



Civil Resolution Tribunal

Date Issued: October 25, 2019

File: ST-2018-002609

Type: Strata

Civil Resolution Tribunal

Indexed as: *Stieda v. The Owners, Strata Plan NW 2729*, 2019 BCCRT 1223

B E T W E E N :

Sieglinde Stieda

APPLICANT

A N D :

The Owners, Strata Plan NW 2729

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant, Sieglinde Stieda (owner), owns strata lot 25 in the respondent strata corporation, The Owners, Strata Plan NW 2729 (strata). The owner says the strata has prevented her from storing certain items on her carport, treated her unfairly by selectively enforcing its bylaws, and failed to prepare and distribute minutes of every council meeting. She wants the strata to allow her to store her bench, broom,

Rubbermaid containers, and potted plants on her carport, and she wants the strata to enforce its bylaws fairly and consistently. She also wants the strata to prepare minutes for all council meetings and distribute the minutes to all owners.

2. The strata says the owner cannot keep the requested items in her carport because its bylaws clearly require any items in a carport to be stored in a strata-approved storage container. It says it enforces bylaws consistently and denies treating the owner unfairly. It also says it prepares minutes from every council meeting and distributes them to the owners.
3. The owner is self-represented and the strata is represented by B.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.

ISSUES

9. The issues in this dispute are:
 - a. Is the owner permitted to store her bench, broom, Rubbermaid containers, and potted plants in her carport?
 - b. Has the strata treated the owner significantly unfairly by inconsistently enforcing its bylaws, and if so, what is an appropriate remedy?
 - c. Has the strata failed to prepare and distribute minutes from its council meetings, and if so, what is an appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the owner must prove her claims on a balance of probabilities. This means the tribunal must find it is more likely than not that the owner'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 1988. On March 26, 2015 the strata repealed all previous bylaws and replaced them with a full set of new bylaws, which it filed with the Land Title Office (LTO). On October 18, 2018 the strata filed a new set of bylaws with the LTO, which repealed and replaced all previous bylaws except those bylaws relating to pets, age restrictions, and rentals.

Is the owner permitted to store her bench, broom, Rubbermaid containers, and potted plants in her carport?

13. Between March 26, 2015 and October 17, 2018, bylaw 15 (a) required all items stored in a carport to be kept in a strata council-approved storage container.
14. On January 3, 2018 the strata received a written complaint from an owner stating that some owners and visitors had complained about pots, a bench, and a blue container in the owner's carport. Photos of the owner's carport taken on January 5, 2018 show the items in the middle of the carport.
15. On January 8, 2018 the strata notified the owner by letter dated January 5, 2018 that it had received complaints that she was storing "pots, plants, etc." in her carport in breach of bylaw 15 (a). The strata gave the owner 14 days to respond or comply with the bylaw, and the parties corresponded about this issue throughout January and February 2018.
16. The strata says the owner eventually removed all items from her carport, and it did not impose a fine. The owner says the strata fined her, but she did not provide evidence of these fines. It is also unclear from her submissions whether the alleged fines relate to a contravention of bylaw 15 (a), or some other bylaw contravention. I find there is insufficient evidence to establish that the strata fined the owner for contravening bylaw 15 (a).
17. Regardless, the question before me is not about fines, it is whether the owner is permitted to keep the items in her carport. On the evidence before me and a plain reading of bylaw 15 (a), I find she was not permitted to do so before October 18, 2018.
18. The strata says the owner is permitted to have storage on her carport, but that it deemed her use of the Rubbermaid containers for food for emergencies to be inappropriate as it could attract wildlife and pests. The owner says the containers are "impervious" to pests, so the strata's concerns are arbitrary. She did not provide evidence that the containers keep out pests.

