



Civil Resolution Tribunal

Date Issued: January 8, 2020

File: ST-2019-005564

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 2902 v. McKeown*, 2020 BCCRT 25

B E T W E E N :

The Owners, Strata Plan NW 2902

APPLICANT

A N D :

WILLIAM ENOCH MCKEOWN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about access to an attic. The applicant, The Owners, Strata Plan NW 2902 (strata), is a strata corporation. The respondent, William Enoch McKeown (owner), owns strata lot 5 in the strata.

2. The strata says that the owner wrongly denied it access to strata lot 5. The strata says it requires access to complete an insulation and ventilation project in the common property attic. The strata seeks \$400.00 in related fines and an order for access to strata lot 5. The owner disagrees. He says the strata did not sufficiently inform him that it needed access to his attic. He also questions the need for the work.
3. The owner is self-represented. A strata council member represents the strata.

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 questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. 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

8. The issues in this dispute are as follows:
 - a. Must the owner provide the strata access to his strata lot to complete insulation and ventilation work in the common property attic?
 - b. Must the owner pay \$400.00 in bylaw violation fines?

BACKGROUND AND EVIDENCE

9. In a civil claim such as this, the applicant owner bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. The strata referred to several documents that were not in evidence. I asked the strata to provide these documents and it did so. The respondent reviewed these documents and provided submissions by email.
11. The strata consists of 13 residential strata lots. The strata plan shows the following details. Strata lots 3, 4, 5, and 6 are connected and arranged like townhouses. Each strata lot has a ground floor, second floor, and a shared attic on top. The attic is designated as common property on the strata plan. I therefore find that the attic above strata lot 5 is common property.
12. The strata says, and I find, that to access the attic above strata lot 5 it must enter through strata lot 5. There is no submission or evidence that suggests otherwise.
13. On February 21, 2019, the strata held its annual general meeting (AGM). According to item 11 of the AGM minutes, the strata discussed and voted on a draft 2019 operating budget. The draft budget is attached to the AGM minutes in evidence.
14. In the budget, the strata budgeted for an insulation and ventilation project for the coming fiscal period. The project appears as its own line item.

15. Explanatory notes attached to the draft 2019 operating budget summarize the project details. The notes say that in 2018 the strata discovered that attic ventilation was insufficient in one area. The strata proposed a repair project that included unblocking soffits, installing soffit chutes, cutting excess roof sheeting, and upgrading attic insulation. Both the budget and explanatory notes show pre-existing surplus funds would fund the project.
16. The owners did not directly vote on the project. However, the minutes show that the owners present unanimously approved the draft 2019 operating budget. There is no suggestion that the vote was improper.
17. The owner says that the strata did not discuss the insulation and ventilation project at the February 2019 AGM. I disagree. The owner acknowledges he was not present at the AGM. The documentary evidence also proves otherwise.
18. Based on the above documents, I find that the owners discussed the draft budget at AGM. This included discussion of the insulation and ventilation project. The owners voted on and approved the budget.
19. The owner says, and I find, that the strata council decided to proceed with the insulation and ventilation project at a March 21, 2019 meeting.
20. On April 22, 2019, the strata wrote to the owner. The strata requested access to his strata lot on April 29, 2019, from 11:30 a.m. to 2:00 p.m. The strata wrote that it required access for the attic insulation and ventilation project. It referred to bylaw 11 as authority for its request. The strata also mentioned discussing the matter with the owner on three separate occasions. These included a phone call (on April 19, 2019) and in-person discussions (on April 20 and 21, 2019). The letter warned that failure to allow access on April 29, 2019 could result in a fine and additional costs.
21. Bylaw 11 governs strata access to strata lots. Bylaw 11.1 states that a strata lot resident must allow a person authorized by the strata to enter the strata lot under certain conditions. Unless it is an emergency, the strata must provide 48 hours'

written notice. The access must be at a reasonable time. The purpose of access must also be to inspect, repair, or maintain common property or common assets.

