



Civil Resolution Tribunal

Date Issued: March 14, 2022

File: ST-2021-005012

Type: Strata

Civil Resolution Tribunal

Indexed as: *Raitt v. The Owners, Strata Plan LMS 1087*, 2022 BCCRT 279

BETWEEN:

SHERLE RAITT

APPLICANT

AND:

The Owners, Strata Plan LMS 1087

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about access to and payment for a strata corporation's records.
2. The applicant, Sherle Raitt, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 1087 (strata).

3. Ms. Raitt says the strata refused to provide her with a copy of a written bylaw complaint another owner made about her. She also says the strata overcharged her for copies of records it did provide. In her dispute application, Ms. Raitt requests orders that the strata provide a copy of the bylaw complaint, reverse overcharged records fees from her strata lot account, and charge her the same records fee as that charged to other owners. Ms. Raitt requested different remedies in her submissions, which I discuss in my reasons below.
4. The strata denies Ms. Raitt's claims, and says they should be dismissed.
5. Ms. Raitt 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. Ms. Raitt's original dispute application contained an additional claim, about the strata posting updated bylaws to its website. Ms. Raitt withdrew this claim during the CRT's facilitation stage, so I have not addressed it in this decision.

ISSUES

11. The remaining issues in this dispute are:
 - a. Must the strata give Ms. Raitt a copy of the written bylaw complaint she requested in November 2020?
 - b. Did the strata overcharge Ms. Raitt for strata records, and if so, what remedies are appropriate?

REASONS AND ANALYSIS

12. In a civil claim like this one, Ms. Raitt, as applicant, must prove her 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.

Written Bylaw Complaint

13. The evidence shows that the strata sent Ms. Raitt a letter on November 9, 2020, which said the strata council had received an email complaint from an owner about some other owners, including Ms. Raitt, congregating in a hallway for over 15 minutes, which obstructed "safe passage" and caused noise that "took away" the owner's enjoyment of her home. The letter asked Ms. Raitt to "be cognizant of others" and not congregate in hallways.
14. The strata's November 9, 2020 letter identified the owner who made the complaint, by unit number.

15. On November 10, 2020, Ms. Raitt replied to the strata's letter by email. She asked the strata to provide her a copy the complaint letter. The strata replied on November 18, 2020, stating that it would not provide a copy of the written complaint because the council had "concerns for the safety of the persons involved" and had "been advised" to only provide the particulars of the complaint.
16. In its submissions in this dispute, the strata says it has not provided the complaint letter to Ms. Raitt because the identity of the complainant is not a fact the strata needs to disclose in order to meet the requirements of *Strata Property Act* (SPA) section 135. The strata also submitted that Ms. Raitt has not proved that the complainant's identity is "material" to the complaint. Finally, the strata submits that Ms. Raitt may have an ulterior motive. It says Ms. Raitt has a history of past antagonism against "many owners and residents", and that her intention in seeking the complainant's identity is to harass, intimidate and threaten that person.
17. I am not persuaded by these arguments. First, SPA section 135, which is about imposing bylaw penalties such as fines, is not triggered in this dispute. The strata did not warn it might impose any bylaw penalty on Ms. Raitt, and no fine was imposed. Even if section 135 did apply, that provision does not prevent a strata corporation from providing copies of written complaint letters requested under SPA section 36. Section 135 does not require that complaints be made in writing: see *The Owners, Strata Plan NW3075 v. Stevens*, 2018 BCPC 2, at paragraph 52. Also, SPA section 135 does not require a strata to provide copies of written complaints before enforcing a bylaw. However, as I discuss further below, if a written complaint was made, and an owner specifically requests a copy, SPA section 36 requires the strata to provide it.
18. Second, and more importantly, the strata's November 9, 2020 letter said the complainant was the owner of unit 215-15. Based on that, I find the strata already disclosed the complainant's identity, so it is too late to raise arguments about concealing that identity. The strata's alleged concerns about the complainant's safety are contradicted by the fact that the strata disclosed the complainant's unit number. Also, the strata asserts that Ms. Raitt has a history of past antagonism. However, I find the strata it has not proved that assertion with evidence.

19. SPA section 35(2)(k) and section 4.1 of the *Strata Property Regulation* require the strata to retain copies of all correspondence sent or received by the strata and council for at least 2 years. Emails and letters of complaint are correspondence, and are therefore covered by SPA section 35(2)(k). SPA section 36 says that upon request from an owner, that strata must provide copies of all records listed in section 35.
20. The *Personal Information Protection Act* (PIPA) sets out how private organizations, such as the strata, can collect, use or disclose an individual's personal information. Section 18(1)(o) says that an organization may only disclose personal information about an individual, without consent, if the disclosure is required or authorized by law.
21. The CRT has previously considered whether stratas may refuse to provide copies of complaint letters on the grounds that they contain private information, based on PIPA. In several non-binding but persuasive decisions, CRT members have found that since disclosure is required under SPA section 36, a strata may not withhold or redact complaint letters when copies are requested by an owner: see *Mason v. The Owners, Strata Plan BCS 4338*, 2017 BCCRT 47, *The Owners, Strata Plan EPS 2409 v. Cao*, 2020 BCCRT 466 and *Bertuzzi v. The Owners, Strata Plan 350*, 2017 BCCRT 6.
22. Although these prior decisions are not binding on me, I find them persuasive and apply their reasoning here. So, I order that the strata must immediately provide Ms. Raitt with a copy of the complaint letter referred to in the strata's November 9, 2020 letter.
23. In her submissions, Ms. Raitt also requests \$2,000 in damages, as a penalty for the strata's significant unfairness in failing to comply with SPA section 36 disclosure requirements. However, Ms. Raitt did not include this remedy request in her dispute notice, so I decline to grant it. I find that raising new remedy requests at the submissions stage of the CRT process subverts the purpose of the CRT's mandatory facilitation phase.

