



# Civil Resolution Tribunal

Date Issued: October 15, 2021

File: ST-2020-007176

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 2885 v. Faith*, 2021 BCCRT 1096

B E T W E E N :

The Owners, Strata Plan LMS 2885

**APPLICANT**

A N D :

PATRICIA FAITH

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Trisha Apland

## INTRODUCTION

1. This dispute is about alleged hoarding in a strata lot.
2. The respondent, Patricia Faith, owns a strata lot in the applicant strata corporation, The Owners, Strata Plan LMS 2885 (strata).
3. The strata says Ms. Faith has been hoarding inside her strata lot for years and storing items on common property contrary to its bylaws. It says the hoarding is a fire and

safety hazard and has caused a rodent infestation. The strata says its own attempts to resolve the issues have failed and it seeks the following orders:

- a. Ms. Faith refrain from hoarding items in her strata lot and storage locker now and in the future and to abide by the strata's bylaws and the *Strata Property Act* (SPA).
  - b. Ms. Faith have an independent professional specializing in hoarding clean her strata lot at her own cost within 3 months of this decision.
  - c. Ms. Faith permit the strata to perform monthly inspections for at least 1 year by "pest control, fire safety and other relevant agencies" at Ms. Faith's cost to ensure compliance with the order.
4. Ms. Faith says she has complied with the strata's requests, removed items to off-site storage, and allowed the strata property manager and a "fire marshall" to inspect her strata lot. She says she was under the impression that she "passed their test". Ms. Faith says she is not hoarding, the requested orders are unnecessary, and monthly inspections would be inconvenient because she generally spends six months abroad.
  5. The strata is represented by a strata council member and Ms. Faith is self-represented.

## **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. Has Ms. Faith been using or keeping her strata lot or assigned storage locker in a manner contrary to the bylaws?
  - b. If so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

11. In a civil claim such as this one, the applicant strata must prove its claims on a balance of probabilities (meaning "more likely than not").
12. I have read the parties' arguments and weighed their evidence, but only refer to that necessary to explain my decision. I have not for example, summarized the parties' submissions about issues the strata is not seeking any remedy about, such as Ms. Faith's scooters on common property, a broken refrigerator, outside refuse or her singing.

13. The strata is a low-rise building with 24 residential strata lots and 1 commercial strata lot over a common property parking garage.
14. The strata filed a complete set of bylaw amendments in the Land Title Office on November 20, 2006, with some amendments in later years. A summary of the bylaws relevant to this dispute follow.
15. Bylaw 3 requires an owner to repair and maintain the owner's strata lot, except for repair and maintenance that is the responsibility of the strata corporation under the bylaws.
16. Bylaw 4.1 says a resident or visitor must not use a strata lot, the common property or common assets in a way that causes a nuisance or hazard to another person or unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot.
17. Bylaw 9.1 says, in part, that a strata lot resident must allow a person authorized by the strata corporation to enter the strata lot or limited common property in an emergency, without notice, to ensure safety or prevent significant loss or damage. They must otherwise allow the strata corporation entry at a reasonable time and on 24 hours written notice to inspect, repair, replace or maintain common property, common assets, and any portions of a strata lot that is the strata's responsibility, or to ensure a resident's compliance with the SPA, bylaws and rules.
18. Bylaw 10 says the strata corporation must repair and maintain common property and common assets, plus certain limited parts of a strata lot that are not relevant here.
19. Bylaw 34.2 says the allocated storage lockers are to be used for miscellaneous storage only, and all hazardous materials are prohibited.
20. Bylaw 37.1 says a resident must not allow a strata lot to become unsanitary or untidy with refuse and any expenses incurred by the strata corporation to remove refuse will be charged to the owner. Bylaw 37.2 requires a resident to ensure ordinary household refuse and garbage is securely wrapped and placed in containers and to appropriately remove recyclables, refuse and garbage.

