



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Prenty v. The Owners, Strata Plan NW2603*, 2022 BCCRT 1029

B E T W E E N :

HEATHER ANNE PRENTY

APPLICANT

A N D :

The Owners, Strata Plan NW2603

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This is a strata property dispute about alleged strata bylaw violations. The applicant, Heather Anne Prenty, owns strata lot 14 (SL14) in the respondent strata corporation, The Owners, Strata Plan NW2603 (strata). Ms. Prenty says the strata has incorrectly

fined her \$200 for having a sunshade that is not white or off-white in colour. She seeks an order that the strata reimburse her for the \$200 fine she paid and an order allowing her to put up her sunshade.

2. The strata says Ms. Prenty's sunshade contravenes the strata's bylaws because of its colour. It also says that Ms. Prenty did not obtain written permission to put up the sunshade contrary to the strata's bylaws. Given Ms. Prenty's alleged bylaw breaches, the strata says the \$200 fine is valid.
3. Ms. Prenty is self-represented in this dispute. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.

7. 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 Matter - Evidence

8. I was unable to properly open a video Ms. Prenty submitted in evidence about the sunshade. At my request, CRT staff sought a viewable copy which Ms. Prenty provided. The strata was given the new evidence and provided an opportunity for response submissions but declined. I have considered the video evidence in my decision below.

ISSUES

9. The issues in this dispute are:
 - a. Did Ms. Prenty breach the strata's bylaws by putting up her sunshade?
 - b. Is the \$200 fine valid?
 - c. Should I make an order allowing Ms. Prenty to put up her sunshade?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant, Ms. Prenty must prove her claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. In November 2020, the strata repealed its existing bylaws and filed a complete set of new bylaws with the Land Title Office. I find the November 2020 bylaws apply to this dispute. I discuss the relevant bylaws below.
12. It is undisputed that sometime before March 26, 2021, Ms. Prenty put up a sunshade on SL14's balcony. Based on the strata plan in evidence, I find this balcony area is limited common property (LCP) for SL14's exclusive use.

13. Ms. Prenty says the sunshade is tan and brown in colour. The strata says the sunshade is brown. I find I do not need to decide the sunshade's exact colour as it ultimately has no impact on my decision. I find video evidence shows the sunshade is not white or off-white. The video evidence also shows that the sunshade is a roll-up shade.

Did Ms. Prenty breach the strata's bylaws?

14. In its Dispute Response, the strata alleges Ms. Prenty has breached bylaws 3(12) and 3(17). In addition to these 2 bylaws, in its March 26, 2021 bylaw violation letter, the strata referred to Ms. Prenty's non-compliance with bylaw 13(2). I discuss each of these bylaws below.

Bylaw 3(17)

15. Bylaw 3(17) says that an owner must not install window coverings visible from a strata lot's exterior in a colour other than white or off-white. The strata says Ms. Prenty breached this bylaw because the sunshade she installed on SL14's balcony is brown. Ms. Prenty says that her sunshade does not need to be white or off-white because it is not a "window covering".

16. The strata says that it has always required colour uniformity. In support, it refers to strata council meeting minutes from May 17, 1991 which note the strata council gave an owner approval to hang a roll-up curtain on their back patio on the condition that the curtain "conform with existing roll ups already installed in the complex and are white in colour". Whether or not the strata council previously only gave approval for sunshades if they were white in colour is not at issue here. Rather, the question I must answer is whether sunshades must be white or off-white under the current bylaws.

17. In *Semmler v. The Owners, Strata Plan NES3039*, 2018 BCSC 2064 at paragraph 18, the court found that the basic rules of statutory interpretation should be used when interpreting strata bylaws. This includes the plain meaning rule of statutory interpretation. The rule requires me to reasonably interpret the plain and ordinary meaning of the words in an individual bylaw within the context of the entire bylaws.

18. Here, I find the plain and ordinary meaning of the words in bylaw 3(17) is that the white or off-white colour requirement applies only to window coverings. There is no indication in the evidence that there are windows on SL14's balcony that Ms. Prenty's sunshade is covering. So, I find the sunshade is not a window covering and bylaw 3(17) does not apply.

