



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Ahern v. The Owners, Strata Plan NW1017*, 2023 BCCRT 310

B E T W E E N :

LEO MICHAEL AHERN

APPLICANT

A N D :

The Owners, Strata Plan NW1017

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. Leo Michael Ahern owns strata lot 2 (SL2) in the strata corporation, The Owners, Strata Plan NW1017 (strata). Mr. Ahern says that the strata has failed to provide records, contrary to section 36 of the *Strata Property Act* (SPA). The records at issue all relate to disputes between Mr. Ahern (and his spouse) and the strata that also

involve the resident of strata lot 1 (SL1), DR. SL1 and SL2 are neighbouring townhouses that each have an LCP backyard and LCP front carport.

2. Specifically, Mr. Ahern says that the strata has failed to provide records about the installation of a “safety panel” on the fence between SL1 and SL2’s backyards, the installation of wood boards between SL1 and SL2’s carports, and DR’s alleged improper use of undesignated common property behind SL1’s backyard. Mr. Ahern asks for an order that the strata provide records about these 3 issues. Mr. Ahern also asks for an order that if the strata does not have those records, the safety panel be removed and a new fence be installed behind SL1’s backyard. Mr. Ahern is represented by his spouse, who also resides in SL2.
3. The strata says it has provided all the records it is required to provide. The strata is represented by a 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). The CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT’s process has ended.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to hear this dispute through written submissions.
6. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court. The

CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.

7. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the tribunal 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.

Scope of this Dispute

8. Before turning to the merits of this dispute, I will consider the scope of Mr. Ahern's claim because I find his Dispute Notice and submissions are arguably inconsistent or unclear. The first sentence of the Dispute Notice says that this dispute is about the strata's compliance with section 36(a) of the SPA, which sets out the strata's obligation to provide records to owners on request. In submissions, Mr. Ahern says that "this complaint is about requests for documentation and in the end process" and later, in his reply submissions, that he and his spouse "simply want council to provide the documents as requested". However, Mr. Ahern's evidence and submissions also seem to challenge the strata's actions and decisions about the safety panel, carport boards, and common property usage, not just the strata's records about those issues.
9. This raises the question of whether this dispute is about the strata's actions and decisions about the safety panel, carport boards, and the common property behind SL1, or whether it is limited to the strata's alleged failure to provide records about those issues.
10. Ultimately, I find that the Dispute Notice is the most important document setting out the issues between the parties. Even though Mr. Ahern requests orders that are not directly related to document disclosure, I find that the "Claim Description" portion of the Dispute Notice indicates that the claim is only about document disclosure. I further find that Mr. Ahern's reply submission that he only wants the strata to provide documents confirms the limited scope of this dispute. I have therefore only considered the details of the underlying disputes for background context.

11. Also in submissions, Mr. Ahern asks for \$1,000 to compensate him for alleged “constant harassment and loss of respect and dignity” and \$1 in punitive damages for the strata allegedly failing to prevent DR from “constant misrepresentation of the truth”. Mr. Ahern did not claim any monetary compensation in his Dispute Notice. I find it would be procedurally unfair for me to consider these new claims. I find that the strata did not have proper notice of them or an adequate opportunity to respond. I also find that adjudicating entirely new late-raised claims would undermine the CRT’s facilitation process. I also note that CRT rule 1.19(1) allows applicants to request amendments to a Dispute Notice. Mr. Ahern did not amend the Dispute Notice during case management. CRT rule 1.19(3) says that the CRT will not allow amendments at the tribunal decision phase except in extraordinary circumstances. I find no extraordinary circumstances exist that would justify amending the Dispute Notice at this late stage. For these reasons, I have not addressed Mr. Ahern’s damages claims as I find they are not properly before me.

ISSUES

12. The remaining issue in this dispute is whether the strata provided Mr. Ahern with records about the following matters as required by section 36 of the SPA:
- a. The safety pane” on the fence between SL1 and SL2’s backyards,
 - b. The boards between SL1 and SL2’s LCP carports, and
 - c. DR’s use of common property behind SL1’s LCP backyard.

BACKGROUND

13. In a civil claim such as this, Mr. Ahern as the applicant must prove his claims on a balance of probabilities. While I have read all the parties’ evidence and submissions, I only refer to what is necessary to explain my decision.
14. The strata consists of 14 residential townhouse-style strata lots in 3 buildings. As mentioned above, SL2 is beside SL1. There is no LCP designated on the strata plan.

However, in 2003, the strata filed a resolution in the Land Title Office designating each strata lot's backyard and carport as LCP. SL1 and SL2's backyards are fenced. The area behind SL1 and SL2's backyards is undesignated common property that appears to be green space.