22. Bylaw 11.3 states that the written notice must include the date, approximate time of entry, and reason for entry.
23. The strata sent the April 22, 2019 letter by mail and email. It attached a general notice that described the project and said that Knights Insulation was the contractor.
24. The owner called the Knights Insulation to say he would not allow access.
25. Based on the above, I find that the strata complied with bylaws 11.1 and 11.3. The strata provided more than 48 hours' written notice for access at a reasonable time. The purpose of the access was to repair and maintain the common property of the attic. The written notice provided all this information, as well as the date and approximate time for entry. I also find the owner received the written notice, given that he called Knight Insulation.
26. On April 26, 2019, the strata sent another letter to the owner requesting access. The strata quoted bylaw 11 and said the owner had been provided 48 hours' written notice. The strata warned that the owner might be liable for a fine and higher costs to have the work done later. It asked the owner to contact the strata to reschedule. The letter says it was delivered by mail and email and I find this to be so.
27. On May 15, 2019, the strata wrote to the owner that he had breached bylaw 11. The strata referred to the attic ventilation and insulation project and the previous letters. The strata asked the owner if he would allow access to his strata lot, respond to the complaint in writing, or request a council hearing. The strata asked for a response within 14 days. The strata warned of further fines. I find this letter was delivered as the owner responded to it on May 27, 2019.
28. In his May 27, 2019 handwritten letter, the owner referred to a February 25, 2014 roofing project. This project replaced the roofs of several strata buildings. The owner said further roof work was unjustified. The owner proposed paying a levy, penalty, or fine under bylaw 4.4 instead of providing access.

29. Bylaw 4.4 was amended on July 17, 2019. It provides that an owner must indemnify the strata from the expense of investigation or repair arising from damage originating from an owner's strata lot. The indemnity is limited to the extent that such expenses are not paid for by insurance proceeds. I find this bylaw to be irrelevant to the issues in this dispute.
30. On June 3, 2019, the strata acknowledged receipt of the May 27, 2019 letter. The strata said that paying a fine under bylaw 4.4 was not an acceptable solution. The strata reiterated that it had to do the work and that the attic was common property.
31. The strata wrote it had decided to impose a fine of \$100.00 under bylaw 28. The strata noted that under bylaw 29 the strata could impose fines for a continuing contravention every 7 days. The strata said it would continue to impose fines for each full week the matter remained unresolved. The strata also demanded the owner pay the bylaw fines and confirm in writing that he would provide access to his strata lot. The strata warned that it would otherwise commence proceedings at the tribunal in one month.
32. Bylaw 28.1 states that the strata corporation may fine an owner \$100.00 for each contravention of a bylaw.
33. Bylaw 29.1 states that the strata may impose fines every 7 days for bylaw contraventions that continue without interruption.

Issue #1. Must the owner provide the strata access to his strata lot to complete insulation and ventilation work in the common property attic?

34. The strata has a fundamental duty to repair and maintain its common property under SPA section 72: *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784 at paragraphs 23 to 32. Strata bylaw 12.1 contains similar language to SPA section 72.
35. As noted in *Weir*, in performing this duty, the strata must act reasonably. The starting point is deference to the decisions made by strata council.

36. The owner objects to providing the strata access. He questions the need for the insulation and ventilation project. The owner does not explain why the project is unnecessary. Instead, he poses questions that he thinks the strata should answer.
37. I find the owner's submissions to be speculative. As noted in *Weir*, the starting point is deference to the decisions made by strata council. Moreover, at the February 2019 AGM, the owners discussed and unanimously approved the draft budget. This budget included the insulation and ventilation project. There is no indication that the owners present had any concerns about the project.
38. As noted above, I have already found the strata complied with bylaw 11. It is also clear that the owner was aware of the strata's attempts to gain access. I find that under bylaw 11.1, the owner was obligated to provide the strata access to his strata lot for the insulation and ventilation project.
39. What is the appropriate remedy? To answer this, I have considered bylaw 11.2, which allows the strata to force entry in an emergency. Bylaw 11.2 says that an owner is responsible for all costs of forced entry incurred by the strata.
40. I order that, on 48 hours' advance written notice to the owner, the owner provide the strata access to the owner's strata lot to complete the insulation and ventilation work.
41. I also order that if the owner fails to provide access within 90 days of this order, the strata may force entry into the strata lot to complete the insulation and ventilation work. The owner shall be responsible for all costs of forced entry incurred by the strata.

