



# Civil Resolution Tribunal

Date Issued: December 1, 2021

File: ST-2021-002773

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR 880 v. Frigault*, 2021 BCCRT 1264

BETWEEN:

The Owners, Strata Plan VR 880

**APPLICANT**

AND:

KATHLEEN FRIGAULT

**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 alleged contravention of bylaws concerning an owners' vehicle leaking fluids, and related fines.
2. The respondent, Kathleen Frigault, is a leasehold tenant of strata lot 12 (SL12) in the applicant leasehold strata corporation, The Owners, Strata Plan VR 880 (strata). I

note that under *Strata Property Act* (SPA) section 1(1), an owner is defined to include a leasehold tenant within a leasehold strata corporation. Therefore, Ms. Frigault is considered an owner in this dispute.

3. The strata says that Ms. Frigault is in contravention of its bylaws because her vehicle leaks fluid onto the surface of the parking stall in the carport of SL12. The strata seeks orders that Ms. Frigault stop parking her vehicle in the carport until the strata is satisfied the vehicle is no longer leaking, remove cardboard from the parking stall, and pay \$400 for outstanding bylaw fines.
4. Ms. Frigault does not dispute her vehicle leaks fluid and essentially says she cannot afford to pay for the required repairs to her vehicle that will stop it from leaking fluids. Ms. Frigault says she is in the process of saving the funds needed to pay for the repairs or that she may purchase a new vehicle, and has made several diligent efforts to clean the parking stall of vehicle fluids. She also says it is only the strata that has complained of her efforts to collect vehicle fluid leaks on cardboard and that other owners have not complained to her about the condition of her parking stall.
5. Despite Ms. Frigault's apparent agreement to pay fines and the strata's Civil Resolution Tribunal (CRT) fees as shown on her filed Dispute Response, I find her responses can be interpreted differently based on her submissions. Specifically, I find Ms. Frigault's position is that she should not have to pay these expenses. I infer that Ms. Frigault feels that she should be given time to repair or replace her vehicle and disagrees with the strata's requested remedies.
6. The strata is represented by a strata council member. Ms. Frigault is self-represented.
7. For the reasons that follow, I generally find in favour of the strata, but order payment of a single \$200 fine as discussed below.

## **JURISDICTION AND PROCEDURE**

8. These are the formal written reasons of the 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.

## **ISSUES**

12. The issues in this dispute are:
  - a. Is the strata entitled to an order that Ms. Frigault not park her vehicle that leaks fluids in her carport until the vehicle no longer leaks?
  - b. Is the strata entitled to an order that Ms. Frigault remove the cardboard from underneath the vehicle and her carport?
  - c. Must Ms. Frigault pay the strata outstanding bylaw fines?

## BACKGROUND

13. In a civil proceeding such as this, as applicant, the strata must prove its 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.
14. The strata is a residential strata corporation consisting of 33 strata lots in 3 buildings. It was created in March 1981 under the *Condominium Act* and continues to exist under the SPA. The strata plan filed with the Land Title Office (LTO) shows the carport of SL12 is part of the strata lot. However, the strata says it is limited common property (LCP) designated for the exclusive use of Ms. Frigault as owner of SL12. LTO documents show that the strata passed a special resolution under section 53 the *Condominium Act* (now  $\frac{3}{4}$  vote resolution under the SPA) on March 14, 1989, designating certain LCP for exclusive use of some strata lots, including SL12. I have reviewed the registered section 53 document and note the referenced sketch plan showing the LCP designations was not attached. Based on the LTO document and that Ms. Frigault did not dispute her carport parking stall was LCP designated to SL12, I accept, on a balance of probabilities, that it is.
15. LTO documents also show the strata filed bylaw amendments in 1985 and 1992. These bylaw amendments are not before me. However, the *Strata Property Regulation* (regulations) addressed transition provisions about bylaws from the *Condominium Act* to the SPA when the SPA came into force on July 1, 2000. The relevant sections of regulation 17.11 state the Standard Bylaws of the SPA were deemed to be the bylaws for all strata corporations on January 1, 2002, except to the extent that conflicting bylaws were filed with the LTO, unless the filed bylaws also conflicted with the SPA.
16. The parties made no submissions about whether the bylaws filed in 1985 and 1992 remain in effect. Based on the overall evidence and my review of the additional filed bylaw amendments of 2006, 2011, 2016 and 2018 (particularly the numbering of the amended bylaws), I infer the 1985 and 1992 bylaw amendments made under the *Condominium Act* had no effect after January 1, 2002. Therefore, I find the strata's bylaws are the Standard Bylaws under the SPA as they have been amended after January 1, 2002.

