



# Civil Resolution Tribunal

Date Issued: January 26, 2017

File: ST-2016-00255

Civil Resolution Tribunal

Indexed as: *Lisa Marie Ehrne v. The Owners, Strata Plan VR 2601*, 2017 BCCRT 2

BETWEEN:

Lisa Marie Ehrne

**APPLICANT**

AND:

The Owners, Strata Plan VR 2601

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Jamie Bleay

### INTRODUCTION

1. The applicant Lisa Marie Ehrne (the “Applicant”) asks the Civil Resolution Tribunal (the “Tribunal”) to make a default order that the respondent, The Owners, Strata Plan VR 2601 (the “Strata Corporation”) do the following:
  - I. Return the handicap parking sign to its original location in the parking facility;  
and

- II. Reinstate the use of the designated handicap parking stall in the building as a disability parking space.
2. The Applicant also requests an order that she be reimbursed for expenses incurred in connection with this dispute.
3. Section 7 of the *Civil Resolution Tribunal Act* (the “Act”) states that where no respondent files a response by the deadline set out in the Tribunal’s rules the Tribunal must adjudicate the dispute in accordance with its rules.
4. Under Tribunal rule 72 a respondent must provide a response to a Dispute Notice by the 14 day deadline shown on a Dispute Response Form. Under rules 79 and 80, an applicant can ask for a default decision and order if a respondent does not respond to a Dispute Notice which has been properly delivered.
5. The Applicant has provided the following documents to the Tribunal to show that she properly delivered the Dispute Notice to the Strata Corporation:
  - I. A registered mail receipt from Canada Post dated September 14, 2016;
  - II. A delivery receipt from Canada Post confirming delivery on September 16, 2016; and
  - III. A completed proof of notice form signed and dated September 14, 2016 confirming the Strata Corporation had been properly served a copy of the Dispute Notice by registered mail.
6. Two preliminary issues arise in connection with the proof of notice form. The first issue relates to the proof of notice form being signed two days prior to the date of the delivery receipt from Canada Post. The registered mail receipt and the completed proof of notice form confirm that the Dispute Notice was sent by registered mail on September 14, 2016. The proof of notice form states that the date the notice was provided was September 16, 2016. The delivery receipt from Canada Post confirms this date as the date for delivery of the Dispute Notice. Despite the fact that the completed proof of notice form is dated September 14, 2016 rather than September 16, 2016 when the Dispute Notice was delivered I am satisfied in the circumstances that the Dispute Notice was properly delivered.

7. The second issue relates to the address for delivery of the Dispute Notice. Tribunal rule 62 states that if the respondent is a strata corporation the Dispute Notice must be provided by registered mail, courier delivery requiring a signature or delivery in person to the strata corporation at its most recent mailing address on file in the Land Title Office or by delivery in person to a council member. On my request, a Tribunal facilitator obtained a document entitled "Form D" for the Strata Corporation from the land title office. That document identifies the most recent mailing address on file for the Strata Corporation which is the same address of delivery on the proof of notice form.
8. I am satisfied on a balance of probabilities that the Dispute Notice was delivered to the Strata Corporation which did not respond to the Dispute Notice as required under the Tribunal Rules. The Applicant is therefore entitled to apply for a default decision and order and the Tribunal will make a binding decision without the Strata Corporation's participation in the hearing.

## **JURISDICTION**

9. These are the formal written reasons of the Tribunal. The Tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal Act* (Act). The Tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the Tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
10. The Tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The Tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

## **ISSUES**

11. The issues in this dispute are:
  - a. Did the Strata Corporation have the right to assign the designated handicap

parking stall (the “Designated Handicap Parking Stall”) to an owner in the building?

- b. Did the Strata Corporation have the right to install a handicap sign to the wall of the parking stall used by the Applicant (the “Applicant’s LCP Parking Stall”)?

## **BACKGROUND AND EVIDENCE**

12. The Strata Corporation came into existence on March 8, 1990 at the time Strata Plan VR 2601 (the “Strata Plan”) was deposited and registered in the land title office. It is a three storey residential building located in the City of North Vancouver with 21 residential strata lots.
13. All of the parking stalls noted on sheet 6 of the Strata Plan, including the Designated Handicap Parking Stall marked “Handicapped Parking” are marked as “C.P.” for common property.
14. On March 8, 1990 the Strata Corporation convened a meeting (the “Meeting”) to approve a special resolution (the “Parking Stall Special Resolution”) to designate certain parking stalls on level 1 of the building as limited common property for the exclusive use of the owners of the strata lots.
15. The legislation in force at the time of the Meeting that governed strata corporations was the *Condominium Act* (the “Condo Act”). Pursuant to section 53 of the Condo Act a strata corporation, by special resolution, could designate an area as limited common property for the use of one or more strata lot owners. This is akin to a designation of limited common property by a resolution approved by a  $\frac{3}{4}$  vote pursuant to section 74 of the *Strata Property Act*, SBC 1998, c. 43 (the “SPA”)
16. Attached as Schedule A to the Parking Stall Special Resolution was a plan of the parking stalls on level 1 of the building that were to be designated as limited common property.
17. The Meeting was presented by Pacific Standard Development Corporation, as the

owners of all strata lots of the Strata Corporation, which voted unanimously to approve the Parking Stall Special Resolution which was registered in the land title office under registration number GDO32144 on March 8, 1990.

