



Civil Resolution Tribunal

Date Issued: June 5, 2020

File: ST-2019-008533

Type: Strata

Civil Resolution Tribunal

Indexed as: *Todd v. Robertson*, 2020 BCCRT 627

BETWEEN:

MARGOT HÉLÈNE TODD

APPLICANT

AND:

JAMES ROBERTSON and The Owners, Strata Plan 259

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about alterations to a patio area that include the installation of a “camera”.
2. The applicant, Margot Hélène Todd (owner), owns a strata lot (SL35) in the respondent strata corporation, The Owners, Strata Plan 259 (strata). The

respondent, James Robertson (neighbour), co-owns a strata lot (SL20) in the strata that is directly below the owner's SL35.

3. The owner says the neighbour, contrary to the strata's bylaws, installed a motion activated security camera on outside patio which infringed on the owner's privacy. The owner says the patio area is common property (CP) and the owner did not receive permission to alter it as required under the strata's bylaws. She also says the strata did not address her complaint about the camera for 24 hours.
4. Although not expressly stated as a requested remedy on the Dispute Notice for this dispute, based on her submissions, I find the owner seeks orders that the strata reprimand and fine the neighbour \$200 for installing the camera. I also find the owner seeks an order that the strata be "censored" for allowing the camera to remain on CP for 24 hours after she asked for it to be removed. I infer the owner's reference to "censored" should be read as "censured", or harshly criticized.
5. The owner expressly seeks reimbursement of \$1,104 for legal fees and \$4,000 for "pain, suffering and trauma".
6. The strata says the owner and neighbour have been involved in a lengthy ongoing dispute about alleged noise and banging from SL13, and debris allegedly thrown by the owner onto the neighbour's patio below. Some of the incidents between the owner and neighbour have involved the police, including this dispute. The strata says the ongoing owner-neighbour dispute is between the 2 parties and denies it failed to take immediate action about asking the neighbour to remove the camera. The strata also says the camera was removed the same day as the owner's complaint. The strata asks the tribunal to dismiss the owner's claims.
7. The neighbour admits to placing a "dummy camera" on his patio and says it was inoperable. He says he placed it on his patio fence to discourage the owner from banging on the floor of SL35, throwing garbage and debris onto his patio, and otherwise harassing him and his spouse. The neighbour asks that the owner's claims be dismissed.

8. For the reasons that follow, I dismiss the owner's claims and decline to order damages or reimbursement of legal fees.

JURISDICTION AND PROCEDURE

9. These are the formal written reasons of the 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.
10. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, email, 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.
11. 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.
12. 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.

Preliminary Decision

13. In a preliminary decision dated February 12, 2020, a tribunal vice chair considered a request about whether the tribunal should refuse to resolve this dispute under section 11(1)(b) of the CRTA. After considering the parties' submissions about refusing to resolve the dispute, the vice chair found it was not appropriate to do so at such an early stage of the tribunal decision process.

14. The vice chair referred the dispute back to facilitation noting it was open to the applicant to amend the Dispute Notice to include new claims.

Preliminary Issue

15. The owner did not amend the Dispute Notice and has made submissions alleging the neighbour made personal attacks and took actions against her prior to and following this dispute. The strata also made submissions about the ongoing issues between the owner and neighbour.

16. I agree with the strata that there was, and likely are, ongoing issues between the owner and neighbour. There was some evidence provided to support the strata's assertion, such as written complaints made by both the owner and the neighbour against each other. However, I find the only issue in this dispute is the neighbour's placement of a camera in his patio area in August 2019.

17. Other than briefly addressing the neighbour's placement of a camera in his patio area in 2018, I have not addressed the parties' submissions about ongoing issues between the owner and neighbour because I find they are not part of this dispute.

18. I also note the alleged personal attacks include bullying and harassment, which are outside the tribunal's jurisdiction. (See for example *Rishiraj v. The Owners, Strata Plan LMS 1647*, 2020 BCCRT 593 and *Ferreira v. The Owners, Strata Plan EPS867*, 2020 BCCRT 239.)

ISSUES

19. The issues in this dispute are:

- a. Is the neighbour's patio CP, limited common property (LCP), or part of his strata lot?
- b. By installing the camera, did the neighbour alter his patio area without permission or otherwise breach the strata's bylaws? If so, what is an appropriate remedy?

- c. Did the strata fail to take reasonable steps to address the owner's complaint about the camera installation? If so, what is an appropriate remedy?

