



Civil Resolution Tribunal

Date Issued: May 6, 2020

File: ST-2019-008367

Type: Strata

Civil Resolution Tribunal

Indexed as: *Herr v. The Owners, Strata Plan KAS 1824*, 2020 BCCRT 496

B E T W E E N :

SHAUN HERR

APPLICANT

A N D :

The Owners, Strata Plan KAS 1824

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. The applicant, Shaun Herr (tenant) is the tenant of a residential strata lot located in the respondent strata corporation, The Owners, Strata Plan KAS 1824 (strata).

2. The tenant had placed a video recording device on the entry door of the strata lot. However, the strata ordered the tenant to remove it. The tenant wants to reinstall the equipment.
3. The strata opposes the tenant's request. The strata says the equipment would violate privacy laws.
4. The tenant is self-represented. The strata is represented by a strata council member.
5. For the reasons set out below, I dismiss the tenant's claim.

JURISDICTION AND PROCEDURE

6. 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.
7. The tenant asks this tribunal to anonymize his name in the decision for privacy reasons. He says that a person in the building is harassing him and he is concerned that public disclosure of his identity may lead to retaliation. The tribunal's decisions generally identify the parties because these are considered open proceedings. This is done to provide transparency and integrity in the justice system. The tribunal only anonymizes decisions in certain limited situations such as disputes that involve a vulnerable party, such as a child. The tribunal may also anonymize decisions in disputes that include sensitive information, such as medical issues. Other than these circumstances, this tribunal generally discloses the parties' names. After consideration, I decline the tenant's request to anonymize his name. I am not satisfied that the tenant's concerns of potential retaliation are a sufficient basis to remove the tenant's name from this decision.

8. 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 that there are no significant issues of credibility or other reasons that might require an oral hearing. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
9. 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.
10. 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

11. The issues in this dispute are:
 - a. Is the tenant's video doorbell device an alteration of common property under bylaw 8.1?
 - b. Was the strata's denial of the tenant's request to install the video doorbell device unreasonable under bylaw 8.2.
 - c. Should I order the strata to allow the tenant to reinstall the equipment?

EVIDENCE AND ANALYSIS

12. In a civil dispute such as this, the applicant tenant bears the burden of proof. This means the tenant has to provide evidence to prove his claim on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

13. The strata was created in 1996 and it consists of residential apartment-style strata lots.
14. Section 119 of the Strata Property Act (SPA) allows strata corporations to govern the use of common property with bylaws.
15. The relevant bylaws were filed at the Land Title Office on December 12, 2001. The strata's bylaws 8.1 and 8.2 say the following:
 - a. Bylaw 8.1: Alterations of common property require strata approval.
 - b. Bylaw 8.2: The strata cannot unreasonably withhold approval under bylaw 8.1, but there may be conditions for approval.
16. The relevant facts are generally not disputed.
17. The tenant says that he installed a video recording device on the exterior door of the strata lot in November 2018 for security purposes. It is not disputed that the tenant attached the video device to the door through the existing peephole and he replaced one of the unit numbers on the door with a smaller unit number.
18. The strata says it discovered the video equipment and the alteration of the unit numbers during an annual inspection on April 30, 2019. It is not disputed that the tenant did not get strata approval to install the video equipment.
19. The strata asked the tenant to remove the video equipment and restore the original lettering. The tenant requested a hearing which the strata held on June 12, 2019. On June 25, 2019 the strata decided that the tenant's video equipment needed to be removed. The strata said the tenant installed the video device without permission and the device violated privacy laws.
20. The tenant removed the video equipment from the door.
21. The tenant asked the strata for permission to re-install the video device on August 5, 2019. The strata denied this request on August 15, 2019 saying the camera violated privacy laws and strata bylaws.

Is the installation of the video doorbell an alteration of common property?

22. As stated above, bylaw 8.1 requires strata approval for alterations to common property.
23. In *Berke v. The Owners, Strata Plan NW 982*, 2018 BCCRT 539, this tribunal determined that the exterior of a strata lot entry door is common property if the strata plan does not designate doors as limited common property or as part of the strata lot. Although this decision is not binding on me, I find the reasoning persuasive. Since the strata plan did not designate the doors as limited common property or as part of the strata lot, I find that the exterior of the door is common property.
24. Common property is defined under section 1 of the *Strata Property Act* (SPA) to include the part of a building that is not part of a strata lot. The strata plan does not designate the windows and doors as limited common property (LCP), or as part of the strata lot. Further, under section 68(1) of the SPA, the boundary of a strata lot is the midpoint of its exterior wall. The windows and patio doors are on both sides of the midpoint. I find the exterior windows and doors are common property.
25. Since the outside of the door is common property, I need to determine whether the placement of the video device on the door is an alteration within the meaning of bylaw 8.1.
26. The strata argues that the decision in *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363 supports their position. In *Hall*, the court said that the owner's replacement of windows and doors was not an alteration requiring strata approval. I do not find this decision helpful in my analysis because the facts in *Hall* differ significantly. Replacing doors and windows is not comparable to placing a video camera on a door.
27. The strata also refers to *Parnell v. The Owners, Strata Plan VR 2451*, 2018 BCCRT 7. In *Parnell*, a strata owner installed a video doorbell device on the ceiling and on a

hallway wall next to the owner's door without strata approval. This tribunal said that this was an alteration of common property requiring strata approval.

