



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Morrissey v. The Owners, Strata Plan K400*, 2020 BCCRT 592

B E T W E E N :

PAUL MORRISSEY, HAROLD O'NEILL, and ROBERT KESTER

APPLICANTS

A N D :

The Owners, Strata Plan K400

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute arises from a breakdown in the parties' relationship and several disagreements on how a strata corporation should be run. The applicants, Paul Morrissey, Harold O'Neill, and Robert Kester (owners), each own different strata lots in the respondent strata corporation, The Owners, Strata Plan K400 (strata).

2. The owners seek an order for the strata to enforce its dog bylaws and for the strata to produce requested documents. The owners also say that 2 new rules adopted by the strata are invalid and should not be enforced. The owners also seeks a remedy for the strata paying a contractor's invoice in full, even though most owners voted not to do so an annual general meeting (AGM). The owners also says the strata failed to enforce bylaws against 2 other owners, EM and SB, for bullying and harassment. EM and SB are not named parties in this dispute.
3. The strata disagrees with the owners' claims. It says the dog at issue is exempt from bylaw enforcement. The strata also says it provided the requested documents and says the 2 new rules are valid. The strata says it paid the contractor's invoice on the advice of its lawyer and it was entitled to do so under new council at the time. The strata also denies EM and SB bullied or harassed anyone.
4. Mr. Morrisey represents the owners. A strata council member represents the strata.

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. I note that some of the remedies requested by the owners are set out in submissions rather than in the application for dispute resolution. I have considered these remedies as the strata has the chance to review and respond to them.

Preliminary Issue #1 – Requirement of a Request for a Council Hearing

10. Section 189.1(2) of the *Strata Property Act* (SPA) says an owner or tenant may not request the tribunal to resolve a dispute unless they have requested a council hearing under SPA section 34.1, or the tribunal, on request by a party, directs that this requirement does not apply. In their application for dispute resolution, the owners requested for the tribunal to direct this requirement not apply. The strata did not object to the owners' request.
11. I find it appropriate in this dispute to waive the hearing requirement. The parties have notice of each others' submission and evidence. The parties have not reached any agreement through the tribunal facilitation process on the issues. I direct that the hearing requirement set out in SPA section 189.1(2) is waived.

Preliminary Issue #2 – Strata Allegations of Financial Mismanagement

12. The strata holds 3 financial accounts. It says the previous strata council (which previously included Mr. Morrissey and Mr. O'Neill) mishandled funds by allowing one account to become inactive from November 30, 2017 onwards. The strata says this may have been an attempt to disguise the strata's capital expenditures as annual budget items. It also says the funds in the account were previously in danger being forfeited to the Bank of Canada after 10 years of inactivity (the account is now active).

13. The strata also says that Mr. Morrissey should have transferred a total of \$2,616 from a credit union operating account into an interest-bearing reserve account in November and December 2019. The strata says this deprived it of interest on the sum of \$2,616 for some time.
14. The strata did not file a counterclaim or request any specific remedy from the owners. Although the strata characterized \$2,616 in funds as “missing”, there is no allegation that any funds were stolen or are unaccounted for. I also did not find these allegations were fully argued before me by the parties. Given these considerations, I decline to make any findings on whether the previous strata council mishandled or mismanaged funds.

Preliminary Issue #3 – Evidence Not Provided to Both Parties

15. The owners also referred a file titled “EC2c” that they sent to tribunal staff but did not make available to the strata. The strata says it has not had the opportunity to review this file and says it should not be admissible. I find it would be unfair to the strata to for the tribunal to consider this file and I have not relied on it in any way in my decision.

ISSUES

16. The issues in this dispute are as follows:
 - a. Did the strata fail to enforce the strata’s dog bylaws?
 - b. Did the strata fail to produce the requested documents?
 - c. Are the 2 new rules adopted by the strata council invalid?
 - d. Did the strata breach the SPA or its bylaws by paying the contractor’s invoice in full, and if so, what is the appropriate remedy?
 - e. Should the tribunal resolve the owners’ claims against EM and SB for bullying and harassment?

BACKGROUND, EVIDENCE AND ANALYSIS

17. In a civil claim such as this, the owners must prove their claims on a balance of probabilities. I have reviewed all the evidence and submissions and only reference them as necessary to give context to my decision.
18. As background, the strata consists of 2 buildings with townhouse-style housing. There are 16 residential strata lots which are occupied mostly or entirely by owners age 55 and above.
19. Mr. Morrissey was the strata's previous president and treasurer, and Mr. O'Neill was its Vice President. At the November 23, 2019 AGM, Mr. Morrissey and Mr. O'Neill did not run for re-election. EM and DS were elected as the new council president and treasurer, respectively. The owner also elected a new secretary, LT, referred to below. The evidence shows there has been conflict between the owners and EM and DS, both before and after the election.

