



# Civil Resolution Tribunal

Date Issued: June 20, 2024

Date Amended: June 21, 2024

File: ST-2023-004096

Type: Strata

Civil Resolution Tribunal

Indexed as: *Knowler v. The Owners, Strata Plan NW 2762*, 2024 BCCRT 580

B E T W E E N :

RICKY KNOWLER

**APPLICANT**

A N D :

The Owners, Strata Plan NW 2762

**RESPONDENT**

---

## **AMENDED<sup>1</sup> REASONS FOR DECISION**

---

Tribunal Member:

J. Garth Cambrey, Vice Chair

## **INTRODUCTION**

1. This strata property dispute is about parking fees.
2. The applicant, Ricky Knowler, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 2762 (strata). Mr. Knowler is self-represented. A strata council member represents the strata.

3. Mr. Knowler says they stopped paying the strata parking fees for an additional parking stall in April 2022 after becoming aware there was no approved bylaw or rule to allow the strata to charge \$30 per month for use of an additional stall. Mr. Knowler values the claim at \$390.00, which is the amount their spouse paid the strata for additional parking stall fees covering April 1, 2022 through April 30, 2023. I find that Mr. Knowler seeks orders that the strata:
  - a. Reimburse them \$390.00 paid to the strata for additional parking, and
  - b. Permit them to continue using the same additional parking stall.
4. The strata admits it did not have a bylaw or rule setting out a \$30 per month fee for use of additional parking stalls. However, it says Mr. Knowler paid the same fee prior to April 1, 2022, when they were a strata council member. The strata also says an appropriate rule was passed by the strata council at its March 9, 2023 meeting and ratified at the strata's annual general meeting (AGM) held May 10, 2023. The strata says this dispute is moot (of no legal consequence) since Mr. Knowler paid the additional parking stall fee. I infer the strata asks that Mr. Knowler's claims be dismissed.
5. As explained below, I order the strata to reimburse Mr. Knowler \$390.00 paid for parking fees plus interest, less any amount they might owe after June 1, 2023. I dismiss Mr. Knowler's remaining claims.

## **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.

### New allegations

9. In submissions, Mr. Knowler raises allegations about the improper appointment of 2 owners to the strata council. These allegations were not included in the Dispute Notice. The CRT rules permit an applicant to request to amend a Dispute Notice to add claims and remedies, but Mr. Knowler did not do that.
10. The purpose of a Dispute Notice is to define the issues and provide notice to the respondent of the claims against it. Procedural fairness requires that a party must be notified of the claims against it and have a fair opportunity to respond, which the strata has not. I therefore decline to address Mr. Knowler's new allegations in my decision below.

## **ISSUES**

11. The issues in this dispute are:
  - a. Are Mr. Knowler's claims moot?
  - b. Did the strata properly approve its rule about additional parking charges and, if so, when is it effective?
  - c. Must the strata reimburse Mr. Knowler \$390.00 for the additional parking fees?
  - d. Must the strata continue to allow Mr. Knowler to use the same additional parking stall?

## BACKGROUND, EVIDENCE AND ANALYSIS

12. In a civil proceeding such as this, Mr. Knowler must prove their 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.
13. The strata was created in April 1988 under the *Condominium Act* (CA). It exists under the *Strata Property Act* (SPA) and is comprised of 12 residential strata lots in a single 3-storey building. The strata plan shows there are 16 common property parking stalls. The strata says each strata lot is assigned 1 stall and the remaining 4 unassigned stalls are used for "strata storage" or an additional rental stall. Mr. Knowler does not dispute this, so I find it is accurate.
14. The strata filed a complete new set of bylaws with the Land Title Office on March 10, 2017. The bylaw amendment confirms all previous bylaws were replaced which I find includes all CA Part 5 bylaws and the Standard Bylaws under the SPA.
15. I agree with the parties that the bylaws do not address rental of common property parking stalls. However, among other things, bylaw 23 says vehicles parked in areas not authorized for parking will be towed.
16. The strata asserts that in 2020, when Mr. Knowler was the strata council treasurer, they increased the rental fee for additional parking stalls to \$30 per month without a vote by the owners. Mr. Knowler does not disagree. Further, cancelled cheques show that Mr. Knowler or their spouse paid additional parking stall fees of \$30 per month from at least January 2021 through March 2022, despite the strata having no bylaws or rules addressing rent for additional stalls during that time.
17. Mr. Knowler resigned from the strata council in September 2022. On the evidence before me, the strata first noted parking fee arrears in the December 7, 2022 strata council minutes. Between December 2022 and March 2023, the parties exchanged correspondence. Mr. Knowler requested at least 2 council hearings, but it is unclear if a council hearing was held. The strata appears to have taken the position that Mr. Knowler was using, but not paying for, the additional parking stall. In December 2022,

