



Civil Resolution Tribunal

Date Issued: August 4, 2020

File: ST-2020-000565

Type: Strata

Civil Resolution Tribunal

Indexed as: *Primeau v. The Owners, Strata Plan VR141*, 2020 BCCRT 866

BETWEEN:

MARIA PRIMEAU

APPLICANT

AND:

The Owners, Strata Plan VR141

RESPONDENT

AND:

MARIA PRIMEAU

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. The applicant, Maria Primeau, owns strata lot 9 (unit 204) in the respondent strata corporation, The Owners, Strata Plan VR141 (strata).
2. This dispute involves Ms. Primeau's allegations that the strata has failed to comply with the *Strata Property Act* (SPA) by not enforcing its bylaws and rules to prevent overwatering on balconies, by not replacing a damaged window screen, and by not repairing Ms. Primeau's balcony. Ms. Primeau requests that strata comply with the SPA and its bylaws and rules, repair her balcony, replace her window screen and provide compensation of \$5,000.
3. The strata requests the tribunal dismiss Ms. Primeau's claims. The strata counterclaims for an order requiring Ms. Primeau to communicate with the strata in a prescribed manner.
4. Ms. Primeau is self-represented. The strata is represented by a strata council member.
5. For the reasons that follow, I order the strata to re-investigate Ms. Primeau's complaint and make a determination whether Ms. Primeau's overwatering complaint constitutes a bylaws or rules violation. I also find the rule prohibiting bicycles in the storage room to be unenforceable. In addition, I order the strata to replace Ms. Primeau's damaged window screens. I dismiss the remainder of Ms. Primeau's claims and the strata's counterclaim.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.

7. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
8. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
9. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
10. Ms. Primeau has requested orders against other strata lot owners. However, because the other owners are not parties to this dispute, I do not have any jurisdiction to make any orders against them. So, I decline to grant any orders against other strata lot owners.

ISSUES

11. The issues in this dispute are:
 - a. Has the strata has unfairly enforced the bylaws and rules for overwatering? If so, what is the remedy??
 - b. Did the strata illegally change the use of the bicycle storage room? If so, what is the remedy?
 - c. Must the strata repair Ms. Primeau's balcony?

- d. Must the strata replace Ms. Primeau's window screen?
- e. Should Ms. Primeau's communications with the strata be restricted?

EVIDENCE AND ANALYSIS

- 12. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
- 13. In a civil proceeding such as this, the applicant owner must prove her claim on a balance of probabilities. The strata has the same burden on its counterclaim.
- 14. The strata was created in 1974 and consists of 15 residential strata lots.
- 15. On February 26, 2018, the strata amended all of its bylaws by filing an entire new set of bylaws at the Land Title Office. I find these bylaws apply to this dispute. The following bylaws are relevant to this dispute:
 - a. Bylaw 3 says an owner must not use their strata lot in a way that causes a nuisance or unreasonably interferes with another owner's enjoyment of their strata lot.
 - b. Bylaw 10 says the strata has the duty to repair balconies and other things attached to the exterior of a building.
- 16. The strata adopted rules at the January 31, 2016 and February 20, 2018 Annual General Meetings (AGM). The following are relevant rules:
 - a. Rule 11 says garage parking stalls shall not be used as storage by strata owners, tenants or visitors. Exceptions will be made for bicycles and mobility aids.
 - b. Rule 12 says bicycles cannot be stored in the workshop.
 - c. Rule 15 says that no material substances, including burning material such as cigarettes or matches, shall be thrown or permitted to fall out of any window, door, patio or balcony.