28. The tenant argues that the decision in *Parnell* should not be applied because the facts in this matter are significantly different. I disagree.
29. The tenant argues this dispute is different than *Parnell* because the cameras are placed in different locations. In this matter, the tenant wants to place the video device on his door. In *Parnell*, the owner placed the camera on a hallway wall and ceiling of the hallway. I do not find that this is a significant difference. The outside of the tenant's door is common property just as the hallway walls and ceilings were in *Parnell*. Both disputes involve the placement of a video device in a common property hallway area. I do not find that my analysis turns in any way on the distinctions between placing a video device on doors, walls or ceiling in a common property hallway.
30. The tenant also argues that *Parnell* is distinguishable because the strata building in *Parnell* had a different layout. Specifically, the tenant argues the building in *Parnell* was a mixed 4-storey complex. I do not find this to be a significant distinction. The issue is the placement of video devices in common property hallways. I do not find differences in the structure of the buildings to be relevant.
31. The tenant also argues that his motivations for installing the video device in this matter differ than those in *Parnell*. However, I do not find a significant difference in the motivations to install the camera device in *Parnell* and this matter. In both cases, the video devices were requested to improve security.
32. I find that the facts in this dispute are very similar to *Parnell*. Although the decision in *Parnell* is not binding on me, I find the reasoning persuasive and I apply it here. Based on the reasoning in *Parnell*, I find that the tenant's placement of the video equipment on his door is an alteration of common property within the meaning of bylaw 8.1. Accordingly, I find that the tenant needs strata approval to install the device.

Should the strata permit the tenant to re-install the video doorbell device?

33. The strata denied the tenant's request to re-install the video device because it says that would violate privacy laws. The issue is whether the strata's denial was unreasonable under bylaw 8.2.
34. The tenant says he needs the video doorbell device for security because another occupant in the building has been harassing him. The tenant says this person has left notes on his door generally complaining about dog noise. The tenant also says this person loiters outside the strata lot. The tenant made a complaint to strata in September 2018 regarding this person's conduct.
35. I accept the tenant's undisputed evidence that someone left unwanted messages on his door. I agree the tenant has a legitimate interest in protecting his security with a camera. However, this alone does not make the strata's refusal to allow video cameras unreasonable. Since the video device will affect the privacy of others in the common property hallway, it is appropriate for the strata to also consider the privacy rights of the strata owners.
36. The tenant argues that the video device does not continuously record the hallway. The tenant says the equipment has a motion detection system and it only records when there is movement directly in front of the device. The tenant also says that the device only records up to maximum of 15 seconds.
37. I accept the tenant's undisputed description of the video device's recording limitations. However, I find that the video device would record strata residents in the common area hallway even if the camera recording is limited. I find that this does affect residents' privacy.
38. The tenant also argues that the camera will not damage the door. The tenant says he will place the device in the existing door peephole and he will only need to move or replace a door number to install the device. However, the strata did not deny the tenant's request to install the video equipment because it would damage common property. Rather, the strata argues video device is a privacy violation.

39. The strata argues that the tenant's request to install the video device breaches privacy laws. Specifically, the strata argues that this would violate the *Personal Information Protection Act* (PIPA) I agree.
40. PIPA prohibits strata corporations from placing video cameras on common property unless the strata has bylaws allowing the video camera and residents are notified. I find that the strata does not have bylaws allowing video cameras in common areas.
41. The strata argues that *Parnell* said the requirements in PIPA apply to the tenant. I agree. In *Parnell*, this tribunal held that the installation of video recording devices by an occupant in a common property hallway must comply with the same requirements imposed on a strata corporation under PIPA. This tribunal reasoned that the strata cannot authorize an owner to do something that it could not do so itself.
42. I find the reasoning in *Parnell* persuasive and I agree that installation of video devices in common property hallways is subject to the requirements of PIPA. I find that the strata acted reasonably by complying with PIPA and denying the tenant's request.
43. The tenant argues that the installation of video cameras does not violate privacy laws. The tenant refers to *Wasserman v. Hall*, 2009 BCSC 1318 which stated that an individual does not have a reasonable expectation of privacy outside. The tenant also argues that the *Privacy Act* does not prohibit video cameras. However, as stated above, I find that the tenant's request to install the video device would violate PIPA. So, I do not find it necessary to determine whether the video device would also violate the *Privacy Act* or common law privacy rights.
44. For the above reasons, I find that the strata reasonably denied the tenant's request to install the video device. For the reasons set out above, I dismiss the tenant's request to install the video device.

TRIBUNAL FEES AND EXPENSES

45. In accordance with the Act and the tribunal's rules, as the tenant was unsuccessful I find he is not entitled to any reimbursement.

ORDERS

46. I dismiss the tenant's claim and this dispute.

Richard McAndrew, Tribunal Member