17. The strata has also adopted rules as permitted under SPA section 125. I discuss the bylaws and rules relevant to this dispute below, as necessary.
18. The basic facts that follow are not disputed.
19. On June 4, 2019, January 17 and March 24, 2020, the strata's property manager wrote to Ms. Frigault about alleged bylaw violations including that her vehicle was leaking fluid on to her carport parking stall. Among other things, the letters claimed leaking fluid from her vehicle was in contravention of bylaw 3(2) which states an owner must not cause damage, other than reasonable wear and tear, to CP.
20. I infer from the parties submissions that in June 2020 Ms. Frigault wrote to the strata explaining she was aware her vehicle leaked fluids and that she was saving her money for the required repair. Ms. Frigault requested the strata rescind the fine, although it is unclear if a fine was actually imposed at that time.
21. In a June 23, 2020 letter, the strata requested Ms. Frigault park her vehicle outside of the strata's property until the vehicle was repaired. The letter advised that if Ms. Frigault provided a mechanic's report that confirmed her vehicle was repaired, she could resume parking in her carport stall. The strata also requested Ms. Frigault have the parking stall professionally cleaned. The letter also reminded Ms. Frigault that her leaking vehicle was in contravention of bylaw 3(2) and stated that if Ms. Frigault did not attend to the things the strata requested within 21 days, the strata might impose fines.
22. In a July 30, 2020 email to the property manager, Ms. Frigault provided copies of vehicle repair receipts and advised her parking stall was professionally cleaned by the strata's contractor on July 16, 2020.
23. The strata responded to Ms. Frigault on September 22, 2020 stating that because her vehicle continued to leak fluids, she did not park it offsite as requested, and she did not provide proof the parking stall was professionally cleaned, the strata had fined her \$200. The letter stated the fluid leaks were a violation of the strata's bylaw 3(2). The letter also stated that cardboard placed under her vehicle was considered a hazard and contrary to bylaw 3(1) that prohibits owners using CP in a way that causes

a nuisance or hazard to another person. The letter also stated that storing cardboard in the parking stall was contrary to certain strata rules discussed further below. Finally, the letter stated if the bylaw and rule contraventions were not resolved within 14 days, maximum fines of \$200 for bylaws and \$50 for rules could be imposed.

24. The January 13, 2021 strata council meeting minutes show the issue was ongoing and that the strata council agreed to impose an additional \$200 fine for the fluid leaks. The minutes also state fines were paid for previous violations, including fines for contravention of rules. Although the minutes do not refer to Ms. Frigault by name, I find she is the individual referenced in the minutes.
25. On January 13, 2021, the strata property manager wrote to Ms. Frigault stating the vehicle was still parked in the parking stall and leaking fluids. It also stated cardboard continued to be placed under the vehicle. The letter stated an additional \$200 fine was imposed for the fluid leaks, and restated violations of bylaw 3(2) and the rules. Ms. Frigault was given 14 days to comply or request a hearing, failing which additional fines might be imposed.
26. The strata wrote to Ms. Frigault again on March 31, 2021. The letter acknowledges February 6, 2021 correspondence from Ms. Frigault, although that correspondence is not before me. The letter states Ms Frigault's vehicle was still leaking fluids on to her carport parking stall contrary to bylaw 3(2) and that cardboard was still used to collect the fluids contrary to bylaw 3(1) and rules 4, 9, and 12, all of which I discuss in greater detail below. Finally, the letter states there is a single \$200 bylaw fine outstanding and that the strata had decided to start a CRT action to resolve this dispute, which it did. The Dispute Notice was issued on April 20, 2021.

