



Civil Resolution Tribunal

Date Issued: April 3, 2020

File: ST-2019-006847 and ST-2019-007043

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan K77 v. Dac*, 2020 BCCRT 371

B E T W E E N :

The Owners, Strata Plan K77

APPLICANT

A N D :

WAYNE DAC

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. These disputes are about alleged bylaw and rule violations.
2. The strata corporation The Owners, Strata Plan K 77 (strata) is the applicant in disputes ST-2019-006847 and ST-2019-007043. Wayne Dac (owner) owns a strata lot (SL2) in the applicant strata. He is the respondent in both disputes.

ST-2019-006847

3. The strata says the owner parked his motorhome under the parkade canopy, contrary to the bylaws and rules.
4. In ST-2019-006847, the strata seeks an order that the owner not park his motorhome under the parking area canopy, and that he pay an outstanding \$50 fine.
5. The strata also asks for an order requiring the owner to stop parking his motorhome under the parkade canopy.
6. The owner denies breaching any bylaw.

ST-2019-007043

7. Before September 2018, the strata issued several fines against the owner for alleged bylaw and rule breaches.
8. On September 4, 2018, strata and owner signed an agreement (Agreement).
9. Under the Agreement, the owner promised he would not (a) use his unit as an AirBnB, (b) park his motorhome or trailer under the carport or on common property (CP) or (c) do laundry at any time other than that assigned to him, unless there was a mutually agreed trade with another resident.
10. After reviewing the Agreement, the strata council waived \$450 in fines against the owner.
11. Since then, the strata says that the owner has repeatedly breached the Agreement.
12. In ST-2019-007043, the strata seeks an order that \$250 of the waived fines be reinstated or charged as a penalty due to the owner's breach. The strata also seeks an order that the owner abide by the Agreement and adhere to the bylaws and rules.
13. The owner says the strata's claims are "unwarranted".

14. In both disputes, the strata is represented by strata council member MH. The owner represents himself.

JURISDICTION AND PROCEDURE

15. 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.

16. 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.

17. 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.

18. 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.

19. These disputes involve the same parties, intertwined facts and overlapping allegations. I find that they are separate disputes akin to two claims within one dispute. To conserve tribunal resources and avoid inconsistent findings of fact, I order that they be heard together. My reasons on both disputes are set out in this decision.

ISSUES

20. The issues these disputes are:

- a. Did the respondent breach the rules by parking his motorhome under the parkade canopy?
- b. Did the respondent breach the Agreement?
- c. If so, what remedies are appropriate?

POSITIONS OF THE PARTIES

21. The strata says the owner parked his motorhome under the parkade canopy in July 2019, contrary to the Rules. The strata asks for an order that the owner pay the \$50 fine and cease parking his motorhome under the parkade canopy.

22. The owner says he was not technically “parked” under the canopy. He says he was stopped for a period, either to fill up the water tank or to load items from the storage area.

23. The strata also says the owner must pay another \$250 which it describes as:

- a. a penalty for breaching the Agreement, and
- b. payment for August 1, 2018 fines it initially set aside due to the Agreement (\$200 for parking and \$50 for laundry).

24. The owner disagrees and says he does not owe \$250 to the strata.

EVIDENCE AND ANALYSIS

25. In a civil claim such as this, the applicant strata 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.

Bylaws

26. The applicable bylaws (Bylaws) are those filed at the Land Title Office (LTO) on October 18, 2013 subject to amendments that do not apply to this dispute.
27. The SPA section 132(1) says that a strata must set out in its bylaws the maximum amount it may fine an owner or tenant for each contravention of a bylaw or rule.
28. Section 7.1 of the *Strata Property Regulation* provides that a strata may not set out a maximum fine in its bylaws of more than \$200 per bylaw contravention and \$50 per rule contravention.
29. Bylaw 25 allows the strata to fine an owner \$200 per bylaw contravention and \$50 for each rule contravention. Where there is a continuing contravention for an activity or lack of activity lasting longer than 7 days, the strata may impose a fine every 7 days.
30. Schedule 2 – 10 of the Bylaws says that an owner may not use the CP for the parking of a motor vehicle except where the strata council gives written permission. Schedule 2 – 10 also says that an owner may not obstruct any sidewalks, passages, roadways, driveways or parking areas, even when using the areas with strata council permission.
31. Schedule 2 – 25 says that if the Bylaws and “posted rules and regulations” are not followed, an owner will get one written warning.
32. Schedule 2 – 25 says that a second offence will result in an “automatic fine” of the maximum allowable amount under the Regulations.
33. I find that this “automatic fine” provision is contrary to the SPA section 135, which provides that a strata may not impose a fine unless the strata has:
 - a. received a complaint,
 - b. given the owner or tenant particulars of the complaint in writing,

- c. provided the owner or tenant with a reasonable opportunity to answer the complaint including a hearing if requested, and
- d. given the owner or tenant written notice of the strata's decision to fine "as soon as feasible."