Bylaw 3(12)

19. Bylaw 3(12) says an owner must not install, attach, place or locate awnings, shades, screens, and canopies, among other things, on the outside of the building or the common property, without the strata council's written consent.

20. As noted above, Ms. Prenty installed the sunshade on SL14's LCP balcony. LCP is a form of common property under section 1(1) of the *Strata Property Act* (SPA). So, I find Ms. Prenty needed the strata council's written consent under bylaw 3(12) before she could put up her sunshade.

21. Ms. Prenty says that she had obtained consent from the strata council in the past to put up sunshades. In support, she refers to extracts from various strata council meeting minutes about requests for window shades, sunshades and mosquito netting. The strata says Ms. Prenty never received written approval.

22. Based on the evidence before me, I find there is no proof Ms. Prenty ever obtained the strata council's written consent to put up a sunshade. From the various meeting minutes Ms. Prenty refers to, only the April 23, 2019 minutes refer to a request and approval for a sunshade. However, the evidence does not establish that it was Ms. Prenty who made this, or any other, request as the minutes do not include names and only refer to "owner". Rather, the strata's evidence includes emails from April to May 2019 between the strata manager and MS, another owner, that I find prove that the request for the sunshade was made by, and subsequent approval provided to, MS, not Ms. Prenty.

23. Given the above, I find Ms. Prenty breached bylaw 3(12) by putting up her sunshade without first obtaining the strata council's written approval.

Bylaw 13(2)

24. As noted above, in its March 26, 2021 bylaw violation letter, the strata referred to bylaw 13(2). This bylaw says any alteration to a strata lot, common property, or LCP that has not received strata council's written approval must be removed at the owner's expense, if the council orders that the alteration be removed. Though not relied on by the strata, I find bylaw 12(1) is also relevant here. It says that an owner must obtain the strata council's written approval before making an alteration to common property or LCP.
25. Ms. Prenty says that her sunshade is not an alteration since it takes only a couple of nails in a beam to put it up. She also says that she puts her sunshade up in the summer months and that it is usually rolled up in the early evenings or if the weather is windy or rainy.
26. Although the strata's bylaws are customized, the SPA's standard bylaws contain a provision nearly identical to bylaw 12(1), so there are applicable decisions from BC courts and the CRT about the term "alteration".
27. In *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363, the court considered whether replacing 4 common property windows and a patio door was an alteration to common property within the meaning of the SPA's standard bylaw 6(1). The court relied on an Ontario case, *Wentworth Condominium Corp. No. 198 v. McMahon*, 2009 ONCA 870, and found that an "alteration" involves a change to the structure of the common property or a strata lot. There was no structural change in replacing windows and a door, so there was no alteration.
28. In *Allwest International Equipment Sales Co. Ltd. v. The Owners, Strata Plan LMS4591*, 2018 BCCA 187, the BC Court of Appeal was critical of *Wentworth* and suggested that structural change cannot be the test for an alteration given that the terms "structure" and "structural change" do not appear in standard bylaw 6(1). I note these words also do not appear in bylaw 12(1). The court in *Allwest* said that immaterial changes to common property will not be alterations. In *Allwest*, the owner's

heat pump and permanent pipes through the building's exterior wall were material changes and were an alteration under standard bylaw 6(1).

29. In the CRT decision of *Parnell v. The Owners, Strata Plan VR 2451*, 2018 BCCRT 7, the Vice Chair found that doorbell cameras attached to common property wall and a surveillance camera mounted to a common property ceiling were alterations because they were additions to what was already there as opposed to building on or supplementing the common property wall and ceiling.
30. I take the above decisions to mean that while a structural change will likely always be an alteration for the purposes of similarly-worded bylaws, non-structural changes may still be alterations if they involve a material change. Adding something that did not exist before is more likely to be a material change than replacing or supplementing something that was already there.
31. The sunshade undisputedly did not exist on SL14's balcony before Ms. Prenty installed it. As noted, Ms. Prenty's submits that to put up the sunshade, it must be nailed into a beam on the balcony. Ms. Prenty says that the sunshade's location is in a very quiet and usually unoccupied area at the back of the strata's complex. However, based on video evidence before me, I find that when rolled down, the sunshade is likely visible to Ms. Prenty's neighbours when they are on their back patios or balconies. Though the sunshade may not be visible when rolled up, I find the sunshade is a material change to the LCP balcony when it is in use. So, based on the BC Court of Appeal's reasoning in *Allwest*, I find the sunshade is an alteration to LCP.
32. Since I have already found above that Ms. Prenty did not obtain the strata council's consent before installing the sunshade, I find Ms. Prenty breached bylaw 12(1) by making an alteration to LCP without the required approval. Ms. Prenty undisputedly did not remove the sunshade between March 26, 2021 and August 9, 2021, despite the strata council's requests. So, I find Ms. Prenty also breached bylaw 13(2).

