



# Civil Resolution Tribunal

Date Issued: October 15, 2021

File: ST-2021-001724

Type: Strata

Civil Resolution Tribunal

Indexed as: *Paulson v. The Owners, Strata Plan LMS 1384*, 2021 BCCRT 1094

BETWEEN:

DENNIS PAULSON and LORRAINE PAULSON

**APPLICANTS**

AND:

The Owners, Strata Plan LMS 1384

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. This dispute is about the use of a common property activity room.
2. The applicants, Dennis Paulson and Lorraine Paulson, rent a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 1384 (strata).

3. The Paulsons asked the strata council for permission use the common property activity room for 2 non-resident family members' guitar lessons. The strata council denied their request. The Paulsons seek an order that the strata council allow the Paulsons to use the activity room for their family members' guitar lessons.
4. The strata says it made its decision based on the advice it obtained about minimizing risk from COVID-19 pandemic. In submissions, the strata says, in effect, that the Paulsons' claim is moot given the Paulsons' are now allowed to use the activity room for guitar lessons again.
5. The Paulsons are represented by Mr. Paulson. The strata is represented by a strata council member. For the reasons that follow, I dismiss the Paulsons' claim.

## **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 and fairness.
8. 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.

9. Under CRTA section 123, 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 Paulsons' claim moot because they are now allowed to use the activity room as requested?
  - b. If the claim is not moot, are the Paulsons entitled to an order that they may use the activity room for their family members' guitar lessons?

## **EVIDENCE AND ANALYSIS**

11. It is undisputed that the Paulsons' lease their strata lot from a member of the Paulsons' family who owns the strata lot. That family member assigned their powers and duties to Mr. Paulson in an agreement under section 148 of the *Strata Property Act* (SPA).
12. Although the parties referred to an "amenity room", the strata plan identifies the room as an "activity room", so I will use that term in this decision. It is common ground that the activity room is common property and includes a washroom and balcony.
13. On January 25, 2021, Mr. Paulson emailed the strata manager to reserve the activity room for 1 hour on Tuesday afternoons weekly starting February 2, 2021. Mr. Paulson explained that the booking was for guitar lessons for 2 members of his family, who were minors and not strata residents, with 1 instructor. It appears that Mr. Paulson had not used the activity room for this purpose before and previously held the lessons in his strata lot. The Paulsons say that compared to their strata lot, the activity room's size, layout and location closer to the building entrance better allows for physical distancing.

14. The strata granted Mr. Paulson access to the activity room for February 2, 2021 but did not grant the weekly reservation. On February 8, the strata council met and considered Mr. Paulson's activity room reservation request. Mr. Paulson serves on the strata council. He was excluded from the vote, which occurred by email following the meeting. The Paulsons take issue with this exclusion, saying this is "not the first time that decisions have been made without all council members being consulted." I find the strata correctly excluded Mr. Paulson from the vote, given he had a direct interest in the outcome as the person making the request. Section 32 of the SPA says such council members cannot vote or participate in discussion except to provide information if asked.
15. On February 9, the strata emailed Mr. Paulson to advise that strata council had denied his request for a standing reservation. The strata says it denied Mr. Paulson's request due to the COVID-19 pandemic, in order to protect the safety of strata residents. Mr. Paulson says that reasoning is inconsistent with the strata council's decisions to use the activity room for strata council meetings and to allow workers to access the activity room's washroom.
16. In its reply submissions, the strata says at a June 14, 2021 council meeting, the strata decided to reopen the activity room to all owners. It says the Paulsons are now able to request the use the activity room at any time, including for their family members' guitar lessons.
17. The Paulsons do not dispute that they can now request to use the activity room for their family members' guitar lessons. So, before getting into the merits of the dispute, I will consider whether the Paulsons' claim is moot.

***Is the Paulsons' claim moot?***

18. In *Binnorsley v. BCSPCA*, 2016 BCCA 259, the BC Court of Appeal restated the principles of mootness as outlined by the Supreme Court of Canada in *Borowski v. Canada (Attorney General)*, 1989 CanLII 123 (SCC). A claim is said to be moot if, after a party initiates a claim or proceeding, events occur that affect the parties' relationship so that no "present live controversy" exists that affects the parties' rights.

19. Determining mootness involves 2 questions. The first is whether the live issue has disappeared and any issues are theoretical or academic. If there is no live issue, the second question is whether the court or tribunal should exercise its discretion to hear the case anyway: see *Borowski*.
20. The Paulsons' only requested remedy is that the strata allow them to use the activity room for their family members' guitar lessons. At the time they filed their claim, the strata was preventing that use because of concerns related to the COVID-19 pandemic. By the time the parties made their submissions in this dispute, provincial orders and guidelines loosed and the strata made the activity room available for booking again. None of this is disputed. The Paulsons are now free to book the activity room for their family members' guitar lessons. So, I find the live controversy has disappeared. I note the Paulsons did not seek damages for the temporary loss of access to the activity room.
21. The Paulsons say they have no argument with closing the activity room when provincial orders or guidelines require it. They say this was the case from March 11, 2021 to May 25, 2021. However, the Paulsons say their "point" is that when the strata council made its February 9, 2021 refusal decision, provincial orders and guidelines were less restrictive.
22. In effect, the Paulsons seek an order declaring that the strata council's previous decision, no longer in effect, was wrong. I find this amounts in substance to declaratory order, which the CRT generally does not have jurisdiction to make: see *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379. I also find that a declaration in this case would not have any practical effect on the parties' rights moving forward.
23. There is no evidence that this dispute is likely to recur. I also find that a decision on the merits would be of limited value to other strata corporations and strata owners because decisions about limiting access to common property due to the COVID-19 pandemic will turn on the particular facts and circumstances of each dispute. Those circumstances may include applicable strata bylaws and rules for accessing common

property, the timing of the strata's decision and any applicable Provincial Health Officer orders, among other factors. So, I find there is little precedential value in this claim to the parties or others.

24. In summary, I find that deciding this claim would have no practical effect on the parties' rights, and following *Binnersley* and *Borowski*, I dismiss this claim.
25. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the Paulsons.

## **ORDER**

26. I dismiss the Paulsons' claim and this dispute.

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Micah Carmody, Tribunal Member