## **REASONS AND ANALYSIS**

***Is the strata entitled to an order that Ms. Frigault not park her vehicle that leaks fluids in her carport until the vehicle no longer leaks?***

27. I find the answer to the question is yes. My reasons follow.
28. The parties essentially agree that Ms. Frigault owns a vehicle that leaks fluids. There is no dispute that Ms. Frigault parks this vehicle in her LCP parking stall next to SL12.

In an effort to stop the leaking fluids from damaging the surface of the parking stall, Ms. Frigault places cardboard under the parked vehicle and sometimes stores cardboard in her carport. None of this is disputed. Although Ms. Frigault provided copies of receipts for vehicle repairs, none of the receipts confirm the fluid leaks were repaired. In fact, as the strata correctly notes, the receipt dated July 10, 2020 from Minit-Tune & Brake Auto Centers contains a comment that the steering rack leaks. Therefore, based on the evidence, I find that Ms. Frigault's vehicle still leaks fluids.

29. I have found the parking stall in question is LCP. Under SPA section 72(2)(a), the strata may, by bylaw, make an owner responsible for repair and maintenance of LCP that the owner has a right to use. Such is the case here. Bylaw 8(c)(i) requires the strata to repair and maintain LCP, but only if, in the ordinary course of events, the repair and maintenance occurs less often than once per year. That means the owner, and not the strata, is responsible for repair and maintenance of LCP that occurs more often than once per year. I find in the case of a vehicle leaking fluids parked in the same parking stall, the surface of the parking stall would require maintenance to remove the leaked fluids more often than once per year. The evidence before me in this disputes confirms that. Therefore, I find Ms. Frigault responsible for repair and maintenance of the carport parking stall in question.
30. As noted above, the strata's position is that fluids leaking from a vehicle causes damage to the surface of the parking stall that is not reasonable wear and tear. I agree. Given LCP is defined under SPA section 1(1) as CP designated to the exclusive use of the owners of 1 or more strata lots, I find Ms. Frigault parking her leaking vehicle in the carport parking stall contravenes bylaw 3(2).
31. I find it was reasonable for the strata to request Ms. Frigault stop parking her leaking vehicle in the carport of SL12 until it was repaired and no longer leaked fluids, in order to prevent unreasonable wear and tear on the parking stall surface. Given this finding, I make the order requested by the strata and order Ms. Frigault not to park her current vehicle in her carport until the vehicle no longer leaks. She must provide the strata with proof the vehicle is repaired, such as repair receipts or a letter from a qualified mechanic who completes the repairs. I decline to include in the order that the strata must be satisfied with the repairs as it requested.

32. If Ms. Frigault has replaced her vehicle with one that does not leak fluids, as she submits she might do, my order above is of no effect and does not apply.

***Is the strata entitled to an order that Ms. Frigault remove the cardboard from underneath the vehicle and her carport?***

33. The strata says storing cardboard in a carport, whether under a vehicle that leaks fluids or otherwise, is contrary to bylaw 3(1)(a) and rules 4, 9, and 12.

34. SPA section 125 permits a strata corporation to make rules governing the use, safety and condition of common property and common assets. Rules do not apply to strata lots and must be ratified at a general meeting. None of the rules were disputed by Ms. Frigault so I accept they are valid rules, properly ratified.

35. Bylaw 3(1)(a) says an owner must not use CP (or LCP) in a way that causes a nuisance or hazard to another person. The strata did not explain how cardboard stored in a carport used exclusively by Ms. Frigault can cause a nuisance or hazard to another person. Therefore, I find that the strata has not provided sufficient details about how Ms. Frigault acted contrary to bylaw 3(1)(a).