19. The strata says it has no problem with the owner using a bench at the back of her carport against the wall, but that she placed the bench in the middle of her carport and used it as a stand for her potted plants which was unsightly and not the purpose of the carport. The strata says the owner has never asked the strata permission to store potted plants in her carport area, and says she has access to the strata's communal garden behind her strata lot. It says a hanging flower pot or plants next to the entrance are acceptable, but that is not what the owner was doing.
20. The owner says her potted plants do no harm and it is unreasonable for the strata to deny her permission to have them in her carport. However, the question is not whether the proposed storage of the items in the owner's carport is reasonable, but whether it complies with the bylaws. I find there is insufficient evidence to indicate that the owner asked or was granted permission from the strata to store her bench or potted plants on her carport, and there is no evidence she asked permission to keep these items in a storage box. I find the strata's reason for not allowing the Rubbermaid containers to be used as food storage in the carport is reasonable.
21. For all of these reasons, I find the owner was not permitted to store the requested items on her carport between March 26, 2015 and October 17, 2018, when bylaw 15 (a) was in effect.
22. Bylaw 15 (a) was repealed on October 18, 2018 when a new set of bylaws came into effect. The relevant bylaws in effect as of October 18, 2018 are set out below:
 - a. Bylaw 8 (5) prohibits an owner from using a parking bay for any purpose other than parking a vehicle.
 - b. Bylaw 8 (17) prohibits an owner from using a parking bay for storage except for items fully contained in a storage unit which complies with bylaw 8 (18) and 8 (19).
 - c. Bylaw 8 (18) allows an owner to place 1 storage unit in their parking bay as long as it has been approved by council, is stored in front of a vehicle, is

neutral in colour, and is less than 1.22 metres long, 1 metre high, and 51 centimetres wide.

d. Bylaw 8 (19) prohibits an owner from storing combustible, flammable, or hazardous materials in a storage unit in a parking bay.

23. I find the new bylaw 8 did not materially change the substance of the rule in former bylaw 15 (a), but it provides more detailed rules about allowable storage in carport areas. Again, there is no evidence the owner requested permission from the strata to store her items in a storage container contemplated by bylaw 8. On a plain reading of bylaw 8 and the evidence before me, I find the owner's proposed use of the items in her carport contravenes bylaw 8. Therefore, I find the owner is not permitted to store the requested items in her carport. I dismiss this claim.

Has the strata treated the owner significantly unfairly by inconsistently enforcing its bylaws, and if so, what is an appropriate remedy?

24. The owner says the strata inconsistently enforces its bylaws by giving preferential treatment to certain owners and targeting other owners.

25. The tribunal has authority to issue orders to remedy a strata corporation's significantly unfair actions under section 123 (2) of the CRTA, which contains similar language to section 164 of the *Strata Property Act* (SPA) (see *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164 at paragraph 119).

26. The courts and the tribunal have considered the meaning of "significant unfairness" in many contexts and have equated it to oppressive or unfairly prejudicial conduct. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable.

27. In *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, the Court of Appeal established the test for determining significant unfairness which the Supreme Court restated in *The Owners, Strata Plan BCS 1721 v. Watson*, 2017 BCSC 763 at paragraph 28 as follows:

- a. What is or was the expectation of the affected owner?
 - b. Was the owner's expectation objectively reasonable?
 - c. If so, was that expectation violated by an action that was significantly unfair?
28. The owner relies on the BC Supreme Court's decision in *Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32, in which it said the owners in a strata have a reasonable expectation that the strata will consistently enforce bylaws. That decision is binding on me, and therefore I find the owner has met the first 2 requirements of the test for significant unfairness. The next question is whether the strata violated the owner's expectation by a significantly unfair action. On the evidence before me, I find it has not.
29. The owner says that in July or August 2017 she verbally complained to a council member about another owner leaving oil in their carport, but that the oil was soon removed from the carport. The owner did not provide specific details about the date of her complaint or who she complained to. The strata says it had no knowledge of this incident or complaint until it received the owner's Dispute Notice. I find there is insufficient evidence to establish that the strata failed to address the owner's complaint, or that it failed to enforce its bylaws with respect to the alleged activity.
30. In her submissions the owner describes numerous examples of other owners allegedly contravening former bylaw 15 (a) or current bylaw 8, including owners storing drywall, electronic gadgets, herb pots, motorcycles, sheds, and other storage boxes on their carports, and using their carport as a carwash station. She provided photos of some of these alleged contraventions.
31. The strata says many of the items the owner describes have since been removed from the carports. It submitted photos of the carports taken in January 2018. These photos show that the only items stored on the carports are storage boxes or small items against the back of the wall. Most of the carports are empty or contain only a vehicle.

