



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Horton v. The Owners, Strata Plan NW2*, 2021 BCCRT 1153

B E T W E E N :

DANIEL HORTON

APPLICANT

A N D :

The Owners, Strata Plan NW2

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about disclosure of financial records by a strata corporation.
2. The applicant, Daniel Horton, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW2 (strata).

3. Mr. Horton says the strata breached the *Strata Property Act* (SPA) by failing to provide records he requested. He requests orders that the strata provide the documents and explain the reasons for the delay.
4. The strata says it has already provided Mr. Horton with all requested documents that are “appropriate to be shared”, keeping in mind the privacy and confidentiality of other strata lot owners.
5. Mr. Horton is self-represented in this dispute. The strata is represented by a strata council member.

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.
10. The applicant provided late evidence, after the deadlines for providing evidence and submissions had passed. I have reviewed that evidence, and agree with the strata's submission that the late evidence is not relevant to the sole issue before me to decide in this dispute. The issue in this dispute, as set out in the Dispute Notice, is whether the strata must provide documents to Mr. Horton. None of the late evidence relates to that issue, but is about other alleged conduct in the strata, such as harassment and violation of a restraining order. Since I find the late evidence is not relevant to this dispute, I have put no weight on it in making this decision.

ISSUE

11. Must the strata provide Mr. Horton with additional or unredacted documents?

REASONS AND ANALYSIS

12. In a civil claim like this one, Mr. Horton, 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.
13. SPA section 35 sets out a list of the records that a strata must prepare and keep. Section 36 says that "on receiving a request", the strata must make the records listed in section 35 available for inspection and provide copies to an owner within 2 weeks (or 1 week for bylaws or rules).
14. Mr. Horton says he requested documents from the strata on October 30, 2020 but the strata failed to provide them, even after he followed up with further correspondence. His requested document included specific financial information discussed further below. He says the strata provided a series of budget comparison sheets for the period of February to October 2020, but these were insufficient.

15. The strata says Mr. Horton is “fully informed” about the strata’s finances, and he is not entitled to further financial records because his general request for all financial records could breach the confidentiality of other owners. The strata says it sent Mr. Horton redacted financial records, and told him financial records would be “discussed as necessary” at the strata’s April 29, 2021 annual general meeting (AGM). The strata admits it did not provide the redacted records within the required 2 week period, but says its volunteer council members were busy dealing with other strata issues. The strata also submits that Mr. Horton’s emails were confusing, frequent, and sometimes inappropriate and harassing.
16. In his dispute application, Mr. Horton requests that the strata provide the following records:
- Financial records from January 2020 to the present, showing money received and spent, and the reason for the expenditure.
 - Bank statements, cancelled cheques and statements of deposit from January 2020 to the present.
 - Any contracts between the strata and realtor Shawn Shakibaei or Sutton 1st West Realty.
 - Any correspondence about the sale of the strata property, and financial information about the sale.
17. One of Mr. Horton’s requested remedies is an explanation about why the strata did not provide the documents within the required time period. As noted above, the strata essentially says its council members were too busy. I find this does not excuse the breach of SPA section 36, which requires disclosure within 2 weeks of a request. However, I order no further explanation, as I find it would serve no useful purpose.
18. The strata says it was not required to disclose some of the requested financial records, and it was not appropriate to do so, as disclosure could have breached owner confidentiality and breached privacy legislation. For that reason, the strata provided Mr. Horton with some documents in a redacted form. However, I find the

strata was not entitled to redact or withhold financial information covered by SPA section 35 for any privacy-related reasons.

19. SPA section 36 is mandatory, and requires a strata corporation to provide a requesting owner with an unredacted copy of document listed in SPA section 35. Strata corporations are subject to the *Personal Information Protection Act* (PIPA). However, section 18(1)(o) of PIPA says that an organization may disclose personal information about an individual without the consent of the individual if the disclosure is required or authorized by law. So, I find that disclosing any document listed in SPA section 35 is authorized under PIPA section 18(1)(o). This conclusion is consistent with the Office of the Information and Privacy Commissioner's (OIPC) publication "PIPA and Strata Corporations: Frequently Asked Questions". Previous CRT decisions, which are not binding but persuasive, have reached the same conclusion: see *Ottens et al v. The Owners, Strata Plan LMS 2785 et al*, 2019 BCCRT 730 and *Johnson v. The Owners, Strata Plan KAS 2716*, 2021 BCCRT 797.
20. For these reasons, if financial records covered by SPA section 35 contain personal information about owners, the strata is required to disclose them in unredacted form upon request. I find the strata was therefore not entitled to redact the financial statements it provided to Mr. Horton by email on April 12, 2021.
21. SPA section 35(1)(d) says the strata must keep books of account showing money received and spent and the reason for the receipt or expenditure. *Strata Property Regulation* (Regulation) section 4.1(3) says the strata must retain records listed in SPA section 31(1)(d) for at least 6 years. Based on these provisions, I find the strata must immediately fulfill Mr. Horton's request for copies of its books of account from January 2020 to the present, showing money received and spent, and the reason for the expenditure.
22. I note that in its correspondence, the strata says financial statements do not fall within SPA section 35. I find that the strata has not established that its financial statements are different from books of account, which it is required to keep and disclose under the SPA. Also, under SPA sections 45 and 103 and Regulation 6.7, the strata is