Overwatering

17. Ms. Primeau says residents have been overwatering plants on their balconies causing water to spill onto the side of the building and onto Ms. Primeau's balcony.
18. Ms. Primeau sent a complaint letter to the strata on October 1, 2017 regarding the water spilling onto her balcony and the strata held a hearing regarding this issue on December 14, 2017.
19. The strata said they could not cite owners for spilling water from their balconies because this was not prohibited by the rules. Specifically, the strata said the rule prohibits dropping materials from balconies, but the strata says that water is not a material. The strata said they would consider this issue at the 2018 AGM.
20. At the August 29, 2018 council meeting, the strata council asked owners to be considerate when watering their plants and reminded owners that no items should be thrown from balconies.
21. Ms. Primeau has continued to complain of water spilling from overwatering. The owner provided photographs and videos showing watermarks and paint discoloration. The owner says the paint on the south side of the building is deteriorating faster than the rest of the building from overwatering. In contrast, the strata provided a statement from a painter saying that the paint deterioration on the south side of the building is from natural sun and rain exposure.
22. The strata takes the position that water dripping from balconies is not prohibited by the rules. The strata also says the water spilling has stopped since the occupant above Ms. Primeau's unit started using plant trays in the summer of 2019.
23. Section 26 of the SPA says that a strata corporation must enforce its bylaws and rules, subject to some limited discretion, such as when the effect of the breach is trivial (see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holdings Inc.*, 2016 BCSC 32). A strata 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).

24. The standard of care that applies to a strata council is not perfection, but rather “reasonable action and fair regard for the interests of all concerned” (see *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74 at paragraph 61). I must determine whether the strata’s response to the applicant’s water dripping complaints was reasonable.
25. In this matter, the strata considered Ms. Primeau’s water dripping complaints and they conducted a hearing on the issue. However, the strata decided not to pursue the complaint because the strata determined that dripping water was not a “material substance” within the meaning of rule 15.
26. So, did the strata act significantly unfair by refusing to enforce its bylaws and rules?
27. In the case before me, the strata has not chosen to not enforce a bylaw or rule, as perhaps suggested by Ms. Primeau. Rather, the strata council has determined in its discretion, that it has not been established there was a contravention of the bylaws or rules at all.
28. Section 27(2) of the SPA states that the owners may not interfere with council’s discretion to determine, based on the facts of a particular case, whether a person has contravened a bylaw, whether a person should be fined, or the amount of the fine.
29. However, I can make an order to remedy a significantly unfair act by a strata corporation, under section 123 of the CRTA and section 164 of the SPA. A “significantly unfair” act encompasses oppressive conduct and unfairly prejudicial conduct or resolutions. The latter has been interpreted to mean conduct that is unjust and inequitable (see, for example, *Strata Plan VR1767 (Owners) v. Seven Estate Ltd.*, 2002 BCSC 381). In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the British Columbia Court of Appeal interpreted a significantly unfair action as one

that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable.

30. The test for significant unfairness was summarized by a tribunal vice chair in *A.P. v. The Owners, Strata Plan ABC*, 2017 BCCRT 94, with reference to *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44: what is or was the expectation of the affected owner or tenant? Was that expectation on the part of the owner or tenant objectively reasonable? If so, was that expectation violated by an action that was significantly unfair?
31. I find the thrust of Ms. Primeau's submission is that the strata is acting significantly unfairly by willfully refusing to enforce the bylaws and rules. In this matter, the strata considered Ms. Primeau's water dripping complaints and determined that the dripping of water was not a "material substance" within the meaning of rule 15. In its interpretation of "material substance", the strata noted that, when the rules were adopted at the 2016 AGM, water drippings were discussed, and it was specifically decided not to include water drippings within the scope of the rule.
32. Since the term "material substances" is not defined in the SPA, I consider the ordinary meaning of this term. Dictionary.com defines "material" as "...the substance or substances of which a thing is made or composed, anything that serves as crude or raw matter to be used or developed; any constituent element." I find that water is a material substance.
33. In addition, I note that bylaw 3 prevents owners from using their strata lot in a way that causes a nuisance or unreasonably interferes with another owner's enjoyment of their strata lot. The strata takes the position that dripping water is not a nuisance because it is not harmful like smoke. I disagree that the scope of nuisance is that narrow.
34. In law, a private nuisance is a significant interference with use and enjoyment of property. See, *Royal Anne Hotel Co. Ltd. v. Village of Ashcroft* (1979), 1979 CanLII 2776 (BCCA).

