



# Civil Resolution Tribunal

Date Issued: February 15, 2022

File: ST-2021-005530

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan 582 v. Dogaru*, 2022 BCCRT 169

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

The Owners, Strata Plan 582

**APPLICANT**

**A N D :**

RALUCA DOGARU and CRISTIAN PADURARU

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell, Vice Chair

## INTRODUCTION

1. This dispute is about a strata corporation's non-smoking bylaw.

2. The applicant, The Owners, Strata Plan 582 (strata), is a strata corporation operating under the *Strata Property Act* (SPA). The respondents, Raluca Dogaru and Cristian Paduraru, own a strata lot in the strata (unit 8).
3. The strata says the respondents' neighbours in unit 7 have repeatedly complained to the strata council that tobacco smoke and odour have escaped unit 8 and are a nuisance, in contravention of the strata's bylaws. The strata submits that it is self-managed, so the council is not qualified to interpret whether and how the bylaws apply to the respondents.
4. As remedies in this dispute, the strata requests an order that the respondents are exempted from the non-smoking bylaw, and an order that the respondents stop permitting smoke, odour, or vapour that can be smelled by other residents to escape from unit 8.
5. The respondents say the non-smoking bylaw does not apply to them, because of an exemption granted when it was first enacted. The respondents deny any bylaw breach, and say they have taken all reasonable steps to prevent smoke from escaping unit 8.
6. The strata is represented by a strata council member in this dispute. The respondents are self-represented.
7. For the reasons set out below, I refuse to resolve the strata's claim for an order that the respondents are exempt from the non-smoking bylaw. I dismiss the strata's claim for an order that the respondents stop permitting smoke, odour and vapour to leave their strata lot.

## **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 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**

12. The issues in this dispute are:

- a. Does the CRT have jurisdiction (authority) to make the orders requested by the strata in this dispute?
- b. If so, what orders are appropriate?

## **BACKGROUND**

13. I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision. In a civil claim like this one the applicant must prove its claims on a balance of probabilities (meaning "more likely than not").

14. The strata was created in October 1977. It consists of 29 3-storey townhouse-style strata lots. Each strata lot has yard and balcony areas, which are shown on the strata plan as part of the strata lot.

### ***Applicable Bylaws***

15. The strata repealed and replaced all of its bylaws by filing new bylaws with the Land Title Office (LTO) in March 2020. I find the following bylaws, as summarized below, are relevant to this dispute:

- Bylaw 3(1) – an owner, occupant, tenant or visitor must not use a strata lot or common property 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 or another strata lot.
- Bylaw 4(1) – an owner, tenant, occupant or visitor must not smoke or vape tobacco, marijuana or any similar organic substances nor use an e-cigarette or vapourizer in a strata lot, on a patio, balcony or carport, or on the exterior common property within 7 meters of any window, entrance door, or air intake vent.
- Bylaw 4(3) – A person who registered with the strata as a smoker under the prior bylaw 1.3(5)(9) may continue to smoke in their strata lot for as long as they reside in it. They must take reasonable efforts to seal their strata lot and not permit the smoke, odour or vapours to escape and be smelled by another resident.

16. Prior bylaw 1.3(5)(9) (now repealed) was filed with the LTO in June 2018, when the strata first brought in its non-smoking bylaws. It said the new smoking prohibition would not apply to any owners, occupants or tenants who currently smoked within their strata lots at the time the bylaw was passed, and registered as smokers with the strata council within 90 days of the non-smoking bylaw's passage.

17. The evidence shows, and the strata does not dispute, that unit 8 was registered as a “smoking unit” under bylaw 1.3(5)(9).

### ***Positions of the Parties***

18. In this dispute, the strata is the applicant, and therefore bears the burden of proving its claims. However, the strata provided limited submissions. The strata submits the following:

- Its volunteer council is not qualified to interpret the extent to which its bylaws allow the smell of smoke, odour or vapours to escape and be smelled by an immediate neighbour.
- The occupant of unit 7 has complained that smoke from the respondents’ unit 8 is a nuisance. That neighbour sought medical advice, and has stopped using the room closest to unit 8.
- Nuisances are contrary to strata bylaws, and the unit 7 occupant’s actions show that the smoke from unit 8 is a nuisance.
- The strata “believes” that the unit 7 occupant’s complaints have occurred because the respondents have been smoking in areas outside unit 8, such as the patio or balcony.

19. The respondents admit to occasional smoking in unit 8 and the adjacent backyard space, at a distance of more than 7 meters away from neighbours’ fences, windows, and vents. The respondents submit:

- They are permitted to smoke because they are exempt from the non-smoking bylaw. This includes permission to smoke in the backyard area, since that is shown as part of the strata lot on the strata plan.
- They have taken all reasonable steps to comply with the bylaws, including ceasing to smoke combustible tobacco in July 2021 and switching exclusively to smokeless, odourless “IQOS HeatSticks”.

- They have not created a nuisance.
- The unit 7 owners have harassed them.
- The strata has failed to effectively communicate with the unit 7 occupant, or provide feedback or suggests about the respondents smoke mitigation efforts.
- The strata has not explained the exemptions in the non-smoking bylaw to the unit 7 occupant, and has instead filed this CRT dispute to skirt its obligations. The respondents have not been fined or sanctioned for any alleged bylaw breach, and are unclear about how they have allegedly breached the bylaws.

