



# Civil Resolution Tribunal

Date Issued: January 10, 2020

File: ST-2019-002321

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan EPS 606 v. Campbell, 2020 BCCRT 41*

**B E T W E E N :**

The Owners, Strata Plan EPS 606

**APPLICANT**

**A N D :**

RONALD CAMPBELL and KARLA CAMPBELL

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Lynn Scrivener

## **INTRODUCTION**

1. This dispute is about a shed. The applicant strata corporation, The Owners, Strata Plan EPS 606 (strata), says that the respondents, Ronald Campbell and Karla Campbell, put an oversized shed on their strata lot without its approval and in contravention of its bylaws. The strata asks for an order that the respondents pay

finer of \$1,600 and remove the shed. The respondents disagree with the strata's position.

2. The strata is represented by a member of the strata council. The respondents are self-represented.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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.
5. 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.
6. 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**

7. The issues in this dispute are:
  - a. whether the respondents' shed contravenes the strata's bylaws,

- b. whether the respondents must pay \$1,600 in fines, and
- c. whether the respondents must remove the shed from their strata lot.

## **EVIDENCE AND ANALYSIS**

8. With the exception of evidence about settlement negotiations (which I did not read as the settlement discussions were confidential), I considered all of the information provided by the parties. However, I will only refer to what is relevant to the issues before me and necessary to provide context to my decision. In particular, I will not address the respondents' submissions about service issues as these appear to have been resolved.
9. The respondents made submissions about their belief that the strata was required to provide them with some form of notice before filing this dispute with the tribunal. Such notice is not required by the CRTA or the strata's bylaws, and I will not address these submissions further.
10. The strata is a bare land strata that began as a campground for recreational vehicles, but later evolved to include more permanent housing with park-model trailers. The strata developed design guidelines for alterations to strata lots that address the size and setback requirements for accessory buildings, including sheds.
11. The strata repealed its previous bylaws and filed new bylaws with the Land Title Office in November of 2012. Bylaw 3(5) states that a resident must not alter their strata lot unless the alteration complies with the municipal bylaws, the design guidelines and the bylaws. According to bylaw 5(1) an owner must obtain written approval from the strata before installing a structure or shed on a strata lot. The municipal bylaws state that accessory buildings cannot exceed 48 square feet.
12. The respondents had a small shed on their strata lot. They applied to the strata for permission to modify their strata lot with a larger 8'x10' shed and attended a hearing to discuss the reasons for their request. On August 8, 2018, the strata denied the

respondents' request on the basis that the proposed shed exceeded the maximum size allowed by the municipal bylaws. The strata's property manager advised the respondents of the strata's decision on August 14, 2018.

13. In October of 2018, the strata council received 2 emailed complaints that the respondents had replaced their small shed with an 8'x10' structure. Members of the strata council attended the strata lot to confirm that the shed had been erected. According to an October 21, 2018 email message, the respondents gave permission for the strata council members to come onto their property to view the shed, and said that the shed did not violate municipal bylaws.
14. On October 22, 2018, the strata's property manager emailed the respondents to notify them of a complaint about their shed. The property manager reminded the respondents that the strata had denied the application for the larger shed and advised that the shed was not compliant with either the strata or municipal bylaws. The message offered the respondents the opportunity to respond to the complaint and request a hearing. The property manager warned that a \$200 fine might be imposed every 7 days in the event of a continuing contravention.
15. The respondents sent an email to the strata on October 25, 2018 to advise that they were researching the municipal bylaws and would get back to council with additional information. The shed remained on the strata lot.
16. At a January 9, 2019 meeting, the strata council decided that, if the shed was not removed from the respondent's strata lot within 1 week, it would start to fine the respondents \$200 per week. The property manager emailed the respondents about this decision on January 14, 2019.
17. On January 19, 2019, the respondents submitted a Development Variance Permit Application Form to the city asking for permission to increase the size of their shed to 8'x10'. The respondents advised the property manager on January 19, 2019 that city staff had expressed support for the application, but warned them that it might be a long time before it went before the city council for consideration. The respondents also advised that a number of other strata lots had non-compliant structures. The

property manager responded that that a fine would be assessed if the shed was not removed by the previously imposed deadline.

