



Civil Resolution Tribunal

Date Issued: January 22, 2024

File: ST-2022-009253

Type: Strata

Civil Resolution Tribunal

Indexed as: *Newton v. The Owners, Strata Plan LMS 1642*, 2024 BCCRT 65

B E T W E E N :

KIMBERLY NEWTON

APPLICANT

A N D :

The Owners, Strata Plan LMS 1642

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about parking in a strata corporation.
2. Kimberly Newton owns a strata lot (unit 214) in the strata corporation, The Owners, Strata Plan LMS 1642 (strata).

3. Ms. Newton is self-represented in this dispute. The strata is represented by a strata council member.
4. Ms. Newton says it is very difficult to get her car in and out of her assigned carport parking stall, because the stall is just across the roadway from a townhouse strata lot (unit 112), and the unit 112 owners park 2 vehicles in front of their garage and front door. Ms. Newton says the parked vehicles “box her in”, so she cannot safely drive in or out of her stall. She says she has repeatedly raised this issue with the strata, and the strata has not resolved it.
5. Ms. Newton requests orders that the strata:
 - Remove the parking stalls in front of unit 112.
 - Follow the fire department’s instructions about parking.
 - Reimburse her \$600 she paid the former unit 112 owners for a bumper chip repair to their car.
6. The strata says it has tried to resolve Ms. Newton’s parking issue, including by offering Ms. Newton a different parking stall, which she refused. The strata says the unit 112 owners are entitled to park in front of their strata lot, based on the parking plan filed at the Land Title Office (LTO). The strata also says it is not responsible for the bumper damage because it would have been covered by the Insurance Corporation of British Columbia, but Ms. Newton chose not to make a claim.
7. For the reasons set out below, I dismiss Ms. Newton’s claims.

JURISDICTION AND PROCEDURE

8. The Civil Resolution Tribunal (CRT) has jurisdiction (authority) over strata property claims under *Civil Resolution Tribunal Act* (CRTA) section 121. The CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.

9. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required even where credibility is at issue. I am satisfied I can fairly decide this dispute based on the evidence and submissions provided, without an oral hearing.
10. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.
11. Ms. Newton provided late evidence in this dispute. I find this evidence relevant to the dispute, and the strata had an opportunity to respond to it. So, I find it is not procedurally unfair to consider the late evidence in deciding this dispute, and I have done so.
12. In her submissions, Ms. Newton argued that the owners of townhouse-style strata lots should pay higher strata fees than the owners of the apartment-style strata lots. Ms. Newton did not raise that issue in her dispute application. So, I find the strata did not have notice of it. Also, raising this issue late in the proceeding undermines the purpose of the CRT's dispute facilitation stage. For these reasons, I make no findings about strata fees in this decision.

ISSUES

13. The issues in this dispute are:
 - a. Has the strata met its duties under the *Strata Property Act* (SPA) and bylaws regarding Ms. Newton's parking stall?
 - b. If not, what remedies are appropriate?

REASONS AND ANALYSIS

14. In a civil claim like this one, Ms. Newton, as applicant, must prove her claims on a balance of probabilities (meaning "more likely than not"). I have reviewed all the

parties' evidence and submissions, but I only refer to what is necessary to explain my decision.

15. The strata was created in 1994.
16. The strata filed consolidated bylaws at the LTO in November 2014, and subsequent bylaw amendments in 2018 and 2022. Together, I find these are the strata's bylaws. I discuss the bylaws relevant to this dispute in my reasons below.
17. The strata plan shows that it consists of 31 strata lots in 4 buildings. Ms. Newton's unit 214 is located on the 2nd floor of building "B".
18. Most of the area surrounding the strata buildings, including the roadways, is marked as common property on the strata plan. The strata plan shows a building labelled "carport". The carport building is marked as common property, and parking stalls within the carport are designated on the strata plan as limited common property (LCP) for the exclusive use of specific strata lots. Of these, the last stall on the southwest corner of the carport is labelled as LCP for the exclusive use of Ms. Newton's strata lot. I will refer to this as Ms. Newton's stall.
19. Ms. Newton purchased unit 214 in 2017. She says she drove infrequently until 2019, when she got a new job and began driving more frequently. Ms. Newton says she then noticed that her parking stall was very "tight". She says it is difficult to get her SUV in and out of the stall safely, without hitting the carport wall.
20. Ms. Newton says the former and current owners of unit 112 park 2 vehicles in front of their townhouse garage and front door, which is right behind her parking stall. She says these parked vehicles make it more difficult to use her parking stall. Ms. Newton says this problem became worse when the former unit 112 owners replaced one of their small cars with a larger SUV, and worse again when in May 2022 when the new unit 112 owners moved in and began parking a truck and a van in front of unit 112.
21. Ms. Newton argues that parking is not permissible in front of unit 112, as this is common property not designated as LCP, and there is no room to park there without impeding access to Ms. Newton's parking stall.

