



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Bevacqua v. The Owners, Strata Plan BCS2723*, 2024 BCCRT 928

B E T W E E N :

ROSA BEVACQUA

APPLICANT

A N D :

The Owners, Strata Plan BCS2723

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. Rosa Bevacqua owns strata lot 22 (SL22) in the strata corporation, The Owners, Strata Plan BCS2723 (strata). Mrs. Bevacqua says when she moved into SL22, she received permission from the strata manager, through her realtor, to replace SL22's blinds with new cream or white blinds. Shortly after Mrs. Bevacqua replaced the blinds, the strata told her the new ones did not comply with the bylaws, and must be

changed. Mrs. Bevacqua says she relied on the information the strata manager provided, and it was unfair of the strata to require her to replace the new blinds. She changed her new blinds after the strata began fining her for violating the bylaws, and claims \$1,600 for the cost the new blinds.

2. The strata says Mrs. Bevacqua did not make a formal request to the strata council to change her blinds, or receive written approval to do so. It also says her new blinds did not comply with its bylaws. So, the strata says it was entitled to require that Mrs. Bevacqua replace them. The strata removed the fines from Mrs. Bevacqua's strata lot account after she replaced the new blinds.
3. Mrs. Bevacqua is self-represented. A strata council member represents the strata.

JURISDICTION AND PROCEDURE

4. The Civil Resolution Tribunal (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. These are the CRT's formal written reasons.
5. 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 I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, and the relatively small amount claimed, I find an oral hearing is not necessary in the interests of justice and fairness.
6. CRTA section 42 says the CRT may accept as evidence information it considers relevant, necessary, and appropriate, even where the information would not be admissible in court.

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 issue

8. In her submissions, Mrs. Bevacqua says she is amending her claim to increase her requested damages to \$2,700 for the cost of both the new blinds and the replacement blinds. The CRT rules say an applicant may amend their Dispute Notice by contacting it to request an amendment, specifying the requested amendment, and paying a fee. The rules also say that except in extraordinary circumstances, the CRT will not issue an amended Dispute Notice after the dispute has entered the tribunal decision process. Here, Mrs. Bevacqua did not take the proper steps to amend her Dispute Notice, and I find there are no extraordinary circumstances. So, I find Mrs. Bevacqua is limited to the \$1,600 she claims in the Dispute Notice.

ISSUES

9. The issues in this dispute are:
 - a. Did Mrs. Bevacqua name the right party?
 - b. If so, must the strata reimburse Mrs. Bevacqua \$1,600 for the cost of the new blinds?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Mrs. Bevacqua must prove her claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence, but refer only to information I find necessary to explain my decision.
11. The strata was created in 2008, under the *Strata Property Act* (SPA). In January 2008, the strata filed what appears to be a full set of bylaws, but without explicitly

revoking and replacing the Standard Bylaws. The January 2008 bylaws created a commercial section and a residential section. SL22 is in the residential section. The strata filed various bylaw amendments after that, none of which apply to this dispute. I find the January 2008 bylaws apply, and I discuss the relevant bylaws below.

Background

12. Around early 2022, Mrs. Bevacqua bought SL22. She says that through her realtor, she asked the strata manager if she could change the blinds, and the strata manager told her she could “change the style of blinds”, if the new blinds were cream or white. So, Mrs. Bevacqua changed the blinds.
13. On April 26, 2022, the strata council wrote to Mrs. Bevacqua to tell her the blinds she had installed violated the strata’s bylaws. The letter referred specifically to bylaw 7.1(11), which says an owner will not install “any window coverings, visible from the exterior of his or her strata lot which are different in size and colour from those of the original building specifications.” It went on to request that Mrs. Bevacqua remove the new blinds, and replace them with blinds “similar in nature to other units.”
14. Mrs. Bevacqua attended a hearing before strata council on May 25. On June 23, the strata council advised her its position remained unchanged, and she had 30 days to remove the new blinds, or face fines. The strata council’s letter also said even if the strata manager told Mrs. Bevacqua she could change her blinds, she was still responsible to ensure the new blinds complied with the bylaws. It did not say anything about making a formal request and seeking written approval for the change, or point to any bylaw requiring this.
15. Mrs. Bevacqua took no immediate steps to remove and replace the new blinds. So, on October 5, strata council wrote to her saying it had decided to apply a fine every seven days for the continuing contravention. Mrs. Bevacqua then replaced the blinds. She asked to be reimbursed for the cost of the new blinds, and that any fines

be removed from her strata lot account. The strata denied Mrs. Bevacqua's request for reimbursement, but it removed the fines from her account.

