



Civil Resolution Tribunal

Date Issued: July 8, 2020

File: ST-2020-001018

Type: Strata

Civil Resolution Tribunal

Indexed as: *Carnochan v. The Owners, Strata Plan K 496*, 2020 BCCRT 758

B E T W E E N :

KELLY ANDREA CARNOCHAN

APPLICANT

A N D :

The Owners, Strata Plan K 496

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about alleged damages resulting from a strata council's failure to approve a pet dog.
2. The applicant, Kelly Andrea Carnochan, is a former co-owner of strata lot 36 (SL36) in the respondent strata corporation, The Owners, Strata Plan K 496 (strata). Ms. Carnochan represents herself and a strata council member represents the strata.

3. Ms. Carnochan argues the strata denied a potential purchaser of SL36 a pet dog, alleged to be an emotional support dog, contrary to the strata's bylaws, which caused the sale of SL36 to collapse. Ms. Carnochan says she suffered \$8,386.24 in damages resulting from the lost sale. The amount of her claimed damages is comprised of lost sale proceeds (\$6,000.00), 2 months of paid strata fees (\$305.12), and 2 months of paid mortgage payments (\$888.00).
4. The strata argues that its decision not to approve the potential purchaser's request for an emotional support dog was reasonably justified and made in accordance with the *Strata Property Act* (SPA) and its bylaws. It says it is not responsible for any losses, damages, or expenses claimed by Ms. Carnochan. The strata asks that Ms. Carnochan's claims be dismissed.
5. For the reasons that follow, I dismiss Ms. Carnochan's claims and this dispute.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The tribunal has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
7. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, email, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
8. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.

9. Under section 123 of the CRTA and the CRT rules, 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.

PRELIMINARY ISSUES

Jurisdiction to hear dispute filed by a former owner

10. Section 189.1(1) of the SPA states that only a strata corporation, owner or tenant may apply for dispute resolution with the CRT. In its submissions, the strata says the CRT has discretion to allow a dispute by a former owner and acknowledges the CRT has allowed former owners to request dispute resolution under its strata property jurisdiction. However, here, the strata says the CRT should refuse to resolve this dispute because Ms. Carnochan was not an owner when she filed her application with the CRT or when the Dispute Notice was issued. The strata cites *Somers v. The Owner Strata Plan VIS 1601*, 2017 BCCRT 28.
11. Ms. Carnochan does not address this issue in her submissions.
12. In *Somers*, I considered whether the definition of owner under the SPA included a former owner and concluded it did not. I therefore found the CRT did not have jurisdiction to decide a dispute involving an owner who had sold their strata lot before the dispute was filed.
13. Subsequent to my decision in *Somers*, the BC Supreme Court discussed *Somers* in a September 27, 2019 decision indexed as *Downing v. Strata Plan VR2356*, 2019 BCSC 1745. In *Downing*, the Court considered whether the tribunal would, hypothetically, have jurisdiction to decide a dispute filed by a former strata lot owner, based on the wording of section 189.1 of the SPA. The Court found, at paragraph 57:

...the fact the [owner] at some point in the future ceases to be a current owner and becomes a former owner would not in itself render her no longer an “owner” under SPA, sections 1 and 189.1, or oust the CRT’s jurisdiction to decide the dispute.

14. A CRT vice chair adequately summarized the Courts decision in *Downing* in a preliminary CRT jurisdiction dispute that was before her, *Gill v. The Owners, Strata Plan EPS 4403*, 2020, BCCRT 4403 at paragraphs 19 through 24. Even though the vice chair's decision is not binding on me, I find it persuasive and applicable to the dispute before me. I agree with her reasoning that in *Downing*, the Court sent a clear message of its view that the CRT should resolve disputes involving former owners. I also agree that such an approach is reasonable, regardless of whether the discussion about section 189.1 in *Downing* could be considered *obiter dicta* (incidental to the issues decided).
15. For these reasons, I find this dispute is not barred under section 189.1 (1) of the SPA because Ms. Carnochan was not an owner under the SPA when she applied for dispute resolution.

Request for council hearing

16. Section 189.1(2) of the SPA says that an owner (or former owner under *Downing*) cannot ask the CRT to resolve a strata property dispute unless the owner has requested a council hearing under section 34.1 of the SPA, or the CRT, at the request of the owner, directs that the owner need not request a hearing.
17. The strata says Ms. Carnochan did not request a council hearing as required under section 189.1. It also says Ms. Carnochan did not seek direction from the CRT that a hearing was not required before she started this dispute. The strata first raised this issue in its response submissions. Ms. Carnochan did not comment on the issue in her reply submissions.
18. While it is likely Ms. Carnochan did not request a hearing, I have considered the strata's position in conjunction with the CRT's mandate under section 2(2) of the CRTA. The mandate is to provide dispute resolution services, for matters that are within the CRT's authority, in a manner that is "accessible, speedy, economical, informal and flexible".

19. I have found the CRT has jurisdiction to hear this dispute involving a former owner. I find to refuse to resolve this dispute and refer the matter of a hearing back to facilitation, or obtain further submissions from the parties, would be wasteful of the CRT's resources. It is unlikely the parties will agree to resolve the issues. I also find the CRT's services would be unreasonably delayed, contrary to its mandate, especially given my conclusion.
20. Therefore, under the authority of section 61(1) of the CRTA, I waive the requirement of a council hearing under section 189.1(2) of the SPA and will consider this dispute on its merits.