Mr. Knowler said they were not paying for the extra stall because the strata did not approve a budget earlier in the year and requested a council hearing. In submissions, Mr. Knowler said they now understand that position was incorrect. They changed their position in January 2023 after obtaining strata documents, to the position they hold here. Namely, that the strata has not properly approved the additional parking stall fee. In January 2023, the strata wrote to Mr. Knowler and asked them to stop using the stall or pay the outstanding fees. I find that Mr. Knowler made their position clear in ensuing correspondence.

18. On March 30, 2023, the strata council wrote to Mr. Knowler. Among other things, the strata's letter stated Mr. Knowler was no longer authorized to use the additional stall because they had not paid for it. The letter also stated the Mr. Knowler was parking in contravention of bylaw 23 and that they must remove their vehicle from the stall, or it would be towed. An invoice dated April 3, 2023 totaling \$390.00 for use of the additional parking stall for the 13-month period between April 1, 2022 to April 30, 2023 was attached to the letter. It is undisputed that the strata posted "No Unauthorized Parking" signs on the wall at the head of the 4 unassigned common property parking stalls. I infer the signs were posted shortly after the strata council passed the rule in early March 2023 to add substance to the strata's March 30, 2023 letter.
19. Mr. Knowler admits their spouse paid the invoice on April 29, 2023 "to avoid any inconveniences from being towed". I find the payment was made on Mr. Knowler's behalf. Mr. Knowler also says they were concerned about not being able to vote at the upcoming May 2023 AGM.

***Are Mr. Knowler's claims moot?***

20. As noted, the strata says Mr. Knowler's claim for the \$390.00 is moot because they paid the additional parking fee invoice. It did not address Mr. Knowler's second claim.
21. A claim is considered moot when something happens after a legal proceeding starts that removes any "present live controversy" between the parties. See *Binnarsley v. BCSPCA*, 2016 BCCA 259.
22. For the first claim, Mr. Knowler seeks reimbursement of the \$390.00 they paid to the

strata for additional parking stall fees during a period they say the strata was not authorized to charge fees. This clearly involves a present live controversy.

23. There is no evidence the strata has stopped allowing Mr. Knowler to use the same additional parking stall or that Mr. Knowler is not paying to use it after the rule was passed. In any event, I find Mr. Knowler's requested remedy that the strata should continue to rent them the same additional parking stall also involves a present live controversy, so I find Mr. Knowler's claims are not moot.

***Did the strata properly approve and ratify its rule about additional parking charges and, if so, when is it effective?***

24. Under SPA section 125(1), a strata corporation can make rules “governing the use, safety and condition of the common property and common assets”. Section 125(4) requires a strata corporation to inform owners of any new rules as soon as feasible. Section 125(6) states a rule ceases to have effect after the first general meeting held after it is made unless the rule is ratified by a majority vote resolution at the first general meeting. Section 125(7) states that once a rule is ratified, it is effective until it is repealed, replaced, or altered, without the need for further ratification.
25. Put another way, a strata council may make rules that have effect until the next general meeting. If the rule is not ratified by a majority vote at that general meeting, it no longer has effect. If the rule is ratified, it continues to have effect until it is changed or replaced. The exception to the effective date of a rule is if it involves user fees, which is what I find the additional parking stall fees are.
26. SPA section 110 says a strata corporation may only impose user fees as set out in the *Strata Property Regulation* (regulations). Regulation section 6.9(1) says a user fee must be a reasonable amount and set out in a bylaw or rule that has been ratified under SPA section 125(6).
27. The March 9, 2023 council meeting minutes in evidence confirm the strata council passed a rule that permits the strata to charge a rental fee of \$30 per month for use of additional parking stalls. The rule says the fee is payable in advance on the first day of the month. Further, the May 10, 2023 AGM minutes confirm the rule was

ratified by a majority vote. Accordingly, I find the rule permitting owners to use an additional common property parking stall was properly approved. Given the rule says the fee is payable in advance on the first day of the month, I find it reasonable to conclude the strata could first start charging the \$30 per month fee on June 1, 2023.

