



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Stuart-Weir v. The Owners, Strata Plan LMS 908*, 2022 BCCRT 683

B E T W E E N :

CANDICE STUART-WEIR

APPLICANT

A N D :

The Owners, Strata Plan LMS 908

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about bylaw enforcement and privacy concerns.
2. The applicant, Candice Stuart-Weir, owns a strata lot (SL114) in the respondent strata corporation, The Owners, Strata Plan LMS 908 (strata).

3. Ms. Stuart-Weir makes a number of claims against the strata. First, she says the strata improperly decided to fine her \$200 and require her to pay landscaping costs for altering common property by removing and replacing 2 trees from a garden area next to SL114. She claims she had permission to maintain the garden bed and had originally planted the 2 trees she removed. She asks for an order that the fine “imposed” in May 2021 be “removed”, and any landscape contractor costs charged to her be “discharged”.
4. Second, Ms. Stuart-Weir says the strata is treating her significantly unfairly in 2 ways. She says the strata included inappropriate information in the May 18, 2021 strata council meeting minutes that caused her embarrassment and damaged her reputation. She also says the strata unfairly denied her permission to continue her “gardening activities”. She asks for an order that information contained in the May 18, 2021 minutes be “retracted” and her gardening activities be “restored”.
5. Third, Ms. Stuart-Weir says the strata is in not enforcing its bylaws against an upstairs neighbour who is causing noise and smoking contrary to the bylaws, which is interfering with her use and enjoyment of SL114. She also says the strata is treating her significantly unfairly by not enforcing the bylaws. Ms. Stuart-Weir asks for an order that the strata enforce its noise and smoking bylaws. In submissions, she says the neighbour has sold her strata lot, so she suggests her claim is now moot, which I discuss further below.
6. Finally, Ms. Stuart-Weir says the strata has not developed and does not follow privacy policies in compliance with the *Personal Information Protection Act (PIPA)*. She asks for an order that the strata “produce and communicate its privacy policy to all strata owners within 60 days”.
7. The strata disagrees with Ms. Stuart-Weir. It says it has acted appropriately and in compliance with its bylaws and legislation. In particular, the strata says it followed proper procedure when it decided to impose the \$200 bylaw fine, and properly investigated Ms. Stuart-Weir’s complaints about her neighbour. The strata asks that Ms. Stuart-Weir’s claims be dismissed.

8. Ms. Stuart-Weir is self-represented. A council member represents the strata.
9. As explained below, I order the strata not to impose a \$200 bylaw fine or assess landscaping costs against Ms. Stuart-Weir for altering common property or common assets. I also order the strata to reimburse Ms. Stuart-Weir \$112.50 in application fees and dismiss her remaining claims.

JURISDICTION AND PROCEDURE

10. 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.
11. 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.
12. 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.
13. Under section 123 of the CRTA and the CRT rules, 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

14. The issues in this dispute are:

- a. Did Ms. Stuart-Weir breach the strata bylaw when she removed and replaced 2 trees and, if so, is the strata entitled to impose a \$200 fine and require payment of landscaping costs?
- b. Did the strata treat Ms. Stuart-Weir significantly unfairly by improperly reporting the tree removal information in the strata council minutes, and by not permitting her to maintain the garden bed?
- c. Is Ms. Stuart-Weir's claim about her neighbour's bylaw contraventions moot? If not, did the strata properly investigate and act on her bylaw complaints?
- d. Should the strata provide a copy of its privacy policy to all strata owners?

BACKGROUND

15. As applicant in a civil proceeding such as this, Ms. Stuart-Weir must prove her claims on a balance of probabilities, meaning "more likely than not". I have read all the submissions and evidence provided by the parties, but I refer only to information I find relevant to give context for my decision. Both parties made submissions and provided evidence about historical issues that I find are not relevant to the issues before me. Therefore, I have not addressed them in this decision.
16. The strata plan shows the strata was created in June 1993 under the *Condominium Act*. It continues to exist under the *Strata Property Act* (SPA). It consists of 187 strata lots in 2 low-rise buildings.
17. Land Title Office (LTO) documents show the strata filed a complete new set of bylaws with the LTO on May 26, 2015 plus subsequent bylaw amendments. I find the only relevant bylaw amendment applicable to this dispute filed after May 2015 is the addition of a smoking bylaw, which was filed on July 3, 2018. I address relevant bylaws below as necessary.