22. In support of her argument, Ms. Newton cites strata bylaws 37.10 and 37.11, which state as follows:

- 37.10 – no vehicle shall be parked in a manner that obstructs another owner’s access to their garage, strata lot entrance, or private parking area.
- 37.11 – no vehicle shall be parked on the [strata] complex roadways in a manner that precludes free and easy access to emergency and other traffic.

23. The strata says its parking plan has always allowed for owners to park in front of their garages, and the unit 112 owners are therefore entitled to do so. The strata also says the unit 112 owners have been “very diligent” about parking their vehicles close to the doors.

24. The strata argues that all the carport parking stalls are the same size, so Ms. Newton has not been treated differently from other owners. It says that due to the size of the stalls, many owners have difficulty parking at times, and must back up and turn again to make the tight turn into their stalls.

Bylaw Breach

25. In arguing that bylaws 37.10 or 37.11 have been breached, Ms. Newton relies on a May 27, 2022 letter and diagram from the municipal fire department. The letter is addressed to the strata council president, and says:

- Strata properties are designed with required access routes for firefighting.
- The strata was built under the BC *Building Code* (BCBC), with required access routes of not less than 6 meters.
- The strata’s road is wider than 6 meters, so it meets the current BCBC.
- Once occupied, the fire department has jurisdiction over the strata’s property, and can enforce the BC *Fire Code* (BCFC).

- The BCFC requires ready access by fire department vehicles at all times, and vehicles may not be parked to obstruct access. This means that the original 6 meter width of the road must be maintained at all times.
26. The fire department's diagram is an aerial view photo, showing the carport and unit 112. There is a vehicle parked in front of unit 112, and the width between the vehicle's back bumper and the edge of the carport is marked as 5.6 meters.
27. Ms. Newton says this diagram means the strata has not kept a 6-meter unobstructed roadway, and is therefore breaching the fire department requirements. The strata disputes this, and provided copies of the fire department's inspection reports from 2021, 2022, and 2023. Each of these reports has various categories for inspection, including fire department access. One of boxes in that category is "Remove obstruction from fire access route/lane". That box is not marked on any of the 3 inspection reports. The comment on the 2021 and 2022 reports is "all good". The 2023 report lists some problems with emergency lighting, fire extinguishers, and a fire door handle. However, there is nothing about fire route access or roadway width.
28. I also note that the fire department's May 27, 2022 letter does not mention any breach of roadway width requirements, or suggest any changes.
29. For these reasons, I find Ms. Newton has not proved any breach of fire department requirements.
30. I also find Ms. Newton has not proved a breach of bylaws 37.10 and 37.11.
31. As noted above, bylaw 37.10 says no vehicle shall be parked in a manner that obstructs another owner's access to their garage, strata lot entrance, or private parking area.
32. I find Ms. Newton has not proved her assertion that her parking stall access is obstructed. She says it is, but provided no evidence to confirm that, such as a video or witness statement. Based on the fire department diagram, there is 5.6 meters between the carport edge and unit 112's vehicle. This is longer than a standard car or SUV. I accept that the parking space is tight, and may require some "back and

forth” driving to access, but I the evidence does not establish that access is obstructed.

33. Bylaw 37.11 says no parked vehicle can preclude free and easy access to emergency and other traffic. For the same reasons as above, and based on the fire department’s letter and reports, I find Ms. Newton has not proved that the unit 112 vehicles, or any others, breach bylaw 37.11.

Limited Common Property

34. The strata argues that the parking plan filed at the LTO gives the unit 112 owners the right to park 2 vehicles in front of their strata lot.
35. The parties agree, and the strata plan shows, that the area in front of unit 112 is common property. Under the SPA, in order to grant an owner exclusive use of common property, the strata must either grant permission annually (SPA section 76) or must designate the area as LCP.
36. To designate common property as LCP, the strata must either amend the strata plan, or must pass a $\frac{3}{4}$ vote resolution at a general meeting and file a sketch plan with the LTO defining the LCP areas and specifying which owners are entitled to its exclusive use.
37. On January 24, 2006, the strata filed a document with the LTO. The document sets out a $\frac{3}{4}$ vote resolution passed at a general meeting, designating LCP for several listed strata lots, including unit 112, “as per the attached sketch”. The sketch, which was also filed at the LTO, clearly shows that the yard area behind unit 112 was designated as LCP. The sketch also shows 2 parking stalls in front of unit 112, marked as “112”. The sketch does not clearly label those stalls as LCP. However, the stalls are not shown on the strata plan, and are clearly identified in the subsequent sketch plan as defined areas for the exclusive use of unit 112. For that reason, I find the sketch plan designates the 2 parking stalls in front of unit 112 as LCP for unit 112’s exclusive use.

