Civil Resolution Tribunal

Date Issued: June 1, 2022

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Dion v. The Owners, Strata Plan NW 2466*, 2022 BCCRT 638

B E T W E E N :

ALLEN DION and MARGRIT BERNET

APPLICANTS

A N D :

The Owners, Strata Plan NW 2466

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about a moving fee deposit in a strata corporation.

2. The applicants, Allen Dion and Margrit Bernet, are the former owners of a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 2466 (strata).

3. The applicants say that when they moved out of the strata in July 2021, the strata improperly refused to reimburse the $250 deposit they paid when they moved in around February 2013. They request an order that the strata reimburse the $250 fee.

4. The strata says it was entitled under its bylaws to withhold the $250 because Mr. Dion left materials and debris in the strata's common property workshop. The strata said it had to pay $260 to have people remove and dispose of the materials, and to clean the workshop.

5. Mr. Dion represents the applicants in this dispute. The strata is represented by 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 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.

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.

ISSUE

10. Must the strata refund the applicants' $250 moving deposit?

REASONS AND ANALYSIS

11. In a civil claim like this one, the applicants must prove their 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.

12. The parties agree that the applicants moved into the strata around February 2013, and moved out around July 2021. They agree the applicants paid a $250 moving deposit in February 2013, which the strata has never refunded. The parties also agree, and I accept, that the workshop in question is common property with shared use by strata lot owners.

13. Mr. Dion submits that for several years before he moved out, the strata and its council members engaged in "a witch hunt, harassment, vendetta and bullying" against the applicants. He says some council members had a personal vendetta against the applicants, which led them to lie and fabricate bylaw violations in order to justify keeping the moving deposit. Mr. Dion also says other owners, including council members, violated various bylaws and were not fined, so it is unfair for the strata to fine the applicants or refuse to refund the moving deposit.

14. The parties provided evidence and submissions on these historical issues, but I find they are not relevant to deciding the issue before me in this dispute, so I will not comment on them in this decision.

15. The strata says it was entitled under bylaws 42.5 and 43.1 to keep the moving deposit, because Mr. Dion failed to remove items from and clean the common property workshop that he used while living in the strata.

16. The strata filed consolidated bylaws at the Land Title Office in April 2014, and filed various bylaw amendments after that. Taken together, these are the strata's bylaws.

17. The strata says it retained the $250 moving deposit as legitimate enforcement for Mr. Dion's infractions of bylaws 42.5 and 43.1, because he left material behind in the workshop. I summarize these bylaws as follows:

    - Bylaw 43.1 – rubbish, dust, garbage, boxes, packing cases and other similar refuse must not be thrown, piled or stored on a strata lot or on common property. Any expenses incurred by the strata to remove such refuse will be charged to the strata lot owner.

    - Bylaw 42.5 – when moving in or out, a resident must ensure that all common areas are left clean and damage free.

18. I find that under the SPA, a strata corporation may not enforce its bylaws by retaining a deposit. Instead, SPA section 129 says a strata may enforce its bylaws in one of three ways: by imposing a fine, by taking steps to remedy the contravention, by or denying access to a recreational facility. Also, Under SPA section 135, a strata may not take any of these bylaw enforcement steps without first giving the person written particulars of the alleged bylaw violation, and an opportunity to respond.

19. There is no evidence before me indicating that the strata gave either applicant written notice of any alleged bylaw contravention before it decided to keep the $250 moving deposit. So, based on SPA sections 129 and 135, I find the strata was not entitled to retain the deposit as a way of enforcing bylaws 42.5 or 43.1.

20. I have also considered whether the strata was entitled to keep the deposit based on the wording of bylaw 42.6. That bylaw says [reproduced as written]:

> A member of the strata council and the moving party will make a before and after inspection through which the move has taken place. A resident must pay a refundable damage deposit of $250.00, whether in or out, 48 hours prior to any move and expenses occurred by the strata corporation attributable to the resident and all fines levied or repair costs paid out will be deducted from the deposit.

21. SPA section 121 says a bylaw is not enforceable to the extent that it contravenes the SPA. As explained above, the SPA does not permit a strata to refuse to refund a deposit as a means of bylaw enforcement. So, I find the part of bylaw 42.6 that permits this is unenforceable.

22. The strata did not cite bylaw 42.6, but provided receipts showing that it spent $100 for garage cleaning and $160 on "removal of drywall compound, wood, and miscellaneous items".

23. I find the strata is not entitled to retain the applicants' $250 deposit based on bylaw 42.6. First, the strata did not explain why it retained the deposit since February 2013. Second, bylaw 42.6 requires a move-out inspection by a council member, and there is no evidence this occurred.

24. Third, I find the evidence before me does not confirm that all the cleaning in the common property workshop was due to mess left by the applicants. The 2 photos the strata provided show about 11 items of drywall-related supplies left in the workshop. These consist of bags or buckets of material, and 2 rolls of plastic sheeting. Mr. Dion admits leaving these, and says he did so purposely in case other owners wanted to use them. In any event, I find that the photos do not show a particularly high level of mess that would require professional cleaning.

25. Fourth, I find the evidence does not confirm that all of the "miscellaneous items" removed from the workshop were left there by the applicants. Rather, Mr. Dion provided photos showing that other owners also had materials stored or left in the workshop.

26. For all these reasons, I find the strata was not entitled to keep the applicants' $250 moving deposit. I allow the applicants' claim, and order the strata to refund the $250 deposit.

27. The *Court Order Interest Act* (COIA) applies to this dispute. I find the applicants are entitled to prejudgment interest on the $250 from the time they moved out on July 9, 2021. This equals $1.01.

CRT FEES AND EXPENSES

28. As the applicants were successful in this dispute, in accordance with the CRTA and the CRT's rules I find they are entitled to reimbursement of $225.00 in CRT fees. Neither party claimed dispute-related expenses, so none are ordered.

ORDERS

29. I order that within 30 days of this decision, the strata must pay the applicants $476.01, broken down as:

    a. $250 as reimbursement of their moving deposit,

    b. $1.01 as prejudgment interest under the COIA, and

    c. $225 as reimbursement of CRT fees.

30. The applicants are entitled to postjudgment interest under the COIA, as applicable.

31. 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