18. The strata has also passed rules as permitted under SPA section 125. I address rules relevant to this dispute below as necessary.

REASONS AND ANALYSIS

The \$200 bylaw fine and landscaping costs

19. Ms. Stuart-Weir argues that the strata must remove the threat of a \$200 fine and landscaping costs. I find this to be the same as determining if the strata is entitled to the \$200 fine and landscaping costs. As I discuss below, there is no evidence the strata assessed a \$200 bylaw fine or landscaping costs against Ms. Stuart-Weir. I considered the CRT’s authority under CRTA section 123 to order a party to do or stop doing something, also known as injunctive orders. In particular, I considered whether Ms. Stuart-Weir’s claim for injunctive relief about the fine and costs in this dispute is premature because the fine and costs have not yet been assessed. The CRT does not generally grant prospective orders: see for example, *Bourque et al v. McKnight et al*, 2017 BCCRT 26, *Parkinson et al v. The Owners, Strata Plan VIS 5086*, and *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379. However, in the circumstances of this dispute I find an injunctive order would not be premature. This is because although the strata has not assessed a fine or costs, I find the events leading up to the strata’s decision to assess these things against Ms. Stuart-Weir have established the facts and the strata believes it is currently in a position to assess the fine and landscaping costs.

20. SL114 is a ground-level strata lot. The strata plan shows the patio located next to SL114 is designated limited common property (LCP) for the exclusive use of the SL114 owner. The definition of common property under SPA section 1(1) includes that part of the land shown on a strata plan that is not part of a strata lot. Based on this definition and the strata plan itself, I find the area outside the patio is common property. The photographs in evidence show the garden bed in question is next to the patio, so I find the garden bed is common property.

21. On April 10, 2021, a resident in the strata contacted a former strata council member to notify of plants being removed from the garden bed by the residents of SL114. The former council member contacted current council members and forwarded several photographs of at least 1 shrub being removed on that date.
22. On April 22, 2021, the strata, through its strata manager, wrote to Ms. Stuart-Weir advising that she had allegedly violated bylaw 6(1) when residents of SL114 were observed “removing common property plants and altering common property landscaping”. Bylaw 6(1) requires an owner to obtain the strata’s prior written permission to alter common property or common assets. The letter advised Ms. Stuart-Weir of her opportunity to answer the complaint in writing or request a hearing, consistent with SPA section 135, and her failure to do so within 14 days might result in the strata council taking action against her, including assessing a \$200 fine. Photographs received by the strata were not provided to Ms. Stuart-Weir.
23. On April 28, 2021, Ms. Stuart-Weir provided a response. She said the strata did not provide any evidence of the plant removal and requested a “full investigation and hard copy report” be completed within 10 days. She also stated she would not assist with the investigation, but did not directly respond to the strata’s allegation or request a hearing.
24. The May 18, 2021 strata council meeting minutes include a summary of the correspondence exchanged between Ms. Stuart-Weir and the strata manager, and confirm that the strata council decided to issue a \$200 fine and charge landscaping costs. I infer the strata’s decision to charge landscape costs against Ms. Stuart-Weir was made under SPA section 133, which allows the strata to require the person who may be fined to pay reasonable costs of remedying a bylaw contravention.
25. However, there is no further correspondence on the fine or costs before me until a November 21, 2021 email from Ms. Stuart-Weir to the strata stating the strata had failed to inform her of the strata’s decision. A copy of an account statement provided by Ms. Stuart-Weir for the period December 1, 2020 to February 1, 2022 does not show a fine or costs was ever charged to her. Further, the strata does not say it assessed a fine or charged landscaping costs, nor wrote to Ms. Stuart-Weir to inform

her of its decision, so I accept that it did neither. For the reasons that follow, I find the strata is not entitled to fine Ms. Stuart-Weir for removing and replacing the replacing the 2 tree from the garden bed or require her to pay associated landscaping costs.

Did Ms. Stuart-Weir have permission to maintain the garden bed?

