



# Civil Resolution Tribunal

Date Issued: December 14, 2021

File: ST-2021-004712

Type: Strata

Civil Resolution Tribunal

Indexed as: *Ford v. The Owners, Strata Plan LMS 2380*, 2021 BCCRT 1308

**B E T W E E N :**

JOHN FORD

**APPLICANT**

**A N D :**

The Owners, Strata Plan LMS2380

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kristin Gardner

## **INTRODUCTION**

1. This dispute is about placement of a shed on a strata lot patio.
2. The applicant, John Ford, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 2380 (strata). Mr. Ford says he applied to the strata council for permission to place a garden shed on his strata lot's rear patio. Mr. Ford

says the strata unreasonably denied his request. He seeks an order requiring the strata to approve his request to place a shed on the patio.

3. The strata says it properly denied Mr. Ford's request because the shed is a permanent structure, which it says is not allowed under the bylaws. The strata says its decision was not unreasonable because several resolutions proposing installation of similar garden sheds have failed to pass at past annual general meetings (AGMs). The strata says it offered Mr. Ford the opportunity to propose a bylaw amendment to allow sheds, but Mr. Ford declined. I infer it is the strata's position that Mr. Ford's claim should be dismissed.
4. Mr. Ford is self-represented. The strata is represented by a strata council member.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
7. 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.

8. 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**

9. The issues in this dispute are:
  - a. Whether the bylaws require Mr. Ford to obtain the strata's written approval to place a shed on his rear patio, and
  - b. If so, whether the strata unreasonably withheld its approval of Mr. Ford's request.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim like this one, as the applicant, Mr. Ford must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but I refer only to what is necessary to explain my decision.
11. The strata is a bare land strata corporation that consists of 53 strata lots. Mr. Ford co-owns strata lot 53 (SL53). Each strata lot has the same unit entitlement.
12. The strata plan filed in the Land Title Office (LTO) identifies individual strata lots but does not show any buildings. There is also no limited common property designated on the strata plan. The plan shows that SL53 is bordered to the east by a common property road, and to the south, west, and north by several other strata lots. Based on the strata plan, I find the SL53 rear patio is part of the strata lot.
13. The strata filed a complete set of bylaws in the LTO in June 2019. I find the relevant bylaws are as follows:
  - 7.1 An owner must obtain the written approval of the strata corporation before making or authorizing an alteration to the strata lot that involves any of the following:

- (a) the structure of a building on a strata lot;
- (b) the exterior of a building on a strata lot;
- (c) doors, or windows on the exterior of a building, or that front on the common property;
- (d) fences, railings or similar structures that enclose a patio, balcony or yard;

7.2 The strata corporation must not unreasonably withhold its approval under bylaw 7.1 but may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration and to indemnify and hold harmless the strata corporation for any future costs in connection with the alteration.

***Was Mr. Ford required to obtain the strata's approval for the shed?***

- 14. It is undisputed that on April 8, 2021, Mr. Ford applied to the strata council to place a garden shed on his rear patio. Neither party provided a copy of Mr. Ford's initial application. On April 12, 2021, the council emailed Mr. Ford to advise that his request had been denied "per bylaw 7.1(a)".
- 15. Mr. Ford says the strata's property management company, CSM, provided him with an indemnity agreement, which he filled out, dated April 18, 2021, and provided to the strata. In the agreement, Mr. Ford described the shed as a "vinyl garden shed" approximately 8 feet long by 10 feet wide and 8 feet high. Mr. Ford also stated the structure will remain portable and not be attached to any common property or the exterior of SL53.
- 16. It is unclear on the evidence whether Mr. Ford was aware that the strata had already denied his request when he provided it with the indemnity agreement. While there is no evidence that the strata responded to Mr. Ford after receiving the indemnity agreement, I infer the strata confirmed it was denying Mr. Ford's request.

