



# Civil Resolution Tribunal

Date Issued: October 9, 2019

File: ST-2019-001921

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS 2429 v. Onni Development (The Point) Corp.*  
2019 BCCRT 1177

B E T W E E N :

The Owners, Strata Plan BCS 2429

**APPLICANT**

A N D :

ONNI DEVELOPMENT (THE POINT) CORP.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell

## INTRODUCTION

1. The applicant, The Owners, Strata Plan BCS 2429 (strata) is a strata corporation existing under the *Strata Property Act* (SPA). The strata consists of 8 commercial

strata lots and 146 residential strata lots (including 15 live/work strata lots). There are separate residential and commercial sections.

2. The respondent, Onni Development Corp. (Onni) owns all 8 commercial strata lots in the strata. Onni was also the owner developer of the strata.
3. This dispute is about the parkade entrance gate (main gate), which is currently left open for public access from 8:00 am to 8:00 pm each day.
4. Onni has asked for the strata to allow it to leave the main gate open from at least 6:00 am to 11:00 pm, to accommodate commercial tenants and monthly parkers. Onni says that under the bylaws the commercial section is entitled to control the main gate hours as it deems fit, although physical access to the main gate controller is within the residential section and the commercial section has no access to it.
5. The strata refused Onni's request to change the main gate hours, citing security concerns.
6. The strata says the parties have been unable to resolve this issue, and asks the tribunal to issue a declaration that bylaw 8.20 permits the strata to maintain the current main gate opening hours. Alternatively, the strata seeks a declaration that the word "occupant" in bylaw 8.20 does not apply to guests or customers of the commercial or live/work strata lots.
7. The owner is represented by an employee, and the strata is represented by a strata council member.

## **JURISDICTION AND PROCEDURE**

8. 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.

9. 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.
10. 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.
11. 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.

## **ISSUES**

12. The issues in this dispute are:
  - a. Does bylaw 8.20 entitle the commercial section to control the main gate?
  - b. If not, does the strata have to comply with Onni's request for expanded main gate opening hours?

## **BACKGROUND FACTS**

13. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding such as this, the applicant strata must prove its claims on a balance of probabilities.
14. The residential and commercial sections share one large parkade area. The street entrance to the entire parkade is controlled by the single main gate. Parking for

residential section owners and tenants is located on 3 separate levels, each of which is behind an additional gate.

15. In the area between the main gate and before the residential gates, there are parking spaces used by commercial tenants, their customers and guests, and by monthly parking pass holders. There is residential visitor's parking. There are also doorways into residential storage locker rooms, a bike storage room, a garbage room, and a janitorial room, which are used by the residential section. There are also doors leading into stairwells which access other parts of the building, including residential areas.
16. The owner developer filed bylaws that are different to and replace the Standard Bylaws at the Land Title Office in July 2007, when the strata was created. There have been some subsequent bylaw amendments, which are not relevant to this dispute.
17. The July 2007 bylaws created separate residential and commercial sections for the strata. Neither section has its own bylaws.
18. Bylaws 8.20(a) and (b) are relevant to this dispute. They say the strata corporation, council, residential section, and commercial section will not:
  - (a) take any action or pass any bylaw or rule which would have the effect of prohibiting, preventing, or impairing in any way whatsoever the owner of a non-residential strata lot or Live/Work lot, or any occupant therefore, from fully utilizing such non-residential strata lot or Live/Work Lot (and any parking stalls, storage areas, common property and limited common property which the owner of such non-residential strata lot or Live/Work Lot, or any occupant thereof, is entitled to use) for commercial purposes in accordance with the applicable governmental zoning bylaws and rules and regulations in effect from time to time;

(b) take any action or pass any bylaws or rules which would restrict the hours of operation of any business carried on within a non-residential strata lot or Live/Work lot...

## **POSITIONS OF THE PARTIES**

19. Onni says that under bylaws 8.20(a) and (b), the strata cannot restrict the main gate access hours from 8:00 am to 8:00 pm, as it has done. Onni submits as follows:

- a. The main gate controls access to the commercial parking area.
- b. Many of the commercial tenants conduct business before 8:00 am and/or after 8:00 pm.
- c. Those commercial tenants are entitled to use the commercial parking stalls. The stalls are regularly used by employees, customers, and clients of the commercial tenants.
- d. By restricting the main gate hours, the strata has impaired Onni and its commercial tenants (occupants) from fully utilizing the non-residential strata lots for commercial purposes. This is because there are certain hours in which employees, customers, and clients of the commercial tenants cannot access the commercial parking area.
- e. Accessible parking is vital to the commercial tenants. Under bylaw 8.20, the strata cannot impair the utilization of the commercial strata lots "in any way."
- f. Section 3.6 of the Disclosure Statement said, "...User of the Residential Portion may be required to pass through the Commercial Portion in order to access the Residential Portion, and the gate system regulating access to the Commercial Portion will remain open as required by users of the Commercial Lots and the live/work Residential Lots..."
- g. The commercial tenants are therefore entitled to dictate the main gate opening hours.



