



# Civil Resolution Tribunal

Date Issued: February 13, 2023

File: ST-2021-009516

Type: Strata

Civil Resolution Tribunal

Indexed as: *Carson v. The Owners, Strata Plan KAS 966*, 2023 BCCRT 132

BETWEEN:

JOANNE LYNN CARSON

**APPLICANT**

AND:

The Owners, Strata Plan KAS 966

**RESPONDENT**

AND:

JOANNE LYNN CARSON

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. This is a strata property dispute about bylaw enforcement, alleged harassment, and expenses to remove a shed.

2. The applicant, Joanne Lynn Carson owned strata lot 25 (SL25) in the respondent strata corporation, The Owners, Strata Plan KAS 966 (strata) from November 2018 through August 2022. Joanne Carson is the respondent in the counterclaim and represents herself. The strata is the applicant in the counterclaim and is represented by a strata council member. Joanne Carson did not provide a preferred title so, for ease of reference, I will refer to her as the applicant in this decision.
3. The applicant applied for dispute resolution claiming the strata failed to enforce its bylaws fairly, that strata council members, and possibly maintenance personnel, acted inappropriately, and the strata improperly requested her to repair her shed. She specifically requests orders that the strata permit her to live in peaceful, quiet enjoyment, properly enforce parking bylaws, rebuild her shed, and contact the City of Vernon (city) for rodent traps. She claims a total of \$12,500 in damages. The strata denies the applicant's allegations about bylaw enforcement and harassment and said the city does not provide traps. The strata also says the requested shed repairs or its removal are the applicant's responsibility. I infer the strata denies any liability for damages.
4. In its counterclaim, the strata seeks an order that the applicant repair her shed and if she does not, the strata asks for an order that it be compensated \$2,000 to remove the shed.
5. The applicant sold SL25 during the facilitation stage of this dispute and removed most of the shed at that time. The parties agree the adjudicator who decides this dispute only determine whether monetary compensation should be awarded.
6. As explained below, I dismiss all the parties' claims and counterclaims, and this dispute.

## **JURISDICTION AND PROCEDURE**

7. 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.

8. 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.
9. 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.
10. 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.

### ***Preliminary Matters***

#### ***Agreement about monetary compensation***

11. As mentioned, the parties request that I only adjudicate claims about monetary compensation. The applicant claims a total of \$12,500 in damages, broken down as follows:
  - a. \$5,000 for alleged inappropriate actions about strata council members and maintenance personnel making false accusations, invading the applicant's privacy causing emotional distress, and for inappropriate touching by the strata council secretary,

- b. \$2,500 for failing to enforce parking bylaws by allowing the strata council treasurer and maintenance personnel to block the applicant's driveway and vehicle, and
  - c. \$5,000 to rebuild or repair her shed.
12. The strata counterclaims for \$2,000 to remove and dispose of the applicant's shed.
13. Given the applicant's claim about rodent traps has no associated damages claim, I will not address it in my analysis.

*Allegations concerning non-parties.*

14. I will also not consider the applicant's claim about inappropriate actions involving non-parties, some of which she says involve harassment. I say this for 3 reasons. First, the strata does not have a bullying or harassment bylaw, so I find it unlikely that the CRT has jurisdiction to adjudicate harassment allegations.
15. Second, the applicant did not name any strata council members or maintenance personnel as respondents and I find it would not be procedurally fair for me to make orders against non-parties. I also note that in submissions, the applicant seems to suggest that the maintenance personnel are strata council members, but nothing turns on this.
16. Third, I find any allegations about strata council members not properly exercising their powers or performing their duties amounts to a claim that the strata council members have breached their duty of care under *Strata Property Act* (SPA) section 31. The courts have found that individual strata lot owners do not have standing (legal authority) to make claims for breaches of SPA section 31. See for example, *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 and *Rochette v. Bradburn*, 2021 BCSC 1752. For these reasons, I will not address the applicant's allegations concerning council members or maintenance personnel.

## **ISSUES**

17. The remaining issues in this dispute are:

- a. Is the applicant entitled to \$2,500 in damages for the strata's alleged failure to fairly enforce its parking bylaws?
- b. What amount of damages, if any, is an appropriate to address the shed removal?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

18. As applicant in a civil proceeding such as this, Joanne Carson, must prove her claims on a balance of probabilities, meaning more likely than not. The strata must also prove its counterclaim on the same standard. I have considered all the submissions and evidence provided by the parties, but refer only to information I find relevant to explain my decision.
19. The strata plan shows the strata was created in November 1991 under the *Condominium Act*. It continues to exist under the SPA. There are a total of 34 townhouse-style strata lots in 17 buildings each comprising 2 strata lots. The strata plan also shows that carports, decks and patios of individual strata lots form part of the strata lot. The yard areas next to the strata lots are designed as limited common property for the exclusive use of the owners of the adjacent strata lot.
20. On July 15, 2019, the strata filed a complete new set of bylaws with the Land Title Office (LTO) that also replaced the Standard Bylaws under the SPA. No further bylaw amendments have been filed with the LTO, so I find the 2019 bylaws apply to this dispute. I discuss the relevant bylaws below as necessary.

### ***Parking Bylaw Enforcement***

21. I summarize the applicable parking bylaws as follows:

Bylaw 44(4)(d) says vehicles must not obstruct driveways or parking assigned to "other strata lots", except as specifically permitted by the strata council in writing.

Bylaw 44(6) allows the strata to tow vehicles that are parked in contravention of the bylaws.

