



# Civil Resolution Tribunal

Date Issued: May 11, 2020

File: ST-2019-008168

Type: Strata

Civil Resolution Tribunal

Indexed as: *Doherty v. The Owners, Strata Plan KAS 3313*, 2020 BCCRT 514

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

EDWARD DOHERTY

**APPLICANT**

**A N D :**

The Owners, Strata Plan KAS 3313

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Kathleen Mell

## INTRODUCTION

1. In a previous Civil Resolution Tribunal (tribunal) decision between the same parties, a tribunal vice chair found the strata did not obtain the necessary  $\frac{3}{4}$  vote to significantly change the use of common property by turning 2 access areas into parking spaces. The respondent, The Owners Strata Plan KAS 3313 (strata), then

obtained the required  $\frac{3}{4}$  vote at a subsequent annual general meeting (AGM) held September 2019.

2. The applicant, Edward Doherty (owner), says that the vote was improperly conducted. He argues that the resolution violates the *Strata Property Act (SPA)*, the *BC Fire Code* and the *Human Rights Code*. He also states that the resolution can be used to discriminate against people and that the parking spaces cause a nuisance. The owner represents himself.
3. The strata says that the resolution was properly passed, and it is not in violation of the SPA, the *BC Fire Code* or the *Human Rights Code*. The strata is represented by a strata council member.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.
6. 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.

7. 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.
8. On December 20, 2019, another tribunal vice chair determined that this dispute is not *res judicata* because it considers a resolution that was not passed yet and therefore not considered in the previous decision, *Doherty v. The Owners, Strata Plan KAS 3313*, 2019 BCCRT 667 (the May 31, 2019 decision). She also considered whether the owner was seeking declaratory relief by requesting a declaration that the resolution is void, which the tribunal does not have the power to do. The vice chair decided that the tribunal does have the jurisdiction under CRTA section 123 to order the strata to do or stop doing something, which could include an order about the use of the contested parking spaces. I agree with the vice chair's reasoning and decisions on these preliminary issues and find that the tribunal does have the jurisdiction to hear this dispute.
9. The owner states that the strata did not meet the deadline for providing evidence. The strata explained that it had difficulty navigating the portal. I note that the owner had time to respond to all of the strata's evidence and submissions. I find that the owner did not suffer any prejudice from the strata being slightly late in providing its evidence and therefore I have considered it.

## **ISSUES**

10. The issues in this dispute are
  - a. Did the strata appropriately pass the  $\frac{3}{4}$  vote resolution altering the use of common property to create 3 new common property parking spaces?
  - b. Is the resolution in violation of the BC Fire Code or the Human Rights Code?
  - c. Do the subject parking spaces cause a nuisance?

## **EVIDENCE AND ANALYSIS**

11. I have reviewed all of the evidence provided but refer only to evidence I find relevant to provide context to my decision.

### ***BACKGROUND***

12. As noted in the previous tribunal decision, the strata was created in September 2007 and is a strata corporation comprising 176 residential strata lots, a combination of apartments and townhomes. The strata plan filed at the Land Title Office shows 139 parking stalls in 2 buildings, one building with 73 stalls and one with 66.

13. On October 7, 2010, the strata amended its parking bylaws. The relevant bylaw includes the following:

a. Bylaw 6(a): A resident shall use only the parking space(s) assigned to their Strata Lot...

b. Bylaw 6(k): No parking is permitted except in a designated parking space, nor shall vehicles be parked in a manner, which will in any way obstruct or reduce the width of an access driveway.

c. Bylaw 6(m): Vehicles shall not be parked in any manner that endangers any person or property or is considered a nuisance by Strata Council, acting reasonably...

14. In November 2018, the strata decided to convert the common property space in front of the storage access doors into parking spaces R1 and R2 and held a lottery for granting use of spaces R1 and R2 to owners in the complex. The lottery winners won the right to rent the spaces from the strata.

15. In her May 31, 2019 decision, the vice chair noted that Section 76 of the SPA provides that, subject to section 71, the strata may give an owner permission to exclusively use common property that is not designated as limited common property, which permission may be given for a period of not more than 1 year.

16. The vice chair found this change to be significant because while occupied by a vehicle, the parking spaces restrict access to the storage facilities. She said that this impacts all owners who utilize the storage facilities in that area. She stated that the change was not approved by  $\frac{3}{4}$  at an SGM or AGM and that the evidence did not show that immediate change was necessary. She ordered the strata remove the parking spaces until the change was approved by a resolution passed by a  $\frac{3}{4}$  vote at an AGM or SGM, subject to all the regular provisions of the SPA.

### ***THE AGM MEETING***

17. The strata removed the parking spaces consistent with the May 31, 2019 tribunal order. On September 4, 2019, the strata provided all owners with notice of the AGM to be held on September 24, 2019. The agenda included a resolution requiring a  $\frac{3}{4}$  vote to alter the common property to create 3 new parking spaces. Two were the same ones that were the subject of the previous dispute and, as noted, both were in front of the storage rooms. The third is located away from the other 2 and intended for use by the strata's employees and contractors. It is not in front of a storage room door.

18. The notice indicates that the strata had consulted with the fire department and confirmed that the clearance doors from the storage areas were in compliance with the *Building Code*. The notice specified the sections of the *Building Code* and stated that the sections of the *Building Code* were available on the "town hall" website. The notice points out there were 25 other storage lockers in the parkade that had parking spaces directly in front of them.

