



Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

GILES DANNY ST PIERRE

APPLICANT

A N D :

The Owners, Strata Plan BCS1586

RESPONDENT

GILES DANNY ST PIERRE

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This strata property dispute is about medical cannabis use.
2. Giles Danny St Pierre, co-owns strata lot 39 (SL39) in a strata corporation, The Owners, Strata Plan BCS1586 (strata). Mr. St Pierre is the applicant in the primary claim, and the respondent to the strata's counterclaim.
3. Mr. St Pierre is self represented in this dispute. The strata is represented by a strata council member.
4. Mr. St Pierre says the strata has discriminated against him by failing to accommodate his disability, contrary to the *BC Human Rights Code* (Code). Specifically, Mr. St Pierre says the strata wrongly issued bylaw fines against him for medical cannabis use, harassed him, and permitted his neighbours to harass him about his cannabis use.
5. Mr. St Pierre requests the following remedies in this dispute:
 - Removal of all bylaw fines and warning letters.
 - An order that the strata not "pursue or enforce" his neighbours' complaints about his cannabis use.
 - Reimbursement of \$1,000 for a cedar privacy hedge installed along his backyard fence line.
 - \$5,000 in damages, including damages for injury to the dignity, feeling, and self-respect of Mr. St Pierre and his wife.
 - Reimbursement of \$1,120 in legal fees.
6. The strata says it has met its duties under the *Strata Property Act* (SPA) and the Code. The strata says Mr. St Pierre has not provided medical evidence that his disability requires him to smoke marijuana, rather than ingesting it in another form. The strata also says Mr. St Pierre has refused to participate in the accommodation process, such as by insisting he must smoke on his back patio, rather than in another

location in the strata. The strata also says it has a duty to enforce its bylaws, including bylaws against nuisance.

7. In its counterclaim, the strata requests an order that Mr. St Pierre comply with strata bylaws and cease smoking marijuana in areas where the smoke enters neighbouring properties.
8. For the reasons set out below, I find in favour of the strata in this dispute.

JURISDICTION AND PROCEDURE

9. 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.
10. 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.
11. 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.
12. 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.

Code Jurisdiction

13. CRTA section 11(1)(d) says the CRT may refuse to resolve a claim or dispute within its jurisdiction that involves the Code. I find this means the CRT has discretion to resolve Mr. St Pierre's discrimination claim.
14. However, in his dispute application, Mr. St Pierre claims damages for injury to dignity, feelings and self-respect on behalf of his wife. His wife is not a party to this dispute, and Mr. St Pierre has no standing (authority) to make claims on her behalf. So, I dismiss this aspect of Mr. St Pierre's claim.

Harassment Claims

15. Mr. St Pierre says some of his neighbours have harassed him, including by yelling at him about his cannabis use, and by filing bylaw complaints against him. In my reasons below, I address the issue of bylaw complaints against Mr. St Pierre. However, I find the CRT has no jurisdiction (authority) to resolve Mr. St Pierre's other allegations of harassment by neighbours.
16. There is no strata bylaw against harassment, and no neighbours are parties to this dispute. Previous CRT decisions have held that, absent a bylaw about harassment, , such claims are outside the CRT's strata property jurisdiction. See: *Wolff v. The Owners, Strata Plan NES3191*, 2021 BCCRT 987 citing *Tomlinson v. The Owners, Strata Plan EPS 938*, 2021 BCCRT 331 and *Larocque v. The Owners, Strata Plan VR 255*, 2021 BCCRT 617. Although prior CRT decisions are not binding, I agree with the reasoning in these decisions and adopt it. I therefore refuse to resolve Mr. St Pierre's claims about harassment by neighbours.

ISSUES

17. The issues in this dispute are:
 - a. Does Mr. St Pierre's cannabis smoking breach strata bylaws?

- b. Does the strata have a duty under the Code to accommodate Mr. Pierre's cannabis use?
- c. If so, did the strata discriminate against Mr. Pierre by failing to accommodate him to the point of undue hardship?
- d. If so, what remedies are appropriate?
- e. Must the strata reverse any bylaw fines?