Issue #1. Did the strata fail to enforce the strata's dog bylaws?

20. Under SPA section 26, the strata has an obligation to enforce its bylaws. The strata's bylaws are registered in the Land Title Office. Bylaw 3(4)(a) says that each strata lot is permitted to house one dog or cat. Bylaw 3(4)(b) says that any such pet cannot exceed 20 pounds.
21. Based on the following undisputed facts, I find that, on its face, bylaws 3(4)(a) and 3(4)(b) are being breached by 2 individuals, DS and RF. DS owns a strata lot known as unit 5 and has a cat. RF is another individual that lives at unit 5 and owns Finlay, a dog weighing approximately 70 pounds. From at least November 23, 2019 onwards, both RF and Finlay lived at unit 5 along with the cat. I did not find it clear from the evidence if RF was a tenant or licensee, but I find nothing turns on this.
22. For the reasons set out below, I find the strata has not provided a reasonable explanation for not enforcing its dog bylaws regarding Finlay. I conclude the strata has failed to enforce bylaws 3(4)(a) and 3(4)(b).

23. In a December 3, 2019 email to LT (the strata council's secretary), Mr. O'Neill and another owner, JO, complained that unit 5 had both a cat and a dog (Finlay), and the dog was over 20 pounds, in breach of the bylaws. Mr. Morrissey sent a similar complaint in a December 9, 2019 email addressed to the members of the strata council.
24. SPA section 135 says a strata corporation cannot impose a fine on a person for a bylaw contravention unless it receives a complaint about the contravention. The strata says no owner complained about Finlay, but I disagree given the correspondence mentioned above.
25. The strata council responded to both Mr. O'Neill and JO in a December 11, 2019 letter. Its author, EM, wrote that the "requirements to house a companion dog by persons in Unit #5 have been met", and no further action would be taken. EM enclosed a June 11, 2019 letter from RF's physician. The physician wrote that Finlay was a source of companionship and therapy for RF's unspecified health conditions. EM also enclose a copy of a card showing Finlay was registered as an official support dog with the Assistance Dogs of America.
26. SPA section 123(1.01) says a bylaw that prohibits a pet or animal or that restricts the access of a pet or other animal to a strata lot or common property does not apply to a guide dog or service dog. SPA section 123(1.02) says that the terms guide dog and service dog are defined in the *Guide Dog and Service Dog Act* ("GDSDA").
27. I find the strata council failed to explain its reasoning in the December 11, 2019 letter. It did not refer to a specific bylaw, the SPA or explain what the "requirements to house a companion dog" were. The strata also failed to explain why a companion dog would be exempt from bylaw enforcement. I also found the strata's explanation for its position in this dispute to be vague, though it referred again to Finlay's status as a companion or support dog. I infer from the December 11, 2019 letter, its attachments, and the submissions before me that the strata found Finlay was a

guide dog or service dog under the SPA, and therefore exempt from bylaw 3(4). For the following reasons, I disagree.

28. Under section 1 of the GDSDA, a dog is only considered a guide dog or service dog once certified, and only the Registrar of Guide Dogs and Service Dogs may issue or renew a valid certificate. While Finlay is registered with the Assistance Dogs of America, this organization is not the Registrar, and there is no indication the Registrar has issued a certificate. Finlay's card also lacks the information required for a certificate under GDSDA section 5. The card does not identify the person who is blind or disabled (no person is named at all), and that that the person and the dog form a guide or service team. The strata notes that RF suffered a mild to moderate heart attack in the fall of 2019 but did not say he had a diagnosed disability or any other health conditions that required guide dog or service dog.
29. In certain circumstances the strata may reasonably choose not to enforce a bylaw, particularly where the contravention is of a trifling or trivial nature: *Abdoh v. Owners of Strata Plan KAS 2003*, 2013 BCSC 817, affirmed 2014 BCCA 270. However, that discretion is limited, particularly in circumstances where the strata owners have a reasonable expectation that the bylaws will be consistently enforced: *Strata Plan LMS 3259 v. Sze Holding Inc.*, 2016 BCSC 32 at paragraph 238. In reaching its decision, I find the strata did not rely on its discretion in the manner described in *Abdoh*. The December 11, 2019 letter and the strata's submissions instead rely on the benefits Finlay provided to RF.
30. In summary, I find the strata failed to enforce its bylaws regarding Finlay. In its December 11, 2019 letter the strata did not provide any reasonable basis for declining to take further action.
31. What is the appropriate remedy? The owners request an order for Finlay to be removed. I find I am unable to make this order as the bylaws do not grant the authority to remove pets from a strata lot. Instead, the strata may issue warnings and fines against a strata lot shown to be in breach of a pet-related bylaw. I would

also not make that order because neither DS or RF (Finlay's owner) are parties to this dispute.