Is the \$200 fine valid?

33. I now consider whether the \$200 fine the strata imposed against Ms. Prenty is valid.
34. SPA section 135 sets out specific requirements that must be met before a strata can impose a bylaw fine. It says a strata corporation may not impose a fine unless the strata has received a complaint about the contravention and has given the person it intends to fine the particulars of the complaint in writing as well as a reasonable opportunity to answer the complaint, including requesting a hearing.
35. SPA section 135(2) says that a strata corporation must, as soon as feasible, give notice in writing of a decision imposing the bylaw fine. Bylaw fines are not valid if a strata corporation does not strictly comply with SPA section 135 (*Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449). In *Terry*, the Court of Appeal also found that the notice to the owner under section 135 must be of an alleged contravention of “an identified bylaw or rule” (see paragraph 28).
36. Though I have found above that Ms. Prenty breached bylaws 3(12), 12(1) and 13(2), the strata manager’s March 26, 2021 bylaw violation letter only referred to Ms. Prenty’s non-compliance with bylaw 3(17), though it was wrongly identified as bylaw (2), as well as bylaw 13(2).
37. I find that at the time the March 26, 2021 letter was sent, Ms. Prenty had not breached bylaw 13(2) because there is no evidence that the strata had ordered her to remove the sunshade before it sent this letter. So, I find the March 26, 2021 letter was the strata’s order or request for Ms. Prenty to remove the sunshade under bylaw 13(2). I found above that bylaw 3(17) does not apply to the sunshade so Ms. Prenty did not breach it. As a result, I find the March 26, 2021 letter did not properly identify any bylaws that Ms. Prenty had actually breached at that time. The strata’s later letters to Ms. Prenty also did not identify any specific bylaws. So, I find the strata did not properly identify which bylaws Ms. Prenty had breached before it imposed the \$200 fine.

38. For those reasons, I find the \$200 is invalid. Ms. Prenty undisputedly paid the fine prior to this dispute. So, I order the strata to reverse the fine and return the \$200 payment to Ms. Prenty.

Should I make an order allowing Ms. Prenty to put up her sunshade?

39. I have found above that Ms. Prenty did not obtain written approval from the strata council to put up her sunshade. Since this written approval is required under bylaws 3(12) and 12(1), I find Ms. Prenty is not currently entitled to put up her sunshade and decline to make her requested order. Nothing in my decision restricts Ms. Prenty from requesting the strata council's approval to put up the sunshade in the future.

CRT FEES, EXPENSES AND INTEREST

40. 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. Since Ms. Prenty was partially successful in this dispute, I find she is entitled to reimbursement of \$112.50 for half of her paid CRT fees. Neither party requested reimbursement for dispute-related expenses so, I order none.

41. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Prenty is entitled to pre-judgment interest on the \$200 from December 18, 2021, the date Ms. Prenty demanded repayment from the strata, to the date of this decision. This equals \$1.21.

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

ORDERS

43. I order that within 21 days of the date of this decision, the strata pay Ms. Prenty a total of \$313.71, broken down as follows:

- a. \$200 as repayment for the invalid fine,

- b. \$1.21 in pre-judgment interest under the COIA; and
 - c. \$112.50 in CRT fees.
44. Ms. Prenty is also entitled to post-judgment interest under the COIA, as applicable.
45. I dismiss the remainder of Ms. Prenty's claims.
46. 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.

Nav Shukla, Tribunal Member