



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Wan v. The Owners, EPS 5734*, 2023 BCCRT 221

B E T W E E N :

DANIEL WAN

APPLICANT

A N D :

The Owners, Strata Plan EPS 5734

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This strata property dispute is about an owner's request to install a motion sensor for an outdoor light.
2. The applicant, Daniel Wan, owns strata lot 21 (SL21) in the respondent strata corporation, The Owners, Strata Plan EPS 5734 (strata). Mr. Wan says the strata has

unfairly withheld its approval of his request to install a motion sensor for the light outside and above his front door. He seeks an order that the strata approve his installation request.

3. The strata essentially says it has authority to deny Mr. Wan's request under its bylaws and that it acted in good faith in denying his request. The strata asks that Mr. Wan's claim be dismissed.
4. Mr. Wan is self-represented. A lawyer, Parveen Shergill, represents the strata.
5. As explained below, I find in favour of the strata.

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 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.
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.

ISSUES

10. The issue in this dispute are:
 - a. Which strata bylaw applies to Mr. Wan's request to install motion sensor?
 - b. Did the strata act fairly by withholding approval for Mr. Wan's request to install a motion sensor?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Mr. Wan must prove his claim 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.
12. The strata was created in February 2020. The strata plan shows the strata consists of 86 residential strata lots. SL21 is a town-house style strata lot that shares a building with 5 other strata lots. Each strata lot in this building consists of a ground floor, main floor, and upper floor.
13. The strata filed a set of bylaws with the Land Title Office (LTO) on February 10, 2020. The bylaws establish 3 sections in the strata: a residential section, an amenity section, and a daycare section. SL21 is part of the residential section.
14. On February 10, 2022, the residential section also filed bylaws with the LTO. These bylaws operate only with respect to residential strata lots.
15. Both bylaws use identical language requiring an owner to get approval to alter common property and a strata lot. Since only the strata is a respondent in this dispute, and given my conclusion dismissing Mr. Wan's claim, I find it unnecessary to consider whether Mr. Wan needed permission from both the strata and the residential section

to install the sensor. So, despite the strata referencing the bylaws that apply to the residential section in their submissions, my analysis below is only with respect to the strata bylaws. Since the bylaws about alterations are identical, the arguments made by the strata about the bylaws remain helpful.

16. Bylaw 20 says an owner must obtain written approval from the strata before making an alteration to a strata lot that involves the structure or exterior of a building. Under strata 21, the strata must not unreasonably withhold its approval for alterations requested under bylaw 20.
17. Bylaw 23 says an owner must obtain written approval from the strata before making an alteration to common property. Unlike bylaw 21, the strata has no explicit obligation to be reasonable in providing approval for alterations to common property.
18. It is undisputed that Mr. Wan purchased SL21 in May 2020 and moved in shortly thereafter. It is also undisputed that he installed a motion sensor and security camera onto and into the soffit above his front door, though neither party says exactly when. I infer, from Mr. Wan's submissions, that it was around the same time as he moved in to SL21. The soffit is part of an overhang from SL21's second floor, which sticks out and extends over the front door.
19. It is undisputed that to install the camera and the sensor, Mr. Wan put a hole or holes in the soffit, and then wired the devices to the junction box to allow them to function. It is also undisputed that he did not seek strata approval before installing the devices.
20. In December 2021, the strata issued Mr. Wan an infraction notice about the security camera, and that Mr. Wan then removed the security camera.
21. On March 17, 2022, the strata issued Mr. Wan an infraction notice about the motion sensor stating that it had been installed without strata council approval. The infraction notice cites residential section bylaw 13.9, which requires Mr. Wan to remove any alterations made to a strata lot or common property that had not received prior written approval of the strata council. As noted above, this is the incorrect bylaw to cite, but nothing turns on the matter. The strata submits, and Mr. Wan does not dispute, that

both puncturing the soffit and affixing the motion sensor to it are alterations requiring approval.

22. On March 24, 2022, Mr. Wan made a written request to the strata council for permission to install the motion sensor.
23. On April 1, 2022, the strata council denied Mr. Wan's request in a letter, stating the proposed installation would affect the strata's common appearance and set a precedent for future alterations. The strata council offered Mr. Wan an opportunity to appeal the decision or provide further information within 14 days. Mr. Wan then filed his claim with the CRT.

What bylaw applies to the request for alteration?

24. First, I must determine if alterations to the soffit are addressed under bylaw 20 or 23. This is because the threshold for approval is different for alterations to common property and strata lots.
25. In the case of SL21, the main floor hangs over the ground-level front door, so that when one stands at the front door and looks up, one sees the soffit and an overhead light. This is where Mr. Wan installed the motion sensor.
26. The strata plan defines strata lot boundaries as "0.01m offset from exterior face of exterior structural walls towards strata lots". The soffit is not located on a wall, but on a ceiling. So, contrary to the strata's position, I find this definition in the strata plan does not apply in determining whether the soffit is part of the strata lot.
27. However, I find that the soffit is common property under section 68(1) of the SPA, which applies to walls, floors, and ceilings. Section 68(1) says the boundary between the strata lot and common property is the middle of the ceiling. So, the soffit through which Mr. Wan wishes to put a hole is common property, as it is on the 'outside' of the midway point of the ceiling.