### ***Past Bylaw Enforcement Action and CRT dispute***

21. In 2017 Ms. Faith was allegedly storing items in the common property hallways, the parking garage and a storage locker contrary to the strata's bylaws.
22. The strata has an obligation under the SPA to reasonably enforce its bylaws and resolve any contraventions that pose a safety hazard to the building or other residents. See Vice Chair's discussion in *Weinrauch et al v. The Owners, Strata Plan NW 3119 et al*, 2019 BCCRT 257 at paragraphs 24 to 28, which is not binding but persuasive.
23. The strata's correspondence shows the strata took bylaw enforcement against Ms. Faith under SPA section 129. The strata fined Ms. Faith under SPA section 130 and removed her items from the common property under SPA section 133(1). SPA section 133(1) permits a strata corporation to do what is reasonably necessary to remedy a contravention of its bylaws or rules, including doing work on or to a strata lot, the common property or common assets, and removing objects from the common property or common assets. I provide these details by way of background as the strata's historical bylaw enforcement actions are not directly at issue in this dispute.
24. The strata building had a pest infestation. According to a June 26, 2017 letter to Ms. Faith from the strata's lawyer, Shawn Smith, the strata inspected all strata lots on May 26, 2017. Mr. Smith's letter described the strata finding evidence of hoarding and "hundreds" of mice, flies and cockroaches in Ms. Faith's strata lot and concluding that her strata lot was the source of the pest infestation. The strata's 2017 inspection report relied on by Mr. Smith is not in evidence.
25. In October 2017, the strata commenced a CRT dispute which was resolved through a Consent Resolution Order (CRO). As set out in a March 2, 2018 CRO, the Vice Chair ordered Ms. Faith to refrain from keeping liquid or food items in the building's storage locker contrary to bylaw 34.2 and to refrain from storing items on other parts of the common property. The CRO included no specific order that Ms. Faith remove items or clean her strata lot or otherwise remedy the alleged source of the pest infestation, which is at issue here. However, the CRO required Ms. Faith to allow a

pest control expert to inspect her strata lot on March 16, 2018, and monthly thereafter until the pest inspector confirmed her strata lot was not the source of the strata property pest infestation. Under the CRO, Ms. Faith consented to have her strata lot inspected by the Vancouver Fire Department inspector in March 2018 and to monthly inspections of her strata lot by another strata lot owner for 12 months, which has since expired.

***Has Ms. Faith been using or keeping her strata lot or assigned storage locker in a manner contrary to the bylaws?***

26. Ms. Faith says she is not the best housekeeper and uses her bedroom for a closet and stores her items in storage boxes. She says she also stores extra food in the boxes that she donates weekly to charities. Ms. Faith says this is “unconventional” but it is not what she views as hoarding. Ms. Faith says she paid the strata’s bylaw enforcement fines and allowed it to inspect her home to “keep the peace”. She says the common property storage issues are historical and there is no current issue.
27. In the strata’s reply submissions, it agrees there is no current issue with Ms. Faith storing items on common property, including in her assigned storage locker. So, I have not discussed the historical common property issues any further.
28. The current issue is whether Ms. Faith is using or keeping her strata lot in a condition that is contrary to bylaws 4.1 and 37.

***Rodent Infestation***

29. The strata submitted 13 inspection reports by Local Pest & Wildlife Control (Local) dated March 17, 2018 to March 15, 2019 that were performed under the CRO. The Local technician’s reports include summaries of the state of Ms. Faith’s strata lot, rat and mouse activity inside her strata lot, and its attempts at treatment. The reports also include photographs taken of Ms. Faith’s strata lot during Local’s inspections. They show it was extremely cluttered and messy. Her floors, counters, and furniture were covered with piles of personal items, mixed with food, containers, and garbage.

30. The January 3, 2019 report by Local's employee, Denise Louzecky, states that the observed clutter and garbage in Ms. Faith's strata lot are attractants and provide harborage (shelter and protection) for pests. They recommended the strata immediately address these issues because they were the source of the pest issue throughout the strata building.
31. The strata does not say whether it took any specific action to remedy the infestation source in Ms. Faith's strata lot after receiving Local's January 2019 report. So, I find it likely did not.
32. The strata says it stopped the inspections in 2020 because of the COVID pandemic. The strata commenced this CRT dispute on September 15, 2020.
33. The next and last Local report is dated March 23, 2021. Local employee Marie Ornopia says they entered and inspected Ms. Faith's strata lot on March 15, 2021 and observed clutter, lack of sanitation, and evidence of heavy rodent activity. They determined Ms. Faith's strata lot was the source of the pest issues throughout the building and would continue to put other strata lots at risk of infestation. They recommended the strata address the clutter and sanitation issues "right away". The report includes photographs, which I find are consistent with Local's previous description of the strata lot's condition. It is not clear what steps the strata took if any, to address the infestation after receiving Local's report.
34. Ms. Faith asserts that the rodents were entering through holes in her walls, Local's reports are fabricated, and it will "tell anyone whatever they want to hear". However, Ms. Faith provided no support for her assertion that its reports are fabricated, and I find no reason Local would fabricate its reports. Local is unrefutably an independent, professional company specialising in pest control. I accept Local's reports accurately describe the condition and rodent activity in Ms. Faith's strata lot during its inspections, as they are supported by photographs. Since Ms. Faith submitted no contrary report from a pest control specialist, I find Ms. Faith's strata lot was likely the source of the rodent infestation. This conclusion is consistent with a common