38. I note that bylaw 37.4 also says that all parking stalls are LCP. That is not binding, as the SPA does not permit designation of LCP by bylaw. However, it does support the conclusion that the sketch plan intended to designate the unit 112 parking stalls, along with others also shown on the 2006 sketch plan, as LCP.
39. Since the 2 parking stalls in front of unit 12 are designated as LCP, I find the unit 112 owners are entitled to park there.

Significant Unfairness

40. Ms. Newton essentially argues that the strata has treated her significantly unfairly in dealing with her parking stall complaints.
41. CRTA section 123(2) says the CRT may make orders remedying a strata corporation's significantly unfair acts or decisions. In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, the court confirmed that significantly unfair actions or decisions are those that are burdensome, harsh, wrongful, lacking in probity and fair dealing, done in bad faith, unjust, or inequitable. In applying this test, an owner's objectively reasonable expectations are a relevant factor, but are not determinative.
42. I find the strata did not act significantly unfairly in responding to Ms. Newton's parking stall complaint. Most importantly, as explained above, I find Ms. Newton has not proved that her parking stall is inaccessible.
43. Also, according to the evidence before me, Ms. Newton first complained to the strata about the parking situation in a July 22, 2021 email. There was some delay in responding, but on June 15, 2022, the strata manager emailed Ms. Newton and said the strata had obtained written consent from another owner, who had agreed to immediately and permanently switch parking stalls with Ms. Newton. Ms. Newton was to be assigned parking stall 209.
44. Ms. Newton acknowledges that the strata offered her stall 209. She has not argued or provided evidence that stall 209 was unsuitable for parking, or that it would not have solved her parking problem. Ms. Newton did not contest the strata's assertion, set out in an August 10, 2022 letter, that stall 209 would have "far more area to swing

out to pull in to your stall.” Rather, Ms. Newton wrote in a July 26, 2022 email that she declined the offer of stall 209 because it made her uncomfortable that her neighbours were asked to trade stalls without her knowledge.

45. I find that was not an objectively reasonable response. Because Ms. Newton has not proved otherwise, I find that stall 209 would have provided her with easily accessible parking, or that the arrangement would not have lasted for the length of her ownership.
46. For this reason, and because the unit 112 parking stalls are LCP, I find Ms. Newton’s expectation that the unit 112 owners should park elsewhere is not objectively reasonable. Since the strata offered Ms. Newton parking elsewhere, I find the strata’s actions were not burdensome, harsh, wrongful, lacking in probity and fair dealing, done in bad faith, unjust, or inequitable.
47. For all these reasons, I dismiss Ms. Newton’s claims about her parking stall.

\$600 for Bumper Damage

48. Ms. Newton requests an order that the strata reimburse her for \$600 she says she paid the former owners of unit 112. Ms. Newton says she paid the former unit 112 owners for a paint chip repair because she damaged their car’s bumper when she hit it while backing out of her parking stall.
49. I dismiss this claim for 3 reasons. First, there is no witness statement, video, or other evidence to confirm Ms. Newton’s account of how the alleged car damage occurred. That is, there is nothing to prove that the alleged accident occurred, or that it was due to the configuration of Ms. Newton’s parking stall.
50. Second, even accepting Ms. Newton’s account of the accident, there is nothing in the SPA or bylaws that would make the strata responsible to pay for vehicle damage in an accident between owners. This is particularly true since I have found the strata has not breached the SPA or bylaws in permitting parking in front of unit 112.

51. Third, and most importantly, Ms. Newton did not provide any evidence confirming that she paid the former unit 112 owners \$600, or another amount. Ms. Newton says she misplaced the receipt. So, I find she has not proved her claim for \$600,
52. So, I dismiss Ms. Newton's claim for reimbursement of \$600 for car repairs.

CRT FEES AND EXPENSES

53. 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. The strata is the successful party. It paid no CRT fees and claims no dispute-related expenses, so I award no reimbursement.
54. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Newton.

ORDER

55. I dismiss Ms. Newton's claims and this dispute.

Kate Campbell, Tribunal Member