



Civil Resolution Tribunal

Date Issued: June 23, 2023

File: ST-2022-003292

Type: Strata

Civil Resolution Tribunal

Indexed as: *Hart v. The Owners, Strata Plan VR 172*, 2023 BCCRT 529

B E T W E E N :

MICHAEL HART

APPLICANT

A N D :

The Owners, Strata Plan VR 172

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. The applicant, Michael Hart, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VR 172 (strata). Mr. Hart says that he made several requests for a hearing with the strata council to discuss alleged strata fees arrears, but that the strata ignored his requests. Mr. Hart says this was significantly unfair to him and he claims \$3,500 in damages.

2. The strata says it provided Mr. Hart with the opportunity for a hearing but he did not attend. It also says that Mr. Hart has refused to submit his hearing requests in writing to the strata management company, as directed. The strata denies it treated Mr. Hart significantly unfairly and says that his claim should be dismissed.
3. Mr. Hart is self-represented. The strata is represented by a strata council member, BG.

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 the dispute's parties that will likely continue after the CRT 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 the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note that in *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and speedy dispute resolution, I decided to hear this dispute through written submissions.
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 decision

8. In the Dispute Notice, Mr. Hart also alleged that the strata had miscalculated his strata fees arrears, and he claimed \$1,681.82 to correct the alleged errors. In a December 8, 2022 preliminary decision, a tribunal member refused to resolve that claim because she found it would be more appropriately resolved through a BC Supreme Court (BCSC) proceeding the strata has commenced to force the sale of Mr. Hart's strata lot for outstanding arrears. The tribunal member found the BCSC proceeding would necessarily address the correctness of the alleged outstanding arrears, and so the CRT should not also decide that issue. Therefore, I find the issue of whether the strata miscalculated Mr. Hart's strata fees arrears is not before me.
9. The tribunal member also decided, on a preliminary basis, that the issue of whether the strata treated Mr. Hart significantly unfairly by failing to hold requested hearings could proceed at the CRT. This was because significant unfairness had not been raised in the BCSC proceeding pleadings, and the hearing issue was unrelated to the correctness of the strata fees arrears. I agree with the tribunal member's reasoning in the preliminary decision, and I find the significant unfairness issue is properly before me to decide.

Other preliminary issues

10. As set out below, Mr. Hart made requests for a strata council hearing starting in 2019. Mr. Hart applied for CRT dispute resolution on May 14, 2022. Neither party raised a limitation issue. The *Limitation Act* generally gives people 2 years to bring a claim. I find that each of Mr. Hart's hearing requests triggered a "fresh" potential claim for significant unfairness if the strata failed to hold the requested hearing. So, I find Mr. Hart's claim is not out of time, but I have only considered the requests made after May 14, 2020 in coming to my decision. I note that my ultimate decision would not have been different had I also considered the requests made before May 14, 2020.
11. The evidence shows that in some of Mr. Hart's correspondence requesting a strata council hearing, he also requested access to certain strata documents. Both parties made submissions about the document requests. However, this issue was not raised

in the Dispute Notice, and Mr. Hart has not requested any remedy for the strata's alleged failure to provide requested records. Therefore, I find this issue is not properly before me, and I have not considered it below.

12. Similarly, Mr. Hart requests in his submissions that the strata provide an accounting of its expenses incurred for this dispute and reimburse him any amounts it "included" him in. As this issue was not raised in the Dispute Notice, I find it is not properly before me, and I decline to make the requested order.
13. Nevertheless, I note that the strata is required to comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Hart or his strata lot account. For clarity, this means that the strata must ensure Mr. Hart has not contributed to the strata's expenses incurred to defend this dispute, including through payment of strata fees.

ISSUES

14. The issues in this dispute are:
 - a. Did the strata act significantly unfairly by failing to hold a hearing?
 - b. If so, what is the appropriate remedy?

BACKGROUND, EVIDENCE, AND ANALYSIS

15. In a civil proceeding like this one, Mr. Hart as the applicant must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all of the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.
16. Mr. Hart says that the strata started sending him monthly notices of arrears on his strata lot account starting in June 2019. He says that after he received each notice, he delivered a handwritten letter to BG requesting a hearing with the strata council, but that the strata did not respond.