Rules

- 34. Section 125 of the SPA empowers the strata to enact Rules governing the use, safety and condition of the CP and common assets.
- 35. Rules must be set out in a written document capable of being photocopied (section 125 (3)).
- 36. A rule ceases to have effect at the first annual general meeting (AGM) or special general meeting held before an AGM where it is not ratified by a majority vote resolution (section 125(6)).
- 37. Under the SPA. section 125(7) once a rule has been ratified under subsection (6), it is effective until it is repealed, replaced or altered, without the need for further ratification.
- 38. The strata has Rules dated June 2010. The Rules are in written document that can be photocopied.
- 39. No one filed copies of general meeting minutes for me to consider whether the Rules were ratified. However, it is uncontested, and I therefore find, that the Rules are effective.
- 40. The Rules provide that laundry machines are only to be used according to a schedule. Owners are not to use other people's laundry time unless both people agree to trade.
- 41. The Rules also provide that parking in common areas is administered by the strata council. No motorhomes or trailers are permitted to park "under the canopy."

42. The Rules provide that “offenders will be given” one written warning. A second infraction will attract a SPA fine.

Background

43. The owner bought a strata lot (SL2) in 1992.

44. Based on the strata plan, I find that the parkade canopy covered area is CP.

45. On August 1, 2018, the strata wrote to the owner to say it had received numerous complaints in two main areas:

- a. washing laundry at times allotted to other residents,
- b. parking a motorhome or trailer in an area that blocked other residents from being able to get into or out of their parking spaces.

46. The strata noted these were both “repeat offences” and assessed a \$50 fine for laundry and \$200 for the parking infraction. The strata did not file correspondence in evidence to prove that it had complied with the SPA section 135 in issuing these fines.

47. On September 4, 2018, then strata council chair PJ and the owner signed the Agreement. The owner agreed not to conduct AirBnB in his unit, park his motorhome or trailer under the carport or on CP, nor do laundry except at his assigned time unless a trade was arranged. Notably, these commitments only repeat his existing obligations under the strata’s Bylaws and Rules.

48. On September 5, 2018, the strata wrote to the owner to say it had reviewed the Agreement and strata council had agreed to “waive” the \$450 in fines “associated with the above infractions as an act of good faith.”

49. On May 13, 2019, the strata wrote to the owner to say that it had received multiple complaints that he was again parking his trailer under the canopy and in another owner’s parking stall. The strata also reported that the owner was observed parking his vehicle in front of the loading zone for 4 hours on May 8, 2019. According to the

strata's letter, the owner left only after the strata's business manager texted him twice with a request to move his vehicle.

50. The strata wrote that it would therefore reinstate the following \$450 in fines:
 - a. a \$200 AirBnB fine issued July 4, 2017,
 - b. a \$50 laundry fine issued August 1, 2018, and
 - c. A \$200 parking infraction fine issued August 1, 2018.
51. On July 9, 2019, PJ observed the owner park his motorhome under the canopy. PJ wrote a letter of complaint to the strata. PJ wrote that she asked him to move the motorhome within 10 minutes and reminded the owner of the Agreement. After 20 minutes, PJ returned and said she would call the tow truck to move the motorhome. The owner became upset, then refused to move the motorhome and said he was going to get a beer "first". PJ also described that the owner had been walking around in the parkade. PJ did not describe the owner having moved items out of storage.
52. Another owner, EW, wrote that he saw PJ tell the owner to move his motorhome on July 9, 2019. EW wrote that, at the time, the owner was using his motorhome to move items out of the storage area, as strata council had requested. EW wrote that he then left the area and did not observe further.
53. On July 22, 2019, the strata wrote to the owner about complaints that his motorhome had been parked under the parkade canopy contrary to Rule 10 and the Agreement. The strata asked for the owner's response and offered him an opportunity for a hearing. I find the July 22, 2019 letter complies with the SPA section 135.
54. The owner responded denying that he had parked his motorhome under the parkade canopy. In his July 2019 response to the strata, the owner wrote that he "may have stopped there to fill water tank", but never left his vehicle unattended. The owner wrote that filling water tank which never takes longer than 10 minutes.

The owner's evidence is at odds with PJ's evidence about how long he was in the parkade and for what purpose, as discussed further below.