26. Ms. Stuart-Weir says she had permission to maintain the garden bed. It is undisputed, and there is some evidence to suggest, that Ms. Stuart-Weir along with other owners of ground-level strata lots were granted verbal permission to maintain garden the beds next to their strata lots between 1997 and 1999, when the building envelope was entirely replaced. The parties disagree that such permission continued after the building project was complete. Ms. Stuart-Weir says it did and the strata says it did not. The burden of proving any permission to maintain the common property garden bed after the building envelope project was complete rests with Ms. Stuart-Weir and I find she has not proven that fact. For example, she did not provide any correspondence or meeting minutes that set out any gardening permission continued after the building project. The fact the current strata council has authority to give short term exclusive use of common property under SPA section 76 for up to 1 year and has not done so, also weighs against Ms. Stuart-Weir. In the circumstances, I find Ms. Stuart-Weir did not have permission to maintain the common property garden bed next to SL114 or anywhere else on the strata property after 1999.

Does the strata own the trees?

27. Under SPA section 72 and bylaw 9, the strata is responsible for repairing and maintaining common property and common assets. Common assets are defined under SPA section 1(1) to include “personal property held by or on behalf of a strata corporation”.

28. Ms. Stuart-Weir says she planted the trees in 2006 and removed them because they became too large, implying the strata did not own the trees. However, the trees were located in a common property garden bed as I have described. As I have also mentioned, there is no evidence that Ms. Stuart-Weir had express permission to plant the trees or replace them, or that the strata even knew she had planted the original trees. Given these circumstances, I find Ms. Stuart-Weir effectively donated the trees

to the strata. I find this is sufficient for me to conclude the trees are common assets of the strata. Based on these circumstances, I find the trees are owned by the strata.

Did Ms. Stuart-Weir breach bylaw 6(1)?

29. In submissions, Ms. Stuart-Weir admits that she removed and replaced 2 trees in the garden bed, but says this was not an alteration to common property or common assets. I disagree.
30. Ms. Stuart-Weir cites 2 court decisions about alterations to common property that address the degree of permanence the alteration has, which she says support her position. First, in *The Owners, Strata Plan LMS 4255 v. Newell*, 2012 BCSC 1542, the court considered whether a hot tub was an "alteration" to common property within the meaning of a similarly worded bylaw. The court found that the hot tub was not designed to be permanent, and was therefore not an alteration that required strata approval. Second, in *Allwest International Equipment Sales Co. Ltd. v. The Owners, Strata Plan LMS4591*, 2018 BCCA 187, an owner argued that cutting a hole in a common property wall and installing permanent pipes to connect an air conditioner to a heat pump was not an alteration within the meaning of its strata corporation's bylaws. The court rejected this argument. It found the hole in the wall was an alteration and partially relied on the degree of attachment and permanence of the heat pump to determine that the owner required the strata's approval.
31. The court's decisions in *Newell* and *Allwest* essentially found that permanent changes to common property can be found to be alterations. I infer Ms. Stuart-Weir believes the court decisions are helpful because she believes the trees are not permanent. I disagree. I find that removal of the trees is a permanent change to both the common property and common assets. It is a permanent change to the common property because the tree that was planted there is no longer present. It is also a permanent change to the common assets, given Ms. Stuart-Weir discarded the trees.
32. Ms. Stuart-Weir also cites *Parnell v. The Owners, Strata Plan VR 2451*, 2018 BCCRT 7. The issue in *Parnell* was whether an owner-installed security camera and doorbell in a common property hallway was an alteration to common property requiring the strata corporation's approval. The CRT vice chair reviewed *The Owners, Strata Plan*

NWS 254 v. Hall, 2016 BCSC 2363 and found that they were alterations. In *Hall*, the issue on appeal was whether “an alteration to common property” includes “replacement”. In that case, the work involved removal and replacement of 4 windows and a patio door, which the court found did not change the common property or the strata lot. There, the court found there was not an “alteration” within the meaning of the bylaws. However, the vice chair noted the court in *Hall* adopted the following definitions (her bold emphasis added):

An addition builds on or supplements **what is already there**. An alteration can add to or subtract from what is already there. ...