## REASONS AND ANALYSIS

### ***Does the CRT have jurisdiction to make the requested orders?***

20. As noted above, the strata requests a CRT order that the respondents are exempted from the non-smoking bylaw and may smoke in their strata lot. The strata also requests an order that the respondents stop permitting smoke/odour/vapour to escape unit 8. Based on these requested remedies and the strata's submissions, it appears that the strata seeks to have the CRT provide an interpretation of the meaning and applicability of its bylaws. I find this is outside the CRT's dispute resolution role and mandate, as it is effectively a request to provide legal advice.

21. Also, I find the strata's request for an order that the respondents are exempted from bylaw 4(1) and may smoke in their strata lot is what is known as a declaratory order (order declaring something). As explained in *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379, the CRT can only make a declaratory order if it is incidental to a claim for relief over which the CRT has jurisdiction. I find the applicants' claim for a declaratory order in this dispute is not incidental to another claim. Their other claimed remedy is for an order that the respondents stop permitting smoke to escape their strata lot. I find that order is not dependent on whether the CRT declares that the respondents are exempt from bylaw 4(1).

22. CRTA section 10(1) says the CRT must refuse to resolve a claim over which it does not have jurisdiction (authority). I find the CRT has no jurisdiction to make the requested declaratory order. I therefore refuse to resolve that claim.
23. I find the CRT does have jurisdiction to order the respondents to stop allowing smoke, vapour or odour from escaping their strata lot. Specifically, CRTA section 123(1)(b) allows the CRT to make an order requiring a party to refrain from doing something. However, I find the strata has not provided sufficient evidence to prove that such an order is reasonable and appropriate in the circumstances. In particular, as explained below, I find the strata has not yet met its duties under the *Strata Property Act* (CRT) to investigate unit 7's bylaw complaints and enforce the bylaws.
24. The strata's evidence shows that it has received documentation and correspondence, including odour/smoking logs, from the unit 7 occupant. This correspondence specifically asks the strata council to enforce the bylaws.
25. SPA section 26 requires the strata council to exercise the powers and perform the duties of the strata corporation, "**including the enforcement of bylaws and rules**" (emphasis added). This includes a duty to reasonably investigate alleged bylaw violations. The strata has a duty to take steps to consistently enforce its bylaws, unless the effect of the breach on other owners breach is trivial or "trifling": see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraphs 237-238.
26. The SPA does not set out any procedures for assessing bylaw complaints. In *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148, the BC Supreme Court stated that the SPA allows strata corporations to deal with complaints of bylaw violations as it sees fit, as long as it complies with the principles of procedural fairness and its actions are not significantly unfair to any person who appears before it (paragraph 52).
27. SPA section 129 sets out the actions a strata corporation may take to enforce bylaws, which includes imposing fines, doing work to a strata lot or common property, or denying access to recreational facilities (for a facility-related breach).

28. As noted by the respondents, the strata has not fined them for any bylaw breach. Based on the evidence before me, the strata's only formal action was to send the respondents a June 27, 2021 letter stating it had received complaints about cigarette smoke leaving unit 8. The letter said that even though the respondents were "grandfathered" under the non-smoking bylaw, they were still required to "make every effort" to prevent cigarette smoke from leaving their strata lot and entering another strata lot. The letter cited bylaw 4, and Standard Bylaw 3(1) about nuisance and hazard. I note that the Standard Bylaws, which are an appendix to the SPA, do not apply because the strata specially repealed all other bylaws except those contained in its March 2020 LTO filing. However, Standard Bylaw 3(1) is the same as strata bylaw 3(1).
29. The strata's June 27, 2021 letter also cited strata bylaws 30 and 31, which are about bylaw contravention fines. The letter concluded by stating, "We trust that this matter can be solved without need for further actions by Strata Council". The letter said the strata council had a duty to enforce the bylaws, and "can be fined for not doing do". By that, I infer the strata meant that the respondents could be fined, although the letter did not specifically say so.
30. The respondents replied to the June 27, 2021 letter the following day, denying any bylaw breach. They said they would continue to be respectful and make reasonable efforts not to allow smoke to enter the neighbour's property. The strata replied by email on July 7, 2021, asking the respondents to adhere to the bylaws, and stating that it was required to enforce the bylaws after receiving a written complaint. After the respondents again denied any bylaw breach, and raised arguments about the strata's interpretation of the bylaws, the strata replied on July 13, 2021 stating that it had decided to file this CRT dispute.
31. As noted above, SPA section 26 requires the strata to enforce its bylaws. The strata's correspondence indicates that it agrees with the unit 7 owner that the bylaws were breached. However, other than a warning letter and email, the strata took no formal action to enforce the bylaws before filing this CRT dispute. So, I find this dispute is premature. First, the strata has not taken the steps available to it under the SPA to



enforce its bylaws, such as imposing a fine. Second, I find that ordering the respondents to adhere to bylaw 4(3) would serve no practical effect, since owners are already legally required to follow the bylaws.

32. For these reasons, I dismiss the strata's claim for an order that the respondents stop permitting smoke, odour or vapour to escape their strata lot.

## **CRT FEES AND EXPENSES**

33. Under CRTA section 49 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 in this case not to follow that general rule.

34. The respondents are the successful parties. They paid no CRT fees and claim no dispute-related expenses. I therefore do not award them to any party.

35. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the respondents.

## **ORDERS**

36. I refuse to resolve the strata's claim for an order that the respondents are exempt from the non-smoking bylaw. I dismiss the strata's claim for an order that the respondents stop permitting smoke, odour and vapour to leave their strata lot.

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Kate Campbell, Vice Chair