18. On January 20, 2019, the strata held a special general meeting (SGM) where the owners voted in favour of allowing a 48 square foot accessory building or shed, unless a variance permit has been approved by the city to allow the accessory building or shed to be a maximum of 100 square feet. As a result of this decision, the strata filed an amendment to its bylaws with the Land Title Office on March 8, 2019.
19. On January 21, 2019, the strata imposed a fine on the respondents' strata lot. As the oversized shed remained on the strata lot, the strata imposed a \$200 fine each week for 8 weeks, resulting in an outstanding balance of \$1,600. On March 13, 2019, the strata council decided to suspend the application of fines and filed this dispute with the tribunal.

### **Does the Shed Contravene the Bylaws?**

20. There is no dispute that the strata's bylaws require compliance with the municipal bylaws, and that the municipal bylaws place a 48 square foot limit on sheds and accessory buildings. The respondents do not deny that their new shed is larger than 48 square feet. The evidence before me suggests that the city is considering changes to the municipal bylaws to permit larger structures. The current status of the city's bylaws and the respondents' variance application are not clear. However, at the time the respondents erected their shed, the 48-foot limit remained in place and the respondents had not obtained a variance decision from the city to permit them to have a larger shed.
21. The respondents say they have a March 7, 2016 alteration permit from the strata that permits them to have a shed on their strata lot. The strata did not dispute this statement, although the alteration agreement is not included in the evidence before me. While the respondents may have permission for a shed, they have not proven that they have specific permission from the strata for an oversized shed.

22. The respondents submit that the strata is retroactively applying the new version of the strata's accessory building bylaw to them. However, as the strata made the decision to fine the respondents for their oversized shed before the new bylaw was adopted, I find that this is not the case.
23. The respondents say that, after their request for a larger shed was denied by the strata, a member of the strata council told them to buy their shed when it was on sale as it would be permitted after the anticipated bylaw change. Even if this conversation occurred, the respondents already had the decision from the strata council that denied their request for a larger shed. Neither the fact that the city was considering a change to its bylaws nor the fact that the respondents were making efforts to get a variance from the city altered that decision.
24. I acknowledge the respondents' submission that they need a larger shed for employment-related storage. However, the reasons behind the shed are not relevant to my analysis. The respondents made an alteration to their strata lot for which permission had been denied and which is not permitted by the strata or city bylaws. I find that the larger shed violates the strata's bylaws.

### **Validity of Fines**

25. Section 135 of the *Strata Property Act* (SPA) states that a strata must not impose a fine against a person, require a person to pay the costs of remedying a contravention, or deny a person the use of a recreational facility for a contravention of a rule or bylaw unless the strata has received a complaint about the contravention, given the owner or tenant the particulars of the complaint, and a reasonable opportunity to answer the complaint, including a hearing if requested. Section 135(3) provides that, once the strata has complied with section 135 in respect of a contravention of a bylaw or rule, it may impose a fine for a continuing contravention of that bylaw or rule without further compliance with the section.
26. The parties disagree about whether the strata followed the section 135 requirements before imposing fines. The respondents say there was no complaint,

the strata did not gather evidence before levying fines, and they were not provided with an opportunity for a hearing.

27. As noted above, the strata received 2 emailed complaints about the respondents' new shed, and these complaints prompted the strata council members to visit the respondents' strata lot to view the shed and discuss the matter. While copies of the October 20 and October 21, 2018 emails may not have been provided to the respondents before fines were assessed, I note that the SPA does not require that written copies of complaints be provided. I am satisfied that the strata, through its property manager, provided particulars of the complaints (i.e. the presence of an oversized shed without permission) before fines were assessed.
28. Although the respondents had a hearing with the strata council in August of 2018 about their request for a larger shed, there is no indication that they ever requested a hearing to discuss the bylaw violation complaint. This is despite the specific offer of a hearing in the property manager's October 22, 2018 email message.
29. I find that the strata complied with the requirements of section 135 of the SPA before assessing fines against the respondents. Further, pursuant to 135(3), I find that the strata was entitled to impose fines for the continuing bylaw contravention. Therefore, the \$1,600 in fines assessed against the respondents' strata lot are valid and must be paid.