18. Having reviewed Schedule A to the Parking Stall Special Resolution I note that the one parking stall that was not designated as limited common property for the exclusive use of an owner was the Designated Handicap Parking Stall.
19. The Parking Stall Special Resolution designated parking stall # 21 as limited common property for the exclusive use of the Applicant's strata lot. The Applicant has been using this stall, being the Applicant's LCP Parking Stall, since she purchased her strata lot over 11 years ago.
20. The Designated Handicapped Parking Stall, which meets the Municipality's requirements for a disability parking space in the City of North Vancouver, is marked as parking stall # 8. It was regularly used over the years by owners and visitors to the building, including the Applicant's helpers to use when assisting the Applicant.
21. Pursuant to zoning bylaw 6700 of the City of North Vancouver and the permitted plans and approvals for the building, the disability parking requirements for Strata Plan VR 2601 requires one disability parking stall be provided for use by visitors.
22. Sometime in the summer of 2014 the disability parking signage for the Designated Handicap Parking Stall was painted over. The stall was later assigned to a new owner for that owner's use. No strata council meeting minutes have been produced to confirm this assignment. One set of council minutes states "the parking stall in question belongs to the correct unit owner".
23. Directly and through legal counsel the Applicant asked the Strata Corporation why it painted over the disability parking signage and assigned it to a new owner. She also asked why the Strata Corporation changed the use or appearance of common property. The Strata Corporation has not responded to these requests.
24. On May 25, 2015 the City of North Vancouver – Community Development Department

asked the Strata Corporation to reinstate the disability parking signage and required disability parking of the Designated Handicap Parking Stall. The City gave the Strata Corporation a deadline of June 26, 2015 but the Strata Corporation did not comply with this request.

25. In September 2015, a handicap parking sign was bolted to the wall in front of the Applicant's LCP Parking Stall. The Strata Corporation has not responded to a request made by the Applicant's legal counsel to the Strata Corporation to remove the affixed signage and reinstate the Applicant's personal use of the Applicant's Parking Stall.
26. Sometime after September 2015, the Applicant covered over the handicap parking sign. She gave evidence that she did this because she felt anxious when she saw the handicap parking sign.

### **POSITION OF THE PARTIES**

27. The Applicant says that the Strata Corporation did not have the authority to:
  - I. Paint over the disability parking signage for the Designated Handicap Parking Stall;
  - II. Change the use or appearance of the Designated Handicap Parking Stall;
  - III. Assign the Designated Handicap Parking Stall to a new owner; and
  - IV. Install a handicap parking sign to the Applicant's LCP Parking Stall.

### **ANALYSIS**

**Did the Strata Corporation have the right to paint over the handicap parking sign for the Designated Handicap Parking Stall and assign it to an owner in the building?**

28. I find for the following reasons that the Strata Corporation did not have the right to paint over the handicap parking sign for the Designated Handicap Parking Stall and assign it to an owner in the building.
29. First, pursuant to zoning bylaw 6700 of the City of North Vancouver and the permitted plans and approvals for the building I find that the Strata Corporation is required to have

one disability parking stall which is to be provided for use by visitors.

30. I find on the balance of probabilities that the one disability parking stall at the building identified as such on the Strata Plan is the common property parking stall that I have referred to as the Designated Handicap Parking Stall. In making this finding I have relied on the letter from the City of North Vancouver to the Strata Corporation dated May 25, 2015.
31. Second, the Designated Handicap Parking Stall is marked as common property on the Strata Plan.
32. The Strata Corporation is required by section 3 of the SPA to manage and maintain common property. However pursuant to section 71 of the Act it must not make a significant change in the use or appearance of common property unless:
  - (a) The change is approved by a resolution approved by a  $\frac{3}{4}$  vote at an annual or special general meeting, or
  - (b) There are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage.
33. A number of BC Supreme Court decisions have considered the meaning of “a significant change in use or appearance of common property” and in one decision a non-exhaustive list of factors was considered. That list was summarized in *Foley v. The Owners, Strata Plan VR 387, 2014 BCSC 1333 (CanLII)* at para. 19:
  - 1) A change would be more significant based on its visibility or non-visibility to residents and its visibility or non-visibility towards the general public;
  - 2) Whether the change to the common property affects the use or enjoyment of a unit or a number of units or an existing benefit of a unit or units;
  - 3) Is there a direct interference or disruption as a result of the changed use?
  - 4) Does the change impact on the marketability or value of the unit?
  - 5) The number of units in the building may be significant along with the general use, such as whether it is commercial, residential or mixed use.
  - 6) Consideration should be given as to how the strata corporation has governed itself in the past and what it has allowed. For example, has it permitted similar changes in the past? Has it operated on a consensus basis or has it followed the rules regarding meetings, minutes and notices as

provided in the Strata Property Act.

