



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Figure Ski Enterprises Inc. v. The Owners, Strata Plan K 838*,
2018 BCCRT 46

B E T W E E N :

Figure Ski Enterprises Inc.

APPLICANT

A N D :

The Owners, Strata Plan K 838

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Figure Ski Enterprises Inc. owns two strata lots 39 and 48 (known as units 400 and 500) in the respondent strata corporation, The Owners, Strata Plan K 838 (strata).
2. The applicant says the strata inappropriately removed and disposed of synthetic turf and school-type lockers that he had stored on limited common property. He says he is entitled to \$10,869 to replace the turf and lockers, plus a refund of \$250 in removal costs charged against his strata lot account.
3. The applicant also says he is entitled to refunds for non-sufficient fund (NSF) and interest charges made against his strata lot account.
4. The applicant is self-represented. The strata is represented by the strata council president.
5. For the reasons set out below, I find that the strata did not have authority to dispose of the applicant's turf and lockers. He is entitled to reimbursement for those items, as well as the removal fee and interest charged to his strata lot account.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (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.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear

this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

8. 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.
9. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
10. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

ISSUES

11. The issues in this dispute are:
 - a. Did the strata have authority to dispose of the applicant's turf and lockers, and if not, what is the appropriate remedy?
 - b. Did the strata have authority to charge the applicant \$250 for turf and locker removal, and if not, what is the appropriate remedy?
 - c. Is the applicant entitled to a refund of NSF and interest charges made against his strata account?

EVIDENCE, FINDINGS & ANALYSIS

12. I have read all of the evidence provided, but refer only to evidence I find relevant to provide context for my decision.
13. The strata has created 2 separate sections through its bylaws. The 2 strata lots owned by the applicant are located in Section 2 of The Owners, Strata Plan K 838 (section 2). Based on my review of the bylaws, no bylaws have been created by

either of the sections and the filed bylaws only relate to the strata. Further, it appears the sections do not operate through executive committees. As a result, I am satisfied that the proper respondent is the strata and that section 2 need not be added.

Removal of Turf and Lockers

14. The applicant stored his turf and lockers on an deck outside units 400 and 500, on the fourth floor of the strata building. Photographs show that the turf was rolled in bundles, and the lockers were stacked on their sides.
15. In an August 19, 2015 email to the applicant, the former strata council president wrote that if the lockers and turf were not removed, they would be thrown out at the applicant's expense. The applicant responded that the deck was limited common property for the exclusive use of his unit, and he wanted to know which bylaw he was breaking. The president did not provide the bylaw information, but said the "current system" was an eyesore.
16. On June 7, 2016, the strata's property manager wrote to the applicant and said there had been a complaint about the personal goods stored on the deck area. The property manager cited item 4.5 of the Bylaws, and said that if the lockers and turf were not removed within seven days they would be removed at the applicant's expense. The letter also said the applicant had an opportunity to answer the complaint in writing or request a hearing within 14 days.
17. The strata's maintenance worker removed and disposed of the turf and lockers on June 30, 2016.
18. In a July 2, 2016 letter to the property manager, the applicant said the strata had no right of seizure under the Bylaws, and he asked for his items to be returned.

19. The applicant says that because the deck where the turf and lockers were stored is limited common property for the exclusive use of his unit, the Bylaws did not allow the strata to remove or dispose of items stored there. He says the disposal was unlawful and he is entitled to replacement costs.
20. As stated in their June 7, 2016 letter, the strata agrees that the deck in question is limited common property. This is consistent with the strata plan, which clearly designates the deck as limited common property. The strata says the rolled turf was waterlogged and stored on an area of fragile roof membrane, and there was a risk of water penetration. They also say the applicant's items were an eyesore.
21. The property manager's June 7, 2016 warning letter cites the wrong Bylaws. The Bylaws cited in and attached to the letter are not the registered Bylaws that apply to strata lot 39. The June 7, 2016 letter refers to Bylaw 4.5, but the Bylaw 4(5) of the registered Bylaws relates to refers to leashing of animals, and is not relevant to this dispute.
22. The property manager appears to rely on Bylaw 4(7) of the registered Bylaws, which states as follows:

(7) If an owner either locates or stores personal goods in areas of the common property without the prior consent and approval of the strata council, the strata council shall be authorized to charge such owner for any costs or expenses incurred by the Strata Corporation to remove such items.
23. The applicant says that because Bylaw 4(1) specifically mentions limited common property, and Bylaw 4(7) mentions only common property, this means that Bylaw 4(7) does not prohibit storage on limited common property. I disagree with this reasoning, as there is no reference to "limited common property" in the text of Bylaw 4(1).

