



Civil Resolution Tribunal

Date Issued: April 19, 2021

File: ST-2020-007531

Type: Strata

Civil Resolution Tribunal

Indexed as: *MacKenzie v. The Owners, Strata Plan LMS1584*, 2021 BCCRT 400

BETWEEN:

SAMANTHA MACKENZIE

APPLICANT

AND:

The Owners, Strata Plan LMS1584

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about a pet restriction bylaw. The applicant, Samantha MacKenzie, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 1584 (strata). Ms. MacKenzie says that, prior to purchasing her strata lot, she was deceived by a member of the strata council into believing that she would be allowed to have two dogs instead of the one permitted by the strata's bylaws. Ms. MacKenzie

says that she did not find out that she would not be granted an exemption to the pet restriction bylaw until after she had completed the purchase of her strata lot. She asks for an order that the strata grant her an exemption to the pet restriction bylaw. The strata denies that Ms. MacKenzie was given permission to have two dogs in her strata lot and says that Ms. MacKenzie was aware that the prospect for an exemption was “limited”.

2. Ms. MacKenzie is self-represented. A member of the strata council represents the strata.

JURISDICTION AND PROCEDURE

3. 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.
4. 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 decide the dispute fairly based on the evidence and submissions provided.
5. 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.
6. 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

7. The issues in this dispute are:
 - a. Whether the strata granted Ms. MacKenzie permission to have a second pet in her strata lot,
 - b. Whether the strata has treated Ms. MacKenzie in a significantly unfair manner, and
 - c. If there was significant unfairness, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

8. The strata is made up of 81 residential strata lots in a multi-building complex. Ms. MacKenzie purchased her strata lot in the spring of 2020.
9. The strata's bylaw 34 restricts the number and type of pets that an owner or occupant may keep in a strata lot. Among other things, it permits "one dog or one cat, unless otherwise approved in writing by strata council".
10. Ms. MacKenzie owns two dogs and describes her pets as members of her family. She did not identify either dog as a guide or service animal as defined in the *Guide Dog and Service Dog Act*.
11. Ms. MacKenzie says that her first consideration when purchasing a property was whether pets were allowed. Before she made an offer on the strata lot, Ms. MacKenzie asked the seller's real estate agent about pet restrictions. In a February 10, 2020 text message, the real estate agent stated that "2 big dogs" were allowed. However, when she received a copy of the bylaws later, Ms. MacKenzie learned that she could only have one dog under bylaw 34.
12. Ms. MacKenzie's real estate agent emailed the strata's property manager on February 19, 2020 about obtaining an exemption to bylaw 34 that would allow her two dogs. The property manager replied that same day, and indicated that the strata council had only granted an exemption once under what she described as

extenuating circumstances where the additional dog was ill and was likely to die shortly. The property manager advised that it was “highly unlikely they will grant permission” but that the request would be discussed “at the next Council meeting where they make such decisions which is scheduled for March 10, 2020”. This date was after Ms. MacKenzie’s deadline to remove the subjects from her offer to purchase the strata lot.

13. Ms. MacKenzie says that she felt that she was unable to wait for the council meeting, so she spoke to AS, who then was the vice president of the strata council. According to Ms. MacKenzie, AS told her that having two dogs would not be an issue as many owners in the complex had more than one pet. In a February 20, 2020 text message exchange with AS, Ms. MacKenzie thanked her for “confirming that the complex is okay with two dogs” to which AS responded “your welcome”.
14. On March 5, 2020, Ms. MacKenzie’s real estate agent emailed the property manager to cancel her request for an exemption. The email message did not say anything about Ms. MacKenzie’s view that AS had given her permission for the second dog.
15. When Ms. MacKenzie moved into her strata lot, she says she did not hide the fact that she had two dogs as she thought she had permission for the additional pet. In May of 2020, the strata council received two complaints that Ms. MacKenzie had two dogs in her strata lot. In a June 10, 2020 letter sent by the property manager, the strata council reminded Ms. MacKenzie that she had not received permission for two pets and asked her to remove one of the two dogs from her strata lot.
16. In her June 16, 2020 response, Ms. MacKenzie indicated that she had received confirmation from AS that having two dogs would not be an issue as “there were multiple owners in the complex with more than one dog including herself”. She asked to be allowed to keep her dogs as she was “given permission prior to moving in”. Ms. MacKenzie stated that she was willing to agree to have only one dog after the death of one of her current dogs.