BACKGROUND

18. Generally, in a civil claim, the applicant must prove their claims on a balance of probabilities (meaning "more likely than not"), and the counterclaim applicant must prove their counterclaims.
19. This dispute involves, in part, a discrimination complaint under the Code. For that discrimination complaint, Mr. St Pierre must prove he has a disability and that not smoking cannabis would have a negative effect on him because of that disability. Once Mr. Pierre has established these facts, the burden shifts to the strata to prove it has accommodated Mr. St Pierre to the point of undue hardship.
20. I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.
21. Land title documents show Mr. St Pierre and his wife purchased SL39 in June 2019. SL39 is a 2-storey townhouse-style strata lot with a basement. It is the end unit in a building containing a row of 4 joined townhouses.
22. The strata plan shows there are limited common property (LCP) yard areas at the back and side of SL39. Photos in evidence show there is a concrete patio immediately behind SL39, in the LCP backyard. The parties agree Mr. St Pierre currently sits on this patio to smoke cannabis. There is also a main floor garage located at the front of the building, which is part of SL39.

23. Mr. St Pierre says he must smoke medical cannabis to manage the symptoms of his multiple disabilities. For reasons explained below, he also says he must smoke the cannabis on his back patio, rather than in front of or inside SL39. Mr. St Pierre says that under the Code, the strata must accommodate him by permitting him to smoke cannabis on his back yard patio.

REASONS AND ANALYSIS

Does Mr. St Pierre's cannabis smoking breach strata bylaws?

24. The parties agree the strata has no bylaws specifically restricting smoking or cannabis use. However, the strata says Mr. St Pierre's cannabis smoke is a nuisance to his neighbours, contrary to bylaws 3.1 and 3.3(b), which state in part as follows:

3.1 – an owner must not use a strata lot or common property in a way that causes a nuisance or hazard to another person, or unreasonably interferes with the rights of other persons to use and enjoy common property or another strata lot.

3.3(b) – an owner must not make, cause or produce undue smell in or about any strata lot or common property, or do anything which will unreasonably interfere with another owner, tenant or occupant.

25. The strata says it has a duty to enforce those bylaws, particularly since the neighbours opposite Mr. St Pierre's backyard have provided medical evidence that both of them have lung-related medical conditions which mean they should not be exposed to second hand smoke. I accept that the strata received that evidence, as some of it was provided in evidence.

26. The evidence shows that other neighbours also filed written complaints with the strata about smoke and odour from Mr. St Pierre's cannabis use.

27. The strata's noise and nuisance bylaws are consistent with case law on nuisance from the BC Supreme Court. For example, in *Campbell et al v. Blainey et al*, 2005 BCSC 250, the court said in paragraph 55 that a nuisance occurs when one person's

use of property unreasonably inflicts inconvenience and discomfort on another. In *The Owners, Strata Plan LMS 1162 v Triple P Enterprises Ltd.*, 2018 BCSC 1502, the court defined nuisance in the strata setting as a substantial, non-trivial, and unreasonable interference with use and enjoyment of property (paragraph 33).

28. The test of whether a potential nuisance is unreasonable is objective and is measured with reference to a reasonable person occupying the premises: see *Sauve v. McKeage et al.*, 2006 BCSC 781. The test for nuisance depends on several factors, such as its nature, severity, duration, and frequency: see *St Lawrence Cement Inc. v. Barrette*, 2008 SCC 64.
29. Based on the evidence before me, including the written statements from his neighbours, I accept that Mr. St Pierre's cannabis smoke is a substantial, non-trivial and unreasonable interference with his neighbours' use and enjoyment of their properties. Several neighbours report that they can smell the smoke from inside their strata lots. Neighbours from 2 different strata lots report that they have brought their children inside due to odour in their yards. The backyard neighbours report that their health conditions are affected by the smoke or odour.
30. In his written statement to the CRT, Mr. St Pierre said he smokes cannabis on the patio 3 to 4 times each day. He also provided a video showing that his patio chair is about 7 feet from the fence line. I find that this evidence about frequency and proximity of use supports the conclusion that the cannabis smoke is a nuisance to his neighbours. I therefore find it breaches strata bylaws contrary to strata bylaws 3.1 and 3.3(b).

