



# Civil Resolution Tribunal

Date Issued: May 3, 2022

File: ST-2021-007173

Type: Strata

Civil Resolution Tribunal

Indexed as: *Lenius v. The Owners, Strata Plan KAS 2959*, 2022 BCCRT 515

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

ZACKARY LENIUS and JENNIFER SCHLOSSER

**APPLICANTS**

**A N D :**

The Owners, Strata Plan KAS 2959

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Kate Campbell, Vice Chair

## **INTRODUCTION**

1. This strata property dispute is about whether the strata must allow the applicants to have emotional support animals.

2. Applicant Zackary Lenius owns strata lot 7 (SL7) in the respondent strata corporation, The Owners, Strata Plan KAS 2959 (strata). The co-applicant, Jennifer Schlosser, is Mr. Lenius' spouse, and lives with him in the strata lot.
3. The applicants say the strata has failed to meet its duty to accommodate under the *BC Human Rights Code* (Code), because it has refused to allow 3 emotional support animals in SL7. As remedy, the applicants request an order that the strata allow them to have multiple emotional support animals.
4. The strata says the applicants' claims should be dismissed. The strata says its bylaws already permit one pet in each strata lot, and the medical documentation the applicants provided did not explain the need for 3 cats.
5. The applicants are self-represented in this dispute. The strata is represented by a strata council member.
6. For the reasons set out below, I dismiss Mr. Lenius' claims. However, I find in favour of Ms. Schlosser, and order the strata to accommodate her disability by allowing her to keep her 3 current cats.

## **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 which

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.

### ***Preliminary Issue – Standing***

11. *Strata Property Act* (SPA) section 189.1 says that only a strata corporation, an owner, or tenant may file a CRT strata property dispute.
12. As noted above, Ms. Schlosser lives in SL7 with Mr. Lenius. The land title document shows that only Mr. Lenius is on title as an owner.
13. Ms. Schlosser says she is a tenant. Since the strata does not dispute this, I accept it, and find that Ms. Schlosser has standing (legal authority) to be an applicant in this dispute.
14. The primary issue in this dispute is whether the strata must accommodate Ms. Schlosser's disability by permitting her to have 3 emotional support animals. There is no suggestion that Mr. Lenius is requesting accommodation under the Code on his own behalf.
15. I find Mr. Lenius has no standing to request or obtain an accommodation on Ms. Schlosser's behalf. So, I dismiss Mr. Lenius' claim.

## **ISSUE**

16. Does the Code require the strata to accommodate Ms. Schlosser by permitting her to have 3 cats as emotional support animals?

## **BACKGROUND AND EVIDENCE**

17. In a civil claim like this one, Ms. Schlosser, 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.
18. Land title documents show that Mr. Lenius purchased SL7 in October 2020. Ms. Schlosser admits she currently has 3 cats in the strata lot. It is undisputed and I agree that strata bylaw 5(1)(b) says an owner, tenant, or occupant may only have 1 cat or 1 dog.
19. The evidence shows that in November 2020, the strata sent Mr. Lenius a letter saying it had received a complaint that there were 2 cats living in his strata lot. The letter quoted bylaw 5(1)(b), and offered Mr. Lenius an opportunity to respond.
20. Mr. Lenius replied that the cats were “support animals”, which he and his spouse had a right to keep under human rights legislation. He provided a copy of a September 21, 2020 letter from BW. BW wrote that they are a licenced social worker registered with the Saskatchewan Association of Social Workers. BW wrote that they worked with Ms. Schlosser for close to a year, addressing “personal anxiety”. According to BW, Ms. Schlosser reported that her anxiety was diagnosed by her family doctor when she was a teenager, and she has “always had” 3 cats specifically for therapeutic support and relief. BW wrote:

Jennifer’s cats are a long standing and an integral part of Jennifer’s treatment plan in managing and regulating her anxiety. I would recommend that Jennifer continue to have her cats in her home for the ongoing emotional support they provide her.