understanding that rodents are generally attracted to open garbage and food, which the photographs show were littered throughout Ms. Faith's strata lot for several years.

35. Under bylaw 3, Ms. Faith is required to maintain her strata lot. If she has a rat infestation and holes on her inside strata lot walls, I find she is obligated to repair and resolve these issues under bylaw 3. Based on the photographs and reports, I find Ms. Faith breached bylaw 37 by not keeping her strata lot sanitary or tidy. I find she also breached bylaw 4.1 by using her strata lot in a manner that created a rodent infestation, which I find is a hazard for the building and its residents.

### *Fire and Safety Hazard*

36. As mentioned, the 2018 CRO required Ms. Faith to have her strata lot inspected by a Vancouver Fire Department inspector in March 2018. Ms. Faith says a "fire marshal" did "OK" her strata lot. I infer she means the Vancouver Fire Department inspector. However, Ms. Faith does not say provide any evidence of an inspection and the strata does not say anything about it. In any event, the inspection, if any, would have taken place 3 years ago and circumstances change.
37. The strata submitted a February 12, 2020 report from Fire-Pro Fire Protection (Fire-Pro) prepared by its president, Shan Parmar. The report states that Fire-Pro's AASTTBC Registered Fire Protection Technician attended Ms. Faith's strata lot on January 9, 2020 to replace a defective smoke alarm and observed the suite was "full of clutter". The report states that the strata lot hoarding and clutter causes a significant increase to fire risk and impacts first responders' abilities to move through pathways and exits. I accept on the conclusions in Fire-Pro's report that Ms. Faith's strata lot was a fire and safety hazard in 2020 as it is consistent with the photographic evidence. The photographs show Ms. Faith's strata lot passages were blocked by the clutter and items were piled on or next to her kitchen stove. I find Ms. Faith breached bylaw 4.1 by using her strata lot in a way that created a fire and safety hazard.



***What if any, is the appropriate remedy?***

38. The strata argues that the clutter and cleanliness issues in Ms. Faith's strata lot are cyclical and says her hoarding poses a safety risk to the building. Again, the strata seeks an order that Ms. Faith refrain from hoarding items in her strata lot and storage locker now and in the future and to abide by the strata's bylaws and the SPA. It also seeks an order that Ms. Faith have an independent professional specializing in hoarding clean her strata lot at Ms. Faith's cost and permit the strata to perform monthly inspections for at least 1 year by "pest control, fire safety and other relevant agencies" at Ms. Faith's cost to ensure compliance.
39. Ms. Faith says she is not hoarding in her strata lot and the requested remedies are not necessary. She uploaded 5 photographs of her strata lot's condition at the time the parties made their submissions in June 2021. I find the photographs show parts of Ms. Faith's strata lot were decluttered and the kitchen surfaces were fairly clean as of June 2021.
40. Keeping the CRT's mandate in mind, I decided not to return to the parties for more evidence about the exact state of Ms. Faith's strata lot at present. Considering the level of documented clutter and sanitary issues from 2017 to 2021, I am not satisfied Ms. Faith has fully addressed the issues inside her strata lot. Neither party submitted a "sign-off" from an expert that the rodent infestation or fire hazards were resolved and the photographs only show parts of Ms. Faith's strata lot. I find the fire hazard conditions and rodent infestation set out in the Fire-Pro and Local reports are not trivial and need to be addressed, if not yet done, to ensure the safety of the strata building and its residents. In the circumstances, I find it is appropriate to make certain orders to ensure the parties address the potential hazards while ensuring Ms. Faith is treated fairly in the process. However, I have not ordered the exact remedies requested by the strata and I find they are not all necessary.
41. I find the requested order that Ms. Faith refrain from hoarding in the future or to otherwise comply with the bylaws and SPA is overly broad and simply restating what Ms. Faith is already required to do under bylaw 4.1 and 37.1. So, I decline to make this unnecessary order.

