



# Civil Resolution Tribunal

Date Issued: October 4, 2021

File: ST-2021-000984

Type: Strata

Civil Resolution Tribunal

Indexed as: *Reid v. The Owners, Strata Plan LMS 908*, 2021 BCCRT 1061

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

ROBERT REID

**APPLICANT**

**A N D :**

The Owners, Strata Plan LMS 908

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. This strata property dispute is about a strata corporation's alleged change in use of common property (CP) contrary to the *Strata Property Act* (SPA).
2. The applicant, Robert Reid, is an owner of a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 908 (strata).

3. Mr. Reid says the strata significantly changed the use of a CP bicycle storage locker contrary to the SPA provisions and directions of the strata owners. He seeks an order that the strata follow the SPA and refrain from making future significant changes to the use or appearance of CP, regardless of whether the change is permanent or temporary, except as permitted under the SPA. He also asks for an order that the strata call a special general meeting (SGM) to consider a resolution to amend the strata bylaws and rules to prevent future significant changes to the use or appearance of CP, whether permanent or temporary, except as permitted under the SPA.
4. The strata says it temporarily changed the use of a bicycle storage room to allow storage of what I infer were common assets, and that the change in use of the bicycle storage locker was not contrary to SPA. The strata also says the storage area reverted back to a bicycle locker on about March 8, 2021. The strata says the issue of whether there was a significant change in use of the CP no longer exists and asks that Mr. Reid's claims be dismissed.
5. Mr. Reid is self-represented. The strata is represented by a strata council member.
6. For the reasons that follow, I dismiss Mr. Reid's claims and this dispute.

## **JURISDICTION AND PROCEDURE**

7. 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.
8. 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 and fairness.

9. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
10. 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**

11. The issues in this dispute are:

- a. Was the change in use of the bicycle storage locker to a storage area for common assets significant under the SPA?
- b. Should the CRT order the strata to follow to the SPA provisions about changes to the use or appearance of CP?
- c. Should the CRT order the strata to call an SGM to consider a  $\frac{3}{4}$  vote to amend its bylaws and rules to prohibit future temporary and permanent changes to the use or appearance of CP, except as permitted under the SPA?

## **BACKGROUND**

12. In a civil proceeding such as this, as applicant, Mr. Reid must prove his claims on a balance of probabilities. I have read all the submissions and evidence provided by the parties, but refer only to information I find relevant to give context for my decision.
13. The strata is residential strata corporation consisting of 187 strata lots in a 4-storey building. The strata was created in June 1993 and continues to exist under the SPA. The parties agree the bicycle storage locker in question is located in the underground parking garage, which is identified as CP. However, the strata plan does not identify

the locker itself. The photographs provided in evidence show the locker is locked in an area that does not appear to be accessible by vehicles, and is enclosed by a chain link fence and gate. The bicycle storage locker in question is the smaller of 2 bicycle storage lockers.

14. The strata filed a complete set of bylaws with the Land Title Office (LTO) on May 26, 2015. I find these bylaws apply to this dispute. I will refer to any applicable bylaws in my analysis below. Subsequent bylaw amendments have been filed with the LTO, but are not relevant to this dispute.
15. In 2019, the strata council notified all owners that it wanted unused bicycles removed from the bicycle locker areas. It did this through strata council minutes and by posted notices. See for example the May 6, 2019 strata council meeting minutes. It appears the strata council wanted to create additional storage areas as the July 8, 2019 strata council meeting minutes state extra storage would be reviewed after the bicycle inventory was complete.
16. On December 1, 2019, Mr. Reid wrote to the strata council expressing his concern over the potential loss of bicycle storage space and requested the locker's use remain for bicycles only. In its December 2, 2019 meeting minutes, the strata council acknowledged receipt of letters from 2 owners about the proposed bicycle locker space conversion, including Mr. Reid's, and reported that the use of bicycle storage locker would be changed to "corporate storage" for 6 months on a temporary basis or until about June 2020. The April 6, 2020 strata council meeting minutes report that the "conversion" of the bicycle locker to a corporate storage area would be put to a vote of the owners at the next general meeting. An SGM was held July 30, 2020, but it did not include a resolution about use of the bicycle locker.
17. The August 4, 2020 strata council meeting minutes report the use of the area would be put to the owners at the next annual general meeting (AGM), which it was. The December 1, 2020 AGM minutes show a resolution to change the use of the bicycle storage locker to corporate storage under SPA section 71 was defeated with about 58% of the owners' voting in favour, which was less than the 75% required. The

December 2020 AGM minutes also show new members were elected to the strata council.

18. Mr. Reid wrote to the strata council on December 22, 2020, requesting the bicycle locker be returned to bicycle storage. On December 30, 2020, he requested a hearing on the matter as he had not received a response from the strata council. The hearing occurred on January 19, 2021 and the strata responded that it would continue the temporary use of the bicycle locker as corporate storage.
19. Mr. Reid applied for CRT dispute resolution services on February 7, 2021 and this dispute was started on February 8, 2020.
20. The strata council reported the outcome of the hearing in its February 19, 2021 meeting minutes noting the temporary change in use of the bicycle locker would continue for an unspecified period of time. The strata also notified the strata owners that this dispute had been started.
21. The parties agree the bicycle locker's use was reinstated in March 2021.

## **EVIDENCE AND ANALYSIS**

### ***Was the change in use of the bicycle storage locker to a storage area for common assets significant under the SPA?***

22. Given the parties agree the bicycle storage locker's use was reinstated in March 2021, it is quite likely the issue is moot and no longer live. However, I find it would be useful to analyze Mr. Reid's claims bearing in mind the CRT's mandate to recognize the relationship of the parties will continue and that some finality to Mr. Reid's claims would be beneficial to the parties.
23. Mr. Reid argues the change in use of the bicycle storage locker to a corporate storage area was a significant change under SPA section 71, and that section 71 does not address temporary changes.