34. In *Frank v. The Owners, Strata Plan LMS 355*, 2016, BCSC 1206 Madam Justice Fisher noted that these factors provided “a helpful guide in structuring an analysis but each case will of course turn on its on its own facts”.
35. Taking into account these factors I find, on the balance of probabilities, that the painting over and removal of the disability parking sign for the Designated Handicap Parking Stall that had been marked as the handicap parking stall on the Strata Plan was significant to the extent that it removed the one disability parking stall available for use by visitors and residents.
36. I also find that the change in use was significant as there was, and continues to be, direct interference and disruption of the use of the Designated Handicap Parking Stall by the Applicant’s helpers or visitors to the building who require the use of a handicap parking stall. In addition, there is no longer a handicap parking stall in the building that meets the requirements of the City of Vancouver.
37. Generally speaking, a significant change in use of common property can happen if, pursuant to section 71(a) of the SPA, the change is approved by a resolution passed by a ¾ vote at an annual or special general meeting. There is no evidence before me that Strata Corporation has complied with section 71(a) of the SPA. There is also no evidence before me that there were reasonable grounds to believe that immediate change in use was necessary to ensure safety or prevent significant loss or damage pursuant to section 71(b) of the SPA.
38. Section 76 of the SPA states:

**Short term exclusive use**

**76** (1) Subject to section 71, the 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.

(2) A permission or privilege under subsection (1) may be given for a period of not more than one year, and may be made subject to conditions.

(3) The strata corporation may renew the permission or privilege and on renewal may change the period or conditions.

(4) 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.

39. There is no evidence before me that the Strata Corporation has complied with section 76 of the SPA.

40. If the Strata Corporation gave an owner short term exclusive use permission under section 76 of the SPA that permission is subject to section 71 of the SPA. If permission given under section 76 of the SPA would result in a significant change in use or appearance the Strata Corporation would first have to comply with section 71 of the SPA. As there is no evidence of a resolution passed by a  $\frac{3}{4}$  vote of the Strata Corporation to approve a significant change in use of the Designated Handicap Parking Stall, I find that the Strata Corporation did not have had the right to give an owner short term exclusive use of the Designated Handicap Parking Stall pursuant to section 76 of the SPA.

41. Third, if the Strata Corporation did comply with section 71 or 76 of the SPA and properly approved the significant change in use of the Designated Handicap Parking Stall, I find that such a change in use would be contrary to the permitted plans and approvals of the building of the City of North Vancouver and contrary to zoning bylaw 6700.

42. For these reasons I find:

- a) The Strata Corporation did not have the right to paint over the handicap parking sign for the Designated Handicap Parking Stall and assign it to an owner in the building;
- b) The decision of the Strata Corporation to paint over and remove the disability parking stall sign and assign the Designated Handicap Parking Stall to an owner in the building was contrary to the permitted plans and approvals of the building and zoning bylaw 6700 of the City of North Vancouver;
- c) The decision was made without consideration for these requirements.

**Did the Strata Corporation have the right to install a handicap sign to the wall of**

### **the Applicant's LCP Parking Stall?**

43. Pursuant to section 74(2)(c) of the SPA the Applicant is entitled to the exclusive use of the Applicant's LCP Parking Stall.
44. Visitors to the building with handicap parking requirements would, seeing the handicap sign, expect to be able to park in the Applicant's LCP Parking Stall. If this was to happen it would mean that the Applicant would no longer have the exclusive use of her limited common property parking space.
45. While there is no evidence that any visitors with handicap parking requirements to the building have used the Applicant's LCP Parking Stall, the prospect of such use has caused the Applicant considerable anxiety to the extent that she took steps to cover the sign.
46. There is no evidence to support or justify the actions of the Strata Corporation when it installed the handicap parking sign to the wall of the Applicant's LCP Parking Stall. I find the Strata did not have the right to install the sign to the wall of the Applicant's LCP Parking Stall and take away her exclusive use of that parking stall.

### **DECISION AND ORDER**

47. I order that the strata corporation:
  - a) Return or restore the handicap parking sign to its original location which is on the wall at the head of parking stall # 8 within 30 days from the date of this decision;
  - b) Reinstate the use of parking stall # 8 in the building as the disability parking stall as designated on the strata plan and required by the City of North Vancouver and not as a parking stall for the exclusive use of any resident in the building within 30 days from the date of this decision;
  - c) Remove the handicap parking sign from the wall in front of the Applicant's LCP Parking Stall #21 within 30 days from the date of this decision;
  - d) Reimburse the Applicant for the sum of \$53.71 for land title agent's fees, within 30 days from the date of the decision.

48. I decline to order the Strata Corporation to reimburse the Applicant for legal costs she incurred prior to the Dispute Notice being delivered as they are not reasonable expenses that I consider directly relate to the conduct of the proceeding.
49. Under section 57 of the Act the Applicant can enforce this final decision by filing in the Supreme Court of British Columbia a validated copy of this order which is attached to this decision. This order can only be filed if, among other things, the time for an appeal pursuant to section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to.
50. Pursuant to section 57(4) of the Act the Tribunal order, once filed, has the same force and effect as if it were a judgment of the Supreme Court of British Columbia.

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Jamie Bleay, Tribunal Member