17. Section 34.1 of the *Strata Property Act* (SPA) says that an owner may request a council hearing by written application stating the reason for the request. If such a request is made, the strata council must hold a hearing within 4 weeks. Section 4.01 of the *Strata Property Regulation* defines “hearing” under SPA section 34.1 as “an opportunity to be heard in person at a council meeting”.
18. Mr. Hart provided copies of 4 handwritten letters he says he delivered to BG between September 3, 2019 and May 3, 2020, each requesting a hearing with the strata council. He provided additional handwritten letters dated May 22, 2020, and July 2, 2020, also requesting a hearing. The July 2 letter noted that it was his 10th request for a hearing.
19. While the strata submits that Mr. Hart cannot prove the strata received all of his letters, I find the strata does not expressly deny that BG received them, and I find that he likely did. I say this because the strata manager, JF, sent Mr. Hart a July 21, 2020 letter about Mr. Hart’s hearing request. The strata did not explain how JF would have known about the request unless BG had advised JF of Mr. Hart’s letters.
20. The July 21, 2020 letter advised Mr. Hart that in-person meetings were postponed indefinitely due to the COVID-19 pandemic, but that the council could conduct a hearing by videoconference over Zoom. The letter asked Mr. Hart to provide his availability and advise whether he needed any strata documents for the hearing.
21. Mr. Hart responded with a handwritten letter dated August 4, 2020, which stated he was not equipped to support videoconferencing and would prefer an in-person meeting with masking and physical distancing. The letter noted that he had been requesting a hearing about the arrears notices for over a year, well before the pandemic started.
22. I find that the strata received Mr. Hart’s August 4, 2020 letter because, in a September 3, 2020 email to BG, JF stated they would send Mr. Hart another letter to ask exactly what he needed and to arrange a meeting with him. The email stated that so long as there were fewer than 6 people, they were willing to meet with Mr. Hart in person for the hearing.

23. I note that the parties made submissions about whether the strata was entitled to hold a hearing by videoconference. However, I find it is unnecessary to address this issue. It does not appear that the strata insisted the hearing be held remotely at the time, or that it expressly refused to provide Mr. Hart with an in-person hearing under any circumstances. In fact, there is no evidence before me that the strata wrote Mr. Hart any further letters or followed up to arrange the requested hearing, whether by videoconference or in person.
24. The evidence shows Mr. Hart then continued to handwrite letters requesting a hearing. His April 27, 2021 letter stated it was his 13th request for a hearing.
25. In a June 24, 2021 email to BG, a different strata manager, JC, stated that Mr. Hart “has not responded”. It is unclear what Mr. Hart would have been responding to, as there is no evidence before me that the strata attempted to contact him. The email also stated JC would not follow up with Mr. Hart but would wait for him to email about scheduling a hearing. So, I infer that JC may have tried emailing Mr. Hart.
26. In any event, the evidence shows Mr. Hart handwrote additional letters requesting a hearing on July 7, August 14, October 3, and November 14, 2021. In a July 8, 2021 email to the strata council, JC thanked BG for providing a letter with a hearing request and noted they would again send Mr. Hart an email and mail to advise that the council was ready to schedule a hearing. JC noted the hearing would have to be scheduled within 4 weeks of his request. However, there is no evidence before me that JC or a strata council member emailed Mr. Hart or sent him a letter to schedule a hearing.
27. I note that the strata says it scheduled a hearing with Mr. Hart and he failed to attend. However, I find the evidence shows that incident occurred in July 2018, and was for a hearing about a different issue. I find Mr. Hart’s prior failure to attend a hearing did not relieve the strata of its obligation under section 34.1 of the SPA to schedule a hearing with Mr. Hart about the strata fees arrears, upon request.
28. The strata also submits that owners must email their requests and concerns to both a council member and the strata management company. It says this is necessary to ensure the correspondence is received and properly recorded. To the extent that the

strata is arguing it was not obligated to schedule a hearing because Mr. Hart did not follow that procedure, I find that position unreasonable and contrary to the SPA.

29. Section 63 of the SPA deals with notices and other records required or permitted to be given to the strata under the SPA, such as a hearing request. It lists the ways such correspondence must be given to the strata. One of the listed methods is leaving it with a strata council member.
30. I find that the strata must accept communication given directly to a strata council member under SPA section 63(1)(a). So, while the strata might prefer that owners correspond by email and include its strata manager, I find Mr. Hart was entitled to give his handwritten letters directly to BG and was not obligated to email his hearing request.
31. An owner's right to a hearing within 4 weeks of a written request is mandatory. I find the strata breached SPA section 34.1 by failing to hold a hearing within 4 weeks of receiving any of Mr. Hart's numerous documented requests between May 14, 2020 and November 14, 2021.
32. So, what is the appropriate remedy for the strata's breach of SPA section 34.1? Mr. Hart has not requested an order for the strata to hold a hearing. Rather, he seeks \$3,500 in damages for significant unfairness.
33. The CRT has authority to make orders remedying a significantly unfair act or decision by a strata corporation under section 123(2) of the CRTA. This provision contains similar language to section 164 of the SPA, which allows the BCSC to make orders remedying significantly unfair acts or decisions. The BCSC recently confirmed that the legal test for significant unfairness is the same for CRT disputes and court actions: *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113.
34. In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, the BC Court of Appeal stated that 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'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.

