



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Cragg v. The Owners, Strata Plan NW 2211*, 2022 BCCRT 631

B E T W E E N :

JOHN CRAGG and OLGA CRAGG

APPLICANTS

A N D :

The Owners, Strata Plan NW 2211

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about a strata corporation's pet bylaw.
2. The applicants, John Cragg and Olga Cragg, own a strata lot (SL60) in the respondent strata corporation, The Owners, Strata Plan NW 2211 (strata).

3. The Craggs say the strata is unfairly requiring them to remove their dog, Mel, from the strata because Mel is allegedly over-height contrary to bylaw 3(5). The Craggs say the bylaw is unclear, Mel is not over-height, and there are other over-height dogs in the strata. The Craggs say the strata has inconsistently enforced the bylaw. The Craggs also say that Mel is a therapy dog and should be allowed to stay on that basis. The Craggs ask for an order that the strata allow them to keep Mel in the strata.
4. The strata disputes the Craggs' claims. It says bylaw 3(5) is clear and Mel is over-height. The strata says the bylaw has been applied consistently, and requiring Mel's removal is not unfair, prejudicial or wrong. The strata says the Craggs did not request accommodation for Mel when they moved into their strata lot, and the medical documentation later received did not explain the need for an oversized emotional support dog.
5. The Craggs are both represented by John Cragg. The strata is represented by CF, whom I infer is 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.

ISSUES

10. The issues in this dispute are:
 - a. Is Mel over-height contrary to bylaw 3(5)?
 - b. Is the strata's enforcement of bylaw 3(5) significantly unfair to the Craggs?
 - c. Does the *BC Human Rights Code* (Code) require the strata to accommodate the Craggs and allow them to keep Mel?
 - d. What remedies are appropriate, if any?

EVIDENCE AND ANALYSIS

11. In a civil proceeding such as this one, as the applicants the Craggs must prove their claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submissions and evidence, but below I only refer to what is necessary to explain my decision.
12. Land title documents indicate the Craggs purchased SL60 in December 2020. It is undisputed that prior to December 2020, the Craggs owned another strata lot in the respondent strata, and rented it to a tenant. It is also undisputed that they never lived in the other strata lot, and have since sold it.
13. The strata repealed and replaced its bylaws by filing new bylaws in the Land Title Office in June 2020. I find these are the bylaws applicable to this dispute.

14. Bylaw 3(4) says an owner is entitled to keep one dog on a strata lot. Bylaw 3(5) says a dog is not to exceed 15 inches at the withers (shoulder) when fully grown.

Background

15. The Craggs moved into SL60 with Mel in February 2021.
16. On March 26, 2021, the strata manager sent a letter to the Craggs on behalf of the strata advising that the strata had received a letter from 5 other owners asking the strata to address their concerns about over-height dogs in the strata. The strata asked the Craggs to provide the strata with official documentation from a veterinarian by April 30, 2021, indicating Mel's height at the "shoulder (withers)".
17. In response, the Craggs provided an April 1, 2021 letter from Tsawwassen Animal Hospital to the strata that says Mel "measures 20 inches in height at the shoulders (withers)". The Craggs also provided the strata with a signed letter explaining their situation and asking that the strata allow them to keep Mel for various reasons. I will return to the Craggs' letter further below.
18. On July 7, 2021, the strata manager sent a letter to the Craggs advising them that Mel was over-height under bylaw 3(5). The letter also directed the Craggs to remove Mel from the strata's property within 30 days, and warned that failure to do so might result in fines. The available evidence does not show that the strata imposed any fines on the Craggs.
19. The Craggs requested a strata council hearing, and the strata held one on August 30, 2021. On September 3, 2021, the strata manager sent a letter to the Craggs' confirming that the Mel must be removed within 45 days or fines may be applied.

Is Mel over-height, contrary to bylaw 3(5)?

20. It is undisputed that the Craggs were aware of bylaw 3(5) when they moved into SL60 with Mel. However, the parties dispute the measurement location for a dog's "withers (shoulder)".

