



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Chan v. The Owners, Strata Plan BCS 3630*, 2025 BCCRT 1253

B E T W E E N :

VIVIAN CHAN

APPLICANT

A N D :

The Owners, Strata Plan BCS 3630

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey

INTRODUCTION

1. This strata property dispute is about the use of a parking stall.
2. The applicant, Vivian Chan, owns and resides in a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS 3630. I will refer to the respondent as the strata. Ms. Chan is self-represented. A strata council member represents the strata.

3. Ms. Chan says parking stall #65 next to her assigned parking stall is marked for use by a small car. She says a regular-sized car regularly parks in the stall which encroaches into her stall and makes it difficult for her to park her vehicle. She also says the situation is a safety issue because the parking stalls are in a high traffic area near the parking entrance gate. Ms. Chan seeks an order that the strata only permit small cars to park in stall #65. She values her claim at \$200.
4. The strata says Ms. Chan has exaggerated the neighbouring car's interference with her stall. It also says it cannot reassign the stalls because the stalls are under a lease agreement and the strata does not control the stall assignments. Despite this, the strata says it tried to assist Ms. Chan by locating a small car to use the small car stall but was unsuccessful. The strata asks that Ms. Chan's claims be dismissed.
5. As explained below, I dismiss Ms. Chan's claims and this dispute.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal or CRT. The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* or 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 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 and decided to hear this dispute through written submissions.
8. 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.

ISSUES

9. The issues in this dispute are:
 - a. Did the strata reasonably enforce its bylaws?
 - b. Did the strata treat Ms. Chan significantly unfairly?
 - c. What is an appropriate remedy, if any?

BACKGROUND, EVIDENCE AND ANALYSIS

10. As applicant in a civil proceeding such as this, Ms. Chan must prove her claim 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.
11. The strata was created in October 2009 under the *Strata Property Act* or SPA. It consists of 284 strata lots located in two 20-storey high rise buildings over 3 levels of underground parking. The strata plan identifies the parking areas as common property and does not identify individual stalls. In submissions, the strata says the individual parking stalls are partial leases of common property as set out by the owner developer in a disclosure statement. I address the nature of the parking stall assignments below.
12. Land Title Office or LTO documents confirm the strata filed a complete new set of bylaws on March 3, 2016, which repealed all registered bylaws and the Standard Bylaws. The strata filed subsequent bylaw amendments, but I find none are relevant to this dispute. I address relevant bylaws below, as necessary.

Did the strata reasonably enforce its bylaws?

13. Ms. Chan's claim essentially comprises 2 aspects that relate to bylaw enforcement. First, she argues the car assigned to stall #65 is not a small car, does not fit in the stall and encroaches into her stall making it difficult for her to park her car. Second, she says the strata did not take any action to address her concerns.

14. The courts have found that the strata council must act reasonably when enforcing the strata bylaws. See *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 237.
15. Bylaw 35 addresses parking.
16. Bylaw 35(1) notes that certain parking stalls are governed by a lease arrangement as set out in the disclosure statement that effectively grants the owner developer long term rights and control over most of the parking stalls in the strata. The strata provided a consolidated Disclosure Statement dated August 1, 2007, that sets out the owner developer's intentions about use of the parking stalls. Generally speaking, the disclosure statement says the owner developer intended to lease about 322 of the 390 parking stalls to a separate entity, likely related, which in turn would lease use of individual stalls to strata lot purchasers. This is a common practice owner developers use to maintain control over the parking stalls and assignment of them.
17. The leases do not need to be approved by the strata nor registered at the LTO. Thus, it is difficult to determine if such a lease arrangement exists and, if so, on what terms. Neither party provided an executed copy of the primary lease, nor any copies of the partial lease assignment to Ms. Chan or any other owner. However, for the purposes of this decision, I infer the stalls are leased as the owner developer intended because Ms. Chan did not object to the strata's submissions nor state otherwise.
18. On this basis, I agree with the strata that it does not have authority to re-assign parking stalls, so that was not an option available to it as Ms. Chan suggests.
19. Notably, bylaw 35 does not define a small car, nor does it say that a car must fit within the assigned parking stall. I find the reference to fitting within a parking stall in bylaw 35(4) only relates to a boat trailer or recreation vehicle. The applicable reference to a car can be found in bylaw 35(6) which says that no vehicle shall park in a manner that will reduce the width of the garage roadway or the width of another strata lot's assigned parking stall.

