



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Adatia et al v. The Owners, Strata Plan NWS 3436*, 2019 BCCRT 1300

B E T W E E N :

SHAFIQUE ADATIA and TARALYNN KLEINE

APPLICANTS

A N D :

The Owners, Strata Plan NWS 3436

RESPONDENT

A N D :

SHAFIQUE ADATIA and TARALYNN KLEINE

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute about parking and strata fees.
2. The applicants and respondents by counterclaim, Shafique Adatia and Taralynn Kleine, (owners), own a strata lot in the respondent and applicant by counterclaim strata corporation, The Owners, Strata Plan NWS 3436, (strata).
3. The strata charged the owners \$2,100 over a 3.5 year period for the exclusive use of a parking stall. The owners say the strata had no authority under the *Strata Property Act* (SPA) to collect the parking fees. They ask for an order that the strata reverse the \$2,100 parking fee charge, as well as a \$52.50 demand letter charge. The owners also ask that I order the strata to create a rule or bylaw before charging an owner a user fee.
4. In the counterclaim, the strata claims \$2,179.99 in unpaid strata fees.
5. The owners are self-represented. The strata is represented by a council member.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
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 strata have authority to charge parking fees? If not, should I order the strata to cancel the \$2,100 parking fee charge on the owners' strata lot account?
 - b. Should I order the strata to create a rule or bylaw before charging an owner a user fee?
 - c. Should I order the strata to cancel the \$52.50 demand letter charge from the owner's strata account?
 - d. Do the owners owe \$2,179.99 in strata fees?
 - e. Is either party entitled to reimbursement for their claimed dispute-related fees and expenses and if so, in what amount?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the owners bear the burden of proving their claims on a balance of probabilities. On the counterclaim, the strata bears the same burden. I have only addressed the evidence and arguments to the extent necessary to explain my decision

12. The strata plan filed on January 16, 1991, shows that the strata building is a high rise with underground parking designated as common property. The strata bylaws relevant to this dispute are the amended bylaws filed in the Land Title Office (LTO) on June 12, 2002, as BT203960.
13. The strata's parking bylaw 40.1 says that a resident must park only in the parking stall assigned to the resident. The owners were assigned parking stall 68. There is no dispute that the strata assigned each strata lot one parking stall, though the parking lot designation records are not in evidence.
14. The parties agree that starting in about January 2016, the strata allowed the owners exclusive use of an additional common property parking stall for \$50 per month. There are no meeting minutes of a strata council decision or written correspondence on the exclusive parking use or charge. The strata bylaws as filed in the LTO and the rules in evidence include no user fees for parking.
15. The owners used the parking stall exclusively for about 3.5 years, until the end of June 2019. The owners say the strata never charged them parking fees until April 2019, despite several follows-ups by the owners about the fees with both the strata property manager and the strata's accountant in 2016 and 2017. The owners say when they then looked into previous years' budgets, the bylaws, and the rules, there was no mention of parking fees or stalls for rent, and they concluded the strata property manager had originally misinformed them and they did not have to pay for parking.
16. The strata says the owners made monthly payments into the strata bank account of strata fees (\$529.58) and parking fees (\$50) beginning in January 2016 until August 2017, then stopped paying their strata and parking fees for about 3 months. The strata says that in 2019 it reviewed its income statements and balance sheets and directed that parking fee income be reallocated into the strata corporation income account. The strata does not specify whether it did this for every owner. It says this review "revealed the failure" by the owners to pay their strata fees. The owners say they temporarily stopped making payments into their strata lot account only

because they had excess funds in the account. They say their strata lot account was not in arrears until the strata back-charged them 3.5 years of parking fees on April 30, 2019.

17. The strata produced an accounting report dated August 12, 2019 that details the strata's charges and the owners' payments into the strata's bank account between December 1, 2015 and August 1, 2019 (report). The report lists no "charge" for parking fees until April 30, 2019. On April 30, 2019, the strata charged the owners \$2,000 in "Parking Charges Jan 2016 – April 2019".
18. The report's running balance shows the strata had applied each of the owners' payments, including the \$50 payments, to either their strata fees or special levies until it started charging for parking on April 30, 2019. Prior to the parking charge, the owners' strata lot account balance had a credit of \$53.45, with no outstanding strata fees or special levies. The parking charge brought the account \$1,946.55 into arrears.
19. The strata submits that "it corrected its own internal accounting by reallocating the \$50 per month to parking income". To do this the strata back-charged the owners a total of \$2,000 to collect the parking fees retroactively to January 2016. It also collected \$100 more in parking fees for May and June 2019. The strata's position is that the parking fees are now paid in full but the owners now owe the \$2,100 as "strata fees" (plus \$79.99 more).

Did the strata have authority to charge parking fees?