32. The owners have asked generally for an order that the strata comply with the SPA and enforce its bylaws. SPA section 135 provides a procedure for the enforcement of bylaws. This requires the strata to provide particulars of the complaint to DS and RF, and a reasonable opportunity to respond.
33. Given this, I order that within 14 days of this decision, the strata enforce bylaw 3(4)(a) and bylaw 3(4)(b) in connection with the owners' complaints through the process outlined in SPA section 135.

Issue #2. Did the strata fail to produce the requested documents?

34. SPA section 35 and section 4.1 of the *Strata Property Regulation* (SPR) require the strata to prepare and retain various records. Under SPA section 36(1), if an owner requests access to any of these records, the strata must make the records available for inspection by an owner within 2 weeks of the request, or within 1 week if the request is for bylaws or rules. Under SPA section 36(4) and section 4.2 of the SPR, the strata must also provide copies of any requested records to an owner. However, the strata may charge an owner up to 25 cents per page for copies of the requested records, and it may require payment before providing the copies to the owner.
35. In a November 26, 2019 email Mr. Morrissey wrote to several members of the strata council requesting documents for the period of November 23, 2019 onwards to November 1, 2020. The owner requested further documents as they were generated, as a standing and ongoing request.
36. Mr. Morrissey identified both the documents and the SPA provisions under which he was making his requests, as follows:
 - a. all strata council meeting minutes, save for any in-camera sessions (SPA section 35(1)(a)),
 - b. all written contracts to which the strata is a party (SPA section 35.2(g)),

- c. any tribunal decision in which the strata was a party (SPA section 35.2(h)),
- d. all correspondence sent or received by the strata corporation and its council (SPA section 35.1(k)),
- e. monthly statements for the strata's credit union and bank accounts (SPA section 35.2(l)), and
- f. the strata's financial statements every time they are reconciled with the statements from the credit union and bank.

37. Mr. Morrissey says the strata has failed to produce certain documents, which I find are included under his November 23, 2019 request. The strata says that it has provided all the documents requested and has no new documents to provide Mr. Morrissey. For the reasons that follow, I find the strata has largely complied with Mr. Morrissey's request but failed to produce monthly statements from its credit union and bank.

38. The owners say they are still waiting for the gardener's contract under SPA section 35.2(g). I conclude the strata has provided this document in this dispute, as it provided a contract between the strata and another individual, MB, for the period of November 1, 2019 to November 30, 2020 for landscaping services.

39. The owners also say they want a copy of the strata's privacy policy or an update on its progress. I note this was not part of the documents requested in November 26, 2019 and for that reason I decline to order the strata to produce it. I also decline to order its production as there is no evidence the strata had such a policy drafted at the time the owners filed their application for dispute resolution.

40. The owners also say the strata has not provided minutes with voting details under SPA section 35(1)(a). I am not persuaded that the strata failed to comply with Mr. Morrissey's request. He requested documents on November 26, 2019, and the owners filed their application for dispute resolution on December 19, 2019. The strata provided minutes from a December 2, 2019 council meeting. I find it unlikely that any other council meetings occurred in November or December 2019. The

owners also requested “voting details” but did not elaborate. The results of council’s votes are noted in the minutes. Given this, I am not satisfied the strata failed to provide meeting minutes, or sufficiently detailed minutes, under SPA section 35(1)(a).

41. Mr. Morrissey also requested the strata’s correspondence under SPA section 35.1(k). The strata says it has none to provide. Given the narrow time frame at issue and the lack of evidence to the contrary, I am not satisfied that the strata failed to provide correspondence to the owners.
42. The owners also requested bank statements for the strata’s credit union and bank accounts. Under SPA section 35(2)(l), the strata must retain bank statements, which I find applies to the strata’s credit union accounts as well. I have reviewed the strata’s documents and agree with the owners that the strata did not provide statements, and instead provided a list of transactions for its credit union and bank accounts for a period of time.
43. Given the above, I order that within 14 days of the date of this decision, the strata must provide Mr. Morrissey monthly statements for each of its accounts held at bank or credit unions from November 23, 2019 to the date of this decision. I order that the strata may charge Mr. Morrissey for copies of the documents produced, as permitted by the *Strata Property Regulation*.