35. The leading legal precedent on nuisance in BC is *Sutherland v. Canada (Attorney General)*, 2001 BCSC 1024 (CanLII). *Sutherland* summarized the legal test for nuisance, as follows: whether the applicants suffered a substantial interference which affects the use or enjoyment of their property, and if so, whether that interference is unreasonable in light of all the surrounding circumstances.
36. I find that dripping water could constitute a nuisance.
37. In consideration of all of the factors, I am not satisfied that the strata reasonably met its duty to investigate the complaint and enforce its bylaws and rules. I find that the strata concluded that there was no bylaw or rule violation without sufficiently evaluating Ms. Primeau's complaints. Specifically, I find that the strata summarily dismissed Ms. Primeau's complaints on the mistaken conclusion that the bylaws and rules do not prohibit overwatering. I am not making a determination that the strata's bylaws or rules were violated. Rather, I find that the strata acted significantly unfairly by not fully considering Ms. Primeau's complaint before summarily dismissing her complaints.
38. I direct the strata to re-investigate Ms. Primeau's overwatering complaint and make a determination whether Ms. Primeau's overwatering complaint constitutes a nuisance in violation of bylaw 3 or is an improper discharge of material substances in violation of rule 15.
39. Ms. Primeau requests \$5,000 in general damages, for failing to address her overwatering complaints. I find that Ms. Primeau has not provided a sufficient explanation, or corroborating evidence, to support her claim for compensation. For these reasons, I dismiss Ms. Primeau's claim for damages.

Bicycle storage area

40. Ms. Primeau also says the strata improperly altered the use of the bicycle storage area. It is undisputed that the strata implemented rule 12 at the February 20, 2018 Annual General Meeting which prohibited the storage of bicycles in the workshop, where bicycles were previously stored. Ms. Primeau says the common property

(CP) bicycle storage area was removed to make space for meetings and recycling without a 3/4 vote of the owners.

41. Section 71 of the SPA says a strata cannot make a significant change in the use or appearance of CP unless the change is approved by a resolution passed by a 3/4 vote at an annual or special general meeting.
42. The strata says that a 3/4 vote was not required because the strata plan does not designate the storage area as a bicycle storage area. Further, the strata argues that its records indicate that the strata decided to install bicycle hooks in 1993 but it is unknown if a 3/4 vote was taken at that time.
43. Since the strata plan does not designate the storage or workshop area as limited CP or as part of a strata lot, I find that the storage area is CP. Furthermore, I find that the removal of the bicycles, after storing bicycles in the CP workshop area for approximately 25 years, is a significant change in use of the CP bicycle storage areas which would require a 3/4 vote.
44. For the above reasons, I find that rule 12 has violated section 71 of SPA. As such, I find that rule 12 is of no force or effect. I find it is open to the strata to call a special general meeting, following the procedures in its bylaws, including notice of the meeting to all owners, for the purpose of determining whether the removal of bicycles from the workshop is approved by a resolution passed by a 3/4 vote as defined in SPA section 1(1) and required under SPA section 71(a).

Balcony repair

45. Ms. Primeau requests an order requiring the strata to repair her balcony.
46. Ms. Primeau says her balcony's vinyl membrane is separating which is letting dirt and water enter the building. The owner provided photographs showing gaps between the building and the vinyl membrane.
47. Ms. Primeau complained to the strata on July 6, 2018 and requested a balcony repair. The strata responded on August 16, 2018 saying they would put this issue

on the agenda for the next strata council. The strata also said that balcony repairs were not in the 2018 budget.

48. At the April 15, 2019 strata council meeting, the strata council discussed concerns regarding the condition of the balcony membranes. The council directed the manager to follow up with a contractor.
49. The strata hired a contractor in 2019 to perform balcony inspections and a repair quote was provided on October 18, 2019. The contractor quoted \$22,500 plus GST for the replacement of all three balconies on the second floor of the south side of the building. The strata says that the contractor did not see signs of leaking and the contractor said the repairs were not urgent.
50. The strata council held another council meeting on December 2, 2019. The strata council decided not to proceed with balcony repairs at that time since the contractor said there was not an immediate need for repairs. The strata also says that they decided not to replace the balconies because the strata had just painted the building which was an expensive project requiring a large special assessment. Since the balcony repairs were not urgent, the strata decided to defer these repairs.
51. The strata has a legal obligation to choose a reasonable repair and maintenance option, not necessarily the best or perfect option. See, *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784.
52. In *Weir*, the Court found that the starting point for assessing whether the strata corporation fulfilled its obligations is deference to the strata council. The reason for deference is that the strata council must act in the best interest of all owners, which requires it to balance competing interests and work within a budget that the owners can afford. With that in mind, the Court found that it is not necessarily unreasonable for a strata corporation to decide not to choose the best repair option.
53. This means that the strata may prioritize between different maintenance projects and may choose a lower standard of maintenance for financial or practical reasons, as long as the decision is not unreasonable. The fact that an individual owner may

