



# Civil Resolution Tribunal

Date Issued: April 8, 2022

File: ST-2021-003925

Type: Strata

Civil Resolution Tribunal

Indexed as: *Davidson v. The Owners, Strata Plan NW 2300*, 2022 BCCRT 403

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

BARBARA DAVIDSON

**APPLICANT**

**A N D :**

The Owners, Strata Plan NW 2300

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell, Vice Chair

## INTRODUCTION

1. This strata property dispute is about alleged harassment and bullying.
2. The applicant, Barbara Davidson, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 2300 (strata).

3. Mrs. Davidson says the strata has “unlawfully” accused her of harassing and bullying the strata’s gardener. As remedy, she requests an order that the strata stop making these accusations.
4. The strata says it has acted consistent with its duties under the *Strata Property Act* (SPA), including its duty to manage and maintain the strata’s common property and common assets for the benefit of the owners. The strata says Mrs. Davidson’s claim is unclear, and that no action was taken against Mrs. Davidson in relation to the alleged harassment.
5. Mrs. Davidson is self-represented in this dispute. The strata is represented by a strata council member.
6. For the reasons set out below, I dismiss Mrs. Davidson’s claim and this dispute.

## **JURISDICTION AND PROCEDURE**

7. 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.
8. 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.
9. 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.

10. 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.
11. In her dispute application, Mrs. Davidson mentioned various incidents, including an unpaid \$10,000 bill from the strata in 2008, a lack of financial audits, tree trimming, and payment and responsibility for yardwork. However, Mrs. Davidson requested no remedies about these matters. In her submissions, she explained that she included them for context, to explain her feelings about how the strata was managed. In the absence of a requested remedy, I make no findings or decisions about these matters which I also find unrelated to the alleged harassment at issue in this dispute. I also agree with the strata that some of these potential claims are likely barred under the *Limitation Act*.
12. Mrs. Davidson provided late evidence in this dispute. Since the strata had the opportunity to respond to that evidence, and given the CRT's mandate that includes flexibility, I accept that late evidence. I note that nothing turns on this evidence, given my reasons below.

## **ISSUE**

13. Should the CRT order the strata to stop accusing Mrs. Davidson of bullying and harassment?

## **REASONS AND ANALYSIS**

14. In a civil claim like this one, Mrs. Davidson, 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.

15. The strata was created in 1985, and consists of 11 residential strata lots, plus common property. Mrs. Davidson has co-owned her strata lot since 2008.
16. The evidence shows that on May 4, 2021, the strata's gardener, MM, wrote to the strata to complain about an incident that allegedly occurred on May 3, 2021. MM wrote that Mrs. Davidson "aggressively" yelled at her about lawn mowing preferences, questioned her about her work, and approached the mower while MM was working. MM wrote that she felt Mrs. Davidson's behaviour was intimidating and upsetting, so she left the area to work elsewhere in the strata. MM wrote that there was a second interaction with Mrs. Davidson after that, where Mrs. Davidson apologized that MM had interpreted her directness as aggression, and "demanded" to know what she had done wrong. MM asked the strata to have owners direct their preferences and requests to the strata, which could then communicate them to her.
17. Mrs. Davidson admits she talked with MM on May 3, 2021, but she disputes MM's account of their interaction. Specifically, Mrs. Davidson says she did not bully or harass MM.
18. After receiving MM's letter, the strata investigated and concluded that Mrs. Davidson had bullied and harassed MM. The investigation included talking to Mrs. Davidson, and 3 witnesses, DB, FC, and BE. The strata's investigation documents show that MM, Mrs. Davidson, and the witnesses described the event in similar ways, but that Mrs. Davidson perceived her conduct as "direct" rather than aggressive.
19. The evidence before me shows that the strata informed Mrs. Davidson about the outcome of its investigation but did not impose any fine or penalty on her. Mrs. Davidson says the strata emailed all owners to advise them she had been "found guilty of harassing and bullying the gardener". The strata denies this, and instead says that Mrs. Davidson emailed all owners with a description of events during facilitation of this CRT dispute.
20. I find Mrs. Davidson has not proved that the strata emailed all owners about the allegations against her, or its investigation findings. There is no such document in evidence, and Mrs. Davidson did not provide particulars such as a date.

21. The strata says that since MM was a worker as defined in the *Workers Compensation Act*, it was required to investigate MM's May 4, 2021 complaint under WorkSafeBC policy, and the strata's own bullying and harassment policy. I agree with this submission. Also, as noted above, the strata did not impose any penalty or sanction on Mrs. Davidson. Rather, the strata created a new rule under SPA section 125, which says that owners must not interfere with workers performing strata duties, but must instead communicate through the strata.
22. As noted above, the only remedy Mrs. Davidson requests in this dispute is an order that the strata stop accusing her of bullying and harassment. I find that this claim is moot, and so I dismiss it. My reasons follow.
23. Mootness occurs when no live controversy exists which affects the rights of the parties: see *Borowski v. Canada (Attorney General)*, 1989 CanLII 123 (SCC), at para. 353. In *Borowski*, the court explained that determining mootness involves a 2-step analysis. First, whether the live issue has disappeared, and any issues are theoretical or academic. Second, if there is no live issue, should the court or tribunal exercise its discretion to hear the case anyway.
24. Following *Borowski*, which is a binding precedent, I find that Mrs. Davidson's request that the strata stop accusing her of bullying and harassment is moot. The May 4, 2021 incident is in the past, and does not affect any of Mrs. Davidson's ongoing rights. The strata is not currently accusing her of any bullying or harassment. I therefore find the claim is moot, and the requested remedy would serve no purpose.
25. I infer that what Mrs. Davidson really wants is a retraction of the strata's investigation findings. However, I find the witness statements provided in evidence, combined with MM's letter, establish that MM felt intimidated during her interaction with Mrs. Davidson. Witness DB wrote in a signed statement, dated January 3, 2022, that Mrs. Davidson shouted at MM, and the DB told Mrs. Davidson at the time that she had been "very aggressive and threatening in your stance and in your manner". DB wrote that Mrs. Davidson's apology to MM was "half-hearted".

26. Similarly, witness FC wrote that she observed the interaction from an upstairs window, and could tell that Mrs. Davidson's voice was "mean", "harsh", and "rude", and that MM was "getting upset".
27. Based on this evidence, I find that the strata's response to MM's letter was reasonable and appropriate in the circumstances. Also, I find it is unjustified in the circumstances to make an order binding the strata's future conduct. So, even if I had found the claim was not moot, I would not have granted the requested remedy.
28. For these reasons, I dismiss Mrs. Davidson's claim, and this dispute.

### **CRT FEES AND EXPENSES**

29. 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.
30. The strata is the successful party. It paid no CRT fees and claims no dispute-related expenses, so I award none.
31. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mrs. Davidson or her strata lot.

### **ORDER**

32. I dismiss Mrs. Davidson's claim and this dispute.

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Kate Campbell, Vice Chair