21. The strata responded that in order to permit the 3 cats, the applicants would have to provide documentation from a “medical professional”, including proof about why it was necessary to have 3 support animals. The applicants provided a May 20, 2021 letter from BC family physician Dr. McKeough, who wrote as follows:

This patient [Ms. Schlosser] has a diagnosis of generalized anxiety disorder, and I agree with her previous health care professional’ recommendations regarding her treatment. It is clear that her 3 cats are beneficial for her mental health, and that having to remove an animal would be significantly detrimental to her diagnosed medical condition. Therefore, I would recommend that these animals be considered necessary to the above patient’s mental health therapy and that she should not be asked to remove an animal for this reason.

22. The applicants also provided a May 25, 2021 letter from Saskatchewan family doctor Dr. Adetola, who said they diagnosed Ms. Schlosser with moderately severe anxiety disorder in summer 2020, and that Ms. Schlosser had obviously had the condition for much longer. Dr. Adetola wrote that Ms. Schlosser had “found therapy” with her 3 cats, which she had used for a long time since she was a teenager.

23. The strata responded with an August 6, 2021 letter denying the accommodation request. The letter said the strata council did not have the expertise to evaluate whether the pets were necessary in the situation, and had “neither the expertise nor the authority to grant this accommodation”. The strata said the applicants should apply to the Human Rights Tribunal (HRT), but failing that the strata had no “recourse” but to enforce the 1-pet bylaw.

## **REASONS AND ANALYSIS**

24. CRTA section 11(1)(d) says the CRT may refuse to resolve a dispute that involves the Code. I find this means the CRT also has jurisdiction to resolve such disputes, at its discretion. Since the parties have not argued otherwise, I find it is appropriate for the CRT to resolve this dispute.

25. Section 8 of the Code says, in part, that unless there is a *bona fide* (genuine) and reasonable justification, a person must not, because of a physical or mental disability, discriminate against another person about any accommodation, service, or facility customarily available to the public.
26. Numerous prior decisions of the CRT and the HRT have confirmed that section 8 of the Code applies to strata corporations: see *The Owners, Strata Plan LMS 2900 v. Mathew Hardy*, 2016 BCCRT 1; *Konieczna v. Strata Plan NW 2489*, 2003 BCHRT 38; *Williams v. Strata Plan LMS 768*, 2003 BCHRT 165. These cases mean that under the Code, a strata corporation has a duty to accommodate disabilities, unless the accommodation would cause the strata undue hardship. I also note SPA section 121(a)(a), which says a strata bylaw is not enforceable to the extent that it contravenes the Code.
27. For Ms. Schlosser to succeed in this dispute, she must first prove she has a disability, which triggers a duty to accommodate under the Code. She must also prove that she was adversely impacted by the strata's refusal to permit 3 emotional support cats, and that her disability was a factor in the adverse impact. After that, the burden shifts to the strata to establish a *bona fide* reasonable justification for its refusal to permit the cats.
28. I find that the uncontradicted evidence of Dr. McKeough and Dr. Adetola establishes that Ms. Schlosser has a disability, for the purposes of section 8 of the Code. I also find this evidence establishes that Ms. Schlosser would suffer an adverse impact related to her disability if the strata does not accommodate her by permitting the 3 cats. Specifically, I find Dr. McKeough's letter establishes this adverse impact. Dr. McKeough said it was clear that the 3 cats are beneficial for her mental health, and that having to remove an animal would be significantly detrimental to her diagnosed medical condition. This would be an adverse impact, for the purposes of Code section 8. I also find that Dr. McKeough's letter qualifies as expert evidence, based on the CRT's rules.

