



Civil Resolution Tribunal

Date Issued: October 1, 2020

File: ST-2020-002338

Type: Strata

Civil Resolution Tribunal

Indexed as: *Timms v. The Owners, Strata Plan LMS 2949*, 2020 BCCRT 1112

B E T W E E N :

ROBERT TIMMS

APPLICANT

A N D :

The Owners, Strata Plan LMS 2949

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about the installation of a screen door.
2. The applicant, Robert Timms, co-owns a strata lot (SL23) in the respondent strata

corporation, The Owners, Strata Plan LMS 2949 (strata). Mr. Timms is self-represented, and the strata is represented by a strata council member.

3. Mr. Timms says the strata has unreasonably refused his request to keep a screen door he had installed on the main entrance to SL23. Mr. Timms says the screen door does not violate any strata bylaws or rules and although he seeks an order that the strata stop “directing us to remove the screen door”, I find his request is effectively seeking an order that the strata approve his screen door request.
4. The strata says Mr. Timms did not obtain permission to install the screen door as required under the strata’s bylaws. In its Dispute Response, the strata also says the strata owners did not approve the installed screen door at the annual general meeting (AGM), and that a special general meeting (SGM) on the matter had to be postponed because of COVID-19. The strata asks that Mr. Timms claims be dismissed.
5. For the reasons that follow, I order the strata to approve Mr. Timms’ screen door request.

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 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.
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. The applicable CRT rules are those in effect at the time the Dispute Notice is issued.
10. 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.

ISSUES

11. The issues in this dispute are:
 - a. Did Mr. Timms require the strata's approval before installing his screen door, and if so, did he obtain it?
 - b. Does the strata have an approved screen door design?
 - c. Does the screen door alteration affect SL23 or common property (CP)? If CP, is the screen door alteration significant within the meaning of section 71 of the SPA?
 - d. Did the strata treat Mr. Timms in a significantly unfair manner?
 - e. What remedy, if any, is appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

12. In a civil proceeding such as this, Mr. Timms as applicant, must prove his claims on a balance of probabilities. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
13. The strata was created in October 1997 under the *Condominium Act* and continues to exist under the SPA. It consists of 78 residential strata lots in 35 2-storey buildings located in Surrey, BC.

14. In February 2002, the strata filed bylaw amendments at the Land Title Office (LTO) that repealed and replaced all of its bylaws, except its age restriction bylaw. The preamble to the bylaws states the Schedule of Standard Bylaws under the SPA do not apply. I find the February 2002 bylaws apply to this dispute. Several subsequent bylaw amendments were filed at the LTO, but I find none are relevant to this dispute. I address relevant bylaws below as necessary.

15. The basic facts are not in dispute. They are:

- a. Mr. Timms had previously installed a retractable screen door at the main entrance to SL23 (old screen door). It is unclear if approval was obtained from the strata at the time of its installation, but the parties agree the old screen door was a type of screen door that was acceptable to the strata, and that it was installed about 10 years ago, or about 2009.
- b. On May 8, 2019, Mr. Timms had a swing-type security screen door (screen door) installed to replace his old screen door, which he says was broken.
- c. In June 2019, a strata council member asked Mr. Timms to request the strata's permission to have his screen door installed. Mr. Timms completed a form (indemnity agreement) and submitted it to the strata council.
- d. On July 9, 2019, the strata wrote to Mr. Timms' denying its approval for the screen door installation and requesting the screen door be removed.
- e. On August 19, 2019, after receiving further correspondence from Mr. Timms about why he installed what he says is a "security screen door", the strata wrote to Mr. Timms advising the screen door was different from other approved screen doors and that because he did not obtain approval from the strata, he had to remove it. In the same letter, the strata said Mr. Timms could present a $\frac{3}{4}$ vote resolution at the next AGM to obtain approval for his screen door.
- f. Further correspondence was exchanged between the parties and their lawyers that resulted in a bylaw amendment being proposed at the strata's

February 4, 2020 AGM that would, if passed, allow the strata to permit the installation of “nonretractable, white, swing open style screen doors.”

