



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Matthews v. The Owners, Strata Plan BCS 3063*, 2023 BCCRT 631

B E T W E E N :

TARA MATTHEWS

APPLICANT

A N D :

The Owners, Strata Plan BCS 3063

RESPONDENT

A N D :

TARA MATTHEWS

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This strata property dispute is about the placement of an air conditioner (AC).
2. The applicant, Tara Matthews, owns strata lot 13 (SL13) in the respondent strata corporation, The Owners, Strata Plan BCS 3063 (strata).
3. Ms. Matthews is self-represented in this dispute. The strata is represented by its insurer.
4. Ms. Matthews says the strata approved the installation of her AC unit on the south side of the townhouse-style building in which SL13 is located. She says after the AC was installed, the strata directed her to move it. As remedy, she requests an order that the strata allow the AC to remain where it is. Alternatively, if she must move it, she requests \$6,000 in damages and the costs of a new assumption of liability agreement.
5. The strata says the assumption of liability (AOL) agreement Ms. Matthews signed said the AC would be installed on the main level deck of SL13, and not on the side of the building. The strata says it did not approve installation of an AC on the south side of the building, so Ms. Matthews must move it.
6. In its counterclaim, the strata requests an order that Ms. Matthews move the AC to the location approved in the AOL agreement. Ms. Matthews says moving the AC is burdensome and unnecessary.
7. For the reasons set out below, I find in favour of the strata in this dispute.

JURISDICTION AND PROCEDURE

8. 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.

9. 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.
10. 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.
11. 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

12. The issues in this dispute are:
 - a. Is Ms. Matthews' AC located in an unapproved area?
 - b. If so, what remedies are appropriate?

REASONS AND ANALYSIS

13. In a civil claim like this one, Ms. Matthews, as applicant, must prove her claims on a balance of probabilities (meaning "more likely than not"). The strata must prove its counterclaim to the same standard. I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.

14. The strata's bylaws are the Standard Bylaws set out in the *Strata Property Act* (SPA), plus some amendments filed in the Land Title Office that are not relevant to this dispute.
15. Standard Bylaw 5(1) says an owner requires the strata's written approval before making any alteration to a strata lot that involves, among other things, the exterior of a building. Also, Standard Bylaw 6 says an owner requires the strata's written approval before altering common property.
16. Based on the documents and photographs in evidence, the AC is a "ductless mini-split" system. It consists of an outdoor condenser unit that sits on a stand next to the building's exterior. The condenser unit is connected to SL13 by various hoses, which travel through holes cut in the exterior walls to 4 indoor cooling units inside SL13.
17. I note that the strata is built on an air space parcel. So, the "main" floor of the strata building is actually located 1 storey up from the ground. The ground floor of the building is not part of the strata.
18. The parties agree, and the evidence shows, that the condenser unit is located on the south side of the building. This area is marked on the strata plan as a common property "landscaped area".
19. Ms. Matthews says the strata approved the AC installation plan that was carried out, including the location of the condenser unit on the south side of the building. I find the evidence before me does not support this position.
20. The background evidence shows that Ms. Matthews first sought permission to install an AC in 2020. At that time, she provided the strata with an installation proposal from a company called Canada Furnace Heating and Air Conditioning (Canada Furnace), and a copy of an AOL agreement. For various reasons not relevant to this decision, that installation did not go ahead. Around the same time, the strata hired a new strata management firm.
21. In spring 2021, Ms. Matthews again strata requested permission to install an AC. In a March 31, 2021 email to the strata management firm, she wrote that she "wanted

to move forward.” She wrote, “I want to get this installed asap and you should have all my past documents and approvals from strata.” The strata manager wrote that they had gone through the information from the previous management company, but did not see an AOL or approval letter. The strata manager requested that Ms. Matthews fill out an attached AOL form and return it, and also provide proof of contractors’ insurance, home insurance, and WorkSafe coverage.

