



# Civil Resolution Tribunal

Date Issued: March 18, 2021

File: ST-2020-007916

Type: Strata

Civil Resolution Tribunal

Indexed as: *Francoeur v. The Owners, Strata Plan EPS288*, 2021 BCCRT 298

BETWEEN:

LUKE FRANCOEUR

**APPLICANT**

AND:

The Owners, Strata Plan EPS288

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Julie K. Gibson

## INTRODUCTION

1. This dispute is about whether a strata corporation must permit an owner to install a gas, tankless hot water heater with new venting through common property (CP).
2. The applicant Luke Francoeur wanted to replace an electric hot water tank in his strata lot with a gas tankless hot water heater. Mr. Francoeur says respondent the strata

corporation The Owners, Strata Plan EPS288 (strata) wrongly refused him permission to vent the new heater through the roof. Mr. Francoeur claims \$1,050.00 for the hot water tank and associated charges.

3. The strata says Mr. Francoeur took steps to install a new water heater without strata council's permission, contrary to the bylaws. The strata says it is not obliged to reimburse Mr. Francoeur for the costs of unauthorized work. It asks me to dismiss the dispute.
4. Mr. Francoeur is self-represented. The strata is represented by a strata council member.
5. For the following reasons, I dismiss Mr. Francoeur's claim to be reimbursed for \$1,050 in expenses relating to his proposed hot water tank installation.

## **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. Was the strata's refusal to permit Mr. Francoeur to install a gas tankless hot water heater significantly unfair or otherwise wrongful?
- b. If so, must the strata pay Mr. Francoeur his claimed \$1,050 in expenses?

## **BACKGROUND**

11. As the applicant, Mr. Francoeur bears the burden of proving his civil claim on a balance of probabilities. I have read all the submissions and evidence provided but only refer to information I find relevant to explain my decision.

12. Luke Francoeur jointly owns SL1 in the strata.

13. The strata plan shows SL1 in a building with SL2. SL1 has a crawl space, main floor and garage within the strata lot, and a limited common property (LCP) yard space.

14. Based on the parties' correspondence, I find the following facts:

- a. In fall 2018, Mr. Francoeur sought strata council's approval to install a new, tankless gas hot water heater in SL1, with a roof vent.
- b. According to the meeting minutes, on December 12, 2018, strata council approved Mr. Francoeur's installation request, subject to having "no holes in roof, unit installed in the crawl space, vented through the siding and a letter of responsibility signed by the owner". Strata council did not approve a roof vent.
- c. On December 31, 2018, strata council wrote to Mr. Francoeur, through its property manager, approving the proposed installation subject to him taking

- responsibility for it in writing, installing the heater in the crawl space, and venting it through existing lines in the siding, not through the roof.
- d. On June 11, 2020 strata council met and noted that Mr. Francoeur had informed them that he would now install the heater under the December 2018 approval “subject to existing venting”.
  - e. Mr. Francoeur then learned from his gas fitter that the Building Code did not permit an installation using an existing vent.
  - f. In July 2020, Mr. Francoeur emailed the property manager to say that the hot water heater would be installed with a new roof vent and air intake. Mr. Francoeur explained that existing vents could not be used.
  - g. On July 9, 2020, strata council met and decided that because the heater installation would now require separate roof venting, “the prior approval” was no longer valid.
  - h. On September 19, 2020, strata council member MH met with Mr. Francoeur and his contractor. MH reminded Mr. Francoeur that he did not have permission to install a roof vent. After discussion, Mr. Francoeur agreed to provide an alternate installation proposal, and MH agreed to take it to strata council for a decision.
  - i. Later that day, Mr. Francoeur wrote to MH proposing that the gas water heater be installed using a side vent from the soffit wall. Mr. Francoeur provided a signed responsibility agreement for the proposed installation through a soffit wall.
  - j. On September 21, 2020, strata council met and decided to deny permission for Mr. Francoeur’s CP soffit wall installation.
  - k. On September 28, 2020, Mr. Francoeur attended a strata council hearing about his installation request. After the hearing, strata council decided to uphold the denial of Mr. Francoeur’s request to install the hot water heater because it involved a CP alteration.

- I. On October 5, 2020, Mr. Francoeur emailed strata council to say that his contractor would “finish installing the gas to the tankless water heater, between 4 and 5PM on Wednesday, Oct. 7th” and that he was again planning a roof vent.
- m. On October 5, 2020, strata council wrote to Mr. Francoeur repeating that he did not have permission to alter CP to install his hot water heater. Strata council asked Mr. Francoeur to restore “the pre-existing hot water heating system” in SL1.
- n. On October 5, 2020, Mr. Francoeur purchased an electric hot water heater and related accessories for \$454.70.
- o. Mr. Francoeur installed an electric hot water heater with existing venting. Mr. Francoeur is storing the tankless gas heater in his garage, pending installation approval.

15. Mr. Francoeur noted that, in *Francoeur v. The Owners, Strata Plan EPS 288, 2018 BCCRT 351*, another tribunal member dismissed his claim to require the strata to allow him to install a sun tunnel which would alter the CP roof.