21. The strata says the withers are the ridge between the shoulder blades of an animal. The strata says Wikipedia defines “withers” as:
- the ridge between the shoulder blades of an animal, typically a quadruped. In many species, it is the tallest point on the body. In horses and dogs, its is the standard place to measure the animal’s height.
22. The strata noted this definition in its June 28, 2021 strata council meeting minutes. The strata says it is entitled to rely on this definition of withers. Neither party submitted expert evidence to confirm the location or definition of a dog’s withers.
23. In their application for dispute resolution, the Craggs say that “withers” and “shoulder” are not the same measurement location. They say bylaw 3(5) can be properly understood to direct measurement at the top or the bottom of the shoulder. The Craggs say if Mel is measured from the lower shoulder, he is not over-height.
24. In their submissions, the Craggs say they measured Mel when they moved into SL60 based on their understanding of bylaw 3(5), and Mel was not over-height. I do not accept this submission because I find it is inconsistent with the information contained in the Craggs’ April 6, 2021 signed letter to the strata, discussed briefly above. In the Craggs’ letter, they specifically acknowledged that Mel was over-height. The Craggs did not say that the bylaw was unclear when they moved in or when they wrote the letter, or that they measured Mel from the lower shoulder and Mel was under-height based on that measurement. Instead, they said they were aware of bylaw 3(5) when they purchased their first strata lot in the strata, but said that at that time Mel was a much smaller dog. The Craggs said when they purchased SL60, they did not think to check whether Mel still complied with the bylaw. I find the Craggs’ letter more likely represents the Craggs’ understanding when they moved in and when they measured Mel because it was signed by the Craggs, and because I find it was written around April 2021 when the Craggs had Mel measured at the Tsawwassen Animal Hospital.
25. The Craggs say that they were dealing with the stress and loss of their grandson when they submitted Mel’s April 1, 2021 measurement and their letter to the strata in April 2021. I appreciate that this was a difficult time for the Craggs. However, I find

the Craggs have not reasonably explained why they relied on and submitted a measurement from Tsawwassen Animal Hospital to the strata that showed Mel was over-height, and did not raise any concerns with bylaw 3(5)'s wording or seek confirmation of the appropriate measurement location when they wrote their letter. I find their letter shows the Craggs did not think the bylaw was unclear when they had Mel measured at the Tsawwassen Animal Hospital in April 2021, and did not initially dispute that Mel was over-height following that measurement. Given this, I find the Craggs' submissions about the alleged ambiguity in bylaw 3(5) less persuasive.

26. In *Semmler v. The Owners, Strata Plan NES3039*, 2018 BCSC 2064 at paragraph 18, the BC Supreme Court held that the basic rules of statutory interpretation should be applied when interpreting strata bylaws even though they are not statutes. Further, the court in *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 said that a strata corporation's bylaws are to be given their plain and ordinary meaning.

27. The Merriam-Webster dictionary defines "withers" as:

- a. The ridge between the shoulder bones of a horse.
- b. A part corresponding to the withers in a quadruped (such as a dog) other than a horse.

28. Applying statutory interpretation principles, I find the plain and ordinary meaning of withers is the ridge between the shoulder bones of a quadruped (four-legged animal). I find the inclusion of "(shoulder)" after the word "withers" in bylaw 3(5) was intended to clarify the location of a dog's withers at the top of the dog's shoulders. Contrary to the Craggs' position, I find that "(shoulder)" was not included after the word "withers" in bylaw 3(5) to allow for a dog to be measured at either the top or bottom of the shoulder. I find bylaw 3(5) requires a dog's height to be taken at the withers, which I find is located at the ridge at the top of a dog's shoulders.

29. I also note that in two other CRT decisions, the withers are referred to as the "top of the shoulder blades" and "the top of the shoulder joint/back". See *Canuel v. Rainbow*

Community Estates Association, 2021 BCCRT 1248 and *Cowden v. The Owners, Strata Plan KAS 1104*, 2018 BCCRT 126. I find these previous decisions also support a finding that the withers are located at the top of a dog's shoulders.

