



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Heneghan v. The Owners, Strata Plan 187*, 2025 BCCRT 1681

B E T W E E N :

JENNIFER HENEGHAN

APPLICANT

A N D :

The Owners, Strata Plan 187

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Mennie

INTRODUCTION

1. This dispute is about a strata corporation's removal of items from common property.
2. The applicant, Jennifer Heneghan, owns and lives in a strata lot in the respondent strata corporation, The Owners, Strata Plan 187. Ms. Heneghan left items on the strata's common property lawn. The strata removed these items. Ms. Heneghan

says the strata had no legal right to do this and asks for \$4,900 in damages. She also asks for the strata to reverse a \$100 fine.

3. The strata says it was permitted to remove the items under its bylaws and rules.
4. Ms. Heneghan is represented by her partner who is not a lawyer. A council member represents the strata.
5. For the reasons below, I dismiss Ms. Heneghan's 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 the *Civil Resolution Tribunal Act* (CRTA) section 121. 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 hearing's format. I find that an oral hearing is not required here. This dispute largely turns on the application of the *Strata Property Act* (SPA) and the interpretation of the strata's bylaws and rules. I find that I can resolve this dispute fairly with the documentary evidence and written submissions provided by the parties.
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.
9. 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.

Late Evidence

10. Ms. Heneghan submitted emails she sent the strata after the deadline set by CRT staff. While minimally relevant, these emails do provide some context for this dispute. Given my conclusions below, I find there is no prejudice to the strata if I consider this late evidence in my decision.

Human Rights Claim

11. The strata raised the issue of the *Human Rights Code* in its response submissions. Ms. Heneghan then said in her reply submissions that the strata failed to accommodate her under the *Human Rights Code*. However, she did not raise this issue in her Dispute Notice or initial submissions, provided no medical evidence about how her disability affects her, and did not clearly explain how the strata failed to accommodate her.

12. CRTA section 11(1)(a) says I may refuse to resolve a claim where it would be more appropriately resolved through another dispute resolution process. Given the lack of supporting evidence and submissions about Ms. Heneghan's disability, I find it would be more appropriate for the BC Human Rights Tribunal to adjudicate any human rights claim in this case. So, I refuse to resolve any claim Ms. Heneghan may have under the *Human Rights Code*.

Document Disclosure

13. Ms. Heneghan says that the strata failed to produce documents in breach of *Strata Property Act* (SPA) sections 35 and 36. However, the strata has now produced these documents as evidence in this dispute. Ms. Heneghan did not ask for a remedy for the delayed disclosure in her Dispute Notice. So, I find this issue is moot, meaning it is no longer a live issue, and have not considered it in my decision.

Undisclosed Evidence

14. Ms. Heneghan says the strata breached CRT Rule 8.1 by failing to disclose 5 pieces of evidence. The difficulty for Ms. Heneghan is that she uploaded these 5 pieces of evidence before the strata uploaded its evidence. I cannot find that the strata withheld evidence when Ms. Heneghan uploaded it to the CRT first. So, I find the strata did not breach CRT Rule 8.1.

\$100 Fine

15. The strata fined Ms. Heneghan \$100 because she left items on its common property. The strata council later reversed the fine, so I find this issue is moot. I have not considered it in my decision below.

Disclosure of Confidential Information

16. Ms. Heneghan says that the previous strata council president, SK, was given access to CRT documents and communications in violation of the CRT's code of conduct. I disagree. Ms. Heneghan provided emails which show that SK had access to CRT communications while they were still living in the strata. On May 6, 2024, SK asked to be removed from all future communications because they had moved out.

Significant Unfairness

17. Ms. Heneghan asks me to apply SPA section 164, which is a claim that the strata acted significantly unfairly. However, she raised this claim in her reply submissions, and the strata did not have an opportunity to respond. I find that it would be procedurally unfair to consider a significant unfairness claim when the strata did not have an opportunity to respond. I have not considered this in my decision below.

ISSUES

18. The issues in this dispute are:

- a. Was the strata entitled to remove Ms. Heneghan's personal items from common property?
- b. If not, is Ms. Heneghan entitled to damages?

EVIDENCE AND ANALYSIS

19. In a civil proceeding like this one, Ms. Heneghan, as the applicant, must prove her claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
20. The strata has 9 strata lots. Ms. Heneghan's strata lot is on the ground floor. There is a lawn outside her back door. The strata plan does not designate the lawn as part of her strata lot and there is no evidence that the lawn was designated as Ms. Heneghan's limited common property. This means the lawn is "common property" as defined in SPA section 1(1).
21. Ms. Heneghan says a plumbing issue damaged her kitchen, so she left 10 custom cabinet doors outside while she did repairs. Ms. Heneghan also admits that she stored a 10 piece disassembled dog fence under the doorsteps and left some patio furniture on the lawn.
22. Ms. Heneghan says that all these items except the dog fence were stored in her locker and brought out periodically over 32 months. The strata disagrees and says these items were left permanently on the lawn.
23. I prefer the strata's evidence on this point. Ms. Heneghan says in her submissions that the cabinet doors were placed outside in May 2023. They were removed by the strata in July 2023, meaning they were outside for approximately 2 months. SK's email dated June 14, 2023, also notes that Ms. Heneghan received multiple warnings about leaving items on common property. Ms. Heneghan did not deny this in her emailed response. A photo in evidence shows a plant growing overtop of the

cabinet doors left outside. All this suggests Ms. Heneghan left her items on the strata's common property lawn for a significant amount of time.