- g. At the February 2020 AGM, the bylaw amendment, which required a $\frac{3}{4}$ vote to pass, was defeated with about 53% of the owners voting to approve it. After the proposed bylaw amendment failed, there was a motion from the floor to allow Mr. Timms’ screen door to remain. The February 2020 AGM minutes show the proposed motion to approve Mr. Timms’ screen door was ruled “out of order” and was not considered. However, the minutes also show that Mr. Timms could apply for an exemption for their “situation” by obtaining the support of 20% of the owners through a petition.
- h. Mr. Timms wrote to the strata on March 3, 2020 requesting a special general meeting (SGM) be held to consider a $\frac{3}{4}$ vote to allow SL23 to keep their installed screen door. The request was signed by 24 of the 78 (30.8%) owners.
- i. On March 11, 2020, the strata issued a notice for a March 31, 2020 SGM. The SGM notice included an agenda that shows “Resolution #1 Petition for SGM *Majority Vote Required*” as an item for discussion.
- j. On March 12, 2020, the CRT issued the Dispute Notice for this dispute.
- k. On March 25, 2020, the strata issued notice to all strata owners that the March 31, 2020 SGM had been postponed due to COVID-19 and public health orders that meetings of 50 or more people were prohibited.

Did Mr. Timms require the strata’s approval before installing his screen door, and if so, did he obtain it?

16. Bylaws 8 and 9 address alterations to a strata lot and common property (CP) respectively.

17. I summarize the relevant parts of bylaws 8 and 9 as follows:

- a. Bylaw 8.1 states an owner must obtain the written approval of the strata before making or authorizing an alteration to a strata lot that involves the

exterior of a building or doors on the exterior of a building, or that front on the CP, among other things.

- b. Bylaw 8.2 states the strata must not unreasonably withhold its approval under bylaw 8.1 but may require, as a condition of its approval, that an owner take responsibility for any expenses relating to the alteration, and to indemnify and hold the strata harmless from future costs of the alteration.
 - c. Bylaw 8.3 requires an owner to submit a detailed plan and written description of the intended alteration to the strata.
 - d. Bylaw 9.1 states an owner must apply to and obtain the written approval of the strata before making an alteration to CP.
 - e. Bylaw 9.2 requires the owner to submit a detailed plan and written description on the intended alteration to the strata.
 - f. Bylaw 9.3 states the strata may require, as a condition of its approval, that an owner agree in writing to certain terms and conditions, including completing the alterations as approved by the strata, taking responsibility for any expenses relating to the alteration, and to indemnify and hold the strata harmless from future costs of the alteration.
 - g. Bylaw 9.5 states that an owner who alters CP without the strata's approval must restore it at the owner's expense or the strata may restore the CP at the owner's expense.
18. It is clear from the bylaws that whether the screen door alteration is an alteration to SL23 or an alteration to CP, Mr. Timms was required to obtain the strata's written approval before installing the screen door.
19. Mr. Timms argues that he did not need permission to install the screen door as he had already received permission to install the old screen door. Neither party was able to locate a copy of an approval for Mr. Timms' old screen door. I find there is insufficient evidence for me to determine the strata approved Mr. Timms' previous screen door,

and if it did, whether that approval might also apply to the replacement screen door that is the subject of this dispute.