Did Mrs. Bevacqua name the right party?

16. While the strata did not raise this concern, I considered whether Mrs. Bevacqua should have named the residential section as a respondent.
17. A section is a separate legal entity from a strata corporation. SPA section 194(1) says "after the creation of sections, the strata corporation retains its powers and duties in matters of common interest to all the owners". Section 194(2) says a section has the same powers and duties as the strata corporation for matters that relate solely to the section, including bylaw and rule enforcement. In *Norenger Development (Canada) Inc. v. Strata Plan NW 3271*, 2018 BCSC 1690, the court found, at paragraph 60, that "Part 11 of the (SPA, which section 194 falls under) contains express provision for the creation of sections and establishes section autonomy over matters that relate solely to the section".¹ Recently, in *Tafti v. Davis*, 2024 BCSC 176, the court relied on *Norenger* to find "it is quite clear the sections operate as autonomous entities". Based on this caselaw, I find the residential section's authority to enforce bylaws and rules about matters that relate solely to it under SPA section 194(2)(f) displaces any authority the strata might otherwise have.
18. However, that does not mean Mrs. Bevacqua should have named the residential section as a respondent in this dispute. I say this for the following reason. Bylaw 7.1(11) applies only to the strata's residential strata lots, which make up the residential section. Even so, I find the issue of the uniformity of residential strata lot window coverings is a question of aesthetics that is likely a matter of common interest to all the owners. So, even though bylaw 7.1(11) only applies to the residential strata lots, I find the concern it addresses is of common interest to all owners, because it is about how the building looks overall. In this way, I find the

¹*Norenger Development (Canada) Inc. v. Strata Plan NW 3271*, 2018 BCSC 1690

strata retained the power to enforce bylaw 7.1(11) under SPA section 194(1), and so Mrs. Bevacqua properly named the strata as the respondent.

Must the strata reimburse Mrs. Bevacqua \$1,600 for the cost of the new blinds?

19. Mrs. Bevacqua says she relied on the information she received from the strata manager in deciding to install the new blinds. She says had the strata manager not told her she could replace the blinds, she would not have done so. Essentially, I find Mrs. Bevacqua argues it was significantly unfair for the strata to require her to remove and replace the new blinds when she had been told by the strata manager that she could change the old blinds if the new ones were cream or white.
20. The CRT has authority to make orders remedying a strata corporation's significantly unfair acts or decisions under CRTA section 123(2). The legal test for significant unfairness is the same for CRT disputes and court actions (see *Dolnick v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113). The BC Court of Appeal has 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 (see *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173). In applying the test, an owner's objectively reasonable expectations are a relevant factor, but are not determinative. The use of the word "significant" means the impugned conduct must go beyond mere prejudice or trifling unfairness.
21. The strata says Mrs. Bevacqua did not formally request permission for the blind change, or receive written approval. However, bylaw 7.1(11) does not require an owner to seek permission or written approval to change their window coverings, and there are no other bylaws that require Mrs. Bevacqua to have met these conditions.
22. The strata also questions whether the strata manager told Mrs. Bevacqua she could change her blinds. First, it says that at the strata council hearing on May 25, Mrs. Bevacqua did not present the alleged voice mail message the strata manager left for her realtor, but rather a voice-to-text transcription of the message. The strata says the strata manager indicated he did not recall leaving the message, and that "it

didn't really sound like the wording he would use." The strata also notes the transcription did not include the question being asked, and says the wording was presented "out of context". Second, the strata says a council member who is an IT expert said that voice-to-text transcription would not produce question marks or quotation marks, as were included here. In any case, the strata says Mrs. Bevacqua was obliged to review and follow the bylaws, whatever she was told.