24. On July 12, 2023, SK removed Ms. Heneghan's items and took them to the dump. Ms. Heneghan says that the strata had no legal right to do this. So, I begin by considering whether the strata's bylaws and rules allowed the strata to remove Ms. Heneghan's items from its common property.
25. The strata's bylaws were filed in 1975 and were never updated. *Strata Property Regulation* section 17.11 says the SPA's standard bylaws are deemed to be the bylaws for all strata corporations on January 1, 2002, except to the extent that conflicting bylaws were filed with the LTO or conflict with the SPA. This means the 1975 bylaws and the SPA's standard bylaws are applicable to this dispute.
26. The strata relies on bylaw D which says sidewalks, walkways, passages, and driveways of the common property shall not be obstructed. However, the lawn is not a sidewalk, walkway, passage, or driveway. So, I find this bylaw does not apply to this dispute.
27. The strata also relies on bylaw G which says that no owner shall do anything on common property likely to damage plants, bushes, flowers, or lawns, and will not place objects on lawns which will interfere with cutting the lawn. I find this bylaw does apply and prohibited Ms. Heneghan from leaving items on the lawn. I say this because her items, particularly her patio furniture, occupied a large space on the lawn and would have interfered with cutting grass.
28. Finally, the strata says it had a rule in place which prohibited personal items being left on common property. It provided a copy of its November 2020 Annual General Meeting (AGM) minutes which say that all present voted unanimously to "Clean up and no personal items outside on the lawn to be reinforced". Ms. Heneghan was the strata council secretary at this time and would have drafted the AGM's minutes.
29. SPA section 125 says the strata can make rules about the use of common property. SPA section 125(6) says the rule ceases to have effect if it is not ratified at the next

AGM. In *Dietrich v. The Owners, Strata Plan LMS 2907*, 2025 BCCRT 623, a tribunal member decided that there is no requirement that a rule be in place before being ratified at an AGM. I agree with this reasoning. SPA section 125 does say that a rule must be in writing and communicated to the owners. Here, the rule was written in the AGM minutes and Ms. Heneghan was in attendance. So, I find that the strata had an enforceable rule which prevented Ms. Heneghan from leaving items on the lawn.

30. SPA section 133(1)(b) says that the strata may do what is reasonably necessary to remedy a contravention of its bylaws or rules, including removing objects from the common property. The strata warned Ms. Heneghan multiple times about this issue, so I find that it acted reasonably when it removed her items under both Bylaw G and its rule against leaving items on the lawn.
31. Ms. Heneghan says SPA section 135 required the strata to provide written particulars of a complaint before taking any action. This is not correct. Previous CRT decisions, such as *Estrin v. The Owners, Strata Plan LMS3758*, 2023 BCCRT 350, have decided that SPA section 135 applies when the strata imposes a fine, requires a person to pay to remedy a contravention, or denies a person the use of a recreational facility. It does not apply where the strata removes objects from common property under SPA section 133(1)(b). I agree with this reasoning and find that SPA section 135 does not apply to this dispute.
32. Ms. Heneghan provided 3 cases in support of her argument. However, none of these cases exist. I find it likely that these are “hallucinations”, meaning false results generated by artificial intelligence.
33. Finally, Ms. Heneghan says the strata breached section 20(4) of the SPA’s Standard Bylaws. This bylaw says the strata council cannot delegate its powers to determine whether a person contravened a bylaw or rule, whether a person should be fined, or whether a person should be denied access to a recreational facility. Ms. Heneghan argues that SK could not solely determine whether the items on common property were a contravention of a rule or bylaw.

34. I do not agree that the strata council delegated its powers in this way. SK was the one who corresponded with Ms. Heneghan through email about her items on the lawn. However, SK also copied the entire strata council which had been elected in the 2022 AGM. I find that the strata council determined there had been a breach and SK, speaking on behalf of the council, communicated this to Ms. Heneghan.
35. To summarize, I find that SPA section 133(1)(b) allowed the strata to remove Ms. Heneghan's items from its lawn. So, I dismiss Ms. Heneghan's claims.
36. Under CRTA section 49 and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. However, neither of the parties paid any CRT fees. I do not order any reimbursement of Ms. Heneghan's dispute-related expense for registered mail because, aside from reversing the \$100 fine, she was not successful in this dispute.
37. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Ms. Heneghan.

ORDER

38. I refuse to resolve any claim Ms. Heneghan may have under the *Human Rights Code*.
39. I dismiss Ms. Heneghan's remaining claims.

Peter Mennie, Tribunal Member