



# Civil Resolution Tribunal

Date Issued: May 12, 2022

File: ST-2021-008552

Type: Strata

Civil Resolution Tribunal

Indexed as: *Murray v. Seibel*, 2022 BCCRT 568

BETWEEN:

TRINA MURRAY

**APPLICANT**

AND:

KAREN SEIBEL

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## INTRODUCTION

1. This dispute is about the use of a common property (CP) fence gate. The applicant, Trina Murray, owns strata lot 1 in a strata corporation, The Owners, Strata Plan EPS5177 (strata). The strata is a 2-level duplex with a CP yard. Strata lot 1 is on the ground floor. The respondent, Karen Seibel, owns strata lot 2 on the upper floor.

2. Ms. Murray says Ms. Seibel put a lock on the CP back yard gate and refuses to give Ms. Murray a key to it, preventing her from accessing the gate. She requests an order that Ms. Seibel provide her with a key to the lock. She also requests an order that the gate be replaced with 2 new gates as a longer-term solution, and claims \$1,777.55 for half of that gate work. Ms. Murray requests a further order that each of the strata lot owners be given exclusive use of one of the 2 new gates, through a limited common property (LCP) designation filed with the Land Title Office (LTO).
3. Ms. Seibel says Ms. Murray agreed with the previous owner of strata lot 2 that each owner would have exclusive use of half of the CP back yard. Ms. Seibel says the disputed gate entrance is on her half of the back yard and that she unlocks it for Ms. Murray upon request when needed. Ms. Seibel says Ms. Murray cannot revoke the alleged agreement about yard use. Ms. Seibel says she does not have to provide a gate key, share any gate-changing expense, or agree to designate any CP as LCP.
4. Each party is self-represented in this dispute.
5. For the reasons set out below, I allow Ms. Murray's claim for a back gate key, and dismiss her other requested remedies.

## **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. Seibel submitted late evidence, specifically a police report about an incident involving the parties but not the disputed gate. I find the evidence is relevant to this dispute, despite its limited usefulness in determining the issues before me. Ms. Murray had an opportunity to comment on it and did not object to it. I allow the late evidence because I find it would not be unfair to do so.

### ***Strata as a party***

11. The strata is not named as a party to this dispute. For the following reasons, I find it is not necessary to add the strata as a party. First, I find that separate submissions from the strata are not needed, given that the parties are the only members of the strata council and have each provided detailed submissions on the disputed issues. There is also a lack of evidence showing that the strata council held any meetings or made any decisions. In the circumstances, I find further submissions from the same individuals in their role as strata council members would serve no purpose.
12. Further, I find the only requested remedies that would require the strata's participation as a party are for an order to replace the CP back gate with 2 new gates, and an order that an ownership vote be held about designating them as LCP. As explained below, I dismiss Ms. Murray's requests for those remedies.

## ISSUES

13. The issues in this dispute are as follows:
- a. Must Ms. Seibel provide Ms. Murray with a key to the back gate lock?
  - b. Should I order the parties to take steps to replace the back gate with 2 separate gates, at their shared expense?
  - c. Should I order the parties to take steps to designate the 2 proposed CP back gates as LCP?

## EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, Ms. Murray, as the applicant, must prove her claims on a balance of probabilities (meaning “more likely than not”). I have read and weighed the parties’ evidence and submissions, but I refer only to that which I find necessary to explain my decision.
15. The strata was formed in 2018 under the *Strata Property Act* (SPA). No bylaw amendments have been filed with the LTO, so under SPA section 120 the applicable strata bylaws are those set out in the SPA’s Schedule of Standard Bylaws. Bylaw 3(1)(c) is relevant to this dispute. It says an owner must not use a strata lot, the common property, or common assets in a way that unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets, or another strata lot.
16. The evidence shows the parties’ relationship has been difficult. In their submissions they mentioned several disagreements, including alleged nuisance and multiple alleged misuses of CP. However, the only issues before me are about the strata’s CP back gate.
17. The strata’s premises are a house on a rectangular property. The strata plan shows that the yards surrounding the house are all CP that has not been designated as LCP for the exclusive use of the owners of one strata lot. There is a front yard facing a

street to the north, a back yard facing a lane to the south, and 2 narrow strips of land on either side of the house. The east side of the property is adjacent to a neighbouring property, and the west side is adjacent to another street. Photos show there is a fence gate on the west side of the property providing an exit from the back yard to the side street. I will refer to this as the side gate.

18. The disputed back gate is in the back fence between the back yard and the lane, and is a rolling or sliding type. When fully opened, the entrance is on the east side of the back fence, and the gate's moveable portion overlaps the western part of the back fence. There is no opening on the west side of the back fence. The back gate and back fence are undisputedly CP that is not LCP. The parties each store their garbage and recycling bins in the back yard, and put them in the lane on collection days.