20. A copy of the indemnity agreement signed by Mr. Timms and his spouse was provided in evidence. I find the indemnity agreement doubles as an alteration request under the strata's bylaws and an indemnity agreement that the owner will save the strata harmless if the alteration is approved by the strata. I infer this is a standard form of an application and indemnity used by the strata to receive and approve alteration requests. I say this based on the standard language and information on the form, and that the form states it is to be returned the strata's clubhouse mailbox, presumably on completion. There are blanks on the indemnity agreement for an owner to fill in their name, strata lot and unit number plus details of their requested alteration. There is also a place for the strata's approval with date, name, and signature lines.
21. Mr. Timms submits that he signed the indemnity agreement on the basis of "indemnity only". I take this to mean that he was not requesting permission to install his new screen door. However, he did not cross out or otherwise alter the standard language in the form that said he was requesting the strata's approval of his screen door. Therefore, I find Mr. Timms provided the form to both request approval for his screen door and to acknowledge his agreement to indemnify the strata if the strata approved his request.
22. The indemnity agreement provided in evidence was not dated or signed by the strata in the pre-defined approval area. This, coupled with the strata's July 9, 2020 denial letter, clearly indicates Mr. Timms did not obtain the strata's approval for the screen door installation as he was required to do under bylaws 8 and 9.
23. I note the strata's submissions focus solely on the fact that Mr. Timms did not receive strata approval to install his screen door, even though the evidence and the strata's Dispute Response address other arguments and provide Mr. Timms with other options.
24. Therefore, I find the dispute does not end here, largely because the strata provided Mr. Timms with certain options that would allow him to keep his screen door. I address

the options offered by the strata below, but before doing so, I find it necessary to confirm if the strata has an approved screen door design and if Mr. Timms' screen door is an alteration to SL23 or CP. I find resolution of these issues provide guidance on how the strata handled Mr. Timms' request and on resolution of this dispute.

Does the strata have an approved screen door design?

25. One of Mr. Timms' main arguments is that there is no approved specifications for screen doors in the strata's bylaws or rules. As a result, he argues that he did not violate any bylaws or rules when he installed his screen door. I have already found Mr. Timms breached the strata's bylaws by not obtaining the strata's approval to install his screen door. Setting that bylaw breach aside, I agree with Mr. Timms that the bylaws do not include any details about approved screen door designs.
26. The strata appears does not argue specifications about screen doors are contained in the bylaws or rules. Rather, the strata relies on approval given for a retractable screen door installed in May 1999 as its "policy" for a standard design screen door installation. I find the strata did not have a standard for screen door installations for the following 4 reasons.
27. First, strata "policies" are not addressed in the SPA or the strata's bylaws. If policies are addressed in the strata's rules then I would have expected the strata to have provided a copy of the rules, but it did not. Therefore, I find it reasonable to draw an adverse inference to determine that the rules, if any, do not address policies, and specifically, a standard screen door policy. I also agree with Mr. Timms that if the strata had approved a standard screen door installation, the owners should be advised of the specifications.
28. Second, a portion of the May 1999 strata council meeting minutes were provided in evidence. The minutes show the strata council approved another owner's request to install a retractable-type screen door. The minutes do not say this is the only type or style of screen door that is permitted. In fact, the preamble to the screen door approval in the May 1999 minutes reminds owners that strata permission is required for any

alterations to the building exterior or CP and that a number of owners had installed screen doors and window screens.

29. Third, another argument provided by Mr. Timms was that his neighbour had a “swing open” type door installed on the main entrance to their strata lot (SL8) that was similar to his screen door. The strata provided a copy of the letter request from the former owner of SL8 in evidence. The former owner stated they had a disability and the strata says it permitted the swing type screen door to accommodate the owner’s disability. I accept the strata permitted the swing open screen door because the door was installed, as the parties agree. However, the strata’s approval of the SL8 screen door is not in evidence, so the reasons for the strata’s approval are unclear. The SL8 request states the screen door and other window screens had already been installed and the owner requested accommodation due to an obstruction from a disability ramp at the front entrance to SL8. Without reviewing a copy of the strata’s approval for the SL8 request, I find it is possible the strata simply approved the SL8 owner’s request without conditions.
30. Based on the overall evidence and submissions, I find the swing open type screen door of SL8 remained on the front entrance of SL8 after the former owner moved out. Specifically, I find the screen door on SL8 was in place when Mr. Timms installed his screen door. This leads me to believe the strata did not require the door to be removed on the sale of SL8. That it was subsequently removed is not relevant to this dispute. If the strata had an “approved retractable-type” screen door, one would expect a non-conforming door would require removal if a disability accommodation no longer applied.
31. Fourth, the strata did not refuse Mr. Timms’ screen door request based on an “approved design”. Neither the July 9 or August 19, 2020 letters from the strata that denied his request, nor the August 13, 2020 minutes, state the reason for the strata’s denial of the screen door request was because it was contrary to an approved design. The July 9, 2020 letter simply stated his request was not approved and noted special permission was given to SL8. The August 13, 2020 minutes state the owner did not obtain the strata’s approval and noted the “change in appearance of the front door was too significant for council to approve.” The August 19, 2020 letter stated the