Issue #3. Are the 2 new rules adopted by the strata council invalid?

44. SPA section 125 says the strata corporation may make rules governing the use, safety and condition of its common property and common assets. If a rule appears to govern a strata lot, it will be invalid. Under SPA section 125(5), if a rule conflicts with a bylaw, the bylaw prevails. See L. Joy Tataryn, ed., *British Columbia Strata Property Practice Manual*, looseleaf (Vancouver: The Continuing Legal Education Society of British Columbia, 2008) at §11.5.
45. A strata corporation, through its strata council, may make rules that have effect without a vote of the ownership but, according to section 125(6) of the SPA, a rule

must be ratified by a resolution passed by a majority vote at an AGM or Special General Meeting. If a rule is not ratified at the next general meeting after it is made, it ceases to have effect. Once a rule has been ratified, it is effective until it is repealed, replaced or altered. See *Weir v. The Owners, Strata Plan EPS2362*, 2020 BCCRT 216, which is not binding but I find provides an accurate summary of the law.

46. According to the December 2, 2019 strata council meeting minutes, the strata adopted 2 rules, which have not been ratified. The owners say the following 2 rules breach the strata's bylaws and the provisions of the SPA. The strata disagrees.
47. I quote the 2 rules below, with minor changes to spelling, grammar and capitalization:
 - a. No restriction of visiting dogs no matter if the owner already has a pet, a visiting pet is just that....visiting. As long as this is not on an extended time there will be no restrictions. Owners must make visitors aware that the pet must be on a leash and must clean up after their pet. Weight for visiting dogs is not a factor.
 - b. No owners [are] permitted to do work on the strata units which involves climbing ladders or shovelling. This is very unsafe and could put our strata insurance in jeopardy as well as the well being of the well-meaning owner.
48. I find that the first rule is invalid as it governs strata lots rather than only common property. The rule affects restrictions on how many dogs or what weight of dogs may be in an owner's strata lot.
49. I find the second rule to also be invalid because it governs strata lots rather than only common property. It prevents work affecting "strata units", which I interpret to include work done on and within strata lots. For that reason, I find it to be invalid.
50. The tribunal does not have jurisdiction to make declaratory orders, but it may order a bylaw unenforceable. See, for example, *Wong v. The Owners, Strata Plan BCS 435*, 2020 BCCRT 53 at paragraph 57, which is not binding but I find persuasive.

51. I order the strata to refrain from enforcing the 2 rules documented in the December 2, 2019 strata council meeting minutes, regarding visiting dogs and work on strata units.

Issue #4. Did the strata breach the SPA or its bylaws by paying the contractor's invoice in full, and if so, what is the appropriate remedy?

52. As background, the previous strata council hired the contractor VE to clean gutters and repair the patio roof cover. The scope of work is in an October 10, 2019 estimate for \$2,635.50.

53. The November 23, 2019 AGM minutes show the previous strata council felt VE's work and communication with the strata was poor. Mr. Kester moved to pay VE only \$1,500 instead of their full invoice (I presume for the estimate amount noted above) and EM seconded the motion. It is undisputed that the motion passed by a majority vote of the owners.

54. Subsequent events are documented in EM's December 17, 2019 memo to file. On December 16, 2019, the new strata council members met with VE's owner to review its work. EM noted that VE's owner said that there was snow on both strata buildings and a further examination would be needed in the spring to identify any deficiencies. VE's owner assured the council that he would come back and fix any problems identified at that time. Based on these comments, the strata council decided to pay the amount outstanding on VE's invoice and have VE return in the spring for further inspections.

55. The owners says the strata should not have paid VE's invoice. They say the council members should be reprimanded or fined for breaching the applicable standard of care outlined in SPA section 31. SPA section 31 says that in exercising the powers and performing the duties of the strata corporation, each council member must act honestly and in good faith with a view to the best interests of the strata corporation, and must exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

56. I note that EM says the strata paid VE based on the advice of its lawyer, but this is contradicted by the above-mentioned memo. In any event, I must dismiss the owners' claim for a remedy under SPA section 31. Based on the BC Supreme Court's decision in *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32, the owners have no standing to make a claim under SPA section 31. In *Sze Hang* at paragraph 267, the court said the duties of strata council members under SPA section 31 are owed to the strata corporation, and not to individual strata lot owners. This means that a strata lot owner, or group of owners cannot succeed in a claim against the strata, the strata council, or individual strata council members for a breach of section 31.
57. Having said that, SPA section 27(1) says the strata corporation may direct or restrict the council in its exercise of powers and performance of duties by a resolution passed by a majority vote at an AGM. I find that under SPA section 27(1), the majority vote of the owners at the November 23, 2019 AGM directed the strata council to pay VE only \$1,500 instead of its full invoice. I find this vote bound the current strata council as there is nothing in the minutes or the resolution passed to suggest otherwise. The strata therefore failed to comply with the majority vote and breached its obligations under SPA section 27(1).
58. What is the appropriate remedy? The owners request an order that the strata refrain from violating a majority vote at an AGM in the future. There is no action requested aimed at VE. I find it appropriate to order the strata to comply with SPA section 27(1).