BACKGROUND, EVIDENCE AND ANALYSIS

20. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
21. In a civil proceeding such as this, the applicant owner must prove her claims on a balance of probabilities.
22. The strata was created in March 1976 under the *Strata Titles Act* and now exists under the SPA. It is located in Victoria, BC.
23. On January 2, 2015, the strata repealed all of its bylaws and filed new bylaws at the Land Title Office. I find the January 2015 bylaws are applicable to this dispute. Subsequent bylaw amendments have been filed but none are relevant. I address the relevant bylaws in my discussions below, as necessary.
24. The facts in this dispute are largely undisputed.
25. On or before August 9, 2019, the neighbour installed an electronic camera on top of a short wooden fence in his patio area. The neighbour admits this. He also says the camera was inoperable, as the owner admitted in her submissions. The neighbour also claims the patio area is limited common property (LCP) designated for his exclusive use.
26. The owner noticed the camera on August 9, 2019. At the time, she was not aware it was inoperable, and believed the neighbour's patio is CP, as I have noted. The owner reported the camera installation to a strata council member by email on the morning of August 9, 2020 and was advised to call the police, which she did. Despite the owner's argument that the camera was pointed up at her balcony, the police report provided in evidence confirms "the camera, a low grade outdoor CCTV unit was... directed into the yard of [SL20]".

27. The owner also reported the camera installation to a strata council member and the strata's property manager by email on the morning of August 9, 2020. At about 10:15 am on the same day, the property manager forward the owner's email to the strata council and included information on previous complaints made between the owner and neighbour. The property manager also telephoned the neighbour the same day to request he remove the camera.
28. The date the camera was removed is not agreed by the parties. The strata says the neighbour removed the camera on August 9, 2019. The owner says it was removed the morning of August 10, 2019 to which the neighbour agrees. Based on the submissions and evidence, I find the camera was removed on the morning of August 10, 2019 at the latest, 24 hours after the owner made her complaint.
29. The owner requested a hearing under section 34.1 of the SPA on August 10, 2019. In her email to the strata property manager, she stated the purpose of the hearing, among other things not relevant to this dispute, was to:
- a. Determine why the camera was allowed to remain for "over 8 hours";
 - b. Request the strata council sternly warn the neighbour, by letter copied to the owner, that "further anti-social behaviour will result in a fine".
30. The hearing was held on August 21, 2019. The strata wrote to the owner on August 27, 2019 providing details to support its decision to deny the owner's requests. Specifically, the strata's letter declined to warn the neighbour and take action to remove images of the owner and 213 from the neighbour's computer, added by the owner later, because the strata lacked jurisdiction to accommodate the owner's requests.
31. The owner later filed a request for dispute resolution with the tribunal and the Dispute Notice for this dispute was issued on November 22, 2019.

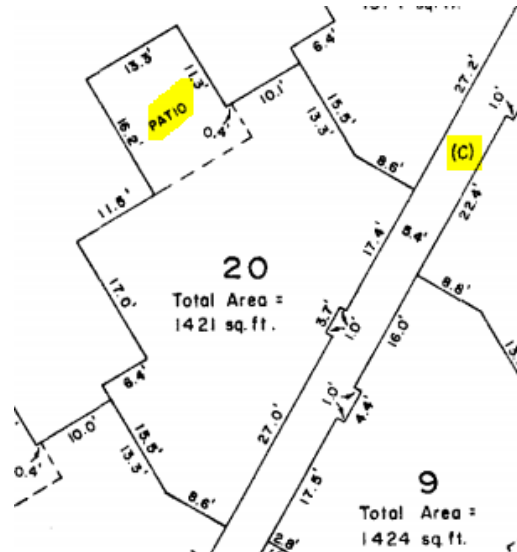
Is the neighbour's patio CP, LCP, or part of his strata lot?

32. There is disagreement between the owner and neighbour over whether the neighbour's patio is CP or LCP. I find it necessary for me to determine the patio

area property type, because that will dictate what bylaws, if any, the neighbour may have breached.