20. The strata submits as follows:

- a. Bylaw 8.20 does not allow Onni or the commercial tenants to dictate main gate hours, and does not require the strata to follow the gate opening hours requested by Onni.
- b. Onni has provided no objective evidence to support its assertion that the current main gate hours have a negative impact on its tenants, that the commercial strata lots are not being fully utilized, or that the commercial tenants want the hours changed.
- c. The main gate hours have been the same for many years without issue for the commercial tenants.
- d. The Disclosure Statement does not bind the successor owners. Also, the Disclosure Statement says in part that visitor parking would be in the residential portion, secured by a gate. Onni, as owner-developer, actually put the visitor parking in the commercial area, so it is not secured by a gate. Security reasons justify the current limited gate hours.
- e. There are no parking stalls assigned to Onni. Rather, the commercial parking stalls are common property, leased to a separate company, Onni Parking Management Services Ltd. (parking tenant).
- f. Onni only wants to keep the main gate open because the parking tenant recently entered into an agreement with Impark to install pay parking in the commercial parking area, and extending the main gate hours would create more parking revenue.
- g. Section 3.1 of the lease with the parking tenant (which is incorporated into Bylaw 11.1) allows the strata to control, manage and administrate the parking stalls, storage areas and common property (including the main gate) in accordance with the SPA.
- h. The strata is not “taking any action”, as contemplated in bylaw 8.20(a). Rather, it has maintained the status quo, with no proposed change.

- i. The strata has problems with break-ins and unauthorized entry, and does not want to increase the main gate opening hours for security reasons. Also, any change to the main gate hours would constitute a significant change in the use of common property, requiring a ¾ vote resolution under SPA section 71.
- j. Onni's interpretation of bylaw 8.20(a) leads to absurdities, as it makes bylaw 8.20(b) redundant, and would have the result of making it impossible for the strata to close or lock any door the commercial tenants have access to, and would effectively cede control of all common areas to Onni.
- k. Commercial tenants and their customers or guests can use the commercial parking spaces outside the main gate opening hours. The commercial tenants have fobs, and they can use them to open the gate, and to let guests or customers in. There is also free street parking at these times.

## **REASONS AND ANALYSIS**

### ***Does bylaw 8.20 entitle the commercial section to control the main gate?***

- 21. Onni says that under bylaw 8.20, the commercial owners and tenants are entitled to control the main gate, including setting the main gate opening hours.
- 22. I do not agree. As shown on the strata plan, the commercial parking area is common property. I find that the main gate is a common asset, as defined in SPA section 1(1). Under SPA section 3, the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners. I find there is nothing in the bylaws that limits the duty and authority of the strata to manage the main gate.
- 23. Both parties cite the disclosure statement as authority for who controls the main gate. A disclosure statement is a marketing document required under the *Real Estate Development Marketing Act*. It is provided by the owner developer (in this case, Onni) to prospective buyers when the strata is newly built. As stated in *Berman v. The Owners, Strata Plan EPS2470*, 2019 BCCRT 179, the disclosure statement describes the intentions of the owner developer, but does not provide



guarantees. Therefore, I find that the disclosure statement is not determinative of the issues in this dispute.

24. Rather, as previously stated, I find that under the SPA, the strata has a duty and authority to manage the main gate. This duty is subject to the limits set out in bylaw 8.20. I discuss the scope of those limits in the following section.