28. Since I find the soffit is common property, not part of the strata lot, bylaw 12 applies. Bylaw 12 does not require me to consider if the strata council's decision was reasonable. So, I must consider if its decision was significantly unfair.

Was the strata council's decision significantly unfair?

29. Although Mr. Wan did not expressly claim significant unfairness, he claims the strata has not made a fair assessment in their decision about the motion sensor, and that the council has applied a double standard in granting approval for alterations. His claim is essentially one of significant unfairness.

30. The CRT has authority to make orders remedying a strata corporation's significantly unfair act or decision under CRTA section 123(2). That provision contains similar language to SPA section 164, which allows the BC Supreme Court to make orders remedying significantly unfair acts or decisions. The legal test for significant unfairness is the same for CRT disputes and court actions: see *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113.

31. In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, the court confirmed the legal test for significant unfairness. Significantly unfair actions are those that are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust, or inequitable. In applying this test, the owner or tenant's reasonable expectations are a relevant factor but are not determinative. The use of the word "significant" means that the impugned conduct must go beyond mere prejudice or trifling unfairness.

32. Mr. Wan argues that the council has approved other changes to common property that impact the common appearance of the strata lots. He provides a photograph of a front door with two sets of deadbolts that he says belongs to a council member. The photograph also shows another front door with only one deadbolt. He says this is evidence that council has approved alterations to common appearance before.

33. In his argument, Mr. Wan effectively submits that the presence of another person's front door deadbolt created an expectation he would receive approval for his sensor.

However, door locks and motion sensors have different functions, appearances, and installations. I find there is a marked difference in appearance between a motion sensor and a deadbolt. It is not clear if the deadbolt was subject to approval, and there is no evidence about the matter. I find the presence of the deadbolt did not create an objectively reasonable expectation that Mr. Wan could install a motion sensor.

34. Mr. Wan also argues that the sensor activating his light is for his home's security, and the council should not prioritize common appearance over his security. I do not find the council's decision to prefer maintaining common appearance to be harsh or unjust, such that it is significantly unfair. I also note it is the strata council's role to make decisions that weigh the common interests of the owners as a whole against the individual interests of one strata lot owner. Generally, such decisions are entitled to deference: see *Radcliffe v. The Owners, Strata Plan KAS1436*, 2014 BCSC 2241, affirmed 2015 BCCA 448.
35. In its Dispute Response, the strata raises the issue that it has an interest in regulating and preventing work that punctures the building envelope, as the sensor installation undisputedly did. While the strata did not raise this issue in the letter explaining their decision to deny Mr. Wan's application, I accept it as a valid concern, and I find it further supports the strata council's decision.
36. Mr. Wan says he does not understand why council took nearly two years to raise an issue about the sensor. He says he also does not understand why council addressed his camera and sensor separately, as both could have been raised together. While nothing turns on this, I note strata council's bylaw enforcement obligations under the SPA are triggered by a complaint. For the strata council to take steps, someone must first complain. The complaints about the camera and sensor were separate. The strata council says it received the complaint about the sensor on March 11, 2022, and it issued the infraction notice on March 17, 2022. So, the strata council did not delay.
37. Finally, Mr. Wan argues the strata amended their bylaws in 2022 to allow them to put a security camera on the clubhouse. As noted above, the 2022 bylaw amendments

are only with respect to the residential section, and not the strata as a whole. That said, even if the argument was made with respect to the strata-wide bylaws, the issue of the clubhouse security camera is not before me. Mr. Wan presents the amendment as evidence that he should be allowed to add the motion sensor. However, the strata submits those security cameras monitor specific areas of common property and are not affixed to the soffits. I accept the strata's position, and I am not persuaded that the presence of common property security cameras gives rise to a reasonable expectation that Mr. Wan could install a motion sensor over his front door.

38. Taken together, I do not consider the strata's decision to have been burdensome, harsh, or wrongful. Mr. Wan not has provided evidence the strata council acted in bad faith. So, I find that Mr. Wan not has proven the strata acted in a significantly unfair manner in denying his application, and I dismiss his claim and this dispute.

CRT FEES AND EXPENSES

39. 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. In accordance with the Act and the CRT's rules, as the applicant was unsuccessful, I find he is not entitled to any reimbursement. Neither party claimed any dispute-related expenses.

40. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Wan.

ORDER

41. I dismiss Mr. Wan's claim and this dispute.

Christopher C. Rivers, Tribunal Member