33. Based on my review of the strata plan, I find the neighbour's patio area is neither CP or LCP, but rather part of SL20. My reasons follow.
34. Section 1(1) of the SPA defines common property as "that part of the land and buildings shown on strata plan that is not part of a strata lot", among other things that are not relevant to this dispute. Many strata plans show a legend on the strata plan that identifies CP, LCP, and strata lots. Strata plan 259 has a legend on page 1 that labels CP as "(c)". The legend does not identify or label strata lots, but I infer the numbers on the various strata plan pages are the strata lot numbers. I say this because on the top left corner of the page is listed a building number, a floor number, and strata lots shown on the page in plan view. For example, sheet 11 of the strata plan shows the following heading at the top left corner of the page: "BUILDING NUMBER TWO, FIRST FLOOR, STRATA LOTS 8 TO 21". There are areas marked off on the page numbered 8 through 21 that I find are the strata lots on the first floor of building two. There is also an area marked as "(c)" that I find is a common property hallway.
35. I turn now to the area of sheet 11 marked "20", which I find is the neighbour's strata lot 20. There is a solid line with dimensions outlining the perimeter of SL20. There is a smaller area along the north side of the strata lot that is marked "patio", which I find is the neighbour's patio. The solid line extends around the patio's perimeter. The solid line matches the solid line around the remaining perimeter of the strata lot. There is a dotted line within the solid-lined area that has no dimensions. I find the dotted line shows the patio area but that the patio area is included within the perimeter of the strata lot.
36. Put another way, because the solid line encompasses the entire patio and there are no dimensions along the dotted line, I find the patio is within strata lot 20 and the dotted line simply defines the (interior) patio boundary. Immediately following, I have included an excerpt from sheet 11 of the strata plan that shows the patio of SL20 in order to provide a clear understanding of my written description above.

Excerpt from sheet 11 of strata plan 269



By installing the camera, did the neighbour alter his patio area without permission or otherwise breach the strata's bylaws?

37. None of the parties identified specific bylaws that the neighbour may have breached. The owner suggests the neighbour altered his patio contrary to the bylaws by installing the camera, but believed the patio was CP. The neighbour says the "installation of the camera was not prohibited by the Strata Bylaws". The strata did not directly address any bylaw breach and focused its submissions on defending its actions, which I discuss below.

38. I have reviewed the strata's bylaws and find the only bylaws relevant to the camera installation are bylaws 3(1)(a) and (c), and bylaw 7.

39. Bylaws 3(1)(a) and (c) respectively say, among other things, that an owner must not use a strata lot or CP in a way that:

- a. causes a nuisance or hazard to another person, or
- b. that unreasonably interferes with the rights of another person to use and enjoy the CP or another strata lot.

40. Bylaw 7 requires an owner to obtain the prior written permission of the strata before making certain alterations to a strata lot.
41. I will first address bylaw 7. I find the installation of camera does not fall within any of the listed categories requiring strata approval. For that reason, I find the neighbour did not breach bylaw 7 when he placed the camera in his patio area.
42. As for bylaws 3(1)(a) and (c), “nuisance” is not defined in the SPA or the bylaws. However, the BC Supreme Court has found nuisance in a strata setting is an unreasonable continuing or repeated interference with a person’s enjoyment and use of their strata lot (see *The Owners, Strata Plan LMS 3539 v. Ng*, 2016 BCSC 2462).
43. I appreciate the owner’s concern over the camera possibly recording her balcony activities, especially considering she may not have known the camera was inoperable. However, given the camera was removed from the neighbour’s patio within about 24 hours, I cannot find the camera installation meets the nuisance test established by *Ng*, because it was not a continuing interference.
44. For the same reason, I do not find the neighbour’s placement and timely removal of the inoperable camera could be considered to be a breach of bylaw 3(1)(c). In particular, I do not find the camera’s temporary placement, pointing into the yard of SL20 as described in the police report, unreasonably interfered with the rights of the owner to use and enjoy SL35.
45. I also note the neighbour installed the same (or a similar) inoperable camera on his patio area in 2018, which the owner also raised with the strata. I do not find this second camera placement can be considered continuous because it was about 1 year between incidents. Even though I have found the neighbour did not breach the strata’s bylaws, I would encourage him not to continue to place the camera in his patio area as repeated actions of this nature may be interpreted differently if they continue to occur.
46. I find there are no other bylaws, such as a privacy bylaw, that could restrict the neighbour’s temporary placement of an inoperable camera in his patio area.

47. For these reasons, I find the owner did not breach the strata's bylaws. I dismiss the owner's claims against the neighbour.

Did the strata fail to take reasonable steps to address the owner's complaint about the camera installation? If so, what is an appropriate remedy?