29. The strata cites a HRT decision, *Judd v. Strata Plan LMS 737*, 2010 BCHRT 276. In that case, the HRT considered an accommodation request by 2 strata lot owners who wished to have a dog, contrary to the bylaws. In *Judd*, the HRT concluded that while the applicants had proven they had disabilities, they had not provided medical evidence about how having a dog would beneficially impact their conditions. The HRT member said that the link between the medical information about the beneficial impact of dog ownership and their specific disabilities was “extremely vague”. The HRT member said in paragraph 36:

Based on all of the material, I conclude that the nexus between the Judds’ disabilities and the adverse impact alleged is too tenuous. There is insufficient information provided to take the Judds’ circumstances out of the general context of seeking something that might be generally good for human health and into the specific of requiring something because of a disability, the deprivation of which leads to a specific adverse impact.

30. Based on the evidence before me in this dispute, I find that Dr. McKeough’s letter establishes that not having her 3 cats would be significantly detrimental to Ms. Schlosser’s disability. As noted above, Dr. McKeough wrote that the 3 cats should be considered necessary for her mental health therapy. While this letter does not provide much detail about how Ms. Schlosser’s disability would be affected having to remove one or more cats from SL7, I find it is sufficient to establish that it would cause a detrimental impact, as discussed in *Judd*. I also find that Dr. McKeough’s evidence is consistent with and supported by the evidence from BW and Dr. Adetola.

31. So, I find Ms. Schlosser has proven that she has a disability that would be detrimentally affected by the strata’s refuse to permit her 3 cats. This means the onus now shifts to the strata to prove that accommodating Ms. Schlosser by allowing her to keep the 3 cats would cause undue hardship. I find the strata has not proven this.

32. Partly in response to the applicants’ accommodation request, at a special general meeting (SGM) in January 2021, the strata put forward a resolution to amend the bylaws to allow 2 pets in a strata lot. The resolution did not pass. Then, at the July

2021 Annual General Meeting (AGM), strata owners voted on a similar resolution, which also did not pass.

33. The strata relies on these failed resolutions as justification for its decision not to permit the applicants' accommodation request. However, I find this is not a justification for refusing to accommodate a disability. The question is whether the strata must accommodate Ms. Schlosser by making an exception to its bylaws, and it is not an issue where the will of the majority is determinative. Also, the fact that the majority of owners wish to keep the existing pet bylaw does not establish that accommodating Ms. Schlosser would create undue hardship.
34. The strata also argues it does not have to accommodate Ms. Schlosser's disability because it arose before she moved into the strata. I find this is not relevant, and that the strata's duty to accommodate does not depend on when the disability began. I note that is not disputed that Ms. Schlosser's disability is ongoing.
35. Related to that, the strata argues it does not have to accommodate Ms. Schlosser by allowing the cats because she had the cats and knew about the strata's pet bylaw before Mr. Lenius purchased SL7. There is evidence that the applicants asked about a possible exception to the pet bylaw before the purchase, through their realtor. It is not clear whether the strata responded to the realtor. In any event, I find this is not determinative of whether the strata must accommodate Ms. Schlosser based on Code section 8. I find the strata has not shown how allowing Ms. Schlosser to keep her 3 cats creates any hardship. The fact that it requires an exception to the bylaws is not a hardship.
36. In conclusion, I find Dr. McKeough's letter is proof that Ms. Schlosser has a disability that would be adversely impacted if the strata does not permit her to keep her 3 cats. The strata has not proven that it would cause an undue hardship to accommodate Ms. Schlosser by permitting the 3 cats.



37. For these reasons, I find in favour of Ms. Schlosser. I order the strata to grant her accommodation request by permitting her to keep her 3 existing cats in SL7. I note that this does not permit either applicant to have any 3 cats, but only the ones they currently have.

## **CRT FEES AND EXPENSES**

38. As Ms. Schlosser was successful in this dispute, in accordance with the CRTA and the CRT's rules I find she is entitled to reimbursement of \$225.00 in CRT fees. Neither party claimed dispute-related expenses, so none are ordered.

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

## **ORDERS**

40. I order that:

- a. The strata must accommodate Ms. Schlosser by permitting to her to keep her existing 3 cats in SL7.
- b. Within 30 days of this decision, the strata must reimburse Ms. Schlosser \$225 for CRT fees.

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

42. I dismiss Mr. Lenius' claim.

43. 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