



# Civil Resolution Tribunal

Date Issued: October 29, 2020

File: ST-2020-004752

Type: Strata

Civil Resolution Tribunal

Indexed as: *Section 2 of The Owners, Strata Plan EPS1945 v. The Owners, Strata Plan EPS1945, 2020 BCCRT 1225*

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

Section 2 of The Owners, Strata Plan EPS1945

**APPLICANT**

**A N D :**

The Owners, Strata Plan EPS1945

**RESPONDENT**

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## **REASONS FOR PRELIMINARY DECISION**

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## **INTRODUCTION**

1. This is a preliminary decision about procedural matters involving a separate section and its representative under the *Strata Property Act* (SPA) to bring a claim before the Civil Resolution Tribunal (CRT).

2. Only the evidence and submissions relevant to this preliminary decision are referenced below. This is not the CRT's final decision as to the substance or merits of the dispute.
3. The applicant, Section 2 of The Owners, Strata Plan EPS1945 (section), is a separate section comprised of all the commercial strata lots within the respondent strata corporation, The Owners, Strata Plan EPS1945 (strata).
4. The dispute is about whether the strata is using the proper schedule of voting rights for the commercial strata lots comprising the section, strata council governance, and repair and maintenance issues. The dispute is in the facilitation stage of the CRT decision process and the case manager has referred to me the procedural issues identified below for a preliminary decision.
5. The strata says the section has brought its claims to the CRT prematurely because the section did not first request a hearing with the strata council, and the section failed to pass a  $\frac{3}{4}$  vote to authorize bringing the CRT dispute.
6. The strata also says the section's representative does not have standing to start the CRT dispute on behalf of the section. I find the strata's position about the section's representative misleading because it is not the section's representative that is starting the CRT dispute, but rather the section itself. I interpret the strata's real concern here is that the section's representative does not have appropriate approval from the section to represent the section in these proceedings. Therefore, I have reframed the issue below.
7. The section disagrees with the strata and asks that the dispute continue through the CRT process.
8. For the reasons set out below, I find in favour of the section, and that the dispute should continue.

## **JURISDICTION AND PROCEDURE**

9. These are the formal written reasons of the 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.

10. 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.
11. 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.
12. 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**

13. The issues before me are:
  - a. Is a hearing required under section 189.1 of the SPA?
  - b. Is the section's representative properly authorized to represent the section?
  - c. Is the section required to pass a  $\frac{3}{4}$  vote to authorize the section to commence a CRT claim?

## **BACKGROUND, REASONS AND ANALYSIS**

14. In making this preliminary decision, I have reviewed the parties' submissions on the issues and the evidence provided. Although I have reviewed all of the submissions and evidence provided for this preliminary matter, I will only refer to submissions and

evidence that provide context for my decision. I find the strata has the burden to prove its claims on the balance of probability.

15. The strata bylaws confirm separate sections were created by the owner developer under section 192 of the SPA on March 10, 2014. My review of the filed bylaw amendments subsequent to that date confirm the sections have not been dissolved. The applicant section in this dispute is comprised of all 10 non-residential strata lots, being strata lots 1 – 10 inclusive.
16. I note section 195(2) of the SPA says a section has the same powers and duties as the strata for all matters that relate solely to the section. I further note that section 120 of the CRTA says the words and expressions used in Part 10, Division 4 of the CRTA about strata property disputes have the same meaning as in the SPA or the *Strata Property Regulation*.

***Is a hearing required under section 189.1 of the SPA?***

17. Section 189.1(1) of the SPA permits a strata corporation, owner, or tenant to make a request for dispute resolutions services under the CRTA over any strata property matter over which the CRT has jurisdiction. There is no dispute, and I find at this preliminary stage, the CRT has jurisdiction to hear this dispute.
18. Section 189.1(2) expressly states an owner or tenant may not start a CRT dispute unless they have requested a council hearing, or the CRT has directed a hearing is not required. It is this section on which the strata relies. While I appreciate the section's submission is that it made several requests of the strata council about its claims that should be considered a hearing request, I find the applicant section is not an owner or tenant as defined in section 1 of the SPA.
19. Rather, based on section 195(5) of the SPA, I find the section is a strata corporation for the purposes of section 189.1 of the SPA. Put another way, there is no requirement for the section to request a council hearing before starting a CRT dispute for a strata property matter.

