



Civil Resolution Tribunal

Date Issued: March 18, 2022

File: ST-2021-005776

Type: Strata

Civil Resolution Tribunal

Indexed as: *Burke v. The Owners, Strata Plan KAS 2959* , 2022 BCCRT 302

B E T W E E N :

CATHY BURKE

APPLICANT

A N D :

The Owners, Strata Plan KAS 2959

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about enforcement of alteration bylaws.
2. The applicant, Cathy Burke, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan KAS 2959 (strata). Ms. Burke says another strata lot's owners (owner X) installed a satellite dish without the strata's approval, contrary to

the bylaws. She says the strata initially indicated it would fine owner X \$75 per week. She says the satellite dish has stayed up and the “fines and penalties have disappeared without votes or informing owners of any resolution”. Ms. Burke also says the strata’s bylaw enforcement is “chaotic” and some owners are allowed to break the bylaws while other owners’ actions are meticulously monitored. Ms. Burke asks for an order that the strata enforce bylaw 9(2) against owner X and demand that owner X remove the satellite dish.

3. The strata says owner X had prior approval to install the satellite dish dating back to 2018, but not in the current location. The strata says it approved owner X’s satellite dish installation in the current location on December 14, 2020. It says the decision was noted in the July 6, 2021 strata council meeting minutes.
4. Ms. Burke 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.

ISSUE

9. The issue in this dispute is whether the strata failed to comply with the SPA or enforce its bylaws in relation to owner X's satellite dish, and if so, what are the appropriate remedies?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one the applicant, Ms. Burke, must prove her claims on a balance of probabilities (meaning "more likely than not"). I have reviewed all the parties' evidence and submissions but only refer to what is necessary to explain my decision.
11. The strata consists of 30 strata lots in several buildings. The strata filed consolidated bylaws in the Land Title Office (LTO) on October 18, 2006. Further amendments have been filed since that time, but none are relevant to this dispute.
12. Bylaw 8 says that an owner must obtain the strata's written approval before making an alteration to common property, and the strata may require as a condition of its approval that the owner agree to take responsibility for any expenses relating to the alteration and maintenance.
13. Bylaw 9(2) says, among other things, that no satellite dish shall be hung from or attached to the exterior of a strata lot without prior written permission by the strata council.
14. It is undisputed that owner X installed a satellite dish on the exterior of a strata lot without the strata's approval as required bylaw 8 and 9(2). A photograph submitted

in evidence by Ms. Burke shows a satellite dish attached to an exterior window frame, which I find is owner X's satellite dish. The strata does not dispute this.

Strata's actions

15. The strata's August 11, 2020 council meeting minutes indicate that the strata council received emails from the strata's previous management company about the satellite dish and the bylaw infraction. Those emails are not in evidence. At the meeting, the strata council passed a motion to advise the owner that the installation did not comply with a previously approved installation approval, the satellite dish must be removed, and an application must be made for installation that complies with the bylaws because the dish is too low and unsafe. The meeting minutes do not confirm whether this is owner X's satellite dish, but I infer that it is.
16. In the September 2020 council meeting minutes, the strata council passed a motion for the strata's property manager to write to owner X requiring the satellite dish's removal, and requiring the owner to submit an alteration request to install the satellite dish in a location that complies with the bylaws.
17. In the November 2020 council meeting minutes, the strata council again noted that owner X installed the satellite dish contrary to an approved location. The strata council passed a motion that the owner be advised in writing that they must either submit an alteration request to retain the satellite dish in "this location" within 14 days of receipt, or provide proof the strata approved the current location in writing. Failing this, the satellite dish must be removed within 30 days and failing to comply would result in a weekly contravention fine of \$75 per week.
18. A November 24, 2020 letter from the strata's property manager advised owner X to submit an alteration request for the satellite dish within 14 days of receipt. It also warned that if owner X failed to do so, the satellite dish had to be removed within 30 days failing which a \$75 weekly contravention fine would be imposed.
19. A December 14, 2020 letter from the strata's property manager to owner X advised that the strata council had reviewed their request and agreed to approve the

installation of a satellite dish on owner X's strata lot's east facing window frame. I note the alteration request itself is not in evidence.

Did the strata failed to enforce its bylaws in relation to unit 103's satellite dish?

20. Under section 26 of the *Strata Property Act* (SPA), a strata corporation must enforce its bylaws, subject to some limited discretion, such as when the effect of the breach is trivial (see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holdings Inc.*, 2016 BCSC 32). SPA section 129(2) says that before enforcing a bylaw or rule the strata corporation may give a person a warning or may give the person time to comply with the bylaw or rule.
21. Here, I find the evidence shows the strata warned owner X that their satellite dish did not comply with the strata's bylaws, and gave them time to comply with bylaw 8 and 9(2). On balance, and given the strata's December 14, 2020 letter discussed above, I find owner X submitted an alteration request for their satellite dish as required by the bylaws. I find the strata approved the alteration request. Therefore, I find the strata has not failed to enforce its bylaws against owner X.

Alleged non-compliance with the SPA

22. Ms. Burke also alleges that the strata failed to record its decision to approve the satellite dish installation.
23. SPA section 35 requires the strata to take minutes at every general meeting and every strata council meeting. Subsection (1) says the minutes must contain the results of any votes taken at the meeting. Bylaw 21(3) says strata council meeting minutes must record the results of all votes. Our courts have considered the degree of detail required in strata council meeting minutes. Minutes must contain records of decisions taken by council. They may, or may not, report in detail the discussions leading to those decisions (see *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610 at paragraph 8). The purpose of minutes is to inform the members of decisions made and money spent on their behalf (see *Yang v. Re/Max Commercial Realty Associates (482258 BC Ltd.)*, 2016 BCSC 2147, at paragraph 133).

24. The strata approved the satellite dish in December 2020. In the June 2021 strata meeting minutes, the strata noted that an owner had emailed the strata about its decision to have a “neighbouring unit move their satellite dish”, and asked where the decision was documented. The strata noted that “as the matter was addressed between meetings it was not recorded.” In the July 2021 strata meeting minutes, the strata noted that it held a hearing with Ms. Burke, who raised her concerns about the unrecorded satellite dish approval. The strata noted that it explained to Ms. Burke the reasons for the approval granted between meetings. The same meeting minutes also noted that the satellite dish documents submitted between meetings complied with placements previously approved for other units and “precedent had been set”. I agree with Ms. Burke that the strata initially failed to record its decision to approve the satellite dish installation. However, although the strata did not immediately record its decision to approve the satellite dish installation, I find that it did so in its July 6, 2021 minutes. In any event, Ms. Burke does not claim any remedy as a result the strata’s failure to record its decision to approve the satellite dish in December 2020. The only remedy that I find would be appropriate is an order requiring the strata to record the decision, which I find it had already done before Ms. Burke initiated this dispute.
25. Finally, Ms. Burke says that the strata has inconsistently enforced its bylaws with some owners being allowed to contravene bylaws, while other owners are monitored “meticulously.” Although she does not use these words, I find Ms. Burke argues that the strata’s bylaw enforcement is significantly unfair. However, beyond this bare assertion, Ms. Burke did not provide evidence that supports her allegation that the strata has inconsistently enforced its bylaws. Therefore, I find she has not proved that the strata has done so.

CRT FEES AND EXPENSES

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 in this case not to follow that general rule. Ms. Burke was unsuccessful in her claim, so I dismiss her CRT fee claim. The strata did not pay any CRT fees or claim any dispute-related expenses, so I award none.

26. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Burke.

ORDER

27. I dismiss Ms. Burke's claims and this dispute.

Leah Volkers, Tribunal Member