***Does the strata have to comply with Onni's request for expanded main gate opening hours?***

25. To recap, bylaw 8.20(b) says, in part, that the strata cannot take any action which would impair the occupant of a non-residential strata lot "in any way whatsoever" from fully utilizing the strata lot, and any parking stalls the occupant is entitled to use, for commercial purposes.
26. Onni says that by refusing its request for expanded main gate opening hours, the strata has breached bylaw 8.20(a). Specifically, Onni says that the current main gate open hours impair the commercial tenants from fully utilizing the non-residential strata lots for commercial purposes, because at times employees and clients cannot access the commercial parking area.
27. I find that Onni's commercial tenants are "occupants", for the purpose of bylaw 8.20. There is no dispute that at least some of those commercial tenants have access to parking stalls in the commercial parking area that are at times used by employees and customers.
28. I accept, based on the evidence before me, that some of the commercial tenants' businesses are open beyond the current gate opening hours of 8:00 am to 8:00 pm. There is a 24-hour gym, a pizzeria that is open until 10:30 or 11:00 pm, and another business that opens at 5:30 am on weekdays.
29. Based on the wording of bylaw 8.20(a), the key question in this dispute is whether the strata's current main gate opening hours are impairing any of the commercial tenants from fully utilizing their strata lots, or the parking stalls they are entitled to use.

30. Onni does not suggest that the main gate hours prevent any of its tenants' business from operating. However, Onni says the employees and customers of those business cannot access the commercial parking stalls at times when the businesses are open.
31. I accept that the current main gate opening hours restrict access to the commercial parking stalls to some extent. For example, a customer cannot simply drive in and park in those spaces before 8:00 am, or after 8:00 pm. However, as submitted by the strata, the commercial tenants have fobs, and could let customers in. Also, the strata says it offered to add the commercial tenants to the entry phone system, which would allow them to remotely buzz customers in.
32. I find that these are reasonable suggestions, given the break-in problems documented in the strata council meeting minutes. However, I find the language of bylaw 8.20(a) sets a very high threshold. It says the strata cannot take any action which would have the effect of "impairing in any way whatsoever" the occupant of a non-residential strata lot from fully utilizing parking stalls they are entitled to use.
33. Onni's position is that in order to fully utilize the commercial parking stalls, it is necessary to have the main gate open longer, so members of the public can enter early in the morning and later at night. However, for the reasons set out below, I find that the evidence before me does not support this conclusion.
34. In support of its assertion that the strata breached bylaw 8.20(a), Onni provided a statement from its Director of Commercial Property Management, SB. SB says that in his view, restricting the main gate hours impairs the ability of Onni and its commercial tenants from fully utilizing the commercial strata lots and parking stalls.
35. It is unclear from the evidence why Onni itself needs expanded main gate hours to utilize its strata lots. Onni rents out its strata lots, and does not have an operational space in the building. While SB says the gate hours impact the marketability of the strata lots, there is no evidence before me to support that assertion, so I place no weight on it.

36. I also find there is no evidence before me to support the conclusion that the current main gate hours impair the commercial tenants from fully utilizing the strata lots or parking stalls. While SB says this is his “view”, there is no evidence about or from the tenant businesses such as business records, letters, or emails. The fact that they are open before and after the gate hours does not, in itself, prove that they need unrestricted public access to the commercial parking area during those times. There is no evidence before me showing how the current main gate hours impair the commercial purposes of the tenant businesses. For example, there is no evidence from the pizzeria operator or the gym operator indicating that they require the public to have access to the parkade after 8:00 pm in order to fully operate their business. There is also no evidence that the current fob access, or the offer of entry phone access, would not allow full utilization of the commercial strata lots and parking stalls.
37. Onni submits that accessible parking is vital to the commercial tenants. I can appreciate that at least some of the commercial tenants would prefer unfettered public access to the parkade at all times. However, there is no evidence from those tenants to support that finding. Thus, it is speculative. There is no evidence that the lack of access before 8:00 am and after 8:00 pm is impairing the tenants’ use of the strata lots and parking stalls for a commercial purpose.
38. For all of these reasons, I allow the strata’s claim. I find the strata is entitled to set the main gate opening hours. While the strata must act in accordance with bylaw 8.20, I find the evidence before me in this dispute does not establish that the current main gate opening hours impair Onni or the commercial tenants from utilizing their strata lots or parking stalls.

## **TRIBUNAL FEES AND EXPENSES**

39. As the strata was successful in this dispute, in accordance with the CRTA and the tribunal’s rules I find it is entitled to reimbursement of \$225.00 in tribunal fees. Neither party claimed dispute-related expenses, so none are ordered.

40. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Onni.

## **ORDERS**

41. I allow the strata's claim. The strata is entitled to control the main gate opening hours, and does not have to grant Onni's request for expanded main gate hours.

42. I order that within 30 days of this decision, Onni must reimburse the strata \$225 for tribunal fees.

43. The strata is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.

44. 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.

45. 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 strata 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.

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Kate Campbell, Tribunal Member