55. The owner provided a statement in evidence where he explains that PJ spoke to him rudely and sang a vulgar song at him during the parkade conversation on July 19, 2019. I find that evidence irrelevant to whether he violated the parking rule.
56. On July 22, 2019, the strata wrote to the owner demanding \$250 in outstanding fines. The owner wrote back saying he did not know what the fines were about and that they were "unwarranted."
57. On July 29, 2019, the strata wrote back to the owner acknowledging the owner's replies. Strata council met that day and considered the owner's evidence. Strata council determined that a \$50 fine should be levied against the owner for parking his motorhome under the canopy.

Did the owner park his motorhome under the parkade canopy contrary to the rules?

58. The parties disagree about whether the motorhome was parked or just standing on July 19, 2019. The Rules prohibit parking a motorhome under the canopy. The Bylaws prohibit use of the CP in a way that blocks those areas.
59. Section 119 of the *Motor Vehicle Act* defines "parking" as the "...standing of a vehicle, whether occupied or not, except when standing temporarily for the purpose of and while actually engaged in loading or unloading."
60. Because EW only observed part of the incident, I prefer PJ's evidence about how long the motorhome was left and the owner's activities during that time.
61. I also prefer PJ's evidence to that of the owner on this point. I say this because the owner's evidence is uncertain about his activities on July 19, 2019. The owner wrote, in his July 2019 response to the strata, that he "may have stopped to fill the water tank", but then he filed EW's statement which refers to moving items out of storage. As well, the owner's evidence that he only ever used the common area to

fill the motorhome water tank, for no more than 10 minutes at a time, conflicts with the May 2019 incident where he reportedly parked the motorhome in the common area for 4 hours.

62. Based on PJ's evidence, I find that the motorhome was stationary under the canopy for at least 30 minutes. During this time, I find that the owner was either moving around in the parkade or had left to get a beverage. Based on PJ's complaint letter, I find that the owner was not "actually engaged in loading or unloading" throughout. I find that his motorhome was parked, as defined in the *Motor Vehicle Act*. As a result, I find the motorhome was parked contrary to the Rules and Bylaw Schedule 2-10.

What remedy is appropriate for parking under the canopy in July 2019?

63. By the time the \$50 fine was imposed, I find that the owner had been warned, in writing, on May 13, 2019, not to park his motorhome under the parkade canopy. As well, the strata complied with section 135 of the SPA. The Rules and Bylaws allow for a \$50 fine in those circumstances.
64. I find that owner must pay the strata the \$50 fine for parking the motorhome under the parkade canopy on July 9, 2019.

Did the respondent breach the Agreement with the strata?

65. Based on the strata's May 13, 2019 letter I find that the respondent breached his Agreement by parking under the canopy and in another owner's stall and in a manner that obstructed part of the CP.

If the respondent breached the Agreement, is the strata is now permitted to impose fines or a penalty of \$250?

66. In its September 5, 2018 letter, I find that the strata agreed to waive the fines against the owner. The strata did not write that the fines were waived only while the owner abided by the Agreement. The Agreement itself also detailed the owner's commitments but said nothing about what, if anything, the strata would do in return.

67. Waiver is an act of intentionally giving up the right to recover a fine: see *Barron's Canadian Law Dictionary*. I find that, having waived those fines, the strata may not now impose against the owner \$250 of the fines it waived. This does not prevent the strata from following the section 135 SPA process to impose fines for new Bylaw or Rule infractions.
68. Similarly, the Agreement did not specify any penalty or consequence for breach of its conditions. As a result, I dismiss the strata's claim to impose the previous \$250 in fines or a penalty for the owner's breach.

Should I order that the owner abide by his Agreement, the Bylaws and Rules?

69. The owner is already required to abide by the SPA, Regulation, Bylaws and Rules. The Agreement is simply a document restating some of his existing obligations under the Bylaws and Rules.
70. I decline to make an order that the owner abide by the Agreement, the Bylaws and Rules, because he is already legally obligated to do so.

TRIBUNAL FEES, EXPENSES AND INTEREST

71. 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 strata was partly successful. I therefore order the owner to reimburse the strata for tribunal fees of \$225, being 50% of the total tribunal fees the strata paid. The strata did not claim dispute-related expenses.
72. The *Court Order Interest Act* (COIA) applies to the tribunal. The applicant strata is entitled to pre-judgement interest on the \$50 from July 29, 2019, the date the fine was imposed, to the date of this decision. This equals \$0.67.
73. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

ORDERS

74. I order that the owner pay the strata a total of \$275.67, within 30 days of this decision, broken down as:

- a. \$50 in fines for the parking his motorhome under the canopy,
- b. \$0.67 in *Court Order Interest Act* pre-judgement interest,
- c. \$225 in tribunal fees.

75. The strata is also entitled to post-judgement interest under the COIA.

76. 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.

77. 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 strata 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.

Julie K. Gibson, Tribunal Member