Issue #5. Should the tribunal resolve the owners' claims that the strata failed to enforce the strata's bylaws against EM and SB for bullying and harassment?

59. In a November 19, 2019 letter, the strata (under the previous council) wrote to EM that it had received complaints that she was bullying and harassing and using foul language against other owners and strata council members through emails and letters. The strata wrote that this behaviour breached bylaw 3.

60. Bylaw 3 states that an owner must not use a strata lot, common property, or common assets in a way that causes a nuisance or hazard to another person, or unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets, or another strata lot.
61. Mr. Morrissey wrote the November 19, 2019 letter. At the time he was the strata council president. After the November 23, 2019 AGM, EM became president and the strata refused to consider the complaint against EM in a December 2, 2019 letter.
62. Based on the November 19, 2019 letter, I find that the complaints against EM are, in substance, about harassment through letters and email, rather than the use of a strata lot, common property, or common assets. I do not find bylaw 3 applicable in the circumstances.
63. As noted in *Louhimo v. The Owners, Strata Plan PG 33*, 2019 BCCRT 491, the tribunal's jurisdiction in strata property matters is stated in CRTA section 121. Allegations of harassment are outside of the tribunal's jurisdiction for strata property claims as they do not involve the matters set out in CRTA section 121(1). Although not binding, I find *Louhimo* applicable in these circumstances and I am persuaded by it. Under CRTA section 10, I refuse to resolve the owners' claim against the strata about EM's alleged bullying, harassment and foul language.
64. Similarly, in a November 17, 2019 letter, the strata (again, under its previous council) wrote to SB that it had received 2 complaints from owners that they had been bullied, harassed, and yelled at by SB. The strata wrote that this breached bylaw 3. The strata provided several other letters from other owners stating that they had been harassed and bullied by SB.
65. SB owns a strata lot in the strata. She is not a member of the new strata council, though she occupies a role as its Privacy Officer. There is no indication the new strata council took any action regarding SB.
66. I find that yelling (especially if persistent) could constitute a nuisance or unreasonable interference in a person's right to use common property or their strata

lot. However, I find the complaints against SB are substantially about harassment rather than yelling, or the use of a strata lot, common property, or common assets under bylaw 3. I do not find bylaw 3 applicable in the circumstances. Under section 10 of CRTA, I refuse to resolve the owners' claim against the strata about SB's alleged bullying, harassment and yelling under CRTA section 10.

TRIBUNAL FEES AND EXPENSES

67. 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.

68. I find the owners have been largely successful on the matters within the tribunal's jurisdiction and should be entitled to 75% of their tribunal fees. I therefore order the strata to reimburse the owners \$168.75 in tribunal fees within 14 days of the date of this decision. The parties did not claim dispute-related expenses, so I do not order any.

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

ORDERS

70. I order that:

- a. Within 14 days of this decision and order, the strata enforce bylaw 3(4)(a) and bylaw 3(4)(b) in connection with the owners' complaints about Finlay the dog through the process outlined in SPA section 135.
- b. Within 14 days of the date of this decision and order, the strata must provide Mr. Morrissey monthly statements for each of its accounts held at bank or credit unions from November 23, 2019 to the date of this decision. I order that

the strata may charge Mr. Morrissey for copies of these documents produced, as permitted by the *Strata Property Regulation*.

- c. The strata must comply with SPA section 27(1).
 - d. The strata refrain from enforcing the 2 rules documented in the December 2, 2019 strata council meeting minutes, regarding visiting dogs and work on strata units.
 - e. Within 14 days of the date of this decision and order, the respondent pay the applicants \$168.75 in tribunal fees.
71. I refuse to resolve the owners' claims that the strata has failed to enforce bylaw 3 against EM and SB as the owners' claims are in substance about harassment and therefore outside the tribunal's jurisdiction.
72. I dismiss the owners' remaining claims.
73. 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.
74. 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 owners 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.

David Jiang, Tribunal Member