Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

ABIGAIL ATHERTON

APPLICANT

A N D :

The Owners, Strata Plan VR 1418

RESPONDENT

REASONS FOR DECISION

Tribunal Member: J. Garth Cambrey

INTRODUCTION

1. This strata property dispute is about the rental of a storage locker.

2. The applicant, Abigail Atherton, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VR 1418 (strata). She is self-represented. The strata is represented by a strata council member.

3. Mrs. Atherton says she rented 3 storage lockers from the strata since she purchased her strata lot in 2010. She asserts the strata agreed she could rent the storage lockers indefinitely as long as she paid the rental fees. She says the strata acted contrary to the *Strata Property Act* (SPA) and in a significantly unfair manner when it cancelled rental of 1 of her lockers on what she considers to be unreasonable notice.

4. Mrs. Atherton says 6 months notice would have been reasonable. She seeks an order that the strata pay her $1,339.29 which she says represents 6 months of storage locker rental fees and associated taxes.

5. The strata denies Mrs. Atherton's claims. It says Mrs. Atherton's storage locker rentals were subject to SPA section 76, which addresses short-term rental of common property. It says the 6-week notice it ultimately provided was reasonable and asks the CRT to dismiss her claims.

6. As explained below, I dismiss Mrs. Atherton's claims and this dispute.

JURISDICTION AND PROCEDURE

7. 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.

8. 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 find I am properly able to assess and weigh the documentary evidence and submissions before me. I am satisfied an oral hearing is not necessary in the interests of justice. I therefore decided to hear this dispute through written submissions.

9. 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.

10. Mrs. Atherton included addition claims and remedies in her submissions that allege various governance issues, such as holding annual general meetings late, bylaw infractions, unapproved expenditures, and conflict of interest of a strata council member. The strata objected to the additional claims and remedies on the basis of procedural fairness because she did not amend the Dispute Notice. In her reply submissions, Mrs. Atherton accepted the strata's objections and withdrew her additional claims and remedies. As a result, I will not address them here.

ISSUES

11. The issues in this dispute are:

    a. Was the strata entitled to cancel Mrs. Atherton's storage locker rental?

    b. If so, did the strata act significantly unfairly?

BACKGROUND, EVIDENCE AND ANALYSIS

12. As applicant in a civil proceeding such as this, Mrs. Atherton must prove her 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 plan shows the strata was created in August 1984 under the *Condominium Act.* It continues to exist under the SPA. The strata comprises a total of 42 strata lots in a single 3-storey building with and underground parking area. A locker room is located next to the parking area. The strata plan identifies the locker room as common property and does not show individual storage lockers. I infer the subject storage locker is located in the locker room, so it is also common property.

14. Land Title Office (LTO) documents show Mrs. Atherton purchased her strata lot on April 12, 2010. It is undisputed that she used 3 storage lockers since then until

about June 30, 2023, the date the strata asked her to vacate the subject locker. According to a storage locker assignment list provided by the strata, it had a total of 14 storage lockers available for rent.

15. I have reviewed the strata's bylaws filed with the LTO and find that the bylaws filed January 7, 2009, and later apply to this dispute. However, based on my review, there are no relevant bylaws.

Was the strata entitled to cancel Mrs. Atherton's storage locker rental?

16. One of Mrs. Atherton's arguments is that that the strata "[imposed] a bylaw" requiring her to vacate her storage locker. This is incorrect. The strata determined that 2 owners, one of which was Mrs. Atherton, were each using 3 storage lockers. At its April 12, 2023 council meeting, the strata council agreed to give the 2 owners cancellation notice for 1 of their storage lockers, so it could reassign the lockers to owners on a wait list who did not have an assigned locker. Although the strata attempted to pass bylaws about storage locker use in 2021 and 2022, the proposed resolutions failed to pass.

17. Mrs. Atherton asserts the SPA mandates that strata corporations manage common property in a manner that that is "fair and reasonable to all owners". However, the SPA does not state this. SPA section 3 says (my emphasis):

> *Except as otherwise provided in this Act*, the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation *for the benefit of the owners*.

18. In *Time Share Section of The Owners, Strata Plan N 50 v. Residential Section of The Owners, Strata Plan N 50*, 2021 BCSC 486, the court considered the meaning of section 3. A broad interpretation of the court's finding is, where a strata corporation is responsible for managing and maintaining common property, it must do so for the benefit of the owners, "but it is not mandatory to do so for the benefit of all the owners in every circumstance". (See paragraph 57). The court also noted that section 3 contains the qualification "except as otherwise provided in this Act", which means the provisions of the SPA make it clear that certain owners could have

exclusive use and control of certain property to the exclusion of other owners.

19. One example of this is contained in SPA section 76, which the strata argues applies here. Section 76(1) says a strata corporation may give an owner or tenant permission to exclusively use, or a special privilege in relation to, common assets or common property that is not designated as limited common property. Subsection (2) says a permission or privilege may be given for up to 1 year with conditions, and subsection (3) says the permission or privilege may be renewed. Lastly, subsection (4) says the permission or privilege given under subsection (1) may be cancelled by the strata corporation giving the owner or tenant reasonable notice of the cancellation.