### **Bylaws**

16. The applicable bylaws are the SPA standard bylaws, subject to amendments filed at the Land Title Office (LTO) on October 2, 2013 and some subsequent amendments that I find are not relevant to this dispute.

17. Bylaw 5(1) requires an owner to obtain the strata’s written approval before altering a strata lot’s structure or exterior, or parts of the strata lot the strata must insure under SPA section 148, and other aspects that do not apply here. Bylaw 5(2) says that the strata must not unreasonably withhold its approval for such strata lot alterations but can require the owner to take responsibility for any expenses relating to the alteration.

18. Bylaw 6(1) and (2) say that an owner must obtain the strata’s written approval before altering CP, including LCP, or common assets. The bylaw says the strata may require the owner to take responsibility for any expenses relating to an alteration.

19. Bylaw 6(5) says that an owner shall not alter the exterior appearance of the building.
20. On the strata plan, the roofs and exterior siding are not designated as part of any strata lots. I find the strata building roofs and exterior siding are CP under sections 1 and 68(1) of the SPA.
21. I find that, under bylaw 6, Mr. Francoeur required written approval before creating a new vent through the strata building's CP roof or siding. Under bylaw 6, I find that the strata had the authority to deny Mr. Francoeur's request for the hot water heater installation with new venting.

## **REASONS and ANALYSIS**

22. Just as in the CRT's persuasive but non-binding decision in *Molloy v. The Owners, Strata Plan VIS 2316*, 2020 BCCRT 73, the bylaws here say that an owner cannot alter CP without strata approval. Unlike for strata lot alterations under bylaw 5, bylaw 6 does not require the strata to be reasonable in approving alterations to CP. In other words, the strata has considerable discretion in deciding whether to approve a hot water heater installation that requires CP alterations for venting.
23. However, a strata must act in a way that is not significantly unfair. I find Mr. Francoeur's argument that the strata's refusal to approve his hot water heater installation was prejudicial is akin to significant unfairness.
24. SPA section 164 sets out the BC Supreme Court's authority to remedy significantly unfair actions. The CRT has jurisdiction over significantly unfair actions under CRTA section 123(2), which has the same legal test as cases under SPA section 164. See *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164. The test comes from *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44. Mr. Francoeur must establish the following:
- a. What is or was the expectation of the affected owner(s)?
  - b. Was that expectation on the part of the owner(s) objectively reasonable?

c. If so, was the expectation violated by an action that was significantly unfair?

25. The courts have interpreted “significantly unfair” to mean conduct that is oppressive or unfairly prejudicial. Oppressive conduct has been interpreted as conduct that is burdensome, harsh, wrongful, lacking in fair dealing or done in bad faith. Prejudicial conduct means conduct that is unjust and inequitable. See *Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, aff’d 2003 BCCA 126.

26. In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2020 BCSC 576, the court determined that the reasonable expectations portion of the test may not be appropriate in all circumstances, but that it may make sense when a strata council is exercising its discretionary authority. I find that refusing Mr. Francoeur permission to install the gas hot water heater was discretionary and will therefore consider the reasonableness of Mr. Francoeur’s expectations.

27. Mr. Francoeur submits that the strata should have granted him permission because:

- a. the entry through the roof would have been small, only large enough for a 5-inch vent,
- b. a tankless, gas hot water heater is a more efficient, lower cost appliance, and
- c. refusal to allow owners to upgrade to tankless gas hot water heaters will reduce the value of their strata lots.

28. Applying the significant unfairness test to the facts before me, I find that Mr. Francoeur’s expectation that the strata would permit him to install a hot water heater with new venting through the building exterior was not objectively reasonable because the bylaws do not require the strata to grant such approval. I also find it objectively unreasonable for Mr. Francoeur to expect the strata to reimburse him for money spent on the appliance and installation, when he knew the strata had not approved the installation.

29. Even if I accept that tankless, gas hot water heaters are preferable to electric ones, I find that Mr. Francoeur has not proven that the strata acted significantly unfairly toward

him. Mr. Francoeur's appliance preference does not determine this dispute. The bylaws are clear about CP alterations. The bylaws were known to Mr. Francoeur. Mr. Francoeur also mentioned his previous CRT application where the strata refused permission for a CP alteration to install a sun tunnel. I find that strata council decision consistent with the strata's approach here. There was no evidence that the strata granted approval for newly vented water heater installations to other owners, while denying permission to Mr. Francoeur. The strata noted that Mr. Francoeur could pursue bylaw amendments through the processes laid out in the SPA.

30. I find that the strata's action in refusing the hot water tank installation was not significantly unfair, given that a new roof or siding vent would be a CP alteration. I find that Mr. Francoeur has not proven that the strata is liable for his claimed \$1,050 in appliance-related expenses.

## **CRT FEES and EXPENSES**

31. 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. In accordance with CRTA and rules, as Mr. Francoeur was unsuccessful, I find he is not entitled to any reimbursement.

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

## **ORDER**

33. I dismiss Mr. Francoeur's claims and his dispute.

---

Julie K. Gibson, Tribunal Member