



# Civil Resolution Tribunal

Date Issued: April 9, 2024

File: ST-2023-001355

Type: Strata

Civil Resolution Tribunal

Indexed as: *Pickering v. The Owners, Strata Plan NW 49*, 2024 BCCRT 341

BETWEEN:

JAMES PICKERING

**APPLICANT**

AND:

The Owners, Strata Plan NW 49

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. This strata property dispute is about reimbursement of towing charges and punitive damages.
2. The applicant, James Pickering, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 49 (strata). Mr. Pickering is self-represented. A strata council member represents the strata.

3. Mr. Pickering says the strata towed his car from his parking stall without proper notice. He seeks reimbursement of \$282.11 for towing charges he paid to recover his vehicle and \$717.89 in punitive damages for a total of \$1,000.00.
4. The strata denies Mr. Pickering's allegations and says it exercised its authority to enforce the strata's bylaws to tow his car because it blocked access to a common property service room. The strata asks that Mr. Pickering's claims be dismissed.
5. As explained below, I dismiss Mr. Pickering's claims and this dispute.

## **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. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the written evidence and submissions provided.
8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

## **ISSUES**

9. The issues in this dispute are:
  - a. Must the strata reimburse Mr. Pickering \$282.11 for towing charges?
  - b. Must the strata reimburse Mr. Pickering \$717.89 for punitive damages?

## BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding such as this, Mr. Pickering must prove his claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' submissions and evidence but refer only to information I find relevant to explain my decision. I note that Mr. Pickering did not provide any evidence or final reply submissions even though he was given the opportunity to do so.
11. The strata was created in June 1971 and operates under the *Strata Property Act* (SPA). It consists of 136 residential strata lots in 19 buildings. Mr. Pickering's strata lot is located in a 3-story building above a single-level common property underground parking garage. The 3-story building is identified as building 19 on the strata plan. All strata lots in the 3-storey building are single-level strata lots. The other 18 buildings are 2-storey buildings containing 2-level strata lots with no underground parking.
12. The strata filed a complete new set of bylaws with the Land Title Office (LTO) on November 22, 2001 which repealed and replaced all previously registered bylaws, including all *Condominium Act* Part 5 bylaws. I find the Standard Bylaws under the SPA do not apply. The strata filed subsequent bylaw amendments with the LTO, but none are relevant to this dispute.
13. Bylaw 38 is the parking bylaw. It identifies apartment and townhouse strata lots, but a distinction between the 2 types of strata lots is not defined in the bylaws. Based on the configuration of strata lots in the 2 types of buildings, I find the apartment strata lots are those strata lots located in building 19, including Mr. Pickering's strata lot. I find all other strata lots are townhouse strata lots.
14. I summarize the parts of bylaw 38 relevant to this dispute as follows:

Bylaw 38.1 says the assignment of parking stalls is at the discretion of the strata council.

Bylaws 38.2 and 38.4 say an apartment owner shall be assigned 1 parking stall but may be assigned 1 additional exterior parking stall upon request, subject to availability.

Bylaws 38.12 says a resident must not permit a vehicle to be parked in a manner that interferes with or obstructs walkways and passages, among other things.

Bylaw 38.13 says the strata council can authorize a vehicle in violation of the bylaws be removed by a towing company at the vehicle owner's expense.

15. From the overall evidence and submissions, there was an apparent ongoing parking issue between the strata and Mr. Pickering relating to a request for an additional parking stall.
16. The strata says that Mr. Pickering requested an underground parking stall and was put on a waiting list as none were available. The strata says he was given parking stall #58 "in the interim" for the sole purpose of parking his motorcycle because parking his vehicle in the stall would block access to furnace room. The strata says Mr. Pickering was already assigned an outside parking stall, which I find means a stall that was not located in the underground parking garage.
17. Mr. Pickering has a slightly different version of events. He admits he was assigned stall #58 for his motorcycles because they would not block access to the furnace room. However, he says when he purchased his car, he requested an outside parking stall because he knew his car would block the furnace room door.
18. It is unclear whether Mr. Pickering was already assigned an outside stall when he requested a second stall because of his car purchase, but I find it does not matter for the purposes of this dispute. I say this because this dispute is about the strata towing Mr. Pickering's car from stall #58 on November 2, 2022. I further note that Mr. Pickering did not provide any evidence to support his submissions. So, to the extent Mr. Pickering says he was treated unfairly by the strata, I dismiss his claim on the basis he has not proven it.

***Must the strata reimburse Mr. Pickering \$282.11 for towing charges?***

19. Mr. Pickering says he was not properly notified his car would be towed. The strata says its strata manager left a telephone message requesting Mr. Pickering remove his car from stall #58 on November 1, 2022, to allow for access to the furnace room. The strata also says its strata manager emailed Mr. Pickering on the same day to remove his car. Mr. Pickering says he did not receive the telephone message or the email.
20. However, I agree with the strata that no prior notification was required under the bylaws. A plain reading of bylaw 38.12 means Mr. Pickering could not block access to the furnace room by parking his car in stall #58, which he admits knowing in his submissions. It is clear from photographs provided that a door marked “furnace” is immediately next to parking stall #58. It is also clear that the door opens into parking stall #58. Mr. Pickering’s car was parked close to the wall containing the furnace room door access door and I find the car did block the door. Therefore, I find the strata had authority to tow Mr. Pickering’s car without notice.
21. Finally, bylaw 38.13 is clear that the owner of a vehicle which is towed is responsible for towing costs.
22. For these reasons, I dismiss Mr. Pickering’s claim for reimbursement of towing costs.

***Must the strata reimburse Mr. Pickering \$717.89 for punitive damages?***

23. An order to award Mr. Pickering punitive damages would require a finding of malicious, oppressive, or high-handed conduct of the strata or its council. There is no evidence of such conduct here, so I also dismiss Mr. Pickering’s claim for punitive damages.

**CRT FEES AND EXPENSES**

24. 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 was the successful party but did not pay CRT fees or claim dispute-related expenses, so I order none.

25. Under section 189.4 of the SPA, the strata may not charge any dispute-related expenses against Mr. Pickering.

## **DECISION**

26. I dismiss Mr. Pickering's claims and this dispute.

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J. Garth Cambrey, Vice Chair