20. Therefore, I find that the section was not required to request a council hearing under section 189.1(2) of the SPA before applying to the CRT.

***Is the section's representative properly authorized to represent the section?***

21. As I have mentioned, the applicant is the section. I have found the section has standing to request resolution of a CRT dispute under the SPA. As for the section's representative, the strata says the representative does not have authority to represent the section because she is not an owner, and because she did not get written consent from all the commercial owners of the section.

22. There is no requirement under the SPA, CRTA or CRT rules that a representative of a section (or strata) obtain the written consent of all owners before they can be its spokesperson or representative. CRT rule 1.13 addresses representation of parties in the CRT process. Subsection 10(a) of that rule says that if a party is a strata corporation, its representative must be a strata council member, unless the CRT authorizes a different person. I have already found the section is a strata corporation for the purposes of section 189.1 of the SPA. For the same reason, I find that if a party is a section under the SPA, as is the case here, its representative must be an executive member of the section, unless the CRT decides otherwise.

23. Section 28 of the SPA states that, unless the strata's bylaws allow for other classes of persons to be council members (or executive members in a section), only owners, individuals representing corporate owners, and tenants who have been assigned a landlord's right under section 147 and 148 of the SPA to stand for council (or the executive), can be council members (or executive members).

24. While the strata and section bylaws do not allow for a different class of persons to stand for the executive section, I find the August 20, 2018 letter from the owner of strata lot 1 of the section, grants the representative the necessary rights to serve on the executive section (and strata council). This is not disputed by the strata and I infer the section's representative is a tenant of strata lot 1. It is also undisputed that the representative is the current president of the section executive.

25. Given these circumstances, I find the section's representative is properly authorized to represent the section in this dispute.

***Is the section required to pass a ¾ vote?***

26. The strata says the section must pass a ¾ vote before it starts a CRT dispute. The section disagrees but says it is prepared to do so. For the reasons that follow, and bearing in mind that a section has the same powers and duties as a strata corporation under the SPA and CRTA, I find a ¾ vote is not required for the section to start this CRT dispute.

27. SPA section 171(2) says that before a strata corporation may sue as a representative of all owners, the suit must be authorized by a resolution passed by a ¾ vote of the ownership at a general meeting (my emphasis added). As explained in *The Owners, Strata Plan NW 177 v. Martin*, 2020 BCCRT 285 at paragraphs 74 to 76, a CRT vice chair found this ¾ vote requirement applies to court proceedings, but not to CRT disputes. I agree with the vice chair's conclusion and I find it applies equally to separate sections created under the SPA.

28. "Sue" is defined in SPA section 1(1) as "the act of bringing any kind of court proceeding". "Suit" is defined as "any kind of court proceeding". Since the CRT is not a court, I find a CRT claim is not a "kind of court proceeding", and is therefore not a "suit". Since section 171(2) of the SPA only applies to "suing" and "suits", as defined in section 1(1), I conclude that ¾ vote authorization is not required for a CRT proceeding.

29. Also, SPA section 189.4 supports the conclusion that section 171(2) does not apply to the CRT. Section 189.4 says that some specific provisions about court proceedings do apply to the CRT, but section 171(2) and the ¾ vote authorization for a proceeding is not included in these.

30. I therefore find the section was not required pass a ¾ vote to start this dispute.

31. For all of these reasons, I find this dispute should continue in the CRT facilitation stage of the CRT's dispute resolution process.

## **CONCLUSION**

32. This dispute is referred back to facilitation.

33. I am not seized of this dispute, should it not be resolved in facilitation.

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J. Garth Cambrey, Vice Chair