screen door was “different from other screen doors” previously approved by the strata, and reiterated the strata’s denial to approve it.

32. For these reasons, I find the strata did not have an approved screen door design.
33. I acknowledge and accept that under bylaws 8 and 9, the strata, through its council, has discretion to approve alteration requests even if it does not have an approved policy. However, as I discuss below, it was not reasonable for the strata to approve some screen door alterations and not others. Regardless, if the strata wishes to rely on a specific screen door standard, then I encourage it to take steps to formally approve one through a bylaw or rule.

Does the screen door alteration affect SL23 or CP?

34. The parties and their lawyers did not agree whether Mr. Timms’ screen door installation is an alteration to SL23 or an alteration to CP. It is important to do so because the alteration type has some bearing on how this dispute can be resolved. One difference is that under bylaw 8.2 that governs alterations to a strata lot, the strata cannot unreasonably withhold its approval, whereas the same does not hold true for alterations to CP. In addition, alterations that result in a significant change to use or appearance of CP are permitted under section 71 of the SPA only if they are approved by a $\frac{3}{4}$ vote of the strata.
35. Not all correspondence from the parties’ legal counsel is before me, but I find the parties’ positions are exactly opposite from what was set out in correspondence exchanged between their respective lawyers. The strata now says the alteration is to CP while Mr. Timms says the alteration is to SL23. However, for the following reasons, I find the screen door alteration affects only CP.
36. I start by noting that section 1(1) of the SPA defines CP as part of the building shown on a strata plan that is not part of a strata lot. I find this includes the exterior walls of the building comprising SL23. Based on the photographs provided, I find the screen door is attached to the exterior of the building.

37. Section 68(1) of the SPA identifies the boundaries of a strata lot where the strata lot is separated from CP by a wall, as is the case here, based on the location of the entrance door to SL23. Section 68(1) states the strata lot boundary is “midway between the surface of the structural portion of the wall” that separates the strata lot from the CP, unless the strata plan identifies different boundaries. Here, the strata plan does not identify different boundaries, so section 68(1) applies.
38. The reference to the exterior of the building in bylaw 8 does not mean the exterior of the building is part of SL23. Rather, I find that in circumstances where the exterior of a building is part of a strata lot, approval for alterations to the building exterior are required. For example, if there were different strata lot boundaries identified on the strata plan that made the building exterior part of SL23, which is not case, bylaw 8 might apply.
39. Given this conclusion, I find that Mr. Timms’ screen door affects only CP.
40. In summary, I have found the strata has not approved a standard screen door design and that the screen door is an alteration to CP. The next question is whether the screen door was a significant alteration to CP.

Is the screen door alteration significant within the meaning section 71 of the SPA?

