



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Levine v. The Owners, Strata Plan BCS 136*, 2021 BCCRT 76

B E T W E E N :

JUSTIN LEVINE

APPLICANT

A N D :

The Owners, Strata Plan BCS 136

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about visitor parking in a strata corporation.
2. The applicant Justin Levine jointly owns a strata lot in the respondent strata corporation The Owners, Strata Plan BCS 136 (strata). Mr. Levine says owners are using the visitor parking stalls, contrary to the strata's bylaws and rules.

3. Mr. Levine seeks an order compelling the strata to enforce its bylaws and parking rules to restrict visitor parking to those visiting the building. Mr. Levine also asks for an order that the visitor parking is not for owner or tenant parking.
4. The strata says the visitor parking is used only as permitted by the bylaws and rules, which currently allow both visitor and owner use. The strata asks me to dismiss the dispute.
5. Mr. Levine represents himself. The strata is represented by a strata council member.

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, 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. 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

10. The issues in this dispute are:
 - a. Is the strata required to enforce exclusive visitor parking?
 - b. If so, what remedies are appropriate?

POSITIONS OF THE PARTIES

11. Mr. Levine says that the strata is failing to enforce its bylaws and rules with the result that visitor parking is being habitually used by owners or tenants “full-time”. Mr. Levine says this unduly restricts the common property (CP) parking for true visitors.
12. The strata says the bylaws and rules allow use of visitor parking stalls with display of a valid pass for a vehicle with valid insurance. Otherwise, the strata says there are no restrictions on who may use the visitor parking stalls.
13. The strata says Mr. Levine can attempt to change the existing bylaws and rules by using section 46(2) of the *Strata Property Act* (SPA).

EVIDENCE AND ANALYSIS

14. The strata is a bare land strata plan made up of 128 strata lots. Each strata lot has 2 parking stalls within it. On the CP, there are 49 ground-level, outdoor spaces designated as “Visitor Parking” on the signage in front of those stalls.
15. Based on statements from several owners, provided by the strata, I find that many owners and residents have 2 or more vehicles in one strata lot. The demand for parking within the strata is longstanding. The strata council meeting minutes over the years document that owners and residents have insufficient parking to meet their needs.
16. At a Special General Meeting (SGM) on June 2, 2004, the owners defeated a $\frac{3}{4}$ vote resolution to introduce Bylaw 31(3) which would have prohibited residents or owners from using visitor parking.

Bylaws and Rules

17. According to the Continuing Legal Education Society's *BC Strata Property Practice Manual*, if parking is CP, in the absence of a lease, it is under the control of the strata corporation and can be allocated by the strata council, subject to any applicable bylaws. This is consistent with SPA section 3, which says a strata corporation is responsible for managing and maintaining the CP and common assets of the strata corporation for the benefit of the owners.
18. The applicable bylaws were filed at the Land Title Office (LTO) on September 5, 2012 (Bylaws), subject to subsequent amendments that I find are not relevant to this dispute.
19. Bylaw 32.1 provides that all vehicles parked in visitors parking must be registered and have proper insurance displayed or will be towed at the owner's expense.
20. The Preamble to Bylaw 32.1 says that "...visitors parking is also meant for visitors only and not designated for owners storing their uninsured vehicles."
21. The strata also has a set of rules that were unanimously ratified at an Annual General Meeting (AGM) on May 30, 2019 (Rules). The Rules address visitor parking as follows:
 - a. Each household will receive one valid "VISITOR PASS" (Pass) per strata lot,
 - b. Vehicles parking from Sunday to Thursday between 11 pm and 6 am, or on Friday, Saturday or evenings before statutory holidays between 2 am and 6 am, without a valid Pass displayed, will be towed at the owner's expense.
22. Although the Rules describe the visitors' parking and imply that visitors use those parking stalls, the Rules do not contain any express restriction on owner or tenant use, provided a Pass is displayed on an insured vehicle.

Visitor Parking Background

23. In terms of enforcement of visitor parking restrictions, on November 1, 2019, the strata circulated a notice to residents informing them that all vehicles in visitor parking stalls must display a Pass during specified times or be towed.
24. The strata provided copies of several parking infraction notices it issued in July and August 2020. I find that these notices, as well as a series of strata council meeting minutes going back to 2006, prove the strata was regularly reviewing vehicles parked in visitor parking and arranging towing for those that did not display a Pass.
25. The strata also provided some photographs showing available visitor parking spaces, with some spaces occupied by tradespeople working within the strata complex.
26. In strata council meetings from 2006 to 2011, the council discussed the demand for parking within the strata. Minutes show the council regularly addressed visitor parking complaints, while noting that the Bylaws did not restrict use of the area to visitors only.
27. Although in 2009 the minutes of one strata council meeting record that “Owners/Residents are reminded that the visitor parking is not for owner or resident vehicles”, other strata council minutes noted the need for spaces for general use. The strata struck a parking subcommittee in 2011. Following that, visitor parking rules were adopted in 2014 that did not expressly exclude owner/resident use. From this I infer that the strata decided to continue a compromise whereby owners would have access to the CP spaces, which were also available to visitors.
28. I find that, since at least 2014, the strata has functioned under and consistent with its current Bylaws and Rules that permit visitor parking, but do not restrict that parking to visitor-only use.

Analysis

29. As noted above, under section 3 of the SPA, the strata is responsible for managing and maintaining the CP and common assets for the benefit of the owners. Under

section 26 of the SPA, the strata council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules.