Issue #2. Must the owner pay \$400.00 in bylaw violation fines?

42. SPA section 135(1) says a strata cannot impose a fine against a person for a bylaw contravention unless it has
 - a. received a complaint about the contravention,

- b. given the owner the particulars of the complaint in writing, and
- c. given the owner a reasonable opportunity to respond to the complaint (including a hearing if requested).

43. SPA section 135(2) says the strata must give notice in writing of its decision to impose a fine to the owner as soon as feasible.

44. SPA section 135(3) says that once the strata has complied with the procedural steps outlined above, the strata may impose fines or penalties for a continuing contravention without further compliance of those steps.

45. The strata must strictly follow the requirements of section 135 before fines can be imposed: *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.

46. For the reason that follow, I find that the strata complied with SPA sections 135(1), (2), and (3).

47. First, I find that the May 15, 2019 letter satisfies the requirements of SPA section 135(1). The strata provided the owner particulars of the complaint in writing. The strata referred to the attic ventilation and insulation project. The strata also identified that bylaw 11 had been allegedly breached. The strata provided the owner 14 days to respond, which I find to be reasonable.

48. There is also no dispute that that the strata delivered the May 15, 2019 letter. The owner replied with his May 27, 2019 letter.

49. Second, I find that the June 3, 2019 letter complies with SPA section 135(2). The strata wrote that the strata council decided to fine the owner's strata lot account \$100.00 for breaching bylaw 11. The strata also wrote that \$100.00 fines would be assessed weekly until the owner stopped breaching bylaw 11.

50. The strata therefore provided the owner written notice of its decision to impose a fine and fines for continuing contraventions. There is no suggestion that the letter was undelivered or that it should have been sent sooner.

51. Given my findings, I also find that the strata complied with SPA section 135(3). The strata may impose fines for continuing contraventions under bylaw 29, referenced above.
52. The strata seeks \$400.00 in fines for 4 weeks' worth of continuing contraventions. As the owner continues to deny the strata access, I find the strata is entitled to 4 fines of \$100.00 for the 4-week period of May 15, 2019 to June 12, 2019. This equals \$400.00. This amount does not exceed the maximum allowed per fine under bylaw 28.
53. The *Court Order Interest Act* (COIA) applies to the tribunal. The strata is entitled to pre-judgement interest on the sum of \$400.00 from June 12, 2019 to the date of this decision. This equals \$4.51.

TRIBUNAL FEES AND EXPENSES

54. 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.
55. The strata is the successful party in this dispute. I order the owner to reimburse the strata \$225.00 in tribunal fees within 15 days of the date of this decision. The parties do not claim dispute-related expenses. I therefore decline to order any.
56. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against the owner.

ORDERS

57. I order that on 48 hours' advance written notice to the owner, the owner provide the strata access to strata lot 5 to complete the insulation and ventilation work.

58. I order that the strata may force entry into the strata lot to complete the insulation and ventilation work if the owner fails to provide the strata access. The owner shall be responsible for all costs of forced entry incurred by the strata.

59. Within 15 days of the date of this order, I order the owner to pay the strata a total of \$629.51, broken down as follows:

- a. \$400.00 in bylaw fines,
- b. \$4.51 in pre-judgment interest under the COIA, and
- c. \$225.00 in tribunal fees.

60. The strata is entitled to post-judgement interest under the COIA, as applicable.

61. 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.

62. 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.

David Jiang, Tribunal Member