41. Section 71 of the SPA applies to significant changes in use or appearance of CP, for which the strata must first pass a $\frac{3}{4}$ vote of its owners at a general meeting. Although section 71 refers to a strata corporation making significant changes to CP, the BC Supreme Court in *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333 found the strata may not permit owners to make significant alterations to CP without first passing a $\frac{3}{4}$ vote. I find the exception permitted under section 71(b) about preventing significant loss or damage does not apply here.
42. Criteria for determining what is a significant change in use and appearance under section 71 of the SPA was clearly set out in *Foley* at paragraph 19. The listed criteria are:

- a. A change would be more significant based on its visibility or non-visibility to residents and its visibility are non-visibility towards the general public;
- b. Whether the change to common property affects the use or enjoyment of the unit or number of units or an existing benefit of all unit or units;
- c. Is there a direct interference or disruption as a result of the change to use?
- d. Does the change impact on the marketability or value of the unit?
- e. The number of units in the building may be significant along with the general use, such as whether it is commercial, residential or mixed-use;
- f. Consideration should be given as to how the strata corporation has governed itself in the past and what it is followed. For example, has it permitted similar changes in the past? Has it operated on a consensus basis or has it followed the rules regarding meetings, minutes and notices as provided in the SPA?

43. The only reference to the screen door being a significant alteration is in the August 13, 2020 strata council meeting minutes that reported Mr. Timms' request was denied, but also reported that the "change in appearance of the front door was too significant for council to approve." As I have noted, the strata council never directly advised Mr. Timms that his requested alteration was a significant change to the use or appearance to CP. Although Mr. Timms now states the alteration affects SL23, he did provide submissions that address the criteria set out in *Foley* that should be considered when determining whether an alteration is significant within the meaning of section 71. Even though the strata takes the position that the screen door alteration is to CP, it did not address Mr. Timms' submissions on significant changes, despite having the opportunity to do so.

44. I agree with Mr. Timms' submission that the installation of his screen door is not significant. His submission follows the criteria set out in *Foley* and I find:

- a. The front entrance door of SL23 is not visible to the public and is only visible to a limited number of owners within the strata. This is because of the location of SL23 on an interior cul-de-sac roadway and the large number of buildings

within the strata as shown on the strata plan and on a map of the strata complex provided in evidence. Further, the door is set back from the front of the building according to the photographs provided,

- b. The screen door installation would not disrupt the use and enjoyment of any strata lot nor change an existing benefit to any strata lot,
 - c. The screen door installation would have no direct interference or disruption on surrounding strata lot owners,
 - d. There is no evidence the screen door would affect the marketability or value of SL23,
 - e. There is no evidence of how the strata has governed itself in the past other than Mr. Timms' assertion that matters of contention were decided by majority vote at a general meeting.
45. I would add to the list of criteria that the screen door replaced a retractable screen door that was installed in the exact same location. While photographs provided by the parties suggest the screen portion of the current screen door may have a darker appearance than a door with a retractable screen or no screen, I find when and where the photograph was taken could potentially cause the screen to appear darker in the photographs than it actually is.
46. There is no dispute the strata has historically approved screen doors throughout the complex. This, together with my findings that the strata does not have an approved screen door design and that Mr. Timms' screen door is not a significant alteration to CP, lead me to conclude the strata's denial of Mr. Timms' screen door alteration request is unreasonable.
47. In any event, I find the screen door is not a significant change to the use or appearance of the CP exterior building wall.
48. Given my conclusion, I do not need to address the issue of significant unfairness.

What remedy, if any, is appropriate?

49. I order the strata to approve Mr. Timms' screen door alteration request. I find it reasonable that the strata require Mr. Timms to indemnify it as permitted by the strata's bylaw 9 using its standard form mentioned above. Accordingly, I order the strata to approve Mr. Timms' screen door request by signing his June 20, 2019 indemnity agreement and returning the original to him within 14 days of the date of this decision.

CRT FEES AND EXPENSES

50. As noted, 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 to deviate from this general rule. Mr. Timms was the successful party in this dispute and paid \$225 in CRT fees but did not claim dispute related expenses. Therefore, I order the strata to reimburse Mr. Timms \$225 for CRT fees.

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

ORDERS

52. Within 14 days of this decision, I order the strata to:

- a. approve Mr. Timms' the screen door request by signing his June 20, 2019 indemnity agreement and returning the original to him.
- b. pay Mr. Timms \$225 for CRT fees.

53. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. Under section 58 of the CRTA, 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.

J. Garth Cambrey, Vice Chair