20. The strata argues that it was entitled to charge parking fees based on its verbal agreement with the owners. However, I find the parties could have had no legally binding verbal agreement for the exclusive use of the parking stall. This is because the parking stall is common property and the strata cannot allocate common property to a person for their exclusive use absent a grant of exclusive use under section 76 of the SPA. The grant must be made by a resolution of the strata council and documented in its minutes (see *Kayne v. Strata Plan LMS 2374*, 2017 BCSC 1610). There is no suggestion here that there was ever a resolution of the strata

council to grant the owners exclusive use of the parking stall. I also note that section 76 of the SPA says the strata can grant an exclusive use permit for no more than 1 year. Thus, even if the use was properly granted in 2016, it would have needed annual renewal. There is no evidence that the strata council renewed the owners' exclusive use of the parking stall.

21. As mentioned, the strata's bylaws and rules include no provision for imposing user fees for parking. Section 110 of the SPA prohibits the strata from charging user fees other than as set out in the regulations. Section 6.9 of the Strata Property Regulation says the strata may only impose user fees where the fee is both reasonable and set out in either a bylaw or a ratified rule. Since the disputed parking fees were for the use of the parking stall and the parking stall was undisputedly common property, I find they were "user fees" as defined in the SPA. Absent an express provision in the bylaws or rules, a strata corporation has no authority to collect the user fees. Accordingly, I find the strata had no authority to collect the parking fees from the owners.
22. I note that the owners made alternative arguments that the strata was barred from retroactively collecting fees outside the 2-year limitation period, and that the strata acquiesced to waive the parking fees. As I have found the strata had no authority under the SPA to collect parking fees in the first instance, I find no need to comment further on these alternative arguments.
23. Considering my findings above, I order the strata to cancel the \$2,100 parking fee charge on the owners' strata account.

Should I order the strata to create a rule or bylaw before charging an owner a user fee?

24. The owners are essentially asking for an order that the strata follow the SPA and the Regulation by enacting a rule or amending its bylaws before charging user fees. I find no need to make that order because the strata is already required to follow the SPA and Regulation if it seeks to impose user fees. Therefore, I dismiss this claim.

Should I order the strata to cancel the \$52.50 demand letter charge from the owner's strata account?

25. On June 17, 2019 the strata charged the owners \$52.50 on their strata lot account. I find the strata issued the demand letter based on its incorrect conclusion that the owners' strata lot account was significantly in arrears because of its improper collection of parking fees. I find the owners should not be charged for the strata's mistake. Accordingly, I order the strata to cancel the \$52.50 charge from the owners' strata lot account.

To what extent if any, do the owners owe \$2,179.99 in strata fees?

26. It is mandatory under the SPA and the strata's bylaws that owners pay strata fees. Bylaw 2.1 says an owner must pay strata fees on or before the first day of the month to which the strata fees related.

27. I found that \$2,100 of the claimed strata fee amount represents 'reallocated' parking fees that the strata had no authority to collect. Absent the parking fees, the accounting report discussed above shows the owners had an outstanding strata fee balance of only \$76.29 as of August 1, 2019, (the dispute notice date on the counterclaim).

28. However, on about July 11, 2019, the owners had deposited \$2,230.64 into their strata lot account under section 114(1)(b)(ii) of the SPA. Under section 114(2) the strata must hold the money in trust, plus any interest on the money, until the dispute is resolved.

29. For the above reasons, I find the strata is entitled to retain \$76.29 of the money it currently holds in trust for the owners' strata fees. I order under SPA section 114 that the strata release to the owners the remaining \$2,154.35 (\$2,230.64 - \$76.29) trust money, plus any accrued interest.

Fees and Expenses

30. 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. The owners claim \$285.96 in legal fees and \$89.96 for unpaid leave from work to deal with the dispute, and the strata claims \$500.00 in “administrative fees” for litigation support.
31. I find the owners were primarily successful in this dispute and therefore, I allow their claim for tribunal fees. I order the strata to reimburse the owners \$225 in tribunal fees. As for the claimed expenses, the tribunal typically does not award a party legal fees or expenses for their own time in dealing with a dispute, unless there are extraordinary circumstances. I find there were no extraordinary circumstances here. Consistent with the tribunal’s practice, I dismiss the owners claim for dispute-related expenses.
32. As the unsuccessful party, I dismiss the strata’s claims for both tribunal fees and dispute-related expenses. I note that even if the strata was successful in this dispute, I would not have awarded reimbursement for litigation fees. As I just mentioned, under the tribunal rules, the tribunal typically does not reimburse legal fees except in extraordinary circumstances, which do not apply here.
33. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners.

ORDERS

34. I order that within 30 days of this decision:
- a. the strata cancel the \$2,100 parking fee charge on the owners’ strata lot account,
 - b. the strata cancel the \$52.50 demand letter charge on the owners’ strata lot account,

- c. the strata pay the owners \$225.00 for tribunal fees, and
 - d. the strata release to the owners the amount of \$2,154.35 that the strata currently holds in trust, plus any earned interest on the monies, according to section 114 of the SPA.
35. The owners are entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
36. I dismiss the owners' remaining claims.
37. I dismiss the strata's remaining counterclaims.
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 owners 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.

Trisha Apland, Tribunal Member