



Civil Resolution Tribunal

Date Issued: October 28, 2019

File: ST-2019-001109

Type: Strata

Civil Resolution Tribunal

Indexed as: *Storey v. The Owners, Strata Plan NW 2150*, 2019 BCCRT 1225

B E T W E E N :

BRANDY STOREY

APPLICANT

A N D :

The Owners, Strata Plan NW 2150

RESPONDENT

A N D :

BRANDY STOREY

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The respondent, and applicant by counterclaim, The Owners, Strata Plan NW 2150, is a strata corporation (strata). The applicant, and respondent by counterclaim, Brandy Storey (owner), owns a strata lot in the strata and rents it out to a tenant.
2. In this dispute, the strata alleges that the owner made unauthorized alterations to her strata lot. The strata says that the owner installed a washing machine without the strata's approval, contrary to the strata's bylaws. The strata asks for an order that the owner remove the alterations and restore her strata lot's plumbing to its previous condition. The strata also asks for an order that the owner obtain a permit from the City of Langley (city) for the work to restore the plumbing, and allow representatives of the strata to inspect her strata lot to ensure that the alterations are removed.
3. The owner says that she did not alter her strata lot's plumbing. She also says that the strata approved the washing machine. In her counterclaim, the owner asks for an order reversing the fines that the strata has imposed. The owner also asks for \$1,120.84 in legal fees.
4. The strata is represented by a strata council member. The owner is self-represented.

JURISDICTION AND PROCEDURE

5. 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.

6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided that I could fairly hear this dispute through written submissions.
7. 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.
8. I note that both parties submitted evidence through the tribunal's online portal after the deadline for submitting evidence had passed. Both parties referred to this late evidence in their submissions, and neither objected to me seeing it. Accordingly, I reviewed and considered this late evidence in making this decision. In any event, I found none of the late evidence relevant in making my decision.
9. 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

10. The issues in this dispute are:
 - a. Did the owner breach bylaw 6(1) by altering her strata lot's plumbing system without strata approval?
 - b. Does the owner need to obtain a permit from the City of Langley (city) to restore the plumbing, and allow the city and strata to inspect her strata lot?
 - c. What remedies are appropriate, if any?

BACKGROUND AND EVIDENCE

11. In a civil claim such as this, the owner must prove her case on a balance of probabilities. The strata bears the same burden of proof in its counterclaim. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
12. The strata consists of 76 residential strata lots in 2 separate buildings. Both buildings have common property laundry rooms.
13. The strata filed a complete set of bylaws in the Land Title Office on March 21, 2012. The strata has filed a number of amendments since then, but none are relevant to this dispute.
14. Bylaw 6(1) says, in part, that an owner must obtain written approval of the strata before altering their strata lot if the alteration involves any portion of the plumbing system. Bylaws 6(6) and 6(7) provide for specific requirements for dishwashers but there is no bylaw about washing machines or dryers.
15. Bylaw 30 provides for a maximum fine of \$200 for breaching a bylaw other than a rental bylaw. Bylaw 31 allows the strata to impose fines every 7 days for a continuing contravention of a bylaw.
16. Although not fully explained in the evidence, it appears that at some point prior to the spring of 2017, there was a flood that caused damage to the owner's strata lot. I infer that at the same time as repairing the damage from the flood, the owner performed some renovations to the strata lot. One of these renovations was adding an open cabinet that could accommodate a stacked washing machine and "ventless" dryer.
17. As part of the restoration, the owner sought and received approval for certain plumbing work to be done. The parties dispute what precisely that approval was for, but given my findings below, I find that I do not need to resolve this issue.

