

Bylaw 3201: The strata may remove a resident's vehicle at the resident's expense if it is not parked in that resident's designated parking stall; if it is found on common property, limited common property, or on land that is a common asset; or if it is parked in a manner constituting a safety or fire hazard.

Bylaw 3202: A resident must not allow a vehicle to be parked in a manner that interferes with other parking stalls, access lanes, or "no parking" zones. A resident must also ensure a vehicle is parked entirely within the boundaries of the parking stall in the parkade, as marked by the painted lines.

13. At the strata's March 18, 2015 annual general meeting (AGM), the owners voted on a special resolution to amend bylaw 3202 to its current version. The minutes from

that AGM indicate the bylaw amendment was to address concerns of oversized vehicles in the parkade protruding into the driveline making it difficult for passing cars to manoeuvre around them and making it difficult for residents to access their vehicles parked next to the oversized vehicles.

14. In October 2016, the strata notified the owner that it received a complaint that he had contravened bylaw 3202 and that it might issue his strata lot a \$200 fine if he did not respond. At some point the owner responded, and he attended a hearing before the strata council on February 2, 2017 where he asked the strata to reverse the fine on his strata lot account. The strata submitted a statement from P.L, the strata council president, who said that during the hearing council explained to the owner that the end of the painted line was the boundary of his parking stall. He said that prior to the meeting that evening a council member measured the owner's truck extending 80 centimetres beyond the painted line of his parking stall. The owner does not dispute any of this.
15. On February 8, 2017 the strata notified the owner of its decision to reverse the fine on his account but asked that he ensure compliance with the parking bylaws and gave him 60 days to find alternate storage for 1 of his motorcycles. The letter did not provide reasons for the decision to reverse the fine. On March 31, 2017 the owner responded stating that he did not believe he was violating bylaw 3200 because there is no painted line at the end of his parking stall.
16. On May 5, 2017 the strata notified the owner that it was taking steps to clearly identify the boundaries of each parking stall in the parkade, but that as of that date he had yet to comply with its request for him to find a different storage space for his motorcycles. It did not state what specific steps it was taking to identify the boundaries of the parking stalls, and there is no evidence to indicate it took any subsequent action to further identify the boundaries of the parking stalls.
17. The owner says that as of May 2017 he considered all parking matters with the strata resolved and says he was compliant with all bylaws. The owner says he continued to park in the same manner for the next 18 months with no complaints from the strata. The strata says the matter was not resolved, the owner was not

compliant with the parking bylaws, and he did not find alternate storage for his motorcycles. It says it hoped the owner would resolve the situation on his own, but once it became clear that he would not do so, it started notifying him of his parking bylaw contraventions again in November 2018.

18. I agree with the strata. I find its May 5, 2017 correspondence is clear that the owner remained in violation of the parking bylaws until he found alternate storage for his motorcycles. The fact that the owner had a different interpretation of the boundary of his parking stall did not mean the matter was resolved.
19. Between November 2018 and April 2019, the strata notified the owner of 5 separate complaints that he was contravening the parking bylaws.
20. The owner acknowledges that his parked truck extends past the open end of his parking stall because he parks at least one motorcycle between his truck and the back wall. He submitted a photo with measurements showing the length of the parking stall from the back wall to the end of the painted line is 545 centimeters. He submitted a photo showing that when he parks 2 motorcycles in front of his truck in his stall the truck extends 615 centimetres out from the back wall, or 70 centimetres past the end of the painted line. He says he is not breaching the parking bylaws because there is no painted line across the open end of his parking stall, so he is technically parking with the boundaries. He also says his parked truck does not interfere with the access lane or impede emergency vehicles from entering the parkade.
21. The strata says its council vice president measured the owner's parking stall on July 22, 2019 and that it is 550 centimeters long, not 545 centimetres. It says on that date when the owner's truck was parked in front of 1 motorcycle, the front of the truck extended 573 centimetres from the back wall, or 23 centimetres past the end of the painted line. The strata says when the owner's truck is parked in his stall in front of 2 motorcycles, his truck extends 634 centimetres from the back wall, or 84 centimetres past the end of the painted line.

22. Regardless of the precise measurements, it is undisputed that whether the owner parks his truck in front of 1 or 2 motorcycles, his parked truck extends past the end of the painted line.
23. The strata says the turning space for vehicles passing between the opposite curb and the front of the owner's truck parked in front of 1 motorcycle is 675 centimeters, or 676 centimetres when parked in front of 2 motorcycles. The strata says this would prevent 2 average-sized vehicles from passing each other in front of the owner's truck but did not provide evidence of the measurements of an "average-sized vehicle." The strata says this risks restricting access to emergency vehicles to the 2 parkade levels below. I note the strata did not provide evidence that any vehicle, including any emergency vehicle, has ever been prevented from accessing the lower 2 parkade levels because of the way the owner parks his truck.
24. The owner says the strata's measurements are "false," but does not elaborate. He submitted photos with measurements indicating that the distance between a post and the wall (constituting the access lane) is 666 centimetres, whereas the distance between the post and the front of his truck when parked in his stall is 688 centimetres. Since there is more space between the post and his parked truck than there is between the post and the wall, he says his parked truck does not impede the flow of traffic through the parkade.
25. On balance, I am not satisfied the strata has established that the owner parks his truck in such a way as to interfere with the access lanes. However, the issue remains as to whether he parks his truck "entirely within the boundaries of the parking stall in the parkade, as marked by the painted lines," as required by bylaw 3202.
26. The owner submitted the City of Vancouver parking bylaws and says he has always complied with them. The strata says the owner's compliance with the City of Vancouver parking bylaws does not absolve him from his responsibility to comply with the strata's bylaws. I agree. The issue is whether the owner is in breach of the strata's parking bylaws, not the City of Vancouver's bylaws.

