



# Civil Resolution Tribunal

Date Issued: April 23, 2020

File: ST-2019-008483

Type: Strata

Civil Resolution Tribunal

Indexed as: *Mastroianni v. The Owners, Strata Plan EPS2878*, 2020 BCCRT 444

B E T W E E N :

DENIS MASTROIANNI

**APPLICANT**

A N D :

The Owners, Strata Plan EPS2878

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Trisha Apland

## INTRODUCTION

1. The applicant, Denis Mastroianni (owner), owns strata lot 81 (SL81), in the respondent strata corporation, The Owners, Strata Plan EPS2878 (strata). This dispute is about the owner's access to records held by the strata.

2. The owner claims that the strata breached the *Strata Property Act* (SPA) by not providing records that he had requested in 2018. The owner asks for an order that the strata provide the “requested” records, plus \$1,000 in punitive damages. The owner does not describe the specific requested records.
3. The strata denies the owner’s request. The strata says that the tribunal did not order record disclosure in the parties’ prior dispute, *Denis Mastroianni v. The Owners, Strata Plan EPS 2878 et al*, 2019 BCCRT 691 (*Mastroianni* 2019). It says therefore, that it does not need to disclose the requested records. I discuss *Mastroianni* 2019 and the disclosure requests in my reasons below.
4. The owner is self-represented. The strata is represented by a strata council member.

## **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 am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
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. The strata requests that the tribunal anonymize “names and suite numbers” in the published version of this decision. The strata says they are a volunteer board with limited experience in dealing with the release of private information. I find it appropriate to anonymize the strata lot number of the third-party owner in my published decision as they are not a named party in this dispute. I have also not included any names or suite numbers of non-parties. However, I find it is not appropriate in the circumstances, to use initials in place of the parties’ full names. By presumption, and consistent with the “open court” principle, tribunal decisions include parties’ names unless specific circumstances, such as protection of a vulnerable person, justify anonymization. I find no such circumstances apply here.

## **ISSUE**

10. The issues in this dispute are:
  - a. Is the owner prevented from bringing this claim?
  - b. Was the strata required to provide the records that the owner requested in 2018? If so, did the strata fail to provide the records and must it provide the records now?
  - c. Must the strata pay \$1,000 for the alleged “flagrant violation” of the SPA?

## **EVIDENCE AND ANALYSIS**

11. In a civil claim such as this, the applicant bears the burden of proving his claims on a balance of probabilities. I have only addressed the arguments and evidence to the extent necessary to explain my decision.
12. In *Mastroianni* 2019, the owner claimed that the strata failed to enforce its noise bylaw. The owner’s claim was not for a breach of section 36 of the SPA, as it is

here. Since the issue was not before the tribunal member in *Mastroianni* 2019, she made no finding and issued no order specifically related to sections 35 or 36 of the SPA. Therefore, I find the owner is not prevented (sometimes called estopped) from bringing this claim for records.

### ***Record Request***

13. As mentioned above, the owner does not specify which records the strata failed to provide. However, on the correspondence he submitted to support his claim, I find the owner seeks those records that his lawyer requested on his behalf in September 2018.
14. By letter dated September 7, 2018, the owner's lawyer asked the strata to provide copies of "all documentation proving that the Strata Corporation is enforcing" its noise bylaws under sections 35 and 36 of the SPA. Without a timeframe, the lawyer requested "copies of all emails or other written correspondence with the owner of SLXX, including notices of the levying of any and all fines". SLXX is another strata lot within the strata. I find that the lawyer's written records request was made on behalf of the owner.
15. Section 35 of the SPA and regulation 4.1 list the records and documents that the strata is required to prepare and retain. Section 35(2)(k) includes correspondence sent or received by the strata corporation and its council. Regulation 4.1(5) says the strata must retain communication for at least 2 years. Section 36 of the SPA says that on receiving a request from an owner, the strata must provide access to the records set out in section 35 of the SPA, either by making them available for inspection, or by providing copies of them within 2 weeks of the request (1 week for bylaws and rules).
16. According to the parties' correspondence in evidence, the strata provided the owner with some records related to its enforcement action. However, the strata took the position that the SPA did not require it to disclose emails. In its submissions here, the strata does not say whether it provided the owner with all the requested emails with SLXX. It also submitted no objective evidence showing that it had fully

complied with the 2018 request. I find on balance, that the strata did not provide the owner with copies of the requested emails.

