



Civil Resolution Tribunal

Date Issued: March 13, 2020

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Job v. The Owners, Strata Plan K77*, 2020 BCCRT 304

B E T W E E N :

PATTI JOB and DALE KLEIN

APPLICANTS

A N D :

The Owners, Strata Plan K77

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. The applicants, Patti Job and Dale Klein, (owners), own a strata lot in the applicant strata corporation, The Owners, Strata Plan K77 (strata). This dispute is about whether the strata was allowed to charge back the applicants \$3,000 for a bylaw contravention.
2. The owners say that the strata charged them \$3,000 to re-key the building after the key for the 2 common doors for the building and the one for their strata lot was stolen from their realtor's lockbox when they were selling their strata lot. They say they are not responsible for the stolen keys and that they did not breach any bylaws.
3. The owners also say that the strata did not follow proper procedure in noting the charge back on the forms that had to be completed when they sold their strata lot. The owners request \$2,000 for legal fees charged by their notary to resolve the issue. They also request an order that their notary release the \$3,000 being withheld from the proceeds of the sale. The owners are represented by Ms. Job.
4. The strata says that the owners are responsible for the theft of the key they gave to their realtor. It submits that the owners breached the bylaws by damaging the property because now the locks do not provide security. It says it was entitled to charge back the \$3,000 cost of re-keying the locks and include this information on the forms required to be completed before the sale. The strata is represented by a strata contact.

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 in writing, by telephone, videoconferencing, or a combination of these. I decided to hear this dispute through written submissions because I find there are no significant issues of credibility or other reasons that 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.
9. An aspect of this dispute involves the Form B information certificate which alerts purchasers to information about the property before completing the purchase. Previous tribunal decisions have found that it is outside the tribunal's jurisdiction to order corrections to a Form B certificate (*Fung et al v. The Owners, Strata Plan NW 1294*, 2019 BCCRT 443). In this dispute I am not considering whether I can change the Form B, but rather whether held back funds from the sale of the owners' strata lot should be released. Therefore, I find that I do have jurisdiction to consider this issue.

ISSUE

10. The issues in this dispute are:
 - a. Are the owners responsible for the keys' theft?
 - b. Was the strata entitled to charge back the \$3,000 re-keying cost to the owners?

- c. Did the strata follow proper procedure in charging back \$3,000 to the owners and listing this on forms necessary for the sale of their strata lot?
- d. Are the owners entitled to \$2,000 in legal expenses?

EVIDENCE, FINDINGS AND ANALYSIS

- 11. In a civil dispute such as this, the applicants must prove their claims. They bear the burden of proof on a balance of probabilities.
- 12. While I have reviewed all of the material provided, I have only commented below on the evidence and submissions necessary for this decision.

Are the owners responsible for the key theft?

- 13. The owners argue that the realtor had possession of the keys and that the strata should be making a claim against the realtor's company for the cost of re-keying the building. It is undisputed that the owners decided to sell their strata lot in 2019. They gave their realtor the keys and signed an agreement indemnifying the realtor from any liability arising from the realtor placing the keys in a lockbox.
- 14. The June 3, 2019 waiver form between the owners and the realtor stated that the realtor would hang a lockbox on or near their listed property to store the keys. It said the lockbox was not a security system and that the lockbox was not immune to a thief accessing it. It specifically stated that a lockbox might be broken into or opened by excessive force.
- 15. The realtor placed the lockbox on the electrical box outside the strata. The evidence is unclear where exactly this is located in relation to the strata. Somebody broke into the lockbox on July 29, 2019 and stole the keys. Other lockboxes were broken into as well.

16. The owners were out of town when this occurred but returned on August 12, 2019. On August 25, 2019 the strata's business manager told the owners that they were responsible for the keys' theft because they gave the realtor the keys and signed the waiver.
17. The owners argue that they are not responsible for the keys' theft because the realtor did not place the lockbox on the strata's property. The waiver form does not say that the realtor will place the lockbox on the strata property and specifically states that the realtor may place the lockbox near the listed property. Based on this, I find that the owners gave the realtor the keys and indemnified the realtor from liability. Therefore, I find that the owners are responsible for the theft of the keys.

Was the strata entitled to charge back the \$3,000 re-keying cost to the owners?

18. The strata says that the owners breached bylaw 3(2) which states that an owner, tenant, occupier or visitor must not damage the common property. The strata sent the owners a letter on October 7, 2019 citing this bylaw and saying that the loss of the common door key caused damage by rendering the common door locks ineffective to provide security to the building. The letter said that the owners had to pay \$3,000 by October 28, 2019. The owners closed the sale of their strata lot on October 15, 2019.
19. I will address whether the strata followed proper procedure in finding that the owners breached the bylaw. However, I find that the strata was not entitled to charge the owners \$3,000 because the evidence does not show that the owners contravened bylaw 3(2) so I will deal with that issue first.
20. The parties submit that:
 - a. There were other lockboxes which were also broken into and other realtors followed the same practice of leaving lockboxes with keys to the strata.
 - b. The strata told another realtor to remove one of the other lockboxes. They have provided evidence that it was not just this one lockbox that was broken into and that the RCMP were investigating but that the strata taped over the

recording of the vandalism. They argue the video recording might have shown that other keys were stolen. The owners say that the strata admitted it recorded over the tape. The strata did not specifically respond to this.

c. The owners also point out that there are multiple keys to the strata in circulation and that the strata does not have a list of who possesses them. It argues that the strata has been lax in protecting the keys and therefore this is not the first time that somebody has possession that should not. The strata did not provide any evidence that it has a record of who has the keys.