36. Rule 12 states “Nothing other than stacked fireplace wood shall be stored in carports”. I find that rule 12 is clear and unambiguous, such that it prohibits storing cardboard in a carport. I find rule 12 is sufficient to restrict Ms. Frigault from placing cardboard anywhere in her carport. Therefore, I find I need not consider rule 4, about maintaining LCP to “a level commensurate with standards set by the [strata]”, or rule 9, about increasing the risk or rate of fire insurance on the strata’s “buildings, outbuildings or carports”.

37. For these reasons, I find the strata is entitled to an order that Ms. Frigault remove the cardboard from her carport, including underneath the vehicle, and I so order.

***Must Ms. Frigault pay the strata outstanding bylaw fines?***

38. I have found that Ms. Frigault contravened bylaw 3(2) by parking a vehicle that leaked fluids in her LCP carport parking stall. I have also found that Ms. Frigault contravened rule 12 by storing cardboard in her carport. The remaining question is whether the



strata followed the procedural requirements under SPA section 135 when it imposed fines against SL12.

39. Under SPA section 135(1), before imposing fines for contravening bylaws or rules, the strata must have received a complaint, given the owner written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if one is requested. Under section 135(2), the strata must give the owner written notice of its decision to impose fines “as soon as feasible”.
40. The BC Court of Appeal has found that strict compliance with section 135 of the SPA is required before a strata corporation can impose bylaw fines. The court also determined that bylaw fines may be found to be invalid if the procedural requirements set out in section 135 are not followed. See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.
41. I have summarized above the correspondence exchanged between the parties. I note the strata did not provide a statement of account for SL12 showing fine amounts or the date fines were applied or paid. The strata claims that Ms. Frigault owes \$400.00 in fines yet in its March 31, 2021 letter to Ms. Frigault it states that only a single \$200.00 fine is outstanding. The last fine imposed by the strata was set out in its January 13, 2021 letter to Ms. Frigault for contravention of bylaw 3(2) as I have noted. Based on the January 13, 2021 strata council meeting minutes which state fines were paid for previous contraventions, I find the single \$200 fine referenced in the strata’s March 31, 2021 letter must be the January 13, 2021 bylaw fine. The evidence does not support outstanding bylaw fines of \$400.00.
42. I find the strata properly followed the criteria established in *Terry* when it imposed the January 13, 2021 \$200.00 bylaw fine. As such and for the reasons set out above, I find that Ms. Frigault must pay the strata \$200.00 in outstanding bylaw fines and I so order.

## **CRT FEES, EXPENSES AND INTEREST**

43. 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. The strata was the successful party in this dispute and paid \$225.00 in CRT fees, so I order Ms. Frigault to reimburse the strata that amount. Neither party claims dispute-related expenses so I make no order for that.

44. The *Court Order Interest Act* (COIA) applies to the CRT. I find the strata is entitled to pre-judgement interest under the COIA for the unpaid \$200.00 bylaw fine. It is unclear how the January 13, 2021 letter from the strata about the bylaw fines was delivered to Ms. Frigault, but I find it reasonable to infer it was delivered in accordance with SPA section 61(3), which deems delivery in 4 days. Therefore, I find the interest due on the \$200.00 bylaw fine is from January 17, 2021 the date the fine was imposed until the date of this decision. I calculate the total pre-judgement interest to be \$0.83 and order Ms. Frigault to pay the strata this amount.
45. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Frigault.

## **ORDERS**

46. I order that Ms. Frigault must:
  - a. Immediately stop parking her leaking vehicle in her LCP carport parking stall until it is no longer leaking fluids and she had provided the strata with proof that it has been repaired. If Ms. Frigault is using a different vehicle that does not leak fluids, this order does not apply.
  - b. Immediately stop storing cardboard in her LCP carport, whether under a vehicle or elsewhere.
  - c. Within 30 days of the date of this decision, pay the strata a total of \$425.83, broken down as follows:
    - i. \$200.00 in bylaw fines,
    - ii. \$225.00 for CRT fees, and
    - iii. \$0.83 in pre-judgement interest under the COIA.

47. The strata is entitled to post-judgement interest under the COIA, as applicable.
48. 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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J. Garth Cambrey, Vice Chair