***Must the strata reimburse Mr. Knowler \$390.00 for the additional parking fees?***

28. As noted, the \$390.00 parking fee payment made on April 29, 2023 was for use of an additional stall from April 1, 2022 through April 30, 2023.
29. I acknowledge that Mr. Knowler's user fees were paid prior to the rule being ratified, but that does not mean he was obligated to pay them. The SPA is clear that user fees like the additional parking stall fee, cannot be imposed through a rule unless the rule has been ratified. Therefore, I find Mr. Knowler was not responsible to pay the additional parking stall fee before the parking fee rule was properly ratified.
30. Based on the content of the strata's March 30, 2023 letter, I find it reasonable, and I accept that Mr. Knowler's spouse paid the strata's \$390.00 invoice to avoid having their vehicle towed. For these reasons, I find the strata must reimburse Mr. Knowler \$390.00.

***Must the strata continue to allow Mr. Knowler to use the same additional parking stall?***

31. Mr. Knowler requests an order that the strata continue to allow them to use the same common property parking stall. The strata did not make submissions on this issue.
32. I find the strata's assignment of the stall is governed by SPA section 76. That provision says exclusive use or special privilege granted by the strata for use of common property may be subject to conditions and may not be given for periods in excess of 1 year. The provision also says the strata may renew the permission of privilege and may change the period or conditions on such renewal. Finally, section 76 allows the strata to cancel the permission or privilege on reasonable notice.
33. In other words, the strata has broad discretion when granting special permission or

exclusive use of the common property parking stall. For this reason, I decline to make the order requested by Mr. Knowler and dismiss their claim.

## **CRT FEES, EXPENSES, AND INTEREST**

34. 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. Mr. Knowler was partially successful and paid \$225.00 in CRT fees. The strata did not pay CRT fees. Therefore, I order the strata to reimburse Mr. Knowler ½ of the CRT fees they paid, or \$112.50.
35. Mr. Knowler also claimed \$68.59 for dispute-related expenses. This amount was for documents Mr. Knowler obtained from the Land Title Office and is broken down as follows:
- a. \$21.00 for the strata's bylaws,
  - b. \$19.24 for a copy of the strata plan, and
  - c. \$28.35 for a copy of the strata' general index.
36. From the evidence, Mr. Knowler requested these documents from the strata, but was asked to obtain them from the Land Title Office, so I accept they are dispute-related expenses. However, Mr. Knowler only provided proof of payment for the strata plan and general index. Accordingly, I order the strata to reimburse Mr. Knowler \$47.59 for dispute-related expenses.
37. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Knowler is entitled to pre-judgement interest under the COIA on the \$390.00 payment made to the strata for parking fees. Interest is calculated from April 29, 2023, the date the payment was made to the date of this decision. I calculate pre-judgement interest to be \$22.28.
38. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Knowler.



## DECISION AND ORDER

39. Within 30 days of the date of this decision, I order the strata to pay Mr. Knowler a total of \$572.37, broken down as follows:

- a. \$390.00 for the additional parking stall fees paid in April 2023,
- b. \$112.50 for CRT fees,
- c. \$47.59 for dispute-related expenses, and
- d. \$22.28 for pre-judgement interest under the COIA.

40. Mr. Knowler is entitled to post-judgement interest under the COIA, as applicable.

41. I dismiss Mr. Knowler's remaining claims.

42. This is a validated decision and order. 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.

---

J. Garth Cambrey, Vice Chair

---

<sup>1</sup> Amended to correct the spelling of applicant's surname under the authority of *Civil Resolution Tribunal Act* section 64