### **Removal of the Shed / Significant Unfairness**

30. Strata bylaw 6(2) allows the strata to take legal proceedings to compel the removal of an unauthorized alteration on a strata lot. Here, the strata asks for an order that the respondents remove the oversized shed from their strata lot. The respondents' position is that it would be significantly unfair to require them to remove the shed. According to the respondents, other strata lot owners have non-compliant structures (including large sheds) on their strata lots but the strata is allowing those structures to stay.

31. Section 123 of the CRTA contains language similar to section 164 of the SPA, which allows a tribunal member to make an order to remedy a significantly unfair act by a strata corporation. A “significantly unfair” act encompasses oppressive conduct and unfairly prejudicial conduct or resolutions. The latter has been interpreted to mean conduct that is unjust and inequitable (see, for example, *Strata Plan VR1767 (Owners) v. Seven Estate Ltd.*, 2002 BCSC 381).
32. The test for significant unfairness was summarized by a tribunal vice chair in *A.P. v. The Owners, Strata Plan ABC*, 2017 BCCRT 94, with reference to *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44: what is or was the expectation of the affected owner or tenant? Was that expectation on the part of the owner or tenant objectively reasonable? If so, was that expectation violated by an action that was significantly unfair?
33. The strata acknowledges that there are non-compliant structures on other strata lots, and says that these structures were approved in error by a previous strata council. As these other strata lot owners all have signed alteration agreements with the strata to permit the non-compliant structures, the strata says it decided to permit those structures to stay, but any future structures must comply with the strata and municipal bylaws.
34. The respondents have an expectation that the strata would treat them in the same manner as other strata lot owners when dealing with non-compliant structures. However, I find that this expectation is not reasonable due to a difference in their circumstances.
35. As discussed above, the respondents’ request for a larger shed was denied in August of 2018. Thus, the respondents knew that they did not have approval from the strata or a signed alteration agreement when they installed their non-complaint shed in October of 2018. By contrast, the other strata lot owners have alteration agreements that provide them with specific permission for structures that were later determined to be non-compliant.



36. I find that it is not reasonable for the respondents to expect the strata to allow them to retain a non-complaint structure that had been specifically denied by the strata. I also find that it is not significantly unfair for the strata to require the respondents to remove their shed while allowing approved (but ultimately non-compliant) structures to remain on other strata lots. Therefore, the respondents must remove the non-compliant shed from their strata lot.
37. In summary, I find that the respondents' shed violates the strata's bylaws, the respondents must pay the \$1,600 in outstanding fines, and they must remove the non-compliant shed from their strata lot. Nothing in my decision would prevent the respondents from continuing to pursue a variance from the city and requesting a new decision about a larger shed from the strata if they obtain a variance or if the city's bylaws are amended to allow larger structures. Further, my decision does not affect the respondents' ability to re-install the small shed that was approved by the strata previously.

## **TRIBUNAL FEES AND EXPENSES**

38. Under section 49 of the CRTA, and the tribunal rules, the tribunal generally will 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. I therefore order the respondents to reimburse the strata for tribunal fees of \$225.00. The strata did not make a claim for dispute-related expenses.
39. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the respondents.

## **ORDERS**

40. I order that:
- a. within 30 days of the date of this order, the respondents pay \$1,600 to the strata for the outstanding fines,

- b. within 30 days of the date of this order, the respondents pay the strata \$225.00 as reimbursement for tribunal fees, and
  - c. within 60 days of the date of this order, the respondents remove the non-compliant shed from their strata lot.
41. 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 an order of the BCSC.
42. 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, an applicant 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 an order of the BCPC.

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Lynn Scrivener, Tribunal Member