***Must Ms. Seibel provide Ms. Murray with a key to the back gate lock?***

19. The undisputed evidence is that Ms. Seibel placed a padlock on the back gate and refused to provide Ms. Murray with a key. Given the photos in evidence, it appears that Ms. Murray has cut off the padlock more than once, and I infer that Ms. Seibel has replaced it each time. The evidence and submissions also show that Ms. Murray once placed a lock on the back gate, preventing Ms. Seibel from opening it. Ms. Seibel emailed about Ms. Murray's lock, "What gives you the right and by what authority do you have to DENY us any access from the common property to the lane?" (emphasis in the original). In this dispute, Ms. Murray essentially asks the same question of Ms. Seibel about the lock Ms. Seibel maintains on the back gate.
20. In submitted correspondence, Ms. Seibel said she did not deny Ms. Murray access through the gate, because she opened the gate for Ms. Murray when necessary. However, Ms. Seibel does not comment on what type or frequency of requests she considered necessary or reasonable, or the delay and inconvenience of Ms. Murray having to request unlocking every time she wanted to open the gate. Ms. Seibel also does not comment on whether Ms. Murray would be able to use the gate when Ms. Seibel was not home or was otherwise unavailable to unlock it.

21. Ms. Seibel says the gate needed to remain locked for security reasons, but I find that does not affect whether Ms. Murray is entitled to a key to that lock. Ms. Seibel also says Ms. Murray can put her garbage and recycling in the alley for pickup via the side gate. Photos in evidence show that the side gate is not on the lane and would likely be a less convenient route for garbage and recycling bins than the back gate. However, the existence of the side gate does not mean Ms. Murray has no right to use the back gate.
22. I find that by maintaining a lock on the back gate and only providing Ms. Murray with access upon request and when allegedly “needed”, Ms. Seibel unreasonably interfered with Ms. Murray’s right to use and enjoy the CP back gate. This is a violation of bylaw 3(1)(c).
23. However, Ms. Seibel says she does not have to remove the lock because the back gate is on “her” side of the back yard. Ms. Seibel says Ms. Murray had an agreement with TO, the previous owner of strata lot 2, that Ms. Murray would have exclusive access to the western half of the back yard. Strata lot 2 would have exclusive access to the eastern half of the back yard, where the back gate entrance is located.
24. When TO still owned strata lot 2, a fence was installed that divided the back yard in half, and each owner used their agreed half. The dividing fence prevented Ms. Murray from accessing the back gate, so she took her garbage and recycling out through the side gate. Some time after Ms. Seibel purchased strata lot 2, Ms. Murray removed the boards from the southernmost end of the dividing fence where it met the back fence, so she could access the back gate. None of this is disputed. Ms. Seibel says Ms. Murray removed the fence boards without Ms. Seibel’s permission, which was an unauthorized change to CP. However, no relief was requested for the fence board removal, so that issue is not before me in this CRT dispute.
25. TO provided a statement saying that they agreed to the back yard division with Ms. Murray in June 2019. Ms. Murray’s June 4, 2019 email to TO acknowledged discussing a back yard split and that she preferred that option, and said she intended to put a gate in the dividing fence so she could access the back gate. Ms. Murray also

wrote that if TO wanted to “do something else just do it and I will deal with it later.” I find this email shows TO and Ms. Murray each agreed to use half of the back yard, but I find Ms. Murray did not specifically agree to give up all access to the back gate.

26. Even if Ms. Murray had agreed to give up access to the back gate in the June 4, 2019 email, I find that does not mean she permanently lost her right to that access. Under the SPA owners are only allowed exclusive access to non-LCP CP in certain circumstances and on a temporary basis. SPA section 76 says that the strata may give an owner permission to exclusively use, or a special privilege in relation to, non-LCP common assets or common property. However, the permission may be given for a period of at most 1 year, although the strata may renew it.
27. Here, there are no meeting minutes or other evidence showing that the strata made a decision to grant TO or Ms. Seibel exclusive access to the eastern back yard and the back gate. Further, even if I found the alleged back yard access agreement was a permission granted by the strata to each strata lot owner, and I do not, Ms. Seibel began locking the back gate in the fall of 2021. I find that was more than 1 year after the June 4, 2019 back yard agreement, and the evidence does not show that the strata renewed any alleged back yard permissions. So, I find the alleged permission would have expired under SPA section 76 before the gate locking began. I find there was no strata permission for Ms. Seibel to exclusively use the eastern back yard and back gate when Ms. Seibel began locking the gate, or since then.
28. To summarize, the entire back yard and back gate are non-LCP CP and neither party has strata permission for temporary special privileges or exclusive use over them. So, under bylaw 3(1)(c) I find that preventing an owner from independently accessing the back gate or opening it is an unreasonable interference with the owner’s right to use the gate. I find that Ms. Seibel broke bylaw 3(1)(c) by locking the back gate and refusing to provide Ms. Murray with a key. I order Ms. Seibel to provide Ms. Murray with a key to any lock Ms. Seibel has placed or will place on the back gate.