32. There is no evidence the owner ever complained to the strata about any of these alleged contraventions, or that the strata failed to investigate any such complaints from her, or from any other owner. Therefore, I find there is insufficient evidence to prove that the strata inconsistently enforced former bylaw 15 (a) or current bylaw 8.
33. The owner also describes examples of other owners allegedly contravening other bylaws, including by smoking, installing laminate flooring, using propane barbeques, storing bicycles in the strata's clubhouse, parking vehicles in their carports in reverse, and allowing their pets to be off leash on strata property. She says an owner and council member have used the strata's clubhouse for an unauthorized business purpose and operate without a business license, and she says an owner allowed their construction worker to temporarily store construction materials in her carport.
34. While the owner did submit some evidence to support some of these allegations, I find there is insufficient evidence that she or any other owner ever complained to the strata about any of these alleged bylaw contraventions, or that the strata failed to investigate any such complaints from her, or from any other owner. Therefore, I find there is insufficient evidence to prove that the strata inconsistently enforced any of its other bylaws.
35. The owner also says she was treated unfairly by being prevented from joining council at the 2012 annual general meeting (AGM) and being treated with hostility at the 2013 AGM. However, I find that even if she could prove these claims, under the former *Limitation Act*, which was in force at the time of those meetings, she is out of time to bring these claims. I therefore decline to address them.
36. The owner also says she was physically assaulted by another owner and verbally harassed by the council president. However, I find the owner has submitted no evidence to support these allegations and the strata denies them. Without more, I find the owner has not established that the strata treated her significantly unfairly with respect to these alleged events.

37. On balance, I am not satisfied that the strata has treated the owner significantly unfairly or that it has inconsistently enforced its bylaws. I dismiss this claim.
38. The owner submitted a statement from another owner which contains details about that owner's alleged mistreatment by the strata, as well as the strata's alleged mistreatment of other owners or former owners. However, those other owners are not parties to this dispute, so I decline to address any allegations that the strata treated them unfairly. Nothing prevents those other owners from starting their own disputes with the tribunal if they wish to do so.

Has the strata failed to prepare and distribute minutes from its council meetings, and if so, what is an appropriate remedy?

39. The bylaws require the strata council to inform owners of the minutes of all council meetings within 2 weeks of the meeting. The owner says the strata has failed to prepare minutes of all council meetings and failed to distribute them to owners, but she did not provide evidence to support her claim. However, I find that if the strata failed to distribute meeting minutes as she claims, then she would not have any evidence to submit.
40. The strata says it has prepared minutes for all council meetings, but the only minutes it submitted are from its February 11, 2013 AGM, and it is not clear that these minutes were distributed to the owners. Presumably the strata has evidence of preparing and distributing minutes to the owners if it in fact did so, but it chose not to provide that evidence to the tribunal. In these circumstances, I make an adverse inference against the strata. I therefore order the strata to prepare minutes for all future meetings, and to distribute those minutes to all owners in accordance with the bylaws.
41. The owner says the minutes from the February 11, 2013 AGM are incomplete and omit many issues discussed at that meeting. However, she submitted no evidence to support her allegation and I dismiss this aspect of her claim.
42. The owner also says the strata did not consult the owners about the new set of bylaws approved at the August 8, 2018 special general meeting (SGM) and failed to

make the new bylaws available to the owners once they were filed with the LTO in October 2018. However, the strata is not required to consult with the owners when drafting new bylaws. It is only required to include the proposed bylaws in the SGM or AGM notice package under section 45 (3) of the SPA, and to obtain the owners' approval of the proposed bylaws through the process set out in section 128 of the SPA. I find there is insufficient evidence to prove that the strata breached section 45 (3) or 128 of the SPA in establishing the new set of bylaws, or that it failed to make those bylaws available to the owners. I dismiss this claim.

TRIBUNAL FEES AND EXPENSES

43. 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 applicant was generally unsuccessful, I find she is not entitled to reimbursement of her tribunal fees. She has not claimed any dispute-related expenses.
44. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

ORDER

45. I order the strata to prepare minutes for all future meetings, and to distribute those minutes to all owners in accordance with the bylaws.
46. 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). The order can only be filed if, among other things, the time for an appeal under section 123.1 of the CRTA has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as a BCSC order.

47. 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. The order can only be filed if, among other things, the time for an appeal under section 123.1 of the CRTA has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as a BCPC order.

Sarah Orr, Tribunal Member