Records Fees

24. Ms. Raitt says the strata overcharged her for records she requested under SPA section 36. She says the strata charged her for some records she did not receive, and

should not have charged her at all since some other owners were charged nothing for records.

25. *Strata Property Regulation* section 4.2 says a strata corporation can charge up to 25 cents per page for records or documents provided under SPA section 36.

26. Ms. Raitt provided a copy of a June 16, 2021 invoice from the strata's property management firm. It shows that she was charged \$23.50 for 94 pages of documents. Ms. Raitt replied to the invoice by email, stating that she should only have been charged \$13.50. She broke down the alleged \$10 overcharge as follows:

- \$1.25 for a copy of the Privacy Policy, which she already had.
- \$2.25 for a copy of the annual general meeting minutes, which she already had.
- \$0.50 for a duplicate copy of a Form I (Amendment to Bylaws).
- \$6.00 for copies of bylaw amendments that should have been provided to all owners for free.

27. Ms. Raitt provided copies of correspondence between the strata and some other owners, which shows that in 2019 and 2020, some owners were provided copies of some strata documents at no charge. She argues that this inequity, and the strata's overcharges, are significantly unfair to her.

28. SPA section 164 sets out the BC Supreme Court's authority to remedy significantly unfair actions. The CRT has jurisdiction over significantly unfair actions by strata corporations under CRTA section 123(2), which has the same language as SPA section 164: see *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164.

29. The courts and the CRT have considered the meaning of "significant unfairness" by a strata corporation, and have equated it to oppressive or unfairly prejudicial conduct. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the Court of Appeal said a significantly unfair action is burdensome, harsh, wrongful, lacking in probity or fair

dealing, done in bad faith, unjust or inequitable. See also *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.

30. In *Kunzler*, the Court of Appeal confirmed that an owner's expectations could be considered a relevant factor in assessing significant unfairness. In considering an owner's reasonable expectations, the following test from *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164 applies:

- a. What is or was the expectation of the affected owner?
- b. Was the owner's expectation objectively reasonable?
- c. If so, was that expectation violated by an action that was significantly unfair?

31. I agree that Ms. Raitt had a reasonable expectation that she would be treated the same as other owners who request documents. However, The BC Court of Appeal has said that significant unfairness must be something more than mere prejudice or trifling unfairness: see *Reid* at paragraphs 27 to 29. I Ms. Raitt's claimed overcharge of \$10 in copying fees, or even the full invoiced amount of \$23.50, is not significantly unfair. Rather, I find that in the context of a strata corporation with 130 strata lots, the alleged overcharge amounts to mere prejudice or trifling unfairness. Given the extremely low dollar amount, I also find this is not a claim that merits litigation.

32. Ms. Raitt argues that only the strata was entitled to charge her for documents, rather than the property management firm. I disagree. The SPA permits a strata corporation to contract with a property manager to perform certain delegated functions, including keeping records. I find there is nothing in the SPA that prevents the strata from having its property manager copy records and invoice for those records on the strata's behalf.

33. Further, Ms. Raitt cites the property management contract, which allows for a 15 cent per page copying charge. However, I find that contract does not prevent the strata from charging owners the maximum fee of 25 cents per page for copies of strata records.

34. For these reasons, I dismiss Ms. Raitt's claim for a refund of records fees.

35. In her submissions, Ms. Raitt requested that the strata disclose records, including a Form I about May 2021 bylaw amendments, and financial and bank statements from February to May 2021. I decline to make this order, since this remedy was not requested on the Dispute Notice. I note that the requested Form I was uploaded by the CRT from the Land Title Office as evidence in this dispute, so Ms. Raitt already had access to it.

CRT FEES AND EXPENSES

36. Ms. Raitt was partially successful in this dispute. In accordance with the CRTA and the CRT's rules I find she is entitled to reimbursement of half her CRT fees, which equals \$112.50. Neither party claimed dispute-related expenses, so none are ordered.

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

ORDERS

38. I order that within 15 days of this decision:

- a. The strata provide Ms. Raitt with an unredacted copy of the complaint letter referred to in the strata's November 9, 2020 letter. The strata will not charge Ms. Raitt any fee for this document.
- b. The strata reimburse Ms. Raitt \$112.50 for CRT fees.

39. I dismiss Ms. Raitt's remaining claims.

40. Ms. Raitt is entitled to postjudgment interest under the *Court Order Interest Act*, as applicable.

41. 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