23. The strata did not explain why it mattered that Mrs. Bevacqua included a voice-to-text transcription, rather than the voice mail message itself. I find it is clear from the transcription that the question was something like "am I allowed to change my blinds", so I find the answer was not presented out of context. The strata does not say the tone of the message mattered, or that it could have changed the answer's meaning. As for the strata manager saying he did not recall leaving a message, the strata did not provide a statement directly from the strata manager, including an explanation about why the wording did not sound like his. The strata says the strata manager is still employed by its strata management company, so I find there is no obvious reason the strata could not have obtained a statement from him, rather than relying on hearsay evidence. In these circumstances, I place no weight on what the strata says the strata manager told it.
24. Next, there is no evidence that the strata council member the strata relies on for information about the validity of the voice-to-text transcription is an IT expert. That is, there is no statement from the member that includes their experience and qualifications. Again, there is no clear reason for the strata to rely on this hearsay evidence, so I have not considered it. Even if the strata had provided a statement from the member, I would likely have found it was not independent evidence, given their position on strata council.
25. Based on the above, I accept the voice-to text transcription is an accurate account of what the strata manager told Mrs. Bevacqua. I find it was objectively reasonable for Mrs. Bevacqua to expect the strata manager's information to be correct, and to rely on it in replacing her blinds. This is because the strata manager is the strata's agent, and so the strata is bound by their representations (see *Chen v. The*

Owners, Strata Plan BCS2756, 2022 BCCRT 708). In these circumstances, I find it was harsh and unjust of the strata to require Mrs. Bevacqua to replace the new blinds.

26. I turn to the strata's assertion that Mrs. Bevacqua had a duty to review and follow the bylaws. While the strata relied on bylaw 7.1(11), nowhere in the correspondence it sent Mrs. Bevacqua about the alleged bylaw violation did the strata explain how the new blinds were "different in size and colour from those of the original building specification". That is, there is no evidence about what the original building specification was. The strata submitted a photo of the "original blinds". I find this is insufficient evidence of the original building specification. I find that to prove Mrs. Bevacqua violated bylaw 7.1(11), the strata was required to provide evidence of the original building specification, such as measurements or a sufficiently detailed description of the size and colour of the required blinds. It did not do this. So, I find the strata failed to establish Mrs. Bevacqua breached the bylaws with her new blinds but required her to replace them anyway, which was wrongful and burdensome.
27. I find the strata's actions went beyond mere prejudice or trifling unfairness. Rather, they caused Mrs. Bevacqua to incur unnecessary expenses, which was significantly unfair.

Remedy

28. Mrs. Bevacqua claims \$1,600 for the cost of the new blinds, which is supported by a paid invoice. Had the strata not treated her significantly unfairly, I find she would not have changed the old blinds to begin with. So, I find Mrs. Bevacqua is out-of-pocket at least the claimed cost of the new blinds. I order the strata to pay Mrs. Bevacqua \$1,600 for the new blinds.

CRT FEES, EXPENSES AND INTEREST

29. 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. As Mrs. Bevacqua was successful, I order the strata to reimburse her \$225 for CRT fees. Neither party claimed dispute-related expenses.

30. The *Court Order Interest Act* applies to the CRT. Mrs. Bevacqua is entitled to prejudgment interest on the \$1,600 monetary award from March 15, 2022, the date of the invoice for the new blinds, to the date of this decision. This equals \$149.92.
31. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the Mrs. Bevacqua.

ORDERS

32. Within 30 days of this order, I order that the strata pay Mrs. Bevacqua \$1,974.92, broken down as follows:
 - a. \$1,600 in damages,
 - b. \$149.92 in prejudgement interest under the *Court Order Interest Act*, and
 - c. \$225 in CRT fees.
33. Mrs. Bevacqua is also entitled to post-judgment interest as applicable.
34. 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.

Megan Stewart, Tribunal Member