33. I do not find the CRT’s decision in *Parnell* or the court’s decision in *Hall* support Ms. Stuart-Weir’s position that the removal and replacement of trees is not an alteration. The narrow issue in *Hall* involved window replacement where the replaced windows looked similar to the new windows. By her own admission, Ms. Stuart-Weir says she replaced the 2 trees with smaller ones because they were too large, which I find meets the definition of “alteration” adopted in *Hall*. That is, the replacement trees add to or subtract from what is already there.
34. The online version of the Merriam-Webster dictionary defines the word “alteration” as “the act or process of altering something”. It also notes synonyms include “change”, “modification”, and “revise”. Based on a plain reading of the bylaw, I find that removing 2 trees from a common property garden bed and replacing them with 2 different trees is an act of altering both the common property garden bed and common assets. Given Ms. Stuart-Weir did not have the prior written permission of the strata to remove and replace the trees, I find she breached bylaw 6(1).

Procedural requirements

35. I turn now to the procedural requirements the strata must follow under the strata’s rules and the SPA. For the reasons that follow, I find the strata has not followed the necessary procedural requirements.
36. I first note the SPA does not set out any procedures for assessing bylaw complaints. In *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148, the BC Supreme Court stated

that the SPA allows strata corporations to deal with matters of complaints for bylaw violations as it sees fit, as long as it complies with the principles of procedural fairness and its actions are not significantly unfair to any person who appears before it (paragraph 52).

37. Rule 301 in part, sets out a procedure the strata must follow when contemplating bylaw fines. The relevant parts say as follows (reproduced as written):

(1) Unless otherwise directed by the terms and provisions of a specific Bylaw, any infraction or violation of a bylaw or rule, perceived or otherwise, shall be submitted in writing to the Council or its agent.

(2) Upon receipt of a written notice of perceived violation, the agent of the Corporation will contact the 'violating' party by telephone and if found to be appropriate in writing or in person to notify them of the complaint received.

(3) If the situation is not rectified within seven (7) days, a written Notice of Violation will be sent to the offending owner, by any means described in SPA clause 61(1) (a) or (b).

(4) If after a further seven (7) days the offending situation has not been satisfactorily corrected, a penalty for violation of a bylaw or rule may be imposed by the Strata Council.

38. Unlike bylaws, rules cannot apply to strata lots: see SPA section 125(1). This distinction is not set out in rule 301 above, but given the issue before me is about a common property garden bed, I find the rule is valid in the circumstances. I find the rule does not contradict any bylaw, so the strata must follow it.

39. The evidence is clear that the strata did not follow rules 301(1), (2), or (3) by giving Ms. Stuart-Weir 7 days to rectify her bylaw breach. Therefore, I find the strata is not in a position to impose a fine for Ms. Stuart-Weir's breach of bylaw 6(1).

40. SPA section 135 also sets out procedural requirements the strata must follow. Under section 135(1) of the SPA, before imposing fines for bylaw or rule infractions or requiring a person to pay the costs incurred to rectify a bylaw breach, the strata must

have received a complaint, given the owner written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if one is requested. Under section 135(2), the strata must give the owner written notice of its decision to impose fines or charge costs to remedy a bylaw contravention “as soon as feasible”.

41. The BC Court of Appeal has found that strict compliance with section 135 of the SPA is required before a strata corporation can impose fines. I find this conclusion applies equally to charging costs to remedy a bylaw contravention under SPA section 133, given the language used in section 135. The court has also determined that fines may be found to be invalid if the procedural requirements set out in section 135 are not followed. See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.
42. As Ms. Stuart-Weir correctly notes, the strata council decided to assess a \$200 fine and charge back related landscaping costs at its May 18, 2021 strata council meeting, but has not given her written notice of its decision. This is contrary to SPA section 135(2), which requires the strata to give Ms. Stuart-Weir written notice of its decision “as soon as feasible”. The meaning of this phrase, which is used in several places in the SPA, was considered by the BC Supreme Court in *The Owners, Strata Plan VR 2213 (Re)*, 2021 BCSC 905. The court noted the meaning of the phrase was not considered in *Terry*, but has been considered several times by the CRT. The court concluded at paragraph 247, that the words “as soon as feasible” will vary from one set of circumstances to the next. One of the cited CRT decisions in *VR 2213* related to a strata corporation informing an owner approximately 4 months after making a decision to impose a fine, which was not “as soon as feasible”: See *Zhang v. The Owners, Strata Plan LMS 2195*, 2020 BCCRT 1443.
43. In this dispute, it has been approximately 1 year since the strata decided to fine Ms. Stuart-Weir and require her to pay landscaping costs, but it has not informed her of its decision. I find this length of time is not as soon as feasible. Therefore I find the strata has not complied with SPA section 135(2) and, contrary to its position, I find the strata is not in a position to assess a fine or require Ms. Stuart-Weir to pay landscaping costs associated with her breach of bylaw 6(1).

