



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Lee v. The Owners, Strata Plan LMS 930*, 2019 BCCRT 1228

B E T W E E N :

HOE PENG LEE

APPLICANT

A N D :

The Owners, Strata Plan LMS 930

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. The applicant, Hoe Peng Lee (owner), owns a strata lot in the respondent strata corporation The Owners, Strata Plan LMS 930 (strata).

2. This dispute is about whether the strata unreasonably denied the owner's renovation application. The owner says that the strata based its denial decision on a finding that he altered his unit without prior approval. The owner says the work performed was not an alteration. The owner requests an order that the strata approve his request to renovate his unit. The owner is self-represented.
3. The strata says that it denied the owner's request to remove a wall after it found out that owner had already begun making alterations without approval. The strata further states that it denied the owner's request to replace the cedar panel on his patio because the patio is limited common property and therefore the strata's responsibility. It noted that the change of materials could affect the strata lot below. It further states that the owner altered the patio without prior approval.
4. The strata also says it denied the owner's request to replace a bathtub with a shower because it might impact the plumbing of the building. The strata also denied the worker's request to remove a fireplace as the fireplace was standard to every strata lot and was connected to the central gas supply. The strata is represented by DL, who I infer is a strata council member.

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. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

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. 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 strata unreasonably denied some of the owner's requested strata lot renovations.

EVIDENCE, FINDINGS AND ANALYSIS

10. In a civil dispute such as this, the applicant must prove his claim. He bears the burden of proof on a balance of probabilities.
11. While I have reviewed all of the material provided, I have only commented below on the evidence and submissions necessary for this decision.
12. The owner lives in Malaysia and does not reside in the strata lot. He was performing ongoing renovations with his realtor, Mr. L, representing him before the strata. In August 2018, Mr. L submitted an application to the strata asking for approval to perform additional work inside the strata lot. Although the strata had approved previous renovation requests, on August 22, 2018 the strata denied the extra renovations.
13. The owner argues that the strata unreasonably denied some of his renovation requests. He asks for an order that the strata approve four renovation projects: removal of a wall between the kitchen and the living room, replacing the surface of the patio, replacing the bathtub with a shower, and removing the gas fireplace.

Removal of the wall between the kitchen and the dining room

14. The owner wants to remove the wall between the kitchen and the dining room. He provided the strata with a July 3, 2018 engineering report stating that the wall was non-load bearing and that it could be removed without any structural impact to the building. The owner also submitted a hand-drawn picture to the strata which shows that the water pipes were on one side of an already existing arched opening between the two rooms. The diagram says that the portion of the wall with the pipes would not be removed. The other side of the archway had electrical wires that needed to be removed or re-routed so that portion of the wall could be taken down. The owner also submitted a picture which shows that the drywall was removed to expose the pipes and wiring.
15. After receiving the pictures, the strata determined that the removed drywall was evidence that the owner had already started the renovation. The strata's property manager, Ms. G, stated in an August 24, 2018 email to Mr. L that they started work prior to approval and that the owner had to restore his strata lot to its original state. She noted that an inspection may be necessary and the strata might impose fines. Ms. G invited Mr. L to a September 26, 2018 strata meeting to discuss the matter.
16. Based on the emails in evidence, it appears that during the meeting the strata asked Mr. L to resubmit the renovation application. Mr. L did this and sent an email to Ms. G on October 13, 2018 explaining that parts of the drywall were removed to investigate whether the wall was load bearing. Mr. L said the drywall also had to be removed to see where the electrical wires and plumbing pipes were located and whether they could be re-routed and if that would affect another strata lot.
17. On October 16, 2018, Ms. G told Mr. L that before they got to the stage of removing drywall they were obligated to get permission to do renovations from the strata. Ms. G said that doing this prior to getting permission was illegal and that the strata had a right to reject the renovation request on that basis.
18. On November 1, 2018, the strata sent an email to the owner saying it was denying the owner's application for renovations as he violated the bylaws by removing the

wall and starting renovations before getting approval. The strata ordered the owner to return the strata lot to its original condition.

The bylaws

19. The strata repealed its previous bylaws and registered new ones with the Land Title Office on April 6, 2009. Bylaw 5 says that an owner must obtain approval before altering a strata lot. Bylaw 5(1)(h) says that an owner must obtain the written approval of the strata before making an alteration to a strata lot that involves changes to the wiring, plumbing, piping inside any wall. Bylaw 5.2 says that the strata must not unreasonably withhold its approval of a request for alterations.
20. In this case, the strata decided that when the owner removed the drywall revealing the wiring, pipes and plumbing inside, that he altered his strata lot. The strata found the owner in violation of bylaw 5.1(h).
21. I note that removing the drywall does not necessarily amount to an alteration of the property. In *Harvey v. The Owners, Strata Plan NW 2489*, 2003 BCSC 1316, the Court decided that an alteration would be more of removing a load bearing wall. Here, I accept the owner's evidence that he removed portions of the drywall so he could see what was inside the wall and also determine whether it was load bearing. I find that this does not amount to altering the building's structure. Drywall is relatively easily replaced and its partial removal did not affect the structure of the building. The owner also did not change the wiring, plumbing, or piping and therefore I find he did not violate bylaw 5.1(h).
22. Under section 130 to 133 of the SPA, the strata's options in enforcing bylaws are to warn, impose fines, or to take steps to remedy contraventions. The strata must also give notice under section 135 before doing so. The strata therefore has no authority to deny a renovation application as a penalty for a bylaw violation, even if there was a bylaw violation, which I have found there was not. For this reason, I find that the strata was unreasonable in relying on the owner's act of removing the drywall as a reason to deny the owner's application to renovate.