35. I find that Mr. Hart had a reasonable expectation that the strata would follow the SPA in scheduling the requested hearing within 4 weeks of his request.
36. The strata says that if Mr. Hart wanted his strata fees arrears resolved, he would have been more cooperative with the strata council and the strata management company. The strata says that Mr. Hart has generally ignored the matter by refusing to answer phone calls, emails, and postal mail sent to his strata lot address and another address he has provided for correspondence. However, for the following reasons I find the strata has provided insufficient evidence to support that allegation.
37. There is a single July 21, 2020 email from JF to BG indicating that JF attempted to phone Mr. Hart about his hearing request, but that there was no voicemail available. There is no other evidence the strata attempted to phone Mr. Hart. So, I am unable to conclude that Mr. Hart unreasonably failed to respond to phone calls.
38. The only evidence that the strata sent Mr. Hart a letter during the relevant period was its July 2, 2020 letter offering Mr. Hart a remote hearing. Mr. Hart undisputedly responded to that letter, requesting an in-person meeting, and there is no evidence the strata replied to that request. So, I find it was the strata who failed to respond to Mr. Hart’s mailed correspondence, not the other way around.
39. As for email, I note that in a prior CRT decision involving the parties (*Hart v. The Owners, Strata Plan VR 172*, 2019 BCCRT 1160), the strata was ordered to stop sending correspondence to Mr. Hart through email, unless Mr. Hart specifically provided an email address for delivery of such correspondence under SPA section 61. Given Mr. Hart’s submissions in this dispute, I find he has not provided an email address for that purpose. Therefore, I find the strata and its strata manager knew or should have known that Mr. Hart would not correspond with them by email, and it was unreasonable for them to expect Mr. Hart to respond by email about scheduling a hearing.

40. Overall, I find the strata has not provided a satisfactory explanation for its failure to schedule a hearing with Mr. Hart. It is unclear whether a strata council hearing would have assisted the parties with coming to a resolution about the strata fees arrears issue. I acknowledge that the parties appear to have a relationship more prone to conflict than cooperation. Nevertheless, that does not excuse the strata from following its obligations under the SPA. Given Mr. Hart's repeated requests to discuss the arrears notices at a hearing, I find the strata's actions in neglecting to schedule a hearing were unreasonable and significantly unfair.
41. The CRT has previously ordered compensation for significantly unfair actions. Prior CRT decisions are not binding on me, but I agree that damages can be an appropriate way to remedy a significantly unfair action. I find the most relevant example is *Lozjanin v. The Owners, Strata Plan BCS 3577*, 2019 BCCRT 481, where a vice chair awarded \$1,000 for a strata corporation's failure to hold a hearing under SPA section 34.1. In *Lozjanin*, an owner made a single hearing request to discuss delayed balcony repairs, and the strata corporation denied the request.
42. Here, I find the strata essentially ignored Mr. Hart's hearing requests for over 1.5 years. Under the circumstances, I find that \$1,500 is reasonable compensation for the strata's significantly unfair actions.

CRT FEES, EXPENSES AND INTEREST

43. 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. While I did not award the full amount of damages he asked for, I find that Mr. Hart was the successful party. So, I find Mr. Hart is entitled to reimbursement of \$225 in paid CRT fees. Neither party claimed reimbursement of dispute-related expenses.
44. The *Court Order Interest Act* (COIA) applies to the CRT. However, Mr. Hart expressly waived his interest claim, so I do not award any pre-judgment interest.

ORDERS

45. I order that within 30 days of this decision, the strata pay Mr. Hart a total of \$1,725, broken down as follows:
- a. \$1,500 as compensation for significant unfairness, and
 - b. \$225 for CRT fees.
46. Mr. Hart is also entitled to post-judgment interest under the COIA.
47. 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.

Kristin Gardner, Tribunal Member