24. He also argues that the fact the  $\frac{3}{4}$  vote resolution to change the use of the bicycle locker under section 71 was defeated at the December 2020 AGM means the strata cannot change its use, even on temporary basis.
25. I disagree with Mr. Reid for the following reasons.
26. The criteria for determining what is a significant change in use and appearance under section 71 of the SPA was clearly set out by the Supreme Court of BC in *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333 at paragraph 19 as follows:
- a. A change would be more significant based on its visibility or non-visibility to residents and its visibility or non-visibility towards the general public;
  - b. Whether the change to common property affects the use or enjoyment of the unit or number of units or an existing benefit of all unit or units;
  - c. Is there a direct interference or disruption as a result of the changed use?
  - d. Does the change impact on the marketability or value of the unit?
  - e. The number of units the building may be significant along with the general use, such as whether it is commercial, residential or mixed-use;
  - f. Consideration should be given as to how the strata corporation has governed itself in the past and what it is followed. For example, has it permitted similar changes in the past? Has it operated on a consensus basis or has it followed the rules regarding meetings, minutes and notices as provided in the SPA?
27. Although cited by the strata, Mr. Reid did not address the factors in *Foley*. I have considered them here and find the change in the bicycle locker use is not significant. I find there is insufficient information for me to determine whether the change in use impacted the marketability of any strata lots, or how the strata has governed itself in the past.
28. However, I agree with the strata that the change would not be significant to the majority of owners or to the public at all. As I have noted, the storage locker is the smaller of 2 bicycle storage lockers located in the underground parking garage. The strata arranged for owners who were storing bicycles in the subject locker to relocate

their bicycles to the larger locker. Mr. Reid did not raise any concern about owners, including himself, not being able to find a space to store their bicycles in the other larger, bicycle locker. Given the locker's location in the underground parking garage, the locker is not at all visible to the public.

29. As for whether the use and enjoyment of a strata lot was affected by the change, I find if there was any effect, it was minimal, as owners' bicycles could be stored in the other bicycle locker. The same argument applies to any concerns about a direct interference or disruption caused by the change in use. I also find the number of strata lots in the building, and that they are all residential strata lots, has no bearing on whether the change is significant. I say this because there is no evidence any owner was left without an area to store their bicycle.
30. In weighing all the factors in *Foley*, I find the change in use of the bicycle storage locker to corporate storage was not significant.
31. As for temporary changes to CP, I agree with Mr. Reid that SPA section 71 does not use the words "temporary" or "permanent" when addressing changes to use or appearance. However, I note In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the court found that placement of potted plants, cedars and other shrubs in a common property entrance was decorative and not a significant change. The court's reasoning included that the potted plants could be removed if requested by the council. I conclude that the placement of potted plants, although decorative in nature as the court found, might also be considered temporary, as they can be removed. In the case before me, the change in use of the bicycle storage locker was always intended to be temporary as the evidence suggests. I find the decision in *Reid* supports my conclusion that the temporary change in use of the bicycle storage locker was not a significant change within the meaning of section 71 of the SPA.
32. Mr. Reid says the strata agreed the change in use was significant because the  $\frac{3}{4}$  vote resolution proposed at the December 2020 AGM expressly stated the strata council found the change significant within the meaning of SPA section 71 in its preamble. While that may have been the case, it is possible, as the strata submits, that the strata council at the time was considering a permanent change in the locker use. The intent

of the resolution is unclear as it does specify if the proposed change was to be permanent or temporary. Also, there was no discussion of the proposed resolution contained in the minutes to assist in determining if owners perceived the change to be permanent or temporary.

33. Similarly, I do not agree with Mr. Reid that the fact the proposed  $\frac{3}{4}$  vote resolution was defeated at the December 2020 AGM means the owners instructed the strata not to make a temporary change. The evidence is not clear on this matter and I find it cannot be implied or inferred on the evidence before me.
34. It is also possible that the newly elected strata council changed its view on whether the change in use was significant, which I find the strata implies in its submissions. Under SPA sections 4 and 26, the elected strata council must exercise the powers and perform the duties of the strata, including bylaw enforcement. The SPA is silent on the issue of revisiting council decisions and I could not locate any case law directly on point. Absent any express prohibition for a strata council to change its decision on a particular matter, I find it is entirely appropriate, practical, and reasonable for a strata council to do so. There could be various reasons a strata council would change its position or point of view. These might include further consideration of the issue, new information, and reversing a decision of previous strata council. Based on my review of the legislation, I find it is the elected strata council that has authority to exercise the powers and perform the duties of the strata. Therefore, I find the elected strata council has the authority to change or reverse a previous decision, even if that decision was made by a prior strata council.
35. For these reasons, I find the temporary change in use of the bicycle storage locker to a storage area for common assets was not significant under SPA section 71 and I dismiss Mr. Reid's claim.
36. Given my conclusion, I decline to grant Mr. Reid's requested order that the strata follow the SPA provisions about changes to use or appearance of CP. I also decline to order the strata to call an SGM to consider a  $\frac{3}{4}$  vote to amend its bylaws and rules to prohibit future temporary and permanent changes to the use or appearance of CP, except as permitted under the SPA.

## **CRT FEES AND EXPENSES**

37. 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 not to follow this general rule. I find the strata was the successful party in this dispute. It did not pay CRT fees or claim disputed-related expenses, so I order none.
38. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Reid.

## **ORDERS**

39. I order that Mr. Reid's claims and this dispute are dismissed

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J. Garth Cambrey, Vice Chair