required to create financial statements with detailed financial information and provide them to all owners annual as part of its annual general meeting notice package. I find that if the strata has prepared any financial statements, it is required to provide them in unredacted form to owners on request, under SPA section 36.

23. Based on all of these provisions, I find Mr. Horton is entitled to receive copies of the strata's financial statements from January 2020 to the present, as requested.
24. Mr. Horton also requests copies of all bank statements, cancelled cheques and statements of deposit from January 2020 to the present. I find he is entitled to these documents, because SPA section 35(2)(l) says the strata must keep bank statements, cancelled cheques and certificates of deposit. I therefore order the strata to provide him with these additional financial documents, as specified below.
25. Mr. Horton also requests copies of any contracts between the strata and realtor Shawn Shakibaei or Sutton 1st West Realty. The strata says there are no such contracts, and I find Mr. Horton has not proven otherwise. I therefore do not order disclosure of any contracts.
26. Finally, Mr. Horton requests copies of any correspondence about the sale of the strata property, and financial information about the sale. From the evidence before me, I infer the sale in question relates to a potential windup of the strata, although the parties did not make submissions about that.
27. Read together, SPA section 35(2)(k) and Regulation says the strata must keep copies of any correspondence it, or the council, sends or receives for at least 2 years. This includes correspondence sent or received by the strata or its council by its property manager, if it has one.
28. I find that correspondence about a sale is captured by SPA s. 35(1)(k). I therefore order the strata to provide Mr. Horton with copies of any correspondence it has sent or received about the possible sale of common property or strata lots within the strata since January 2018. I chose this date because it is 2 years before Mr. Horton filed

this CRT dispute, so the documents fit within the retention period identified in the Regulation.

29. If the strata does not have any of this correspondence, it must provide Mr. Horton with a statement signed by 2 council members, stating either that no such correspondence was ever sent or received, or alternatively explaining what happened to the correspondence.
30. Mr. Horton also requests “financial information about the sale”. I find this request is vague, and as currently phrased does not specifically fall within SPA section 35. I therefore do not order disclosure of financial information about any potential sale, unless it was attached to correspondence sent or received by the strata. If it was attached, it must be disclosed as it forms part of the correspondence.
31. A strata corporation is normally allowed to charge up to 25 cents per page for records provided to an owner. However, since the strata has breached SPA section 36 by providing records late and refusing to provide records to which Mr. Horton was entitled, I find it is appropriate to order the strata not to charge for any records it provides as a result of this dispute.

CRT FEES AND EXPENSES

32. As Mr. Horton 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.
33. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Mr. Horton.

ORDERS

34. I order the following:
 - a. The strata must immediately provide Mr. Horton with copies of its financial statements and books of account from January 2020 to the present. These

documents must show all money received and spent, and the reason for the expenditure.

- b. The strata must immediately provide Mr. Horton with copies of all bank statements, cancelled cheques and statements of deposit from January 2020 to the present.
 - c. The strata must immediately provide Mr. Horton with copies of any correspondence it has sent or received about the possible sale of common property or strata lots within the strata since January 2018. If the strata does not have any of this correspondence, it must, within 14 days of this decision, provide Mr. Horton with a statement signed by 2 council members, stating either that no such correspondence was ever sent or received, or alternatively explaining what happened to the correspondence.
 - d. The strata must not charge Mr. Horton for copies of these documents.
 - e. The strata must immediately reimburse Mr. Horton \$225 for CRT fees.
35. Mr. Horton is entitled to postjudgment interest under the *Court Order Interest Act*, as applicable.
36. 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