



Civil Resolution Tribunal

Date Issued: August 6, 2021

File: ST-2020-001311

Type: Strata

Civil Resolution Tribunal

Indexed as: *Park v. The Owners, Strata Plan EPS5206*, 2021 BCCRT 861

BETWEEN:

MIL PARK

APPLICANT

AND:

The Owners, Strata Plan EPS5206

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about vehicle towing in a strata corporation.
2. The applicant, Mil Park, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan EPS5206 (strata).

3. The parties agree that on November 24, 2020, the strata had Mr. Park's vehicle towed from an outside visitor parking stall (OVP stall). Mr. Park says he parked in that spot based on the strata's instructions, due to power washing work going on in the parkade where his usual spot is located. Mr. Park says he emailed the strata in advance to arrange alternate parking, and the strata did not clearly communicate that he was not permitted to park in the OVP stall during the pressure washing. Mr. Park says the towing occurred without notice, and was unfair. He requests reimbursement of \$232.85 in towing charges he paid to a third party towing company.
4. The strata says Mr. Park had no legitimate reason to park in the OVP stall, and that doing so was a violation of the strata's rules. The strata says Mr. Park misread or ignored its communications and chose not to reserve alternate parking, so he is responsible for the towing costs.
5. Mr. Park is self-represented in this dispute. The strata is represented by a strata council member, SI.

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). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
7. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. Under CRTA section 123 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.

ISSUE

10. Is Mr. Park entitled to reimbursement of \$232.85 in towing charges?

REASONS AND ANALYSIS

11. In a civil claim like this one, Mr. Park, as applicant, must prove his claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.
12. The parties agree that on November 24, 2020, Mr. Park’s usual parking stall in the residents’ parkade was unavailable due to power washing. The parties also agree there is both a visitor parkade, and outdoor visitor parking stalls (OVP stalls).
13. The strata says it was justified in having Mr. Park’s vehicle towed because he parked in the OVP stall without a valid parking pass, contrary to the strata’s parking rules. SI, the strata’s representative, submits as follows:

Our plan was to try to keep the outside parking spots vacant. This would allow space for the contractor and service vehicles, if needed. To do this we would fill the slots in the visitor parkade (VP) first, then the outside ones, if needed.

...

Tuesday, Nov. 24. The first day of parkade washing and of vehicles having to be moved. Also the day that Mr. Park would have to move his vehicle. As washing was to start at 9:00, I arrived on-site between 8:15 and 8:30 to ensure a smooth start. Driving onto the property, one of the first things that I saw was 2 vehicles parked in the outside visitor spots. There was no legitimate reason for any vehicles to be parked there, so they were eligible to be towed.

This was the first morning of the parkade power washing and it was uncertain if the space would be needed or not. To ensure that the washing went well, a call was made to the towing company to have both vehicles towed.

As it turned out, only Mr. Park's vehicle was towed. The other vehicle had left before its tow truck arrived on-site.

14. Section 133(1) of the *Strata Property Act* (SPA) says that a strata corporation may do what is **reasonably necessary** to remedy a contravention of its bylaws or rules, including removing objects from common property.
15. Based on the above-quoted statements from SI, I find it was not reasonably necessary to have Mr. Park's vehicle towed on the morning of November 24, 2020. SI admits that it was "uncertain" if the OVP stalls would be needed for the power washing work or not. SI also admitted that the strata planned to allow some residents to park in the OVP area if necessary.
16. Finally, the visitor parking pass form the strata provided in evidence shows that Mr. Park provided his vehicle's make, model, and licence plate number to the strata in writing on December 16, 2019, and the strata had that information on file. I find that since there was no imminent need to use the OVP stall for another purpose, it would have been reasonable for the strata to attempt to contact Mr. Park before having his vehicle towed.
17. For these reasons, I find it was not reasonably necessary to tow Mr. Park's vehicle from the common property OVP stall on the morning of November 24, 2020.

18. I have also considered if the towing was significantly unfair to Mr. Park. CRTA section 123(2) gives the CRT authority to make an order directed at the strata, if the order is necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights. Significantly unfair means conduct that is oppressive or unfairly prejudicial. “Oppressive” is conduct that is burdensome, harsh, wrongful, lacking fair dealing or done in bad faith, while “prejudicial” means conduct that is not just and equitable (see *Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, affirmed in 2003 BCCA 126). In considering an owner’s reasonable expectations the courts have applied the following test from *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44:

- a. What was the applicants’ expectation?
- b. Was the expectation objectively reasonable?
- c. Did the strata violate that expectation with a significantly unfair action or decision?

19. I find the strata’s action in having Mr. Park’s vehicle towed on November 24, 2020 was significantly unfair. I find that Mr. Park had a reasonable expectation that the strata would follow the SPA in enforcing its rules. For the reasons explained above, I find that having the vehicle towed without notice went beyond the strata’s authority to remedy rule contraventions set out in SPA section 133(1), as it was not reasonably necessary in the circumstances.

20. So, as remedy in this dispute, I order the strata to reimburse Mr. Park \$232.85 for towing charges. I note that Mr. Park provided an invoice and receipt to confirm this expense. I find that Mr. Park is also entitled to prejudgment interest on this amount, under the *Court Order Interest Act* (COIA), from November 25, 2020 when he paid the towing charge. This equals \$0.73.

CRT FEES AND EXPENSES

21. As Mr. Park was successful in this dispute, in accordance with the CRTA and the CRT's rules I find he is entitled to reimbursement of \$225.00 in CRT fees. Neither party claimed dispute-related expenses, so none are ordered.
22. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Mr. Park.

ORDERS

23. I order that within 30 days of this decision, the strata must pay Mr. Park \$458.58, broken down as follows:
 - a. \$232.85 in towing charges,
 - b. \$0.73 in interest under the COIA, and
 - c. \$225 in CRT fees.
24. Mr. Park is entitled to postjudgment interest under the COIA, as applicable.
25. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, the order can be enforced through the British Columbia Provincial Court 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.

Kate Campbell, Vice Chair