



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Wong v. The Owners, Strata Plan 1279*, 2021 BCCRT 1192

B E T W E E N :

TRACY-ANNE WONG and BRENDAN RUSH

APPLICANTS

A N D :

The Owners, Strata Plan 1279

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about governance and compliance with the *Strata Property Act* (SPA).
2. The applicants, Tracey-Anne Wong and Brendan Rush, co-own a strata lot in the respondent strata corporation, The Owners, Strata Plan 1279 (strata). The strata is

made up of 6 strata lots in 1 building and Ms. Wong was a member of the strata council at the time this dispute was started.

3. The applicants say the strata council has consistently contravened the SPA, and generally does not understand or accept that it must follow the SPA. As examples, the applicants say, among other things, the strata:
 - a. failed to understand or accept requirements for its rental restriction bylaw,
 - b. often excluded the applicants in strata council discussions or decisions despite that the bylaws provide them 1 vote on the strata council,
 - c. failed to provide requested documents required under the SPA,
 - d. failed to propose budgets consistent with the SPA, and
 - e. failed to enforce bylaws in a consistent manner.
4. The applicants seek orders that the strata;
 - a. comply with the SPA, bylaws, Strata Property Regulation (regulations) and rules, and obtain professional advice and guidance for such compliance,
 - b. Ensure its strata council members attend workshops to upgrade their understanding of their roles and responsibilities under the SPA, and
 - c. Enforce bylaws in a “fair and consistent manner in conformity with the SPA”.
5. The strata says that since 2017, there has been “a torrent of complaints” from the applicants but that the issues that have been raised are resolved, or are being resolved. The strata says it has always tried to resolve any issues in accordance with the SPA. The strata agrees with the orders sought by the applicants.
6. The applicants are represented by Ms. Wong. The strata is represented by a strata council member.
7. For the reasons that follow, I make the orders requested by the applicants and agreed to by the strata.

JURISDICTION AND PROCEDURE

8. 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.
9. 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.
10. 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.
11. 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.

Preliminary Issue – Council Hearing Request

12. SPA section 189.1(2)(a) requires the applicants to request a council hearing under SPA section 34.1 before making a request of the CRT for dispute resolution services. The applicants admit they did not request a council hearing because one of the major alleged issues is that the strata council does not follow the SPA provisions, or "recognize the SPA contraventions" as the applicant put it. I infer the applicants request the hearing requirements be waived as the CRT is permitted to do under SPA section 189.1(2)(b).

13. I find it is reasonable in the circumstances of this dispute for me to waive the council hearing requirement under the SPA given the strata agrees with the applicants' requested remedies. I find it would not reasonable or in keeping with the CRT's mandate to be speedy, economical, and flexible to force the applicants to request a hearing at this stage of the dispute resolution process.

ISSUES

14. The issues in this dispute are:

- a. Are there any live issues before the CRT that must be resolved?
- b. Should the CRT grant the orders requested by the applicants and agreed by the strata?

BACKGROUND

15. In a civil proceeding such as this, as applicants must prove their 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.

16. The strata is a residential strata corporation consisting of 6 strata lots in a single 4-storey building. It was created in January 1983 under the *Condominium Act* and continues to exist under the SPA.

17. On June 4, 2002, the strata filed a complete new set of bylaw with the Land Title Office (LTO). I infer the bylaw amendments replaced all previously filed bylaws. The rental restriction bylaw (bylaw 31) was amended on June 10, 2019. There are no other bylaw amendments filed with LTO. I find the June 2002 bylaws as they were amended in June 2019 apply to this dispute.

18. A large amount of evidence dating back to 2017 was provided by the parties, which I have read. Much of it is not relevant to this dispute and relates to claims that could be out of time under the *Limitation Act* as noted by the applicants. However, given there are no remedies in dispute, I have not asked the parties for additional submissions on the application of the *Limitation Act*.

EVIDENCE AND ANALYSIS

Are there any live issues before the CRT that must be resolved?

19. As noted, the applicants allege strata council has consistently contravened the SPA, and generally does not understand or accept that it must follow the SPA. As noted, the applicants provided examples of alleged non-compliance, and although the strata does not necessarily agree with the allegations, it says any issue has either been resolved, or is the process of being resolved. I agree. This is supported by the applicants' submission that their "only aim is conformity with the legislations (sic) and to have the bylaws applied equally to all owners". Their requested remedies are directly related to their submission, and the strata agrees with the remedies, which I find significant. On that basis, I find there are no live issues before the CRT that must be resolved.
20. I appreciate the parties had several disagreements in the months and years preceding this dispute, and that the applicants may have been frustrated about certain procedural matters or the interpretation of the SPA and bylaws. However, given the parties' agreement, I find the only remaining question is whether the CRT should order the requested remedies.

Should the CRT grant the orders requested by the applicants and agreed by the strata?

21. I note that the SPA (and its regulations) is large, complex piece of legislation that governs most aspects of the strata's operation. Strata council members are volunteers and are not expected to be experts in how a strata corporation must operate.
22. Ordinarily, I might not have ordered the strata to comply with the SPA, bylaws regulations, and rules because the strata is already required to do so under the SPA. However, given the parties' agreement, I make the requested order, which includes and order to enforce bylaws in a fair and consistent manner.
23. There is evidence the strata has already obtained legal advice on a unit entitlement issue raised by the applicants and that it has obtained a membership in the

Vancouver Island Strata Owners Association (VISOA), through which some strata council members have attended workshops. Thus, the strata appears to have already obtained professional advice and guidance, as well as taken steps to ensure its strata council members have increased their understanding of the SPA. In the circumstances of this dispute, I find these things should not be discouraged, so I make the related orders on which the parties agree. While the orders may be somewhat broad, I find the strata can interpret them appropriately, as it has already done.

24. Lastly, I note that the strata is not restricted only to VISOA workshops, and should rely on professional guidance and advice for things its strata council members do not clearly understand.

CRT FEES AND EXPENSES

25. 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 the applicants were the successful party in this dispute, but they did not claim any dispute-related fees and submit they do not want to make a monetary claim. Therefore, I make no order for reimbursement of CRT fees or dispute-related expenses.
26. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDERS

27. I order the strata must:
 - a. comply with the SPA, regulations, its bylaws and rules, and obtain professional advice and guidance for such compliance, including enforcing its bylaws in a fair and consistent manner, and
 - b. Ensure its strata council members attend workshops to upgrade their understanding of their roles and responsibilities under the SPA, as appropriate.

28. 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.

J. Garth Cambrey, Vice Chair