44. For these reasons, I find the strata is not entitled to the \$200 bylaw fine or landscape costs, and I order the strata not to impose the fine or assess landscaping costs against Ms. Stuart-Weir.

Did the strata treat Ms. Stuart-Weir significantly unfairly?

45. As earlier noted, there are 2 aspects to Ms. Stuart-Weir's claim the strata has treated her significantly unfairly. The first relates to the strata's alleged improper reporting of the bylaw contravention in the May 18, 2021 strata council meeting minutes. The second is the strata's refusal to permit Ms. Stuart-Weir to maintain the common property garden bed next to SL114. I address each in turn.

46. The CRT has jurisdiction to determine claims of significant unfairness. See *The Owners, Strata Plan BCS 1721 v. Watson, 2018 BCSC 164*.

47. The courts and the CRT have considered the meaning of "significant unfairness" in many contexts and have equated it to oppressive or unfairly prejudicial conduct. In *Reid v. Strata Plan LMS 2503, 2003 BCCA 126*, the BC Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith and/or unjust or inequitable. See also *Kunzler v. The Owners, Strata Plan EPS 1433, 2021 BCCA 173*.

The May 18, 2021 minutes

48. As noted, the May 18, 2021 strata council meeting minutes include a summary of the correspondence exchanged between Ms. Stuart-Weir and the strata manager, and confirms that the strata council decided to assess a \$200 fine and charge Ms. Stuart-Weir landscaping costs.

49. I find I do not need to address whether the strata's summary in the minutes was significantly unfair to Ms. Stuart-Weir based on her requested remedy. The only remedy Ms. Stuart-Weir requests is that the strata amend its minutes by "issuing a retraction" of the summary. I find that such a request would serve no practical purpose as the comments already form part of the minutes. Therefore, I dismiss Ms. Stuart-Weir's claim that the strata's comments in the May 18, 2021 minutes about the tree replacement are significantly unfair.

Common property garden bed

50. In *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, the BC Court of Appeal established a reasonable expectations test, restated in *Watson* at paragraph 28 as follows:

- a. What is or was the expectation of the affected owner or tenant?
- b. Was that expectation on the part of the owner or tenant objectively reasonable?
- c. If so, was that expectation violated by an action that was significantly unfair?

51. More recently in *Kunzler*, the Court of Appeal determined the reasonable expectations test set out in *Dollan* could be considered a factor in deciding whether significant fairness has occurred, together with all other relevant factors including the nature of the decisions and the effect of overturning it.

52. I find the expectation of Ms. Stuart-Weir was that she could maintain the common property garden bed as she thought fit. I have already determined that Ms. Stuart-Weir did not have permission to maintain the garden bed after 1999. I have also found that the garden bed in question is common property, and the plants are common assets as defined under the SPA. These are things for which the strata is responsible and has discretion to decide. Given these circumstances, I find Ms. Stuart-Weir's expectation was not objectively reasonable.

53. Ms. Stuart-Weir also provided photographs about other areas of the common garden bed near other ground level strata lots that she says represent a change in landscaping for its original in 1993. While this may be so, that does not mean that other ground level strata lot owners made the changes, continue to maintain those garden beds, or had authority to do so, if that is what Ms. Stuart-Weir suggests. That the strata does not have copies of correspondence permitting other ground-level strata lot owners to maintain common property garden beds also weighs against Ms. Stuart-Weir. For these reasons, I dismiss her claim the strata treated her significantly unfairly.

Is Ms. Stuart-Weir's claim about her neighbour's bylaw contraventions moot?

54. The evidence is that Ms. Stuart-Weir began making complaints about her upstairs neighbour, a previous strata council chair, concerning noise and smoking tobacco or narcotics in about February 2021. However, in submissions, Ms. Stuart-Weir says her neighbour sold her strata lot, so the issue is moot (of no consequence), and she no longer seeks a remedy. The strata does not address whether the claim is moot.