17. In a July 30, 2020 letter, the property manager advised Ms. MacKenzie that the strata council had declined the request to keep two dogs in the strata lot, and asked that the second dog be rehomed by September 7, 2020.
18. Ms. MacKenzie requested a strata council hearing on the matter, and the hearing was held on September 8, 2020. On September 11, 2020, the property manager advised Ms. MacKenzie that the strata council had denied her request for an exemption to the pet restriction bylaw, and asked her to confirm that she had removed the second pet by October 13, 2020.
19. In her submissions, Ms. MacKenzie says that she thought that her conversation and subsequent text message exchange with AS were “sufficient written permission” for the additional pet, and that she did her due diligence before completing her purchase of the strata lot. According to Ms. MacKenzie, AS and many other owners have admitted to her that they have more than one pet. She says it is unfair for the strata council to single out one person and only enforce the bylaws against them. Ms. MacKenzie describes the pet restriction bylaw as archaic, and says that she had many owners’ support for a petition to amend the bylaw to allow two dogs, or two cats or one of each. Ms. MacKenzie says that she should be allowed to have a second dog until one of her current pets dies.
20. The strata denies that Ms. MacKenzie had permission for an additional pet, and says that AS has advised it that her comment about a second pet not being a problem was her personal opinion. The strata says AS’s comments did not bind the strata, as one member does not have the authority to make decisions for the entire council. Further, the strata submits that it was unreasonable for Ms. MacKenzie to rely on AS’s comments given the clear language in bylaw 34 that any exemption could only be granted by the whole of the strata council in writing, and because Ms. MacKenzie was aware that her request for an exemption would be considered during a strata council meeting and likely would not be approved. The strata says that it enforces its bylaws, including bylaw 34, in a uniform and consistent manner.

Does Ms. MacKenzie have permission for the second dog?

21. There is no dispute that bylaw 34 limits the numbers and types of pets that may be kept in a strata lot. Although there may have been discussions about changing this bylaw, there is no indication that the owners have approved a resolution to amend it. Therefore, it remains in force.
22. Although there is no dispute that Ms. MacKenzie discussed the pet restrictions with AS, there is no statement from AS to confirm the contents of this conversation. Whatever was said, I find that the text message that shows AS responding to Ms. MacKenzie's statement that "the complex is okay with two dogs" does not amount to approval "in writing by strata council" as set out in bylaw 34.
23. Even if AS's comments could be construed as granting permission for additional pets, AS did not have the authority to make such a decision. Section 3 of the *Strata Property Act* (SPA) requires a strata corporation to manage and maintain the common property assets for the benefit of owners. Section 4 provides that the powers and duties of a strata corporation must be exercised and performed by a council including, as discussed in section 26, the enforcement of bylaws and rules.
24. According to bylaw 20, the strata council may delegate some or all of its powers or duties to one or more council members. However, there is no indication that the strata council made any delegation of the power to make decisions about exemptions to bylaw requirements. I find that the decision-making power for exemptions rests with the strata council as a whole and AS could not make a decision about bylaw exemptions on her own.
25. I acknowledge Ms. MacKenzie's statements that she was unfamiliar with strata procedures, that she believed that AS had the authority to grant an exemption to the pet restrictions, and that AS never told her that she would need to seek further permission from the strata council for an additional pet. However, in the February 19, 2020 email to her real estate agent, the property manager had specifically advised Ms. MacKenzie that decisions about pet exemptions would be made at a meeting of the strata council. Therefore, Ms. MacKenzie was aware of the necessary procedure

to apply for an exemption. I find the strata did not provide her with “deceiving information” as she suggests.