23. However, this does not mean that the evidence supports a finding that I should order the strata to allow the renovation to go ahead. The owner submitted a report from a structural engineer stating that the wall is a non-structural wall. The owner did not submit any report about the feasibility or safety of re-routing the wires and pipes within the wall.
24. I find that the owner has not established that he can remove the wall without affecting the wires, pipes, and plumbing. Therefore, I decline to order the strata to allow the owner's requested renovation. However, since I have found that the strata's original decision on this issue was unreasonable, contrary to bylaw 5.2, it is open to the owner to resubmit his proposal, or work with the strata to have an alternate proposal approved.
25. The owner submits that if the strata has a legitimate reason to deny his request to remove the wall, which includes re-routing the existing wires, pipes and plumbing, then he only requests to expand the wall's current opening. The strata has not had an opportunity to consider this proposal. The owner may make another application to the strata detailing his proposed renovation and alternate proposals if he wishes. He should provide any expert reports necessary to support his proposal or proposals.

Resurfacing the patio

26. In its November 1, 2018 letter, the strata also denied the owner's application to renovate the patio. It said that the patio was limited common property and it was the strata's responsibility to repair and maintain it. The strata referred to Bylaw 6(2) which says that the owner must not resurface patios or balconies. The strata ordered that the patio be returned to its original condition.
27. The owner wishes to put down a different type of panel on the patio. The owner did not wish to cover the patio with new cedar but supplied a picture of TREX panelling that he wished to install. The owner provided an advertisement for the TREX panelling but did not provide any information as to whether it would function in the same manner as the cedar which was on top of the patio previously.

28. Bylaw 5.1(c) says that the owner must obtain approval before making alterations to balconies or other things attached to the exterior of the building. Further, bylaw 8.1(2)(c) says that the strata is responsible for repair and maintenance of the patios. The strata submits that it needs to protect the membrane of the building, the strata lot below, and that it is entitled to make sure that there is a uniformity of the look of the building from the outside.
29. I agree with the strata and find that it is entitled to determine the surface and look of the patio's deck. Therefore, the strata did not unreasonably refuse to allow the owner to renovate the deck. I decline to order that the strata allow the owner's suggested renovation.
30. However, it is open to the owner to obtain additional information showing that the TREX panelling would not put at risk the membrane of the building and that it would not vary from the look of the building from the outside. The owner may make another application to the strata detailing his proposed renovation. He should again provide any expert reports necessary to support his proposal.

Replacing the bathtub with a shower

31. In the November 1, 2018 letter, the strata also denied the owner's request to install a shower in place of the bathtub. It said that this type of plumbing would affect the main plumbing system of the building and the other units.
32. The owner removed the existing bathtub. He says he did this for investigative purposes so that the plumber could tell whether the existing pipes needed to be replaced or changed. The owner had the strata's approval to remove the bathtub and replace it with a new one. Therefore, I find that the removal of the bathtub did not violate any bylaw. The question is whether I should order the strata to allow the owner to replace the bathtub with the proposed shower system.
33. The owner submits that he has provided confirmation from his plumber that the work can be completed in the bathroom without having access to other units. The strata did not deny the installation for this reason, rather it said that replacing the

bathub with this shower system would affect the building's plumbing system. The owner did not provide any expert report or evidence from his plumber stating that this was not the case.

34. The owner did provide a promotional video about how to install the shower system. The video is made by the company and makes reference to the necessity of determining the drain system. I find that this video does not specifically address the effects of installing this shower system in the owner's strata lot.
35. The owner says that the strata must provide proof that the shower's installation would affect the building's plumbing. He notes that there is a shower in the second bathroom of his strata lot. However, the evidence suggests that the shower system he currently wishes to install is a different system with a different form of drainage from a regular shower. The strata argues it would affect the building's plumbing system differently.
36. The burden of proof rests with the owner. He must establish that the strata unreasonably denied his request to add the second shower. He has not provided evidence as to the impact of this proposed second shower system on the overall plumbing system or even if this particular shower would work with the current plumbing. Therefore, I decline to make an order that the strata allow the owner to install this shower system. Again, the owner can obtain the expert reports necessary and again approach the strata with his proposal.

Removing the gas fireplace

37. The owner did not make any submissions or provide any evidence to support his claim that the strata's decision not to allow him to remove the gas fireplace was unreasonable. The strata submits that it denied the request because the fireplace is standard to every strata lot and is connected to the gas supply that serves all the units. I find that the owner has not established that the strata was unreasonable in denying his request to either remove or move the gas fireplace.

TRIBUNAL FEES AND EXPENSES

38. Under section 49 of the Act, and the tribunal's rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The owner was unsuccessful in this dispute and therefore he is not entitled to reimbursement of his tribunal fees.
39. The owner submitted receipts for his return flight from Kuala Lumpur to Vancouver and his hotel accommodation for 19 days totaling \$8,357.92. He argues the tribunal did not allow him legal counsel so he had to travel to Vancouver to take part in the process. I note that the tribunal's interaction with parties are usually done by telephone or email. There was no necessity for the owner to travel to Vancouver. The owner cites the time difference as the reason he could not take part without travelling to Vancouver. However, even if and when phone calls were necessary, they could have been arranged with the owner taking part in the evening which would be regular business hours in Vancouver. Further, the tribunal does not generally allow expenses for the costs involved in taking part in a dispute. Therefore, even if I had found in favour of the owner, I would not have allowed these expenses.

DECISION

40. I dismiss the owner's claims and this dispute.

Kathleen Mell, Tribunal Member