55. The BC Court of Appeal in *Binnersley v. BCSPCA*, 2016 BCCA 259, at paragraph 22, restated the principles of mootness as outlined by the Supreme Court of Canada in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R 342 finding:

... if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot...

56. Again citing *Borowski*, the court in *Binnersley* found 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.

57. I am bound by the decision reached in *Borowski*. I find a letter in evidence from Ms. Stuart-Weir's upstairs neighbour's daughter confirms the neighbour moved out of the strata lot prior to March 20, 2022. Therefore, I find allegations the strata failed to enforce its noise and smoking bylaws are moot given there is no further live controversy with the upstairs neighbour. I decline to exercise my discretion to consider the moot issue, for the following reasons:

- There is no prejudice to either party if I do not consider the issue further.
- To address how the strata handled the alleged bylaw contraventions would not be an appropriate use of the CRT's resources as the issue with the neighbour will not reoccur.

- This dispute is not one of public interest as it affects only the parties to this dispute.
- There is no compelling reason for the CRT to resolve a dispute that no longer exists.

58. For these reasons, I dismiss Ms. Stuart-Weir's claim that the strata failed to enforce its bylaws.

Should the strata provide a copy of its privacy policy to all strata owners?

59. This claim appears to stem from the strata's distribution of the Dispute Notice for this dispute to all residents of the strata. Ms. Stuart-Weir says this was contrary to PIPA as the Dispute Notice contained her personal information, which she had not given consent for the strata to disclose.

60. The strata says it complies with Privacy Guidelines for Strata Corporations and Agents required under PIPA as published by the Office of the Information and Privacy Commissioner (OIPC). It also says the CRT does not have jurisdiction to determine the issue because Ms. Stuart-Weir has filed a claim with the OIPC.

61. PIPA is provincial legislation that governs how private organizations, including strata corporations, collect, use, disclose, and destroy personal information. The OIPC has jurisdiction to make decisions under PIPA that include disclosure of personal information. To that extent, I find the CRT does not have jurisdiction to determine if a privacy breach occurred. However, that is not what Ms. Stuart-Weir is asking here. As mentioned, Ms. Stuart-Weir says the strata has not developed and does not follow policies and practices necessary to ensure compliance with PIPA, has not developed a process to respond to complaints that may arise relating to PIPA, and has not made the information about its privacy policy available on request.

62. Under section 5 of PIPA, the strata must develop and follow policies and practices necessary to ensure compliance with PIPA, develop a process to respond to complaints that may arise relating to PIPA, and make the information about its privacy policy available on request. I find it is unclear on the evidence whether the strata has developed policies and processes relating to PIPA. However, there is no evidence

before me that Ms. Stuart-Weir requested the strata to provide her with its privacy policy. Notably, PIPA does not require the strata to distribute information about its privacy policy to strata owners, it only requires the strata to provide such information upon request. So, on that basis, I dismiss this claim.

63. I note that Ms. Stuart-Weir cited my decision in *L.S. v. The Owners, Strata Plan ABC XXXX*, 2018 BCCRT 376, where I did order the strata to distribute its privacy policy information to strata owners. I find the facts in that decision distinguishable from the facts here, largely because the strata in *ABC XXXX* acknowledged it did not have a privacy policy or procedures and stated it was in the process of developing one.

CRT FEES AND EXPENSES

64. 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 not to follow this general rule in this dispute. Ms. Stuart-Weir has been partially successful and paid \$225.00 in CRT fees, so I order the strata to reimburse her ½ of that amount or \$112.50.

65. Ms. Stuart-Weir also claimed \$104.62 in dispute-related expenses for “landscaping photo development and contributions to legal defense costs”. However, she did not provide proof of her expenses, such as paid invoices, so I decline to order reimbursement. The strata did not claim expenses, so I make no order for dispute-related expenses.

66. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Stuart-Weir.

ORDERS

67. I order that the strata must not impose the \$200 bylaw fine, or landscaping costs associated with Ms. Stuart-Weir’s breach of bylaw 6(1) in April 2021.

68. I order the strata, within 30 days of this decision, must reimburse Ms. Stuart-Weir \$112.50 for CRT fees paid.

69. I dismiss Ms. Stuart-Weir's remaining claims.

70. Ms. Stuart-Weir is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.

71. 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.

J. Garth Cambrey, Vice Chair