30. Section 27(2) of the SPA provides the strata council with the discretion to determine whether a person has contravened a bylaw or rule. Under section 133 of the SPA the strata may do what is reasonably necessary to remedy a bylaw or rule contravention.
31. The first question is whether the Bylaws or Rules restrict owners or residents from using the CP visitor parking. As explained above, I find that they do not. Although a Preamble to one Bylaw suggests an intention to restrict the visitor parking to visitors-only, if the strata wanted to use that approach, I find it would have adopted a Bylaw or Rule to say so.
32. Mr. Levine argues that the word “visitor” in the Rules and Bylaws ought to be read with its dictionary definition, meaning a person who stays for a short time. In his submissions, Mr. Levine concedes that an owner or tenant can, on occasion, be only visiting.
33. Mr. Levine also submits that he is not seeking to ban all owner use of the visitor stalls. Rather, he submits that the CRT should rule that the word “visitor” qualifies the type of parking in "visitor parking", then order the strata to enforce that bylaw.
34. I find, through the Bylaws and Rules, the owners have decided that visitor parking may be used by anyone displaying a Pass and with valid insurance. The Bylaws and Rules do not prevent owners from using the Visitor Parking if they comply with these requirements. However, the parking spaces remain available to non-owner visitors as well. Put differently, the parking is visitor parking, but not visitor-only parking.
35. Mr. Levine also submitted that if the word “visitor” on the parking signage and in the Bylaws and Rules were replaced with the word “handicapped”, the outcome would be to restrict use of those spaces to disabled people only. I distinguish Mr. Levine’s example from that of visitor parking, because accessible parking is regulated by provincial legislation, including the *Motor Vehicle Act*, city bylaws and subject to the BC Human Rights Code. Visitor parking is not subject to such a framework.

36. Although Mr. Levine did not argue significant unfairness, I have also considered that CRTA section 123(2) allows the CRT to make an order directed at the strata if the order is necessary to prevent or remedy a significantly unfair action.
37. The courts and the CRT have considered what “significantly unfair” means and have equated it to oppressive or unfairly prejudicial conduct. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 128, the BC 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 and/or unjust or inequitable.
38. The BC Court of Appeal considered the language of SPA section 164 in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44. The test established in *Dollan* was restated in *The Owners, Strata Plan LMS 1721 v. Watson*, 2018 BCSC 164 at paragraph 28:
- a. What is or was the expectation of the affected owner or tenant?
 - b. Was that expectation on the part of the owner or tenant objectively reasonable?
 - c. If so, was that expectation violated by an action that was significantly unfair?
39. In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2020 BCSC 576, the Court determined that the reasonable expectations portion of the *Dollan* test may not be appropriate in all circumstances. However, the Court held it may apply when a strata council is exercising discretionary authority. Because here the strata council was exercising discretionary authority about enforcement of visitor parking restrictions, I will consider the reasonableness of Mr. Levine’s expectations.
40. Mr. Levine submits that, before buying his strata lot, he observed the “Visitor Parking” signage and reviewed the Bylaws and Rules. I find that in doing so, he would have recognized that the visitor parking was not restricted to visitors-only. I find Mr. Levine did not have an objectively reasonable expectation of visitor-only restrictions on the CP parking. Such an expectation runs contrary to the Bylaws and Rules.

41. I find that the strata has enforced the parking Bylaws and Rules as written. The strata has not extended that enforcement to a visitor-only restriction, because the owners have decided not to adopt that limit.
42. For its part, the strata submits that it would be unreasonable to stop owners using the visitor parking when that has not been a formal limitation at any time, and where shared use between visitors, residents and owners has been the practice for at least 6 years.
43. In *Ireland et al v. VIS 6016*, 2019 BCCRT 974, a CRT member considered a dispute where a strata had CP visitor parking regulated by rules, but not bylaws. The rules in *Ireland* allowed residents to use the visitor's parking, provided they used their own garage for parking as well.
44. In *Ireland*, the CRT found that the strata had been managing the CP visitor parking adequately, "for the benefit of all owners" as required by SPA section 3. Though it does not bind me, I find the *Ireland* analysis applicable and adopt it here.
45. How the strata balances the needs of residents with multiple vehicles against the needs of owners who desire improved access for visitors is a matter for the strata's democratic governance, subject to the SPA's requirements that it enforce its rules and bylaws and manage the CP parking spaces for the benefit of all owners. This means that a strata must manage the CP parking for the benefit of all owners, meaning the "greatest good for the greatest number", as determined by the owners in a democratic setting: *Ireland* at paragraph 25. The current parking system was unanimously adopted by an owners' vote at an AGM. I decline to interfere in that democratic governance.
46. With the strata's democratic governance framework, there are avenues for Mr. Levine to pursue Bylaw amendments or Rules changes, subject to the owners' will, such as through SPA section 46(2).

47. For these reasons, I find the strata's actions have not been significantly unfair. I also find the strata has met its obligation to enforce its SPA obligations to enforce its Bylaws and Rules. I dismiss Mr. Levine's claims.

CRT FEES and EXPENSES

48. 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. The strata was successful in this dispute but did not pay CRT fees or claim dispute-related expenses, so I make no order for them.

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

ORDER

50. I dismiss Mr. Levine's claims and this dispute.

Julie K. Gibson, Tribunal Member