48. As noted in *Weir v. Strata Plan NW 17*, 2010 BCSC 784, the standard of care required by the strata is one of reasonableness.

49. Section 26 of the SPA says the strata council must exercise the powers and perform the duties of the strata, including the enforcement of bylaws.

50. A strata corporation may investigate bylaw contravention complaints as it sees fit, provided it complies with the principles of procedural unfairness and is not significantly unfair to any person appearing before the council (see *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148).

51. The owner submits the strata did not act quickly enough to have the camera removed following her complaint. The strata disagrees and says it acted the same day and the camera was removed. I find the fact the camera was removed the morning of the next day does not diminish the strata's position. I find it was unreasonable for the owner to expect the strata to act more quickly than it did to have the camera removed.

52. As the strata correctly notes, section 129(2) of the SPA allows the strata council to give a person a written warning or time to comply with a bylaw before enforcement. The strata says it exercised its discretion under section 129(2) by not taking any action against the neighbour. While this may be true, there is no evidence the strata found the neighbour in violation of any bylaw. Rather, it appears the strata took no action against the neighbour because the camera was quickly removed and therefore, if there had been a bylaw violation, which I find there was not, it was corrected when the camera was removed.

53. I find the strata's contact with the neighbour to request the camera be removed within a few hours of the complaint, and giving the owner time to remove the camera, was reasonable.

54. For these reasons, I dismiss the owner's claims against the strata.

Legal Fees and Damages

55. As earlier noted, the owner claims \$1,104.00 for legal fees and \$4,000.00 for "pain, suffering and trauma".

56. I will first address the owner's claim for legal fees, which she says relate to legal advice she obtained on the difficulties she encountered with the neighbour and the strata. She submitted 3 invoices from her lawyer that total \$1,568.00. The owner did not explain the difference between the amount she claimed for legal fees and the total of the invoices submitted. However, for the following reasons, I dismiss the owner's claim for legal fees.

57. One invoice and part of a second invoice relate to advice the owner obtained at times that predate this dispute. For that reason, I dismiss that part of owner's claim for legal fees, as I find they are not dispute-related expenses.

58. As for the remaining legal fees that appear to relate to this dispute, I note tribunal rule 9.4 in place when the Dispute Notice was issued (now rule 9.5), requires extraordinary circumstances to exist in order for one party's legal fees to be paid by another. The owner and neighbour may very well have ongoing and other issues, but the sole issue before me is the August 9, 2019 camera placement. I do not find that extraordinary circumstances exist here to make such an order. I dismiss the owner's claim for the remaining legal fees.

59. I find the owner's claim for \$4,000.00 for "pain, suffering and trauma" is a claim for damages. In her submissions, the owner says she suffered distress, and physical and mental trauma as a result of the neighbour's actions. Some of her submissions relate to prior actions of the neighbour that are not before me as I have mentioned.

60. Since the owner hasn't established any bylaw breach, or unreasonable action by the strata, there is no legal basis to support her damages claim.
61. Even if the owner had been successful, I would not have ordered damages based on the evidence proved. In support of her damages claim, the owner provided 2 blood test results that show elevated levels of certain chemicals in her blood at the times of the tests. The blood test dates were October 2019 and January 2020. There are handwritten notes on both that suggest the test results indicate a "diagnosis of Diabetes type 2" and "Indicates liver functions are compromised", respectively. I infer the handwritten notes are those of the owner. The owners says she communicated with Diabetes Canada, her doctor, and her endocrinologist, among others, and received advice that "physical or mental stress" changes blood sugar levels. She says increased blood sugar levels can eventually cause severe damage to a person's eyes, kidney and liver functions among other health issues, including diabetes.
62. The owner did not provide any objective evidence that her test results were a direct result of the neighbour's camera placement on August 9, 2019. Without such evidence, such as a doctor's note, I cannot connect the respondents' actions to the owner's health. Further, there may have been other things occurring in the owner's life that caused her stress and elevated her blood sugar levels.
63. For these reasons, I decline to make an order for damages.

TRIBUNAL FEES AND EXPENSES

64. 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 and the neighbour were the successful parties but did not pay tribunal fees. Therefore, I order none.
65. Aside from the owner's claim for legal fees, which I have dismissed, no party claimed dispute-related expenses, so I make no order for such reimbursement.

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

ORDER

67. The owner's claims and this dispute are dismissed.

J. Garth Cambrey, Vice Chair