18. There are several photographs in evidence showing how the washing machine is installed and how it is used. The owner constructed an open cabinet in the strata lot's main living area. On the other side of the wall at the back of the cabinet is a bathroom vanity with a sink. The owner drilled 2 holes in the wall separating the cabinet and the vanity and ran the washing machine's water input hose and drainage hose through the 2 holes. When not in use, these hoses are stored underneath the sink in the vanity's cupboard. When the tenant uses the washing machine, they pull the hoses out from the vanity. The input hose attaches to the bathroom faucet and the discharge hose rests in the sink to drain. The washing machine is not hard plumbed into any aspect of the strata lot's plumbing system. It plugs into a normal electrical socket.
19. In its submissions, the strata suggested that there was no way of knowing whether these photographs were from the owner's strata lot. The strata suggests that they could be from anywhere. However, the strata did not provide any evidence to support its suggestion that the photographs are of somewhere else, such as a statement from the strata council member who has been inside the owner's strata lot. I therefore accept the owner's photographs as showing how the washing machine is set up.
20. On August 21, 2018, the owner's fiancé, BR, a strata council member, and the property manager inspected the washing machine.
21. On September 4, 2018, the property manager sent a bylaw infraction letter. The property manager said that the strata did not accept BR's explanation about how the washing machine operated. The property manager said that the owner had breached of bylaw 6(1) and gave the owner the opportunity to answer the complaint.
22. On September 20, 2018, the strata sent a letter imposing a fine of \$200 and requiring that the plumbing be returned to its original condition by October 15, 2018. The letter also warned of further fines if the owner did not remove the plumbing alterations.

23. On February 13, 2019, the owner requested a hearing, which appears to have taken place on either February 27 or 28, 2019. In any event, on March 1, 2019, the strata council requested photographs of the hose system but the owner refused because she did not want to inconvenience her tenant.
24. The strata gave the owner its decision on March 3, 2019. The strata said that the owner made plumbing alterations during a “permitted unrelated restoration”, which I infer refers to the repair work from the flood. The strata said that the washing machine is an alteration based on the 2 hoses that run the wall between the washing machine and the bathroom vanity.
25. The strata has imposed further \$200 fines for a continuing contravention on March 27, April 2, May 9, and May 27, 2019.
26. Before turning to my analysis, I will comment briefly on the dryer. The strata’s initial fine letter clearly only relates to the washing machine, not the dryer. Furthermore, the strata’s counterclaim does not ask for an order about anything other than the plumbing. That said, there is correspondence between the owner’s lawyer and the strata’s lawyer from before the owner started this tribunal dispute that mentions alterations to the electrical system for the dryer. In this dispute, the strata provided evidence and submissions about the dryer and the electrical system.
27. I find that none of the fines at issue relate to the dryer or the electrical system as they were not mentioned in the bylaw contravention correspondence that the strata sent to the owner. I find that neither party asked for an order about the dryer or the electrical system. Therefore, I find that any issues with the dryer are not properly before me, and I make no comment about them.

ANALYSIS

28. The owner argues that there is no bylaw prohibiting or regulating the use of in-suite laundry. She also argues that she did not alter the plumbing because one hose simply hooks up to her bathroom sink when there is a load of laundry on while the other rests in the sink. She says that she did not alter the drain pipe below the

bathroom sink. She says that she did not need an adapter or additional supply piping to install the washing machine.

29. The strata argues that the absence of a specific bylaw about washing machines does not mean that they are permitted. The strata points to its bylaw about portable dishwashers, which are allowed only if there is a water hammer arrester installed at the time of installation. A water hammer arrester mitigates the effects of water hammer, which occurs when waterflow in a pipe changes rapidly. The strata says that it does not need a bylaw about washing machines because it is unreasonable for an owner to expect to install them.
30. I find that the bylaw about dishwashers does not assist the strata. I find that the lack of a specific bylaw about washing machines means that they are not prohibited or regulated. In other words, absent a specific bylaw, an owner is allowed to have a washing machine as long as its installation and use comply with the strata's other bylaws.
31. I therefore find that the question before me is whether the owner altered, changed or improved her strata lot in a way that involved any portion of the plumbing system.
32. Based primarily on the photographs in evidence, I find that the owner did not alter, change or improve her strata lot by adding a washing machine to her strata lot. I find that these 3 words in the bylaw all require an installation with a permanent or fixed impact on the plumbing system. I accept the owner's evidence that the washing machine required no new pipes or plumbing fixtures. As for the hoses, I find that these are components of the washing machine, not components of the strata's plumbing system. The discharge hose simply hangs in the bathroom sink while the input hose only connects to the faucet when the washing machine is in use.
33. I rely on the Supreme Court of British Columbia (BCSC) decision *The Owners, Strata Plan LMS 4255 v. Newell*, 2012 BCSC. In that case, the Court found that a hot tub that had been installed onto a limited common property balcony was not an "alteration" because it did not require changes to the strata's plumbing or electrical

systems and was not permanently affixed to the balcony. While not directly applicable to this dispute, I find that the Court's reasoning supports my conclusion because the washing machine did not require changes to the strata's plumbing or electrical systems and is not affixed to the strata lot.