20. I agree with the strata that designation of common property storage lockers is captured by section 76 and applies to this dispute. Mrs. Atherton did not argue otherwise. I also do not accept Mrs. Atherton's claim that she was given use of 3 storage lockers for an indefinite period provided she paid the rental fees. If this were the case, I would have expected Mrs. Atherton to provide proof of that arrangement such as through correspondence exchanged with the strata or a written statement from a previous strata council member knowledgeable about the rental arrangement. I find she has not provided proof of her alleged storage locker rental arrangement.

21. Mrs. Atherton relies on 2 previous CRT decisions to support her position: *Galano v. Hundal*, 2020 BCCRT 1134 and *Hales v. The Owners, Strata Plan NW 2924*, 2018 BCCRT 91. I find neither decision is helpful to Mrs. Atherton.

22. First, *Galano* is about use of a single storage locker claimed by 2 different owners. The tribunal member found the strata corporation had maintained a list of assigned lockers and that there was no record the locker assignment had changed. The tribunal member ordered the strata give the listed owner exclusive use of the locker. The issue here is not about a who was assigned the use of a common property locker, but whether the strata had authority to cancel Mrs. Atherton's use of the storage locker.

23. Second, *Hales* is about designating short-term exclusive use of a storage locker that existed under the *Condominium Act* after the SPA took effect, and whether the strata had authority to give short-term exclusive use of a common property storage locker to a strata lot, rather than an owner or tenant as set out in section 76. Neither of these things are relevant here.

24. The strata did not address the specific requirements of section 76 and submits it was not initially aware the storage lockers were common property. However, the strata appears to acknowledge that it did not fully comply with section 76 because it did not limit storage locker use to a 1-year term. I also note that other CRT decisions have found that section 76 assignments must be in writing and authorized in meeting minutes of which there is no evidence here. See *Galano and Hales.* I agree with these decisions but find nothing turns on them.

25. There is no evidence the strata entered into a long-term arrangement for use of the storage lockers, such as a lease under SPA section 253, so on a balance of probabilities, I find the strata gave Mrs. Atherton and other owners exclusive use or special permission to use the common property lockers under section 76. I find the strata's lack of compliance with section 76 does not change this. An undated list of assigned storage lockers was provided in evidence. I find the locker assignments existed since at least December 13, 2013, because that is the earliest date noted on the list. Given the existence of the section 76 assignments, I find the strata was entitled to cancel the locker rental on reasonable notice as permitted under section 76(4).

26. I also find the length of time Mrs. Atherton had used the storage locker is not relevant to the cancellation notice required by the strata. This is because section 76 gives the strata authority to make grants for use of common property for up to 1 year and to renew the grants indefinitely, subject to conditions and reasonable cancellation. There is no limit on the number of renewals and no requirement the strata take the length of time the grant has existed into account when it issues cancellation notice.

27. Subject to my discussion on significant unfairness. I find that the 6 weeks notice the

strata gave to Mrs. Atheron is reasonable.

Did the strata act significantly unfairly?

28. The CRT has authority to make orders remedying a significantly unfair decision under CRTA section 123. Significantly unfair actions are those that are burdensome, harsh, wrongful, lacking in probity and fair dealing, done in bad faith, unjust, or inequitable. In applying this test, the owner's reasonable expectations are relevant, but are not determinative. See *Dollan v. The Owners, Strata Plan 1589*, 2012 BCCA 44, *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.

29. Mrs. Atherton argues the strata acted significantly unfairly because it did not give her 6 months' notice to vacate the locker. The strata disagrees.

30. I find Mrs. Atherton's expectation of a 6-month notice period to vacate the storage locker was unreasonable. SPA section 76 does not define "reasonable notice", but I find it means a period of time that is fair, moderate and non-excessive. In my view, 1 month notice is fair, so I agree with the strata that the 6-weeks notice it provided to Mrs. Atherton was also fair.

31. I also find that it was not significantly unfair for the strata to cancel rental of 1 of Mrs. Atherton's lockers considering she was renting 3 of the 14 lockers the strata had available. This is especially true when at least 5 other owners were on a waiting list for 1 storage locker.

32. The evidence also suggests that one other owner was also renting 3 storage lockers and agreed to cancel rental of 1 of their lockers at the request of the strata. So, Mrs. Atherton cannot say she was treated differently than other owners in the same position.

33. Finally, I find the strata's actions were entirely in keeping with SPA section 3, when it decided to cancel the rental of a storage locker to Mrs. Atherton.

34. On this basis, I find the strata did not treat Mrs. Atherton significantly unfairly when it cancelled 1 of her 3 storage lockers on 6-weeks' notice.

35. I dismiss Mrs. Atherton's claims and this dispute.

CRT FEES AND EXPENSES

36. 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. Mrs. Atherton paid $225.00 in CRT fees and did not claim dispute-related expenses. The strata did not pay CRT fees or claim dispute-related expenses. Given Mrs. Atherton was unsuccessful, I make no order for payment of strata fees.

37. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mrs. Atherton.

DECISION

38. Mrs. Atheron's claims and this dispute are dismissed.

J. Garth Cambrey, Tribunal Member