24. Section 1(1) of the *Strata Property Act* (SPA) states that, “limited common property” means “common property designated for the exclusive use of the owners of one or more strata lots.” Thus, limited common property is a form of common property. This means that the provisions of Bylaws 4(1) and 4(7) apply to all common property, including limited common property.
25. Despite the fact that Bylaw 4(7) applies to limited common property, I find that the strata did not follow proper procedure in issuing its written warning. Section 135(1) of the Act states that a strata corporation must not require a person to pay the costs of remedying a contravention of a bylaw or rule unless the strata has given the owner particulars of the complaint in writing.
26. The June 7, 2016 warning letter does not cite the correct version of the Bylaws, does not say which Bylaw the applicant contravened, and does not provide any particulars of the complaint, other than that it relates to the storage of personal goods on the deck. It also does not say that the applicant’s items would be disposed of. I therefore find that the strata did not provide sufficient particulars of the complaint, contrary to section 135 of the Act.
27. For these reasons, I find that the strata did not have authority to dispose of the applicant’s turf and lockers, and he is entitled to reimbursement for them.
28. The applicant originally provided invoices to the strata showing that the replacement costs for his turf and lockers was \$7,035.67. The turf and lockers were not new, and had been stored outside for at least a year at the time they were removed. The strata has asserted that the turf was mouldy, but has not provided evidence to support that assertion, so I place no weight on it.
29. The applicant has not provided evidence that used replacement items, which would be equivalent to what he lost, were unavailable. For that reason, I find that the applicant is entitled to half the cost of new turf and lockers. I order that he be reimbursed \$3,517.83.

Removal Costs

30. As I have found that the strata did not have authority to remove the applicant's items from the deck on June 30, 2016, I find it did not have authority to charge him for the removal. I order that the applicant be reimbursed for the \$250 removal fee.

Refund of Charges Against Strata Lot Account

31. The applicant says he is entitled to a refund of NSF and interest charges made against his two strata lot accounts.
32. The strata says the applicant was charged interest on overdue amounts due to late or non-payment of monthly strata fees and special levies. Specifically, the applicant was required to pay a special levy assessed in April 2016, but when he paid the levy in November 2016, he deducted \$7,035.67 for the turf and lockers that had been removed from his deck. The account statements from the strata show that they subsequently charged him interest on the outstanding balance.
33. The applicant did not have authority to reduce the payment of his special levy. Under Amended Bylaw 2(1), an owner must pay special levies on or before the first day of the month to which they relate. However, under Amended Bylaw 2(2), the strata may charge interest in the amount of 10% per year, compounded annually and levied monthly. The strata did not levy the interest monthly, but instead levied it in a single charge in November 2016. This is contrary to Amended Bylaw 2(2), and was therefore not permitted.
34. For this reason, the applicant is entitled to reimbursement of \$969.02 for interest charged on his April 2016 special levy.
35. The documents in evidence indicate that the strata reversed the NSF charges, so I make no order for reimbursement of those charges. The applicant is entitled to payment of any interest levied on the NSF fees.

DECISION AND ORDERS

36. I order that within 30 days of this decision, the strata pay the applicant \$3,517.83 as reimbursement for his turf and lockers, \$250 as a refund of the removal costs, and \$969.02 as a refund of interest charges.
37. The *Court Order Interest Act* (COIA) applies to the tribunal and prejudgment interest must be awarded. Prejudgment interest is calculated on the debt owing as of the date the cause of action arose up to the date of this order.
38. I find the cause of action arose on November 1, 2016, as that was when the date the strata levied interest against the applicant. I calculate prejudgment interest payable by the strata to be \$46.49.
39. The applicant is also entitled to post-judgment interest.
40. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. As the applicant was substantially successful in this dispute, I see no reason to depart from this general rule. I therefore order the strata to reimburse the applicant \$225 for tribunal fees.
41. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.
42. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order

which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Kate Campbell, Tribunal Member