be unhappy with the strata's choices does not mean that the strata breached its duty under section 72 of the SPA. See also *Warren v. The Owners, Strata Plan VIS 6261*, 2017 BCCRT 139.

54. Relying on these principles, I find the strata is entitled to interpret its repair and maintenance obligations on the basis of necessity. Given their contractor's opinion that the balconies are not leaking, and after just completing an expensive painting project, I find it is reasonable to defer the balcony repairs. Ms. Primeau has not provided any evidence to suggest the balcony repair is urgent or an immediate concern.
55. For these reasons, I find that the strata's decision not to immediately undertake the balcony repairs was reasonable. Given this finding, it follows that there is no basis for an order that the strata comply with the SPA and bylaws.

Window screens

56. Ms. Primeau says that the strata's painting contractor splashed paint onto the owner's window screens. Ms. Primeau provided photographs showing multiple paint marks appearing to be approximately 1 to 2 inches in length.
57. The strata does not dispute that its painter caused the damage. However, the strata argues it is not responsible for maintaining the owner's window screens.
58. Bylaw 10 says the strata has the duty to repair the "...things attached to the exterior of a building". As window screens are typically placed on the exterior of windows, I find that owner's window screen are a "...thing attached to the exterior of a building" within the meaning of bylaw 10.
59. So, I find that the strata is responsible for maintaining the owner's window screens.
60. I order the strata to replace Ms. Primeau's paint damaged window screens.
61. Ms. Primeau has also requested \$5,000 compensation for damage to the window screens. The owner has not provided any evidence to corroborate her claim for

compensation. So, I dismiss the Ms. Primeau's claim for compensation for damage to the window screen.

Counterclaim regarding the owner's communications

62. The strata has filed a counterclaim against Ms. Primeau to restrict her methods of communicating with the strata.
63. The strata says Ms. Primeau has improperly delivered notices in the strata's mail slot rather than mailing notices.
64. The strata says that a previous CRT order limited Ms. Primeau's methods of communication. However, the strata did not provide a copy of this alleged previous order. Without evidence of such an order in effect, I find that Ms. Primeau's communication methods are only limited by the provisions in the SPA.
65. Section 63(1) of the SPA says that notice to a strata corporation can be delivered in multiple ways, including by putting it through the strata's mail slot or mailbox. As such, I do not find that the owner has violated the SPA by placing notices in the strata's mail slot and I dismiss the strata's counterclaim.

CRT FEES and EXPENSES

66. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. As Ms. Primeau was generally successful in her claims, I find that she is entitled to reimbursement of her CRT fees, being \$225. Since the strata was not successful in its counterclaim, I find that it is not entitled to a reimbursement of its CRT fees.
67. Since neither party requested reimbursement of dispute-related expenses, none are ordered.

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

ORDERS

69. I order that:

- a. Within 30 days of this decision, the strata must re-investigate the owner's complaint and make a determination whether the owner's overwatering complaint constitutes a nuisance in violation of bylaw 3 or is an improper discharge of material substances in violation of rule 15, and notify Ms. Primeau of its decision within 45 days,
- b. Rule 12 is cancelled and is not enforceable.
- c. Within 30 days of this decision, the strata must replace Ms. Primeau's damaged window screens, and
- d. Within 30 days of this decision, the strata must reimburse Ms. Primeau \$225 for CRT fees.

70. Ms. Primeau is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

71. Under sections 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. The order can also be enforced by the Provincial Court of British Columbia if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Richard McAndrew, Tribunal Member