Human Rights Code

31. Mr. St Pierre says that regardless of strata bylaws, under the Code the strata must accommodate him by permitting him to smoke cannabis on his patio.
32. Section 8 of the Code says, in part, that unless there is a *bona fide* (genuine) and reasonable justification, a person must not, because of a physical or mental disability,

discriminate against another person regarding any accommodation, service, or facility customarily available to the public.

33. Prior CRT and Human Rights Tribunal (HRT) decisions confirm that section 8 of the Code applies to strata corporations: see *The Owners, Strata Plan LMS 2900 v. Mathew Hardy*, 2016 BCCRT 1; *Konieczna v. Strata Plan NW 2489*, 2003 BCHRT 38; *Williams v. Strata Plan LMS 768*, 2003 BCHRT 165. These cases mean that under the Code, a strata corporation has a duty to accommodate occupants' disabilities, unless the accommodation would cause the strata undue hardship.
34. Also, SPA section 121(1)(a) says a strata bylaw is not enforceable to the extent that it contravenes the Code.
35. For Mr. St Pierre's discrimination claim to succeed, he must first prove he has a disability, which triggers a duty to accommodate under the Code. He must also prove he was adversely impacted by the strata's refusal to permit him to smoke cannabis on his back patio, and that his disability was a factor in the adverse impact. After that, the burden shifts to the strata to establish a *bona fide* reasonable justification for its refusal to permit smoking on the patio.
36. The parties agree that Mr. St Pierre has multiple disabilities. This is confirmed by the medical evidence before me. So, I accept that Mr. St Pierre has disabilities for the purposes of section 8 of the Code.
37. However, for the reasons set out below, I find Mr. St Pierre has not proved that his disabilities were adversely affected by the strata's refusal to permit him to smoke cannabis on his back patio. Specifically, I find Mr. St Pierre has not proven that he must smoke cannabis rather than ingesting it in another form. I also find the strata met its duty to accommodate Mr. St Pierre by permitting him to smoke elsewhere in the strata.

Necessity of Smoking

38. In *The Owners, Strata Plan LMS 2900 v. Mathew Hardy*, 2016 BCCRT 1, the CRT considered another case where a strata lot owner was fined because his marijuana

smoking breached strata bylaws. The owner argued that the strata had a duty to accommodate his marijuana smoking because he had a disability. The then-CRT chair found that while the owner provided medical evidence proving a disability, he had not provided persuasive evidence that smoking marijuana, rather than ingesting it in another form, was necessary to accommodate his disability (see paragraph 49). The chair therefore concluded that the owner had not proven that the strata's decision to prohibit the marijuana smoking caused the owner to be adversely affected or treated differentially because of his disability.

39. Similarly, I find there is no persuasive medical evidence in this case that establishes that Mr. St Pierre must smoke cannabis, rather than ingest it in another form. Mr. St Pierre says that other forms like edible cannabis do not have the same effect, as the onset is 60 to 90 minutes, and to manage his conditions he requires the rapid onset of smoked cannabis.
40. I accept that this is Mr. St Pierre's opinion. However, Mr. St Pierre is not a medical or psychological expert, and there is no expert evidence before me confirming it. There is also no expert opinion stating that other forms of medication and treatment would be less effective than smoked cannabis.
41. Mr. St Pierre provided extensive medical evidence, much of which does not mention cannabis or marijuana use. A December 19, 2017 report from Veterans Affairs Canada, completed by psychologist Cheryl Ainsworth, states that Mr. St Pierre uses marijuana less than once a month. I accept that report is several years old, and is likely out of date.
42. A February 11, 2020 nursing assessment states that Mr. St Pierre's pain gets better with smoking marijuana. However, based on its content, I find that assessment is a summary of what Mr. St Pierre's told the nurse, and does not offer a medical opinion about treatments or symptom management. The nursing assessment also does not address the effectiveness of ingesting other forms of cannabis, or other treatments.
43. Mr. St Pierre provided a June 20, 2022 letter from Dr. Withers, his family doctor. Dr. Withers wrote that Mr. St Pierre suffers from a number of ailments, for which