26. Based on the evidence before me, I find that Ms. MacKenzie did not have an exemption to bylaw 34 that would allow her to keep two dogs in her strata lot.

Significant Unfairness

27. Although she did not say so specifically, I infer that Ms. MacKenzie’s position is that the strata treated her in a significantly unfair manner. She says that not all owners are conforming to the same rules, and that the strata is singling her out by making her comply with bylaw 34 while allowing owners to have additional pets.

28. As noted above, the strata says that it enforces its bylaws in a consistent manner. The strata’s position is that Ms. MacKenzie has not provided evidence to establish otherwise.

29. 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 fair dealing or done in bad faith. “Prejudicial” conduct means conduct that is unjust and inequitable (*Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, affirmed 2003 BCCA 126).

30. Section 164 of the SPA sets out the authority of the British Columbia Supreme Court to remedy significantly unfair actions. The CRT has jurisdiction over significantly unfair actions under section 123(2) of the CRTA, which involves the same legal test as cases under SPA section 164. I find that the circumstances of this claim fall within sections 121(1)(a) and (f) of the CRTA, as they involve the application of the SPA and a decision of a strata corporation in relation to an owner.

31. The test for significant unfairness was summarized by a CRT 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?

32. The British Columbia Court of Appeal recently confirmed that consideration of the reasonable expectations of a party is “simply one relevant factor to be taken into account” (see *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342 at paragraph 89).
33. Ms. MacKenzie’s expectation was that the strata would treat her in the same way as other owners. While this is objectively reasonable, I find the expectation that she would be allowed to keep two dogs contrary to the bylaws was not.
34. Even if AS told her that others in the complex had more than one pet, Ms. MacKenzie was aware that the strata had only granted one exemption to the pet restriction in the past. She was also aware that the circumstances of that exemption, which involved an ill pet, did not match her own. I find that it is not reasonable for Ms. MacKenzie to expect an exemption to bylaw 34 that has not been provided to others. I find that there is no significant unfairness in the strata choosing to limit the amount of exemptions it makes to a mandatory bylaw.
35. Ms. MacKenzie submits that the strata is not enforcing bylaw 34 against other owners and allowing them to have additional pets. In support of this position, Ms. MacKenzie provided images from a social media account that she says show that a current member of the strata council has multiple cats. She says that this person deleted these images from their account after Ms. MacKenzie uploaded them as evidence in this dispute. The images include undated photos of 2 adult cats, photos of an adult cat with 5 kittens in November and December of 2020, and messages that suggest this person was fostering a cat and 4 kittens in 2018. Ms. MacKenzie did not say that she has made a complaint to the strata about this person or any other owner who she believes has more than one pet.
36. The fact that other owners may have more than one pet in their strata lots does not necessarily mean that the strata is aware of the infractions and is not enforcing the bylaw against those owners. There is no indication that there have been complaints

about any other owners' pets that the strata has failed to pursue, and no evidence that the strata picks and chooses how and when to enforce the bylaws as Ms. MacKenzie suggests.

37. I find that Ms. MacKenzie has not established that the strata is inequitably or inconsistently enforcing the bylaws, and that the strata did not treat Ms. MacKenzie in a significantly unfair manner. Therefore, it is not necessary for me to consider whether Ms. MacKenzie is entitled to an exemption to bylaw 34 as a remedy.

38. Although I dismiss Ms. MacKenzie's claims, my decision does not impact the strata's ability to amend its bylaws under section 128 of the SPA. Further, if owners who hold at least 20% of the strata's votes support a change to bylaw 34, my decision does not prevent them from calling a special general meeting and proposing a resolution for consideration under sections 43 and 46 of the SPA.

39. As the strata did not file a counterclaim, I make no orders about the dogs.

CRT FEES AND EXPENSES

40. 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. The strata was successful, but did not pay any CRT fees. As Ms. MacKenzie was not successful, I dismiss her claim for reimbursement of CRT fees.

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

ORDER

42. I dismiss Ms. MacKenzie's claims and this dispute.

Lynn Scrivener, Tribunal Member