27. For the following reasons, I prefer the strata's interpretation of bylaw 3202, and I find the owner has regularly parked his truck outside the boundaries of his parking stall. It is undisputed that the owner regularly parks his truck in a way that extends past the end of the painted lines. While the owner says there is no painted line across the end of his parking stall, I find that would be an unusual demarcation of a parking stall. I find a reasonable interpretation of the end of a parking stall is the invisible line across it connecting to the 2 painted lines. It is undisputed that the strata told the owner in 2017 that this was how it interpreted the bylaw, but he chose not to comply.
28. The evidence also indicates that it would not be onerous for the owner to comply with the parking bylaws as the strata interprets them. The owner submitted a photo showing his parking stall when he parks 1 motorcycle between his truck and the wall. This allows his truck to be within the end of the painted lines and still between the painted line and the wall, but it is much closer to the parking stall next to his. He says he is concerned with impeding access to the parking stall next to his, but that he believes parking in that manner would comply with all parking bylaws as interpreted by the strata. I agree.
29. The owner says that when he bought his strata lot he expressed his concern about fitting his vehicles into his parking stall, and the owner developer assigned him a parking stall in the corner to meet his needs. He says he has been parking in the same manner for 19 years and it has never been a problem. However, there is no evidence the owner has any agreement with the owner developer or the strata allowing him to park a certain type or number of vehicles in his parking stall. The parking bylaws at issue came into force in 2015. The fact that the owner parked in the same way for many years before these bylaws came into force without issue is irrelevant, because as an owner he is required to abide by the strata's bylaws, as amended, at all times. On the evidence before me I find there is no legal basis entitling him to park a truck and 1 or 2 motorcycles in his parking stall at the same time.

30. The owner also says the strata has not actually received complaints about his alleged bylaw contraventions, rather the strata council has initiated the complaints. However, since strata council members are also owners, I find that nothing in section 135 of the SPA prevents a strata council member from initiating such a complaint.
31. On the evidence before me, I am satisfied that the strata's interpretation of the boundaries of the owner's parking stall is reasonable and was communicated to him in 2017. I therefore find the owner has consistently parked his truck in breach of parking bylaw 3202, and I order him to park his vehicle(s) within the boundaries of his parking stall, which includes the imaginary line running perpendicular from the painted line to the wall.
32. The strata submitted a July 15, 2019 statement of the strata's accounts receivable showing the owner had 2 outstanding \$200 fines on his strata lot, 1 issued April 26, 2019, and another issued May 23, 2019. In its submissions the strata says it wants the owner to pay the 2 outstanding \$200 fines on his strata account. However, it did not formally request these remedies in its Dispute Notice or during the facilitation process, and therefore I find the owner did not have the opportunity to submit evidence on this point. I therefore decline to address whether the strata issued the fines in accordance with section 135 of the SPA. However, I note that the owner is required to follow all bylaws, which includes payment of any fines levied against his strata lot in accordance with the SPA.

TRIBUNAL FEES AND EXPENSES

33. Under section 49 of the CRTA, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Since the strata was successful, it is entitled to reimbursement of \$225 in tribunal fees. In its submissions and evidence, the strata appears to claim \$11.08 in dispute-related expenses for registered mail, however it did not explicitly claim

this amount in its Dispute Notice or during the facilitation process. I therefore decline to order reimbursement of the strata's dispute-related expenses.

34. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

DECISION AND ORDERS

35. Within 14 days of the date of this order, the owner must pay the strata \$225 in tribunal fees.
36. I order the owner to park his vehicle(s) within the boundaries of his parking stall, which includes the imaginary line running perpendicular from the painted line to the wall, in accordance with bylaw 3202.
37. The strata is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
38. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing a validated copy of the attached order in the Supreme Court of British Columbia (BCSC). Once filed, a tribunal order has the same force and effect as a BCSC order.
39. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia (BCPC). However, the principal amount or the value of the personal property must be within the BCPC's monetary limit for claims under the Small Claims Act (currently \$35,000). Under section 58 of the CRTA, the owner can enforce this final decision by filing a validated copy of the attached order in the BCPC. Once filed, a tribunal order has the same force and effect as a BCPC order.