20. Photographs in evidence show that parking stall #65 and Ms. Chan's parking stall are located in a corner of the parking area. Stall #65 is located along the west wall and Ms. Chan's stall is located along the north wall. There is a service room located in the very corner between the 2 stalls, such that the stalls are perpendicular to each other. I agree with Ms. Chan that a car parked in stall #65 which extends past the parking stall lines would make it difficult for Ms. Chan to park her car in her stall. However, I do not agree that the painted parking stall lines define the length of the stall nor that a car that extend past the painted lines encroaches the driveway aisle or Ms. Chan's stall. Based on the photographs in evidence, I agree with the strata that the car parked in stall #65 that was the subject of Ms. Chan's dispute did not extend into the parking driveway nor into her stall in contravention of bylaw 35(6). That Ms. Chan may need to cautiously park her car to avoid damage does not mean the car parked in stall #65 was parked in breach of bylaw 35(6).
21. I also do not agree with Ms. Chan that the City of Vancouver guidelines about small vehicles applies here. I say this for 2 reasons. First, the guidelines appear to apply to parking stall dimensions and not to car dimensions. Second, and more importantly, the strata is located in the City of North Vancouver and not in the City of Vancouver.
22. The strata also addressed bylaw 3(1). The relevant parts of that bylaw say an owner, tenant, occupant or visitor must not use common property in a way that:
- a. causes a nuisance or hazard to another person,
 - b. unreasonably interferes with the rights of other persons to use and enjoy the common property, or
 - c. is contrary to a purpose for which the common property is intended as shown expressly or by necessary implication on or by the strata plan.
23. I largely agree with the strata's arguments and find that Ms. Chan has not proved bylaw 3(1) was breached.
24. I find the test for whether something is a nuisance is the same as the test for an unreasonable interference. In *The Owners, Strata Plan LMS 1162 v. Triple P*

Enterprises Ltd., 2018 BCSC 1502, the court found that nuisance is an unreasonable interference with an owner's use and enjoyment of their property. Whether an interference is unreasonable depends on several factors, such as its nature, severity, duration, and frequency. The interference must also be substantial such that it is intolerable to an ordinary person. See *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64.

25. Here, the evidence suggests that for a period March through June 2023, Ms. Chan was concerned that car parked in stall #65 was making it difficult for her to park in her stall. I accept that during those times the frequency was likely daily, but as I have found, I do not agree the car parked in stall #65 caused a sever interference to Ms. Chan. Rather, I have found the parked car caused only a minimal interference to Ms. Chan based on the photographs.
26. I also find Ms. Chan has not proved the parked car was a hazard. There is no evidence damage was sustained to the parked car or to Ms. Chan's car. Therefore, I find Ms. Chan was able to safely park her car when a car was parked in stall #65 by taking a cautious approach. As for Ms. Chan's argument that the location of the stalls near the main the gate makes the situation more hazardous, I disagree. I find a reasonable person would likely have to act cautiously when parking to avoid other cars in the drive aisle no matter where their parking stall is located.
27. As for whether the use of a small car parking stall is contrary to a purpose for which the common property is intended on or by the strata plan, I find it is not. As I have mentioned, the individual parking stalls are not shown on the strata plan. This means stalls marked for use by a small car are also not shown. Rather, the parking areas clearly show the areas are to be used for parking, which is the exact purpose shown on the strata plan.
28. Finally, the evidence shows that the strata spoke with the parking stall #65 car owners, who changed during the course of Ms. Chan's complaints, to make them aware of the issue. I infer that during these discussions, the strata made the car owners aware of the bylaws. Therefore, contrary to Ms. Chan's assertion that the strata took no action, I find that it did.

29. For these reasons, I find the strata acted reasonably when enforcing bylaws relevant to Ms. Chan's expressed concerns.
30. To the extent Ms. Chan argues that the strata might not take steps in the future to address parked vehicles in stall #65 encroaching on her parking stall, I find her point is speculative. The strata is responsible for bylaw enforcement, so if a future bylaw infraction occurs, it is obligated to take reasonable steps to address it. The strata is not obligated to address hypothetical complaints.

Did the strata treat Ms. Chan significantly unfairly?

31. Although Ms. Chan did not use these words, I find her arguments imply the strata treated her significantly unfairly. The strata says it did not.
32. The CRT has authority to make orders remedying a significantly unfair act or decision by a strata corporation under CRTA section 123(2). The legal test for significant unfairness is the same for CRT disputes and court actions. See *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113.
33. As discussed in *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, in order for the court or the CRT to intervene, a strata corporation must act in a significantly unfair manner, resulting in something more than mere prejudice or trifling unfairness.
34. 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 *Reid, Dollan v. The Owners, Strata Plan BCS 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.
35. As I mentioned above, I find the strata acted reasonably in assessing Ms. Chan's complaints in relation to its bylaws. There is no evidence the strata treated Ms. Chan differently than any other owner. In fact, there is evidence that supports there are many parking stalls marked as small car stalls and that other residents have found parking in these circumstances challenging. However, that does not mean the strata acted significantly unfairly and, in my view, it supports the strata's position.

36. There is also evidence that the strata took steps to attempt to assist Ms. Chan by finding an occupant with a smaller car to park in stall #65, as it had done with another occupant when a similar situation arose.

37. For these reasons, I find the strata did not treat Ms. Chan significantly unfairly.

38. Ms. Chan also has the option of requesting a different parking stall from the company that controls the parking lease, which she has not done.

39. In light of the foregoing, I dismiss Ms. Chan's claims and this dispute.

CRT FEES AND EXPENSES

40. 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. Ms. Chan was not successful, and the strata did not pay CRT fees, so I make no order for CRT fees.

41. Neither party claimed disputed-related expenses, so I order none.

42. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Chan.

DECISION

43. I dismiss Ms. Chan's claims and this dispute.

J. Garth Cambrey, Tribunal Member