conventional therapies have not been effective. Dr. Withers wrote that he assessed Mr. St Pierre and authorized medical cannabis, and that a specialist subsequently also endorsed the medicinal cannabis use. Dr. Withers wrote:

Often smoked, his current therapies provide significant relief from his chronic medical conditions. We feel that medicinal cannabis is and will remain an important component of his therapy.

44. While Dr. Withers' note acknowledges that Mr. St Pierre often smokes cannabis, he did not provide an opinion about whether smoking was necessary, or whether other forms of ingesting cannabis would be less effective. Rather, the phrase "often smoked" suggests other forms of ingestion are at least a possible option. Similarly, on a February 16, 2022 medical cannabis authorization form, Dr. Withers checked boxes indicating that Mr. St Pierres uses cannabis in both dried and oil forms. There is no indication that smoking dried cannabis is required. Also, as noted above, Mr. St Pierre says he smokes cannabis 3 to 4 times each day. This indicates that the cannabis is provided in a constant dosage, rather than only intermittently and occasionally. Dr. Withers did not comment on how this dosage should be delivered.
45. Dr. Withers referred to a specialist's authorization for medical cannabis, but there is no report from that specialist in evidence.
46. I therefore conclude that the medical evidence before me does not confirm that smoked cannabis, rather than cannabis in another form, is necessary to accommodate Mr. St Pierre's disabilities.

Location of Smoking

47. Even if smoked cannabis was necessary to accommodate Mr. St Pierre's disabilities, I find he has not proved it is necessary to smoke on his back patio, rather than in another location that would have less impact on his neighbours.
48. As an accommodation, the strata offered to permit Mr. St Pierre to smoke cannabis in his strata lot, including in his garage with the door open. In a June 7, 2022 letter to Mr. St Pierre setting out the accommodation offer, the strata's lawyer noted that the

strata had received medical documentation from the owners occupying the strata lot opposite SL39's backyard, indicating they that physical disabilities requiring that they not be exposed to second hand smoke.

49. Mr. St Pierre says he must smoke cannabis on his back patio because it is covered and he can use his zero gravity chair to relax. He says he cannot smoke in the common property area in front of SL39 because there is limited space, constant traffic on the nearby road. He also says that people are constantly driving by and walking to the visitor parking next to SL29, which would expose him to discrimination and increase his disability-related stress and anxiety.
50. Based on the photos in evidence, I accept there is limited space in front of SL39. However, I find Mr. St Pierre has not proven that it is unreasonable for him to smoke in his garage, or elsewhere inside SL39. He says he cannot do so because his children would be exposed to the smoke. However, I find this is unproven. For example, he could smoke in the garage with the door open, using privacy screens and fans as required. In his March 18, 2022 statement, Mr. St Pierre suggested that to remove his second hand smoke from their strata lot, his neighbours could use activated carbon safeguard window filters, air purifiers, or portable air conditioners with filters. However, he has not explained why he could not use that equipment to remove smoke from SL39, including the garage. He has also not proven that his childrens' smoke exposure would be higher if he smoked in the garage rather than on the patio immediately outside SL39's back door.
51. In *Ross v. Strata Plan NW 608*, 2007 BCHRT 80, a strata lot owner whose physical disability caused mobility problems argued that the strata had to accommodate him by installing a gate and pathway to link his patio with the public sidewalk. The HRT member concluded that while the pathway would be more convenient for the owner, he could access his strata lot by other means, so the strata was not obligated to install the pathway. The HRT said the owner's preference and convenience were not enough to establish the necessity of an accommodation. Similarly, in *Loewen v. BC Emergency Health Services and others*, 2015 BCHRT 190, the HRT said that a party

requesting accommodation cannot expect a perfect solution, but must accept an accommodation that is reasonable in the circumstances.