21. The owners also point out that the strata claims that it is charging them the \$3,000 to re-key the building because of the security risk and yet have done nothing to actually take steps to re-key the building. The owners point out that at the time of submissions it had been months since the date of the theft, but the strata had not acted to get the strata re-keyed. They say that this shows that the strata knew that the building had not become unsecure because of the theft of their specific key and therefore the strata has not proved that they caused damage to the property by making the building unsecure.

22. Reviewing the evidence, I agree with the owners' submissions that the evidence does not show that the owners breached bylaw 3(2) and that the building was damaged by becoming unsecure after the key theft. The strata did not provide any evidence showing that it kept a firm accounting of who had a key to the building. It also did not show that no other keys were stolen on the day of the owners' key theft. But most significantly, the strata provided evidence that it obtained a formal quote to re-key the building on October 31, 2019. This is 3 months after the key theft took place on July 29, 2019. I find that the actions of the strata do not demonstrate that the owners' key theft damaged the property by making it suddenly unsecure. If the strata determined that this was so it would have done something about it earlier. The strata has also not shown that the strata was secure before the owners' key theft.

23. Therefore, I find that the strata is not entitled to the \$3,000 which was charged back at the time of the owners' strata lot's sale because the evidence does not show that

the owners breached bylaw 3(2). I also note that under section 133(2) of the *Strata Property Act* (SPA) the strata may charge back the reasonable costs of remedying the bylaw contravention. Since the strata did not have the locks re-keyed, \$3,000 is not a reasonable cost of remedying the contravention since it was not remedied.

24. Therefore, the \$3,000 must be returned to the owners.

Did the strata follow proper procedure in charging back \$3,000 to the owners and listing this on forms necessary for the sale of their strata lot?

25. Because I find that the owners did not breach the bylaw, whether the strata followed the proper procedure in charging back the \$3,000 re-keying cost becomes less relevant. However, even if I had found that the owners breached the bylaw, I find the strata did not follow proper procedure in charging \$3,000 back to the owners. The strata also did not follow proper procedure in completing forms B and F which the strata had to complete before the sale of the strata lot.

26. The owners agreed to put \$3,000 in trust with their notary so they could complete the sale.

27. The strata issued a demand letter on October 7, 2019, before allowing the owners an opportunity to respond to the complaint, including asking for a hearing. Section 135 of the SPA states that the strata must not require a person to pay the costs of remedying a contravention unless the strata has received a complaint and given the owners the particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if requested.

28. The strata then stated on the October 9, 2019 Form B, which the purchasers would require before the sale was completed, that the owners owed it \$3,000. Again, this was also before a hearing was held where the strata actually determined that the owners owed \$3,000. The strata also stated on the October 9, 2019 Form F that the owners owed money to the strata for breaching bylaw 3(2).

29. Therefore, even if I had found that the owners were in breach of bylaw 3(2), I would have found that the strata did not follow proper procedure under section 135

because it did not allow the owners a hearing before reaching its decision. Therefore, the strata was not entitled to charge back \$3,000 to the owners' strata account and place notations on the sales' forms indicating that the owners owed it this amount.

Are the owners entitled to \$2,000 in legal expenses?

30. Although the owners initially claimed that they were entitled to \$2,000 in legal expenses, they did not provide evidence that their notary charged them this amount. They submitted a pay out form from when the strata lot was sold indicating that their notary was charging them a \$30 maintenance fee and a \$56 holdback fee. Based on this, I find that the owners have not proved that they had to pay \$2,000 in legal expenses because their notary had to withhold the \$3,000. Therefore, I find the owners are only entitled to the \$86 they paid their notary to hold the money in trust.

TRIBUNAL FEES, EXPENSES AND INTEREST

31. 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. As the owners were successful in this dispute, they are entitled to have their \$225 tribunal fees reimbursed. As noted, the owners are also entitled to the \$86 in expenses they paid to their notary to hold the \$3,000 in trust. The owners are also entitled to \$0.69 interest on those expenses under the *Court Order Interest Act* (COIA) as of October 15, 2019 which is the date they completed the sale of their strata lot.

ORDER

32. I order that within 14 days of this decision:

- a. The owners are entitled to the return of the \$3,000 being held in trust and any accrued interest.
- b. The strata pay the owners a total of \$311.69 broken down as follows:

- i. \$86.00 in expenses,
- ii. \$0.69 in pre-judgement interest under the COIA, and
- iii. \$225.00 reimbursement of their tribunal fees.

33. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia (BCSC), a validated copy of the order which is attached to this decision. Once filed, a tribunal order has the same force and effect as a BCSC order.

34. 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.

Kathleen Mell, Tribunal Member