15. Section 35 of the SPA sets out a lengthy list of records that the strata must create or retain. Section 36 of the SPA says that the strata must provide access to or copies of any section 35 records to an owner within 2 weeks of a request (except for bylaws and rules, where the deadline is 1 week). The CRT has repeatedly determined that a strata corporation has no obligation under the SPA to create, retain, or disclose records that are not listed in section 35, including for example my decision in *Simpson v. The Owners, Strata Plan BCS 3591*, 2022 BCCRT 661. The CRT also has no authority to order a strata corporation to disclose records that are not listed. See *The Owners, Strata Plan NWS 1018 v. Hamilton*, 2019 BCSC 863.

EVIDENCE AND ANALYSIS

The Safety Panel

16. It is undisputed that in summer 2016, DR installed a 2-foot panel on top of part of the fence separating SL1 and SL2's backyards. I note that Mr. Ahern takes issue with the strata initially calling the panel a "privacy panel" but later calling it a "safety panel". I find nothing turns on what it is called. It is undisputed that DR requested the installation of the safety panel after either Mr. Ahern or his spouse admittedly threw garden waste, including cypress needles, over the fence. Mr. Ahern and his spouse took issue with the cypress tree in SL1's backyard shedding "mega amounts of needles" into SL2's backyard, and apparently considered throwing those needles over the fence to be a justified response.
17. In July 2016, DR alleged that a flying needle injured their eye, which required medical attention. Mr. Ahern says that he requested, but never received, medical evidence of this alleged injury. I find that the only subsection of section 35 of the SPA that could apply to a resident's medical records is section 35(2)(k), which requires the strata to retain copies of correspondence sent or received by the strata or strata council.

However, there is no evidence that DR ever provided the strata with medical evidence of their alleged eye injury. Mr. Ahern does not explain why DR would have had any reason to do so. I find it unlikely that there is correspondence from DR to the strata containing DR's medical records. In any event, section 4.1(5) of the *Strata Property Regulation* (SPR) only requires the strata to retain correspondence for 2 years, and almost 7 years have passed since the alleged eye injury. I therefore find that the requested records likely do not exist, and even if they did, the strata no longer has an obligation to retain them. I dismiss this aspect of Mr. Ahern's claim.

18. Mr. Ahern also wants copies of the AGM minutes that show that the owners approved the installation of the safety panel. The strata must prepare AGM minutes under section 35(1) of the SPA. However, there is no suggestion that the owners ever voted to approve the safety panel at an AGM. As Mr. Ahern knows from the parties' previous correspondence, the strata has always taken the position that an owner vote was not necessary. So, I find that AGM minutes that include a reference to owner approval of the safety panel do not exist. There is no suggestion that the strata has ever failed to provide Mr. Ahern with AGM minutes on request. I dismiss this aspect of Mr. Ahern's claim.

The Carport Boards

19. It is undisputed that in March 2020, DR installed boards on wood posts in between SL1 and SL2's carports. Mr. Ahern says that "no documentation was provided when asked for" about the carport boards, but he does not specify what specific records he asked for and never received. In this dispute, the strata provided a copy of a June 19, 2020 alteration agreement between DR and the strata for the boards. The strata now takes the position that it never properly approved the carport boards and has demanded DR remove them. DR is disputing this decision. The strata provided as evidence in this dispute correspondence between it and DR about their ongoing dispute about the carport boards. Again, Mr. Ahern has not identified any other records that he has requested but not received. I dismiss this claim.

The Common Property Area behind SL1

20. There is a long-running dispute between the strata and Mr. Ahern about the undesignated common property area behind SL1's LCP backyard. Mr. Ahern believes that DR has effectively incorporated around 300 square feet of common property into SL1's backyard by moving a fence.
21. At the 2017 annual general meeting, a resolution to alter the common property behind SL1's backyard to make it more accessible failed to pass, with 1 vote in favour and 12 against. However, Mr. Ahern continues to advocate for the strata to make the area more accessible to all owners.
22. Mr. Ahern asks for documentation confirming that DR "acquired" this common property from the strata. However, since the strata disputes that there was ever an "acquisition", I find that no such documentation exists. Mr. Ahern does not specify what other records he has requested but not received. I dismiss this claim.

TRIBUNAL FEES AND EXPENSES

23. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a party for CRT fees and reasonable dispute-related expenses. Mr. Ahern applicant was unsuccessful, so I dismiss his claim for CRT fees and dispute-related expenses.
24. The strata claims \$1,769.52 for its council members' time spent on this dispute. CRT rule 9.5(5) says that the CRT will not order compensation for time spent on a dispute except in extraordinary circumstances. While I acknowledge that being involved in a CRT dispute can be time consuming, I find that there are no extraordinary circumstances here that would justify departing from the general rule. I dismiss this claim.
25. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Ahern.

DECISION AND ORDERS

26. I dismiss Mr. Ahern's claims, the strata's claim for dispute-related expenses, and this dispute.

Eric Regehr, Tribunal Member