52. For the reasons set out above, I find the strata's offered accommodation was reasonable in the circumstances. Given the provided medical evidence about neighbours' disabilities, I find the strata met its duty to accommodate to the point of undue hardship. I therefore dismiss Mr. St Pierre's complaint about discrimination under the Code.

Bylaw Fines

53. A July 11, 2022 strata lot account ledger shows the strata fined Mr. St Pierre 5 separate times for smoking-related bylaw breaches. Each fine was \$200, for a total of \$1,000.

54. At the time he filed his dispute application on March 18, 2022, Mr. St Pierre had only been fined \$600. However, I find it is procedurally fair and consistent with the CRT's mandate to address all the fines in this dispute, as they were all imposed for cannabis smoking, and the strata had an opportunity to provide evidence about all of them.

55. SPA section 135 says that before imposing a bylaw fine, the strata must give written notice of the particulars of the complaint and a reasonable opportunity to answer it.

56. The evidence shows the strata first sent Mr. St Pierre a written warning about cannabis smoking complaints, citing bylaws 3.1 and 3.3(b), in December 2021. It send further letters after that, including warnings about potential fines.

57. The correspondence and strata lot account ledger shows that the strata imposed \$200 fines on Mr. St Pierre for 5 incidents of smoking in 2022: January 20, February 2, February 3, March 27, and March 29.

58. I find the correspondence in evidence establishes that the strata sent appropriate warning letters before imposing the fines, and notified Mr. St Pierre of the fines imposed. So, I find the strata met all the section 135 requirements. Given my findings above that Mr. St Pierre's cannabis smoking on the patio is a nuisance contrary to

strata bylaws, that the strata did not have to accommodate him by permitting smoking on the patio, and given his statement that he smokes 3 to four 4 every day, I find the fines were permitted under SPA section 135.

59. Mr. St Pierre argues that in 2 instances, the strata imposed 2 fines in less than 7 days. However, given that these fines were not continuing fines, but were separate fines for separate incidents of smoking, I find they are permissible. I note that in *The Owners v. Grabarczyk*, 2006 BCSC 1960, the BC Supreme Court said that incidents of nuisance are not continuous or continuing contraventions when observed on different dates. So, a strata corporation may impose a series of fines for repeated noise violations, as long as notice is provided for each fine under SPA section 135: see *Grabarczyk* at paragraphs 43-44.
60. For these reasons, I dismiss Mr. St Pierre's claim to reverse the bylaw fines. The strata did not request an order for payment in its counterclaim, so I make none.
61. The strata requested an order that Mr. St Pierre comply with bylaws 3.1 and 3.3. and cease smoking cannabis in an area where the smoke drifts into neighbouring properties.
62. Mr. St Pierre is already required to follow strata bylaws, so ordering him to do so would have no practical effect. However, under the authority of CRTA section 123(1)(b), I order Mr. St Pierre to stop smoking cannabis in areas where the smoke enters common property or other strata lots. This includes the LCP backyard and patio behind SL39.

CRT FEES AND EXPENSES

63. The strata was the successful party in this dispute. Under the CRTA and the CRT's rules I find the strata is entitled to reimbursement of \$125 in CRT fees. Neither party claimed dispute-related expenses, so I order none.
64. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to SL39.

ORDERS

65. I order that:

- a. Within 30 days of this decision, Mr. St Pierre must pay the strata \$125 for CRT fees.
- b. Mr. St Pierre must immediately stop smoking cannabis in areas where the smoke enters common property or other strata lots.

66. I refuse to resolve Mr. St Pierre's claims about harassment by neighbours. I dismiss Mr. St Pierre's other claims.

67. The strata is entitled to postjudgment interest under the *Court Order Interest Act*, as applicable.

68. 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