42. As for the inspections, the strata already has a CRO for a pest control expert to inspect Ms. Faith's strata lot monthly until the expert confirms her strata lot is not the strata's pest infestation source. There is no final report from Local or another pest control expert stating that the infestation source was eradicated. So, I decline to make the requested order for 1 year of monthly inspections by a pest control expert as there already is an order about it. While the CRO does not say who must pay for the inspections, I find I do not have authority under the CRTA to amend the CRO to add a requirement that Ms. Faith pay for the pest control inspections.
43. The CRO has no ongoing requirement for inspections by a fire safety and prevention expert. Considering the potential risk and the strata's obligation to enforce its bylaws, I find the strata must engage an expert who specializes in fire safety and protection (fire safety expert) at its own cost to inspect Ms. Faith's strata lot as soon as reasonably possible to determine if her strata lot poses a fire and safety risk and to provide its results and recommendations in writing to remedy any hazard it finds exists. As required by its bylaws, I find the strata must give 24 hours advance written notice for the inspection and Ms. Faith must allow up to 2 council members and the fire safety expert access to her strata lot at the arranged time.
44. The strata must promptly give a copy of the fire safety expert's report and any pest control expert's report to Ms. Faith.
45. If either a fire safety or a pest infestation expert concludes on their inspections that Ms. Faith's strata lot is still the source of the pest infestation or fire hazard, I find Ms. Faith must take the actions recommended by the experts to repair, clean, or otherwise remedy the hazard in her strata lot at her own cost within 30 days of receiving the report or a different time as recommended by the expert.
46. Ms. Faith must inform the strata in writing once she remedies the hazard and allow 2 council members access to inspect her strata lot at an agreed time with the relevant expert to confirm the hazard was resolved.
47. I decline to order additional monthly inspections because Ms. Faith is already required under bylaw 9.1 to allow the strata access to her strata lot with 24 hours notice to

ensure compliance with the SPA and bylaws. I find Ms. Faith has been cooperative in permitting the strata access to her strata lot for inspections over the years and there is nothing to lead me to conclude this will change. So, I find the requested order for monthly inspections is unnecessary or premature.

## **CRT FEES AND EXPENSES**

48. 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 find there was mixed success and so I award the strata reimbursement of \$112.50, which is half its paid CRT fees.
49. In its claim for dispute-related expenses, the strata asks for an order that Ms. Faith reimburse it for any additional expenses it might incur if Ms. Faith's strata lot continues to be the source of a pest infestation or otherwise poses a hazard. I find the strata's claim is not for dispute-related expenses, which are expenses only related to the conduct of the CRT proceeding (CRTA section 49(1)(b)). The strata can already require Ms. Faith to pay the reasonable costs to remedy a violation of its bylaws as set out in bylaw 37 and SPA section 133(2). So, I decline to make such an order here.
50. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Faith.

## **ORDERS**

51. I order that:
  - a. As soon as reasonably possible and on 24 hours advance notice to Ms. Faith, the strata must access Ms. Faith's strata lot with a fire safety expert to determine whether Ms. Faith's strata lot remains a fire and safety hazard and to obtain recommendations to remedy any hazard the expert finds may exist.
  - b. Ms. Faith must permit up to 2 council members and the fire safety expert to access her strata lot at the arranged time.

- c. The strata must promptly provide Ms. Faith any fire safety expert or pest control expert reports of her strata lot.
  - d. If either a fire safety or the pest infestation expert concludes based on their inspections that Ms. Faith's strata lot is still the source of the fire hazard or pest infestation, Ms. Faith must take the actions recommended by the expert to repair, clean, or otherwise remedy the hazard in her strata lot at her own cost within 30 days of receiving the expert's report or at a different time as recommended by the expert.
  - e. Ms. Faith must inform the strata in writing once she remedies the hazard and allow 2 council members access to inspect her strata lot at an agreed time with the relevant expert to confirm the hazard is resolved.
  - f. Within 30 days of this order, Ms. Faith must pay the strata \$112.50 in CRT fees.
  - g. The strata is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
  - h. The strata's remaining claims are dismissed.
52. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, 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.

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Trisha Apland, Tribunal Member