### ***Gate replacement and LCP designation***

29. Ms. Murray says that she ultimately wants the back gate replaced by 2 gates on either side of the back fence. I find she requests an order for that gate work to be performed, and claims \$1,777.55 which I infer is approximately half of the estimated cost. She also requests an order that the new gates be designated as LCP for the exclusive use of one party for each gate. Ms. Seibel says she does not want to contribute to any gate-replacement costs.
30. Under SPA sections 3 and 72, and bylaw 8(b), the strata is responsible for maintaining and repairing CP that has not been designated as LCP. I find the strata, and not any owner individually, is responsible for the back gate. Under bylaw 6, an owner must obtain the strata's written approval before making a CP alteration. The strata may require the owner to agree in writing to take responsibility to any alteration-related expenses. The strata undisputedly has not provided its written permission for any back gate changes.
31. The only strata council members are the parties, who are the only 2 owners. I find that a strata council decision granting permission to alter the CP back fence and back gate requires both parties' consent. In other words, neither party can change or alter the back fence and gate without the other's permission. As noted, Ms. Seibel has not consented to any changes. I also note that if the proposed gate change was a "significant change" in the use or appearance of CP under SPA section 71, approval would require both parties to vote in favour of an ownership resolution about the change, because at least a  $\frac{3}{4}$  majority is required. However, I find nothing turns on whether the proposed changes are significant, because the consent of both parties is required under bylaw 6 in any event.
32. Ms. Murray suggests that because Ms. Seibel does not want to pay for the proposed fence alterations, a strata council decision under bylaw 6 would fail to be passed by a majority of the 2 council members, leaving Ms. Murray without her desired gate changes. However, I find that alone does not justify interference with the strata's decision-making processes.



33. The SPA sets out specific requirements that must be met before changes to CP are permitted. In the circumstances, I find it would not be appropriate to interfere with the strata's discretion over CP back gate alteration approvals under bylaw 6. I also find that not having a second back gate is not unfair to Ms. Murray, given my above order that she be given a key so she can use the present back gate. I dismiss Ms. Murray's requested orders for back gate replacement and \$1,777.55 for that replacement.
34. Turning to the requested LCP designation, under SPA sections 73 and 74 non-parking-related CP may only be designated as LCP for the exclusive use of an owner in 3 ways. These ways are: on the deposited strata plan by the owner developer, by a strata plan amendment under SPA section 257 requiring a unanimous ownership vote, or by a resolution passed by a  $\frac{3}{4}$  vote at an AGM or SGM. No vote has been held on a strata plan amendment or a resolution designating LCP.
35. Given that the parties disagree about the appropriate way to allocate use of and access to the back gate, I find it would not be fair or appropriate to order particular LCP designations in the absence of the ownership votes required under the SPA. Further, the 2 gates Ms. Murray seeks to have designated as LCP do not exist, and I dismissed her request for an order to construct those gates. So, I dismiss Ms. Murray's claim for an order that the 2 proposed CP fence gates be designated as LCP. It remains open to the parties to file an LCP designation with the LTO after an appropriate resolution meeting the SPA's requirements is passed by the ownership.

### ***CRT fees and expenses***

36. 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. Murray was partly successful in this dispute, so I find she is entitled to reimbursement of \$112.50 for half the CRT fees she paid. Ms. Murray claimed no CRT dispute-related expenses.
37. Ms. Seibel paid no CRT fees, but she was partly successful and seeks reimbursement of \$90 for the cost of obtaining copies of 2 police reports, as a CRT dispute-related

expense. However, Ms. Seibel provided no proof showing that she paid anything for the 2 reports. Further, I find the 2 reports were not helpful in determining the issues before me. I find one report recorded an incident between the parties that did not directly involve the back gate or back yard. I find the other report simply repeated facts about the back gate and lock issue that the parties do not dispute. So, even if the alleged expenses had been proven with evidence, I find that they were not reasonable because the reports were not necessary or useful. I decline to reimburse Ms. Seibel for the alleged cost of the 2 reports.

## **ORDERS**

38. Within 15 days of the date of this decision, I order Ms. Seibel to provide Ms. Murray with a key to any lock placed on the back gate by Ms. Seibel or any guest or occupant of strata lot 2.
39. Within 30 days of the date of this decision, I order Ms. Seibel to pay Ms. Murray \$112.50 in CRT fees.
40. Ms. Murray is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
41. I dismiss the remaining aspects of Ms. Murray's claims and Ms. Seibel's expense claims.
42. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, 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.

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Chad McCarthy, Tribunal Member