34. As for the initial fine letter of September 4, 2018, the letter suggests that BR had been untruthful in his explanation about how the washing machine operated. Neither BR nor the strata council member attended the August 21, 2018 inspection gave evidence in this dispute. The property manager who was present is deceased. In its submissions, the strata does not explain how BR's description of the washing machine's operation was inaccurate. For these reasons, I place no weight on the strata's suggestion in that letter that the owner and BR have misrepresented how the washing machine operates.
35. In conclusion, I find that the owner did not need to seek strata approval under bylaw 6(1). I therefore do not need to consider the parties' evidence and submissions about whether the strata approved the addition of the washing machine. Because the owner did not breach bylaw 6(1) as the strata alleged, I find that the strata must immediately cancel all fines that it has imposed on the owner's strata lot for breaching bylaw 6(1).
36. It follows that I dismiss the strata's claims for orders about the owner restoring the plumbing to its previous condition.
37. I recognize that my reasoning does not refer to many of the arguments that the parties made, particularly about whether the owner's use of the bathroom faucet and sink was contrary to the washing machine manufacturer's guidelines, whether the owner was justified in denying access to her strata lot, and whether the washing machine is "portable". I find that these issues have no bearing on whether the washing machine is an alteration, change or improvement within the meaning of the bylaws. That said, in an effort to assist the parties move forward, I will make some brief comments.

38. With respect to the issue of the owner's use of the washing machine, the strata only fined the owner for breaching bylaw 6(1). The strata's arguments about whether the owner has complied with the manufacturer's instructions in operating the washing machine have nothing to do with whether the addition of the washing machine required strata approval under the bylaws. Rather, the strata appears to be concerned about whether the use of the washing machine could place an undue strain on the strata's plumbing system and cause damage.
39. While the evidence is not conclusive, I find that the strata has at least raised a valid concern about whether the bathroom sink and drain have enough capacity to safely drain the washing machine. In order to put this matter to rest, the parties may consider retaining a plumber to provide an opinion about the washing machine's impact, if any, on the strata's plumbing system. The strata may also consider proposing a bylaw amendment that would provide clarity around the installation and use of dishwashers in the strata.
40. Nothing in this decision affects the strata's ability to investigate whether the use of the washing machine may violate another bylaw, including by reasonably accessing the owner's strata lot under bylaw 8. I make no comment on about whether the owner may be breaching another bylaw by using the washing machine as it is currently set up because it could be the subject of a future dispute and because the evidence in this dispute is not conclusive on that issue.

TRIBUNAL FEES AND EXPENSES

41. 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 to deviate from the general rule. I therefore order the strata to reimburse the owner for tribunal fees of \$225 and dispute-related expenses of \$11.08 for a total of \$236.08.
42. The owner also claims legal fees of \$1,120.84. Tribunal rule 9.4(3) says that a party is not entitled to be reimbursed for legal fees unless there are extraordinary

circumstances. I find that there is nothing extraordinary about this dispute and therefore dismiss the owner's claim for legal fees.

43. I dismiss the strata's claim for tribunal fees and dispute-related expenses as it was unsuccessful in this dispute.
44. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner.

DECISION AND ORDERS

45. I order that:

- a. The strata immediately cancel the fines imposed on the owner's strata lot for breaching bylaw 6(1), and
- b. Within 14 days of the date of this decision, the strata pay the owner \$236.08 in tribunal fees and dispute-related expenses.

46. I dismiss the owner's remaining claims.

47. I dismiss the strata's claims.

48. 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 BCSC. Once filed, a tribunal order has the same force and effect as a BCSC order.

49. 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.

Eric Regehr, Tribunal Member