30. The strata relies on Mel's April 1, 2021 measurement taken at the Tsawwassen Animal Hospital. The parties do not dispute that the April 1, 2021 measurement was not taken by a veterinarian. The strata says it was taken by a registered veterinarian technician with the assistance of a staff member. This is confirmed by a January 12, 2022 letter from Tsawwassen Animal Hospital. The Craggs say this measurement should not be relied on because it was not taken by a veterinarian. I find the measurement is not invalid simply because it was not taken by a veterinarian. The bylaw itself does not require a veterinarian to take the measurement. The strata requested official documentation from a veterinarian in its letter to the Craggs, but has not raised any concerns with the measurement being taken by a registered veterinarian technician. I find the April 1, 2021 measurement shows that Mel measured 20 inches at the "shoulder (withers)". I find this is the same measurement location as set out in the bylaws, which requires the measurement to be taken at the "withers (shoulder)", despite the words being in reverse order.
31. The Craggs submitted a May 27, 2021 letter from a veterinarian at Huff Animal Hospital that says Mel has "a height of 15 inches at the lower shoulder". The Craggs say this is the correct measurement of Mel's height, and it was taken by a veterinarian. The Craggs say this proves Mel is not over-height. I do not accept this submission because the letter indicated the 15 inch measurement was taken from Mel's "lower shoulder". It does not say that Mel measured 15 inches at the withers, as required by bylaw 3(5). It does not reference "withers" at all. Given that the measurement must be taken from Mel's withers under bylaw 3(5), which I have found is located at the top of the shoulders, I find the lower shoulder measurement does not assist me in determining whether Mel is under the bylaw's height limit.
32. I note that the strata also offered to pay to have Mel re-measured by a veterinarian at Tsawwassen Animal Hospital to confirm the April 1, 2021 measurement. The Craggs undisputedly refused this offer. In a letter to the strata's lawyer, the Craggs said it was

unnecessary to do so because they had already obtained a measurement from a veterinarian at Huff Animal Hospital. As noted above, I find the Huff Animal Hospital measurement is not helpful because it taken at Mel's lower shoulder, rather than at Mel's withers. The Craggs also alleged that the Tsawwassen Animal Hospital would "have a strong incentive to take a measurement justifying its past procedure". I do not accept this submission because I find there is no reason for a veterinarian at Tsawwassen Animal Hospital to intentionally provide an incorrect measurement. Further, the Craggs initially took Mel to be measured at Tsawwassen Animal Hospital and submitted the initial 20 inch measurement to the strata.

33. As noted, the Craggs bear the burden of proving their claims. Here, I find the available evidence does not prove that Mel is under bylaw 3(5)'s height limit. The only available height measurement at Mel's withers indicates that Mel measured 20 inches at the withers. This is 5 inches in excess of the height limit in bylaw 3(5). I find that Mel is over-height, contrary to bylaw 3(5). In making this finding, I also place particular weight on the fact that the Craggs did not submit another measurement taken by a veterinarian that says Mel measured under 15 inches at the withers. I also place particular weight on the Craggs' own admission in their April 2021 letter that Mel was over-height.

Significant Unfairness

34. Section 123(2) of the CRTA gives the CRT authority to make an order directed at the strata, if the order is necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights.
35. Although the Craggs did not use this particular language, I infer from their submissions that they claim the strata has treated them significantly unfairly by denying their request to keep Mel in their strata lot and requiring Mel's removal from the strata.
36. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the BC Court of Appeal said a significantly unfair action is one that is burdensome, harsh, wrongful, lacking in probity

or fair dealing, done in bad faith, unjust or inequitable. It must be something more than mere prejudice or trifling unfairness.

37. In *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, Madam Justice Garson of the Court of Appeal applied a “reasonable expectations” test that asks:

- a. What was the applicants’ expectation?
- b. Was that expectation objectively reasonable?
- c. Did the strata violate that expectation with a significantly unfair action or decision?

38. In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the BC Court of Appeal confirmed that an owner’s reasonable expectations may also be relevant in determining whether the strata’s actions were significantly unfair.

39. The Craggs argue that there are other dogs in the strata that exceed the height limit in bylaw 3(5). They also say the strata granted an exemption to an over-height dog in 2019. The Craggs submitted photographs of two other dogs, Russell and Nelson, beside Mel. They say both Russell and Nelson were permitted to stay in the strata despite them being obviously over-height. I find the photographs show dogs that are similar in size to Mel. However, the Craggs did not submit statements from Russell or Nelson’s respective owners confirming that the photographed dogs reside in the strata, or confirming that they also measure over 15 inches at the withers. I find the photographs alone do not prove that the strata has allowed other dogs that are over the 15 inch height limit in bylaw 3(5) to remain in the strata, while requiring the Craggs to remove Mel.