17. In any event, Mr. Ford requested a hearing, which was held on June 3, 2021 over Zoom. The strata says Mr. Ford provided no new information at the hearing, and its decision to deny approval of the shed stood. Neither party provided a copy of the strata's email to Mr. Ford confirming its decision, but it is undisputed that the strata did not provide further reasons for its denial other than referencing bylaws 7.1 and 7.2. Mr. Ford says that in subsequent discussions with the strata council, it advised him that this is what has "always been done" regarding garden sheds.
18. Mr. Ford argues that council's previous decisions to deny other owners' requests for sheds is not a relevant factor in determining whether the strata reasonably withheld its approval of his request under bylaw 7.2. Mr. Ford also argues that his proposed shed did not even require the strata's approval under the bylaws, but he requested strata's permission out of an abundance of caution.
19. The strata says that it has the right to approve or deny requests for any "structures" under bylaw 7.1, and its decision to deny Mr. Ford's request was reasonable because votes at previous AGMs about installing garden sheds have not passed.
20. I infer from the strata's submissions that it considers the proposed shed a "structure", so placing the shed "structure" on Mr. Ford's strata lot constitutes an alteration for which strata's approval is required. For the following reasons, I disagree with the strata's interpretation of bylaw 7.1, and I find Mr. Ford did not require the strata's approval to place the shed on his strata lot.
21. Under bylaw 7.1, not all alterations to a strata lot require the strata's approval. Bylaw 7.1(a) says the strata must approve alterations to the strata lot that involve **the structure of a building** on a strata lot (my emphasis). I find this means approval is required if the proposed alteration is to part of a building's structure. I find the term "structure", as it is used in bylaw 7.1(a), refers to the structural elements of a building, such as the foundation, walls, floors, and ceilings.
22. I infer that there is a detached dwelling built on each strata lot, as the parties' evidence and submissions refer to "homes" and "homeowners" in the strata. There is no evidence before me that there are any other buildings on the individual strata lots.

So, I find the reference in bylaw 7.1(a) to “the structure of a building on a strata lot”, is likely a reference to the structure of the homes built on each strata lot.

23. Mr. Ford says his proposed shed will not be attached to his house, nor will it be affixed to any other building or the ground. While the strata says “all these units” provide instructions to anchor the sheds to a solid structure such as bolting them into concrete, the strata provided no evidence that Mr. Ford’s proposed shed has any such instructions.
24. I also considered whether the shed itself would be considered a building. The *Strata Property Act* and the bylaws do not provide a definition of a “building”. The Merriam-Webster.com Dictionary defines a building as “a usually roofed and walled structure built for permanent use (as for a dwelling)”. There is no evidence before me that the shed would have its own concrete foundation, any electrical wiring, or other structural features that would suggest it was intended to be permanent or used as a dwelling. Rather, I find based on Mr. Ford’s representations that his proposed vinyl shed is relatively small and will not be a permanent installation, but a freestanding and moveable unit. Therefore, I find the shed does not itself constitute a building to which bylaw 7.1(a) would apply.
25. For the above reasons, I find the shed is not an alteration involving the structure of a building on Mr. Ford’s strata lot under bylaw 7.1(a), and the bylaws do not require him to obtain the strata’s written approval to place the shed on his rear patio.
26. I acknowledge the strata’s argument that the ownership has previously rejected applications to install sheds on other strata lots. The strata provided the following evidence in support of this submission:
  - a. Minutes of a May 17, 2010 AGM, which stated a resolution for a proposed bylaw amendment to allow owners to apply to the council for authorization to “implement the addition of structures” such as garden sheds and greenhouses was defeated unanimously. Another resolution for a proposed bylaw amendment prohibiting owners from making structural alterations or additions to the outside of their homes was also defeated.

- b. Minutes of a May 9, 2012 AGM, which stated a resolution for a proposed bylaw amendment to allow owners to erect storage sheds and/or greenhouses with the strata's written approval, and subject to various conditions, was defeated.
  - c. Minutes of an August 7, 2013 council meeting, which stated a request for a shed was denied.
  - d. Minutes of a May 7, 2014 AGM, which stated an owner requested the subject of installing greenhouses be re-visited, but the owners attending the meeting were not in favour of re-visiting the issue.
  - e. Minutes of a May 5, 2016 AGM, which stated an owner requested the subject of installing greenhouses be re-visited, but again, the owners attending the meeting were not in favour of re-visiting the issue.
27. While these minutes may be some evidence of the owners' views about whether sheds should be permitted on strata lots, I find there is currently no bylaw that prohibits all garden sheds or that requires owners to obtain the strata's permission to place an impermanent vinyl shed on a strata lot.
28. Under the circumstances, I find it is appropriate to order the strata to approve Mr. Ford's request to place the shed on his rear patio, and I do so.
29. Given my conclusion about the applicability of bylaw 7.1, I find it is unnecessary to address whether the strata unreasonably withheld its approval under bylaw 7.2.

## **CRT FEES AND EXPENSES**

30. 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 Mr. Ford was successful, so I order the strata to reimburse his \$225 in paid CRT fees. Mr. Ford did not claim any dispute-related expenses.

31. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Ford.

## **ORDERS**

32. I order the strata to:

- a. Immediately approve Mr. Ford's request to place a garden shed on his rear patio, and
- b. Within 30 days of this decision's date, reimburse Mr. Ford \$225 for CRT fees.

33. Mr. Ford is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

34. 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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Kristin Gardner, Tribunal Member