ISSUES

21. The issues in this dispute are:

- a. What is the law about pets?
- b. Did the strata owe a duty of care to the potential purchaser of SL36, and if so, did the strata breach that duty?
- c. Did the strata owe a duty of care to Ms. Carnochan, and if so, did the strata breach that duty?
- d. What remedies, if any, are appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

22. In a civil proceeding such as this, Ms. Carnochan must prove her claims on a balance of probabilities.
23. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
24. The strata was created in 1982 under the *Condominium Act*, and continues to exist under the SPA. It consists of 38 residential strata lots in a single building located in Vernon, BC.

25. The bylaws applicable to this dispute are those filed at the Land Title Office (LTO) on March 18, 2013, which repealed and replaced all previous strata bylaws, including the Standard Bylaws under the SPA. I address the bylaws relevant to this dispute below, as necessary.
26. The material facts are not in dispute. They can be summarized as follows:
- a. Ms. Carnochan co-owned SL36 from March 2019 to December 2019.
 - b. Sometime before August 13, 2019, SL36 was listed for sale.
 - c. On August 13, 2019, Ms. Carnochan entered into contract of purchase and sale for SL36. The agreed price was \$154,000 and the sale was to complete October 2, 2019. Among other things, the contract was conditional upon the potential purchaser receiving written approval from the strata by August 26, 2019, that they could have their “small [emotional support dog]” live with them in SL36.
 - d. On August 14, 2019, the purchaser’s realtor emailed the strata a request that the purchaser’s dog be able to reside in SL36. A note from the purchaser’s doctor was included with the request.
 - e. On August 15, 2019, the strata’s property manager emailed the purchaser’s realtor that the purchaser’s request was denied.
 - f. On August 21, 2019, Ms. Carnochan received an email for the purchaser’s realtor that the purchaser would not proceed with the purchase.
 - g. On August 23, 2019, Ms. Carnochan was advised by the purchaser’s realtor that the contract of purchase and sale had collapsed.
 - h. On December 2, 2019, SL36 was sold to another purchaser for a price of \$148,000.

The Law

27. Section 119 of the SPA requires the strata to have bylaws and permits bylaws to govern the control, management, maintenance, use and enjoyment of strata lots, common property and common assets of the strata, among other things.
28. Section 121(1)(a) says a bylaw is not enforceable if it contravenes the SPA, *Strata Property Regulation* (regulation), or any other legislation, including the Human Rights Code (Code).
29. Section 123 allows the strata to prohibit pets, with specific exemptions for dogs. Those exemptions are guide dogs and service dogs as defined under the *Guide Dog and Service Dog Act* (GDSDA), or dogs that are members of a retired guide or service dog team as defined under the GDSDA, provided the person who is a member of the team is also an owner, tenant or occupant in the strata.
30. The strata does have a bylaw that prohibits pets, with certain exemptions. Bylaw 3.1(1) reads, in part [my emphasis added]:

An owner, tenant or occupant must not have any pets or other animals within a strata lot, on common property... **except** that one **properly trained animal which is prescribed by a physician and approved by the Strata Council** in writing is permitted to assist a resident with a disability....

Did the strata owe a duty of care to the potential purchaser of SL36, and if so, did the strata breach that duty?

31. A duty of care can be described as a legal obligation to act in someone's best interests. Under section 3 of the SPA, the strata is only responsible for acting in the best interests its owners. It is not responsible to act in the best interests of anyone else, including potential purchasers.
32. I agree with the strata that bylaw 3.1(1) only applies to owners, tenants and occupants and not to potential purchasers. I also agree there is no relationship between the strata and the potential purchaser, and the potential purchaser is not

bound by the strata's bylaws. In other words, the bylaws do not apply to potential purchaser.

33. The potential purchaser's request about the strata council permitting their dog to reside in SL36 was purely hypothetical. The SPA and bylaws would only apply if the potential purchaser actually purchased SL36 and became an owner as defined under the SPA.
34. There is no evidence the potential purchaser had a disability as defined under the Code, such that the strata needed to consider accommodating the potential owner. Rather, the evidence is that the potential purchaser accepted the strata's decision not to allow her pet to reside in SL36 and collapsed the agreement with Ms. Carnochan due to "not being satisfied with the review of the strata rules and regs and bylaws".
35. Finally, the contract of purchase and sale of SL36 that ultimately collapsed, was between Ms. Carnochan and the potential purchaser. The strata was not a party to the contract.
36. For these reasons, I find the strata did not owe a duty of care to the potential purchaser.

Did the strata owe a duty of care to Ms. Carnochan, and if so, did the strata breach that duty?

37. Given my finding that the strata does not owe a duty of care to a potential purchaser, the remaining question is whether the strata owed a duty of care to Ms. Carnochan, as a former owner, to facilitate the sale of SL36. I find it did not for the following reasons.
38. First, the application for a pet exemption was not made by Ms. Carnochan and the application did not involve her pet. Therefore, bylaw 3.1(1) did not apply.
39. Second, there is nothing in the SPA, regulation, or bylaws that imposed such a duty on the strata.

40. Third, as I have mentioned, there was no contractual obligation on the strata to facilitate the sale of SL 36.

41. Therefore, I find the strata did not owe a duty of care to Ms. Carnochan to facilitate the sale of SL36.

What remedies, if any, are appropriate?

42. It is not necessary for me to interpret the strata's bylaw, or the application of the Code or GDSDA given my conclusion that the bylaws do not apply.

43. Further, even though the strata presented a defence against a significant unfairness argument, such an argument was not made by Ms. Carnochan.

44. Accordingly, I find it appropriate to dismiss Ms. Carnochan's claims and this dispute.

CRT FEES AND EXPENSES

45. Under section 49 of the CRTA, 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. The strata is the successful party and did not pay CRT fees or claim dispute-related expenses, so I order none.

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

ORDER

47. I dismiss Ms. Carnochan's claims and this dispute.

J. Garth Cambrey, Vice Chair