40. However, the Craggs also submitted a November 2, 2018 email from the strata manager to another strata lot owner that granted the strata lot owner permission to keep their over-height dog as long as the dog enters and exits the strata building through the garage ramp. A second email in evidence indicates that the dog measured 15.9 inches. It is unclear whether this dog is Russell, Nelson, or another dog. The Craggs allege the 15.9 inch measurement was taken from the shoulder and

also say that another dog measured at the lower shoulder was also allowed to stay in the strata. I find nothing turns on this because regardless of whether the measurement was taken at the lower shoulder or the withers, the dog is still over the height limit in bylaw 3(5). I find this evidence proves that the strata has allowed other over-height dogs to remain in the strata. Further, I find that the strata manager's March 26, 2021 letter to the Craggs asking them to measure Mel in response to five other owners' complaints about over-height dogs also proves there were other over-height dogs residing in the strata because it indicated that the complaints were about several over-height dogs, not just Mel.

41. The strata says it has not focused its enforcement of bylaw 3(5) solely against the Craggs. The strata submitted a February 7, 2022 statement from its strata manager in evidence. The strata manager confirmed that following a March 8, 2021 strata council meeting, they sent written notices to the Craggs and two other strata lot owners. The strata manager also said that since that time, one strata lot sold and the dog moved out, and the tenant in the other strata lot moved out with their dog. A letter from the strata manager to another strata lot owner also shows that the strata fined one of the other strata lot owner's for failing to provide their dog's measurement by April 30, 2021. I find the strata manager's evidence shows that the strata was taking steps to enforce bylaw 3(5) against other over-height dogs in the strata, and the other two dogs the strata identified as potentially over-height no longer reside in the strata. However, I also find the strata manager's evidence confirms that other over-height dogs were residing in the strata.
42. I find the Craggs' expectation was that the strata would allow the to keep Mel despite being over-height. Based on the above evidence from the Craggs and the strata manager, I find the Craggs' expectation that the strata would allow them to do so was objectively reasonable. As noted, I find the available evidence shows that the strata took steps to enforce bylaw 3(5) against other strata lot owners with over-height dogs, as well as the Craggs. However, I find it also shows that other over-height dogs were allowed to remain in the strata. Further, and significantly, the evidence also shows that the strata granted permission for a dog measuring 15.9 inches to stay in the strata in 2018 or 2019, despite being over the 15 inch limit in bylaw 3(5). The strata

did not provide any explanation for why it denied the Craggs' request to keep Mel while expressly allowing another over-height dog to remain in the strata. Instead, the strata says only that Mel is over-height and must be removed. I agree that Mel is over bylaw 3(5)'s height limit. However, in the absence of any meaningful explanation for why some over-height dogs were allowed to stay in the strata and not others, I find there are no reasonable grounds for the strata's decision to require the Craggs to remove Mel from their strata lot.

43. For these reasons, I find the strata's decision directing the Craggs to remove Mel from their strata lot was significantly unfair. I therefore find it is appropriate to order that the Craggs are entitled to keep Mel in their strata lot.

Must the strata accommodate the Craggs under the Code?

44. In the Craggs' letter to the strata, discussed above, they also referred to a letter from their doctor and asked the strata to allow them to keep Mel because they lost their grandson, they are prone to depression, and they are not able to move due to those events and their age. They said Mel was an integral part of their family. I find the Craggs asked the strata to accommodate them by allowing Mel to stay in their strata lot due to, in part, their mental health issues. Although the Craggs did not specifically mention the Code in their letter, the request for accommodation in their letter triggers the Code. However, I have already found that the strata's decision to require Mel's removal was significantly unfair and ordered that the Craggs are entitled to keep Mel in their strata lot. Given this, I find I do not need to determine whether the strata must accommodate the Craggs under the Code.

CRT FEES AND EXPENSES

45. 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. As the Craggs were successful in this dispute, I order the strata to reimburse the

Craggs \$225 in CRT fees. The Craggs did not claim any dispute-related expenses, so I award none.

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

ORDERS

47. I order that the Craggs are entitled to keep their current dog Mel in their strata lot.
48. Within 30 days of the date of this order, I order the strata to pay the Craggs \$225 in CRT fees.
49. The Craggs are also entitled to postjudgment interest under the *Court Order Interest Act*.
50. 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.

Leah Volkens, Tribunal Member