22. Ms. Matthews did not fill out the AOL form provided in 2021. Rather, on the same day, she emailed the strata a copy of an earlier AOL form she had signed on July 9, 2020. The title of the email is, “Air Conditioner Details, All I need now is strata approval”.
23. The July 9, 2020 AOL form states that the work must be done in accordance with detailed plans and specifications dated July 8, 2020, prepared by Canada Furnace.
24. The AOL form also states that the strata authorized Ms. Matthews to make the following alterations (reproduced as written):

Installation of Daikon Air Conditioning Unit

4 ductless will be installed. There will be 2 in the back and 2 in the front. No ductless units will go on the side of the building.

All work on the side will be done below the planters. The 1 main compressor will be on the main level deck.

25. On June 3, 2021, the strata sent Ms. Matthews a letter granting “conditional approval” to install the AC. The letter says the approval was granted on the following conditions:
 1. The renovation is carried out in accordance with the strata bylaws and alteration agreements.
 2. Onni is advised when any material is being brought through the elevator so the elevator can be padded.
 3. The common areas are left clean and free of debris.

26. The AC was installed around July 2021. The evidence shows that Ms. Matthews did not hire Canada Furnace to install the AC. Instead, she hired Rocky Point Heating & Air Conditioning Inc. (Rocky Point).
27. On August 12, 2021, the strata sent Ms. Matthews a letter stating that the AC was not installed according to the approved specifications, as outlined in the AOL. The letter said the current installation was unacceptable, and requested that Ms. Matthews remove the AC by August 31, 2021.
28. The evidence shows that after this, the parties discussed the matter several times, including at a strata council hearing. Ms. Matthews proposed lowering the condenser unit, or camouflaging it. Ultimately the parties could not agree, and Ms. Matthews filed this CRT dispute.
29. Ms. Matthews agrees the AC was not installed in the way that Canada Furnace had proposed in 2020. However, she says the strata was aware of Rocky Point's installation proposal, and verbally agreed to it. The strata denies this. However, even if this were true, I find that would not meet the requirements of Standard Bylaw 6, or the strata's June 3, 2021 conditional approval letter.
30. As explained above, Standard Bylaw 6(1) says an owner must obtain the strata's **written** approval **before** altering common property (my emphasis added). Standard Bylaw 6(2) says that as a condition of approval, a strata may require the owner to sign an AOL agreement.
31. There is no evidence before me showing that the strata ever gave written permission for the AC configuration installed by Rocky Point. Even if strata council members discussed it, there was no written consent. The June 3, 2021 consent letter specifically said the work had to be "carried out in accordance with strata bylaws and alteration agreements". The only alteration agreement is the July 2020 AOL, which says no ductless units would go on the side of the building, all work on the side would be done below the planters, and the 1 main compressor would be located on the "main level deck".

32. Based on the evidence before me, none of these requirements were met. The condenser unit is installed on the side of the building, and not on the main level deck. Also, the photos provided by the strata clearly show that the condenser and piping on the side of the building is not below the planters, and instead is unobscured from the street and side views.
33. Based on these specific terms in the June 3, 2021 conditional approval letter and the July 2020 AOL, I find Ms. Matthews did not have written permission to install the condenser unit on the south side of the building, as she did. I also note that since the south side of the building is common property, the strata council could likely not have granted permission to install the condenser there without holding a $\frac{3}{4}$ vote of the strata ownership. This is because SPA section 71 requires a $\frac{3}{4}$ vote before permitting significant changes to the use or appearance of common property.
34. In *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333, the BC Supreme Court set out a non-exhaustive list of factors to consider when deciding whether a change is significant:
- a. Is the change visible to other residents or the general public?
 - b. Does the change affect the use or enjoyment of a unit or existing benefit of another unit?
 - c. Is there a direct interference or disruption because of the changed use?
 - d. Does the change impact the marketability or value of a strata lot?
 - e. How many units are in the strata and what is the strata's general use?
 - f. How has the strata governed itself in the past and what has it allowed?
35. In some prior cases, the CRT has found heat pumps and air conditioners to be a significant change. See for example *Peace v. Hyde*, 2020 BCCRT 1284, *Fleming v. The Owners, Strata Plan 1290*, 2021 BCCRT 1117, *Leishman v. The Owners, Strata Plan VR 2648*, 2022 BCCRT 1136 and *Colabraro v. Adams*, 2022 BCCRT 592.