17. I find that the SPA, at section 35(2)(k), requires the strata to retain its emails between the strata and strata lot owners for two years. I find that the strata was required under section 36 of the SPA to make the requested emails with SLXX available for inspection and to provide copies to the owner within 2 weeks of his September 7, 2018 request. I find the strata breached section 36 of the SPA by not providing the emails within 2 weeks.
18. The strata submitted 265 emails as evidence in this dispute that relate to the owner's noise complaint and the strata's enforcement. While most of the emails are between the strata and the owner, some of the emails are between the strata and SLXX. I find the strata's emails with SLXX are responsive to the owner's September 7, 2018 request. However, it is not clear that its disclosure for this proceeding included all the strata's retained emails with SLXX about the noise bylaw enforcement. The strata does not say either way.
19. I am mindful that it is now between 2.5 and 4.5 years later and the strata was only required to retain the emails for 2 years. However, in response to this dispute the strata disclosed responsive emails dating back to 2017. Therefore, the strata clearly retained some responsive emails past the required 2 years.
20. I find the strata must provide the owner with a complete copy of the emails in its possession between the strata and the owner of SLXX from September 7, 2016 and September 7, 2018 that relate to the strata's noise bylaw enforcement. Considering the passage of time, I find the strata cannot charge a fee for copies under section 36(2) of the SPA.
21. This order does not require the strata to produce any additional emails or other records not captured by the September 7, 2018 request. However, the SPA does not limit an owner's ability to make a further record request in accordance with sections 35 and 36. If the owner requests section 35 records, the strata must respond within the timelines set out in the SPA, section 36(3). For future record

requests it is entitled to charge the fee for copies of a record as set out in the SPA, section 36(4).

### **Penalty**

22. The owner argues that a \$1,000 penalty is required to deter the strata from acting unlawfully. There is no express provision in the SPA for a penalty against the strata for breaching section 36. The SPA and the CRTA are silent on punitive damages. However, under the tribunal's strata jurisdiction, the tribunal can order a party to pay money, which I find can include punitive damages.
23. In *Vorvis v. Insurance Corporation of British Columbia* [1989] 1 SCR 1085, the Supreme Court of Canada said that punitive damages may only be awarded for conduct deserving of punishment because of its harsh, vindictive, reprehensible, and malicious nature.
24. I find on the parties' correspondence and the strata's submissions, that the strata's section 36 breach was likely a result of its council misunderstanding the SPA requirements. I find the mere fact of the breach does not render its conduct harsh, vindictive, reprehensible, and malicious. The owner submitted no objective evidence that the strata engaged in conduct of that nature. Therefore, I dismiss the owner's claim for the \$1,000 penalty.

### **TRIBUNAL FEES AND EXPENSES**

25. 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. I find the owner was partially successful in this claim. I order the strata to reimburse the owner a total of \$112.50, which is half his tribunal fees. The owner claimed no dispute-related expenses.
26. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

## ORDERS

27. I order that within 45 days of this order that the strata:

- a. provide the owner with copies of the emails in its possession between the strata and the owner of SLXX from September 7, 2016 to September 7, 2018 that relate to the strata's noise bylaw enforcement,
- b. the strata not charge the owner a fee for providing copies of the records set out in paragraph 27(a) above, and
- c. pay the owner \$112.50 in tribunal fees.

28. 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.

29. 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.

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Trisha Apland, Tribunal Member