19. The September 2019 AGM minutes show that the resolution passed with 69 votes in favour and 1 opposed.

20. The owner submits that the notice was procedurally incorrect because it referred people to a website to look at the *Building Code*. Section 45(3) of the SPA says that the notice of an AGM must include a description of the matters that will be voted on at the meeting, including the proposed wording of any resolution requiring a  $\frac{3}{4}$  vote. I find the strata met this requirement. There is nothing in the SPA that says the

strata can not refer owners to other information, such as a website, if the strata thinks the information might be relevant to their decision on how to vote. I do not accept the owner's submission on this issue.

21. The owner also argues that because 2 of the parking spaces are in front of storage areas and the third is not, there should have been two separate votes. The evidence shows that the strata was transparent about where the parking spaces were going to be created and who would be entitled to use them. There is no suggestion that the strata ownership was confused as to what they were voting on. Further, the strata allowed discussion about the resolution before the vote. If an owner had concerns about whether the resolution should include all 3 parking spaces they could have raised them for discussion prior to the vote. I do not accept the owner's submission that there should have been 2 separate votes on the designation of parking spaces.
22. Based on the evidence, I find that the September 2019 AGM was procedurally correct and the  $\frac{3}{4}$  vote resolution creating 3 parking spaces on common property was passed in accordance with the requirements of the SPA.
23. The owner also submits that the resolution can be abused by strata because it can be applied in a discriminatory manner. The owner does not elaborate on what he means by this. However, I note that the strata gave residents access to renting 2 parking stalls based on a random lottery. There is no suggestion that the strata is acting unfairly in determining who gets to rent the parking stalls in front of the storage areas, which are the stalls the owner's submissions focus on. I further note that the resolution stated that the strata council has sole discretion to administer the parking spaces. The passing of the resolution could be considered direction by the ownership under SPA section 27(1), even though it was by a  $\frac{3}{4}$  rather than a majority vote.
24. With regard to the third parking stall, the resolution specified it was for strata employees and contractors. The resolution was passed by a near unanimous vote. The owner does not make submissions about the third parking space for employees

and contractors. Therefore, I do not accept the owner's submission that the strata is acting in a discriminatory manner in allowing employees and contractors to use the third parking stall as he has provided no evidence on this issue.

25. I find that the owner has not shown that the resolution is being applied in a discriminatory manner. I dismiss this aspect of the owner's claim.

### ***The BC Fire Code***

26. The owner submits that allowing parking in front of the storage areas violates the *BC Fire Code*. The owner says that the strata has blocked one of the 2 doors to the storage areas in violation of the *Fire Code*. He has provided pictures of cars parked in front of the storage area. I note that some of the pictures shows that there is a yellow line indicating where the vehicles should be parked so as to allow the storage door to open. Further, the strata has provided a January 8, 2020 fire department inspection report showing that the building passed the inspection. Based on the fire department inspection report, I find that the owner has not proved that the parking spaces violate the *Fire Code*. I dismiss this aspect of the owner's claim.

### ***The Human Rights Code***

27. The owner submits that the strata is violating the *Human Rights Code* because a person with a mobility device would have difficulty using the door exiting to the parking space. The owner does not say he needs a mobility device or point to any other owner who needs one. He suggests that because many owners are older that mobility devices will be needed in the future. I note that this submission is speculative and if a situation such as this arises the strata at that time can consider whether they need to put in place additional measures to accommodate a person who needs a mobility device.
28. Further, the strata has provided a British Columbia information bulletin which explains that under the 2018 *British Columbia Building Code* where a space is required to be accessible, 50 percent of the pedestrian entrance to spaces must be

made accessible. The strata says that the second doors not leading to the parking spaces are fully accessible and are located closest to the elevator which would be the recommended entry point to the storage room for people with mobility challenges. The owner has not provided evidence that this is not the case. I dismiss the owner's claim that the parking stalls are in violation of the *Human Rights Code*.

### **Nuisance**

29. The owner says that the resolution is in violation of the strata's bylaw that an owner, tenant or occupant must not use a strata lot, common property or asset that unreasonably interferes with the rights of other persons to use and enjoy the common property. He also argues that allowing the parking spaces causes a nuisance. The owner further claims that the location of the parking spaces creates unnecessary and undue hardship for all residents. I first note that the vote to allow the parking spaces was a near unanimous vote. There is no suggestion that the other owners feel that the parking spaces are causing a nuisance or are an undue hardship.
30. I have already decided above that the strata did have the authority to change the use of the common property to parking spaces for the benefit of an assigned strata lot owner as long as the resolution was supported by a  $\frac{3}{4}$  vote, which it was.
31. Nuisance in a strata setting is an unreasonable continuing or repeated interference with a person's use of their strata lot. The owner has not provided specific evidence as to how the parking spaces affect him personally. Most of his submissions deal with the potential harm to people with mobility issues. He makes a reference to the lack of access perhaps making his property less desirable for future buyers. The owner has provided no evidence that the parking spaces would lower the desirability or value of his strata lot.
32. Based on the evidence, I find that the parking spaces may occasionally cause the owner an inconvenience when he needs to access the storage area. I acknowledge that when the owner has to move a large object into or out of the storage area, he



might have to use the second door that has more room in front of it. I find that this occasional inconvenience does not reach the level of being a nuisance.

33. I dismiss the owners' claims and this dispute.

## **TRIBUNAL FEES AND EXPENSES**

34. 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. Because the owner was unsuccessful in his claim, he is not entitled to reimbursement of his tribunal fees. There was no claim for expenses.

35. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners.

## **ORDER**

36. I dismiss the owners' claims and this dispute.

---

Kathleen Mell, Tribunal Member