Whether a heat pump or air conditioner is a significant change largely depends on the specific facts of each case.

36. In this case, the photos show that Ms. Matthews' condenser unit and piping is located on common property, and is visible from the street. The evidence indicates no prior owner has installed an air conditioner in this manner. In *Simon Fraser University Foundation v. The Owners, Strata Plan BCS 1345*, 2021 BCSC 360 and *Allwest International Equipment Sales Co. Ltd. v. The Owners, Strata Plan LMS4591*, 2018 BCCA 187, courts have found that cutting holes in common property walls and installing pipes for heat pumps is an "alteration" for the purpose of strata bylaws. While these cases do not specifically address whether these changes are "significant" for the purposes of SPA section 72, the cases do note the permanence of these changes, and the potential for leaks into the building envelope.
37. Based on these factors, I find Ms. Matthews' AC system is a significant change to common property, which required a $\frac{3}{4}$ vote of the ownership to approve.
38. In this dispute, Ms. Matthews argues that the July 2020 AOL is invalid, because it was based on the Canada Furnace installation proposal, and because the strata never signed it. Even if this is true, I find it does not support Ms. Matthews' position in this dispute. Ms. Matthews was the party who sent the strata a copy of the July 2020 AOL when the strata requested she sign an AOL. Since Ms. Matthews provided the AOL to the strata, I find it is unreasonable for her to now argue she should not be bound by the installation terms set out in that document. Also, there is no other document giving permission for the current installation, with the condenser unit on the south side of the building.
39. Finally, even if the strata did approve the Rocky Point installation proposal, I find the AC is not installed in the way set out in that proposal. The undated written proposal says the outdoor condenser would be installed on the south side of the building "at approximately ground level, behind the shrubs, to minimize visibility from any common areas."

40. The photos in evidence show that the condenser is not at ground level. Rather, it sits on a stand at least 2 feet above the ground. It is also not behind any shrubs, and its visibility is unobstructed.
41. For all of these reasons, I find Ms. Matthews did not obtain the strata's advance written permission for the current AC installation, contrary to Standard Bylaw 6(1).

Remedy

42. Ms. Matthews requests permission to keep the AC in its current configuration. For the reasons set out above, I dismiss that claim. I also dismiss her claim for reimbursement of costs to move the AC, and the costs of a new AOL agreement, for the same reasons.
43. Ms. Matthews argues it is unreasonable for the strata to require her to move the condenser unit. I do not agree. In addition to cosmetic concerns, as I noted above the south side of the building is common property. Under the SPA, the strata council cannot grant one owner exclusive use of common property without holding a $\frac{3}{4}$ vote of the ownership.
44. The strata requests an order that Ms. Matthews move the condenser unit. I decline to grant this remedy, as I find it unclear from the evidence where the strata wishes it to move to. It is also unclear whether this proposed location is common property, requiring a $\frac{3}{4}$ ownership vote under either SPA section 71 or 74. However, since the AC was not installed in an approved manner, I order Ms. Matthews to remove the condenser unit within 180 days of this decision. It is open to her to request strata permission to reinstall it elsewhere. Under Standard Bylaw 6(2), the strata may require her to sign a new AOL as a condition of this approval.

CRT FEES AND EXPENSES

45. I find the strata was largely successful in this dispute. So, under the CRTA and the CRT's rules I find it is entitled to reimbursement of \$125 in CRT fees. Neither party claimed dispute-related expenses, so I order none.

46. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Ms. Matthews.

ORDERS

47. I order that:

- a. Within 30 days of this decision, Ms. Matthews must reimburse the strata \$125 for CRT fees.
- b. Within 180 days of this decision, Ms. Matthews must remove the AC condenser unit.

48. I dismiss Ms. Matthews' claims.

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

50. 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, Tribunal Member