Bylaw 46(1) restricts parking to carports or a formally assigned parking stall and prohibits parking on common property roadways but not on the “aprons in front of a strata lot”.

Bylaw 47 addresses recreation vehicle (RV) parking in a separate parking area set aside for such parking.

22. Based on the applicant’s submissions and a chronology of events she provided, I understand she had 2 separate concerns with parking. The first was vehicles parking in front of SL25 or a neighbouring strata lot such that the vehicle partially blocked the SL25 driveway. She submits this included strata council members. The second was a single incident of parking in the RV area when the common roadways were “seal coated”.
23. Although the applicant’s chronology suggests she first complained of vehicles blocking her driveway access in April 2021, the first letter in evidence is dated June 6, 2021. On that date, the applicant wrote to the strata council requesting that it enforce the bylaws that prohibit parking on the roadways. She provided a photograph of a white pickup truck that was parked so as to partially block access to her driveway. She also says a similar incident occurred on July 24, 2021 and that she telephoned a strata council member that day, but there is no correspondence or photographs in evidence.
24. Finally, the applicant wrote to the strata council on August 12, 2021 stating her neighbour, a strata council member, or their family member, had blocked her driveway on 3 occasions among other alleged bylaw violations by other owners. The letter also explained the applicant’s view about an incident that occurred in the RV parking area involving the same strata council neighbour, who was assisting with parking vehicles in the RV area while the seal coating was being complete. The applicant’s letter explains her frustrations with the strata council’s parking bylaw enforcement but I find it is really a complaint about bullying and harassment she alleged of her neighbour. The strata responded by letter dated August 18, 2021 stating her neighbour had been warned about parking bylaw infractions and that it considered the RV parking incident “a spat” between neighbours.

25. Based on the photographs in evidence, it appears the common property roadways within the strata are narrow and driveways very short. It is unclear from the evidence where an assigned parking stalls are located or where the “aprons” mentioned in the bylaws are located. I can appreciate that vehicles parking on the roadways or partially on the roadways very likely interfere with access to carports, including the applicant’s carport. However, based on the evidence I do find the applicant has proven the strata has acted unreasonably in its parking bylaw enforcement.
26. More importantly, I do not find the applicant has proven she is entitled to \$2,500 in damages for the strata’s failure to enforce its parking bylaws. Notably, she has not provided any evidence she suffered any loss as a result of the alleged parking infractions.
27. For this reason, I dismiss the applicant’s claim for \$2,500 in damages relating to the strata’s parking bylaw enforcement.

### ***Shed Removal***

28. As explained above, the parties took opposite views about who was responsible to repair the shed. Given, the applicant admits she removed almost of the shed when she sold SL25, I find there is no remaining issue about who was responsible to repair the shed so I will not address that aspect of the parties’ claims.
29. The applicant claims \$5,000 for the strata repair of the shed, yet she took steps to remove almost all of it. Based on the overall submissions and evidence, I find the applicant’s claim likely relates to the alleged aggravation she says she suffered from the strata’s constant requests that she repair the shed. However, the applicant did not provide any evidence that she incurred any cost or suffered any damages relating to the strata’s actions. Nor did she provide any evidence of the cost she incurred in removing the shed if that was the reason for her claim. Given this, I find the applicant has failed to prove her claim and I dismiss it.
30. I am left then with the strata’s claim of \$2,000 to remove the shed.

31. It is undisputed that a prior owner of SL25 installed the shed and that the applicant bought SL25 with the shed already installed. The applicant's position is that the shed was attached to the exterior wall of SL25, which she says is the strata's responsibility to repair and maintain. The strata says the applicant is responsible for the shed removal costs based on bylaws 49(5) and (6). These bylaws state that owners are responsible for alterations to common property and back yards unless the strata has expressly agreed to take responsibility for repair and maintenance of the alteration. The strata also stated if provide the applicant with a Form B – Information Certificate that disclosed she was responsible for maintenance and repair of the shed.
32. Based on photographs in evidence, the shed was located on the back patio of SL25, which I have mentioned is part of SL25. Photographs of the area after the shed was removed show what appears to be 2 – 2" x 4" pieces of wood attached to the exterior wall of SL25 plus 2 more pieces of wood attached to 1 of the pieces that is attached to wall. In other words, the applicant removed the entire shed except for 4 pieces of wood, 2 of which were attached to exterior wall of SL25.
33. The difficulty for the strata is that it did not provide any evidence as to its cost of removing the 4 pieces of wood. The applicant says the removal and repair to the exterior wall of SL25 was done through volunteer efforts of strata council members and that there was no cost to the strata. The strata does dispute this so I find there was no cost incurred by the strata to remove the wood. On this basis, I dismiss the strata's counterclaim for \$2,000 to remove the shed.
34. Even if the strata had provided evidence of its expense, I would still have dismissed its counterclaim. A copy of the Form B provided to the applicant was not provided in evidence, so I find it unproven that the applicant was aware of her alleged responsibilities as the strata suggests Further, without a copy of an agreement between the strata and the former owner or applicant about the shed's maintenance and repair, which was also not provided, I would have found the SPA and strata's bylaws make the strata responsible for alterations to common property, even it was altered by the previous owner with permission.
35. For these reasons, I dismiss the strata's counterclaim.



## **CRT FEES AND EXPENSES**

36. Under CRTA section 49 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 that general rule here. However, neither party was entirely successful so I find they should each bear their own CRT fees. I also make no order for disputed-related expenses and none were claimed.

## **ORDER**

37. I dismiss the applicant's claims, the strata's counterclaim, and this dispute.

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J. Garth Cambrey, Vice Chair