



Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

GERALD RENAUD and DARLENE RENAUD

APPLICANTS

A N D :

The Owners, Strata Plan 38

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about access to strata facilities and how the parties should communicate with each other. The applicants, Gerald Renaud and Darlene Renaud (owners), own a strata lot in the respondent strata corporation, The Owners, Strata Plan 38 (strata).

2. The owners say the strata has wrongfully denied them access to the strata's recreation and office building. The owners seek reimbursement of \$2,427. This is their part of the special levy used to repair and remodel the building after a fire. The owners also seek an order for access to the strata's office to examine the strata's documents. The owners also say they should be allowed to communicate to the strata by using email, regular mail, or the strata's mailbox. The owners also reported other concerns about the strata council members. I will discuss these in the jurisdiction and procedure section of my decision.
3. The strata says it was unaware the owners' fobs stopped working and will provide access once they pay another fob deposit of \$20.00. The strata says it will also comply with a request for strata documents. It says previous requests did not appear serious. The strata also says the bylaws require the owners to communicate by registered mail or email. Finally, the strata says the owners have raised several issues that were not noted in the application for dispute resolution and for which no hearing has been requested. The strata says these claims should not be addressed in this dispute.
4. The applicants represent themselves. The strata council president represents the strata.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT 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.
6. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, 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.

7. 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.
8. 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.

Jurisdiction over Allegations of Conflict of Interest and Breaches of the Standard of Care

9. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. I find I must refuse to resolve the owners' claims about allegations of conflicts of interest and breaches of the standard of care by strata council members. My reasons follow.
10. The owners say that the strata council consists of its president, vice president, and secretary, and all are members of the same family. The owners say that the council holds 84.4% of the voting shares. The owners say the strata council is using the strata's equipment and facilities to benefit their own personal rental business. Given this, the owners say that the strata council members are in a conflict of interest and have failed to place the strata's interests above their own. The owners also say the strata council members use their voting majority to manage through means of "shunning and intimidation".
11. The strata council members are not parties to this dispute. The only respondent is the strata, which is a separate legal entity. I must therefore refuse to resolve these claims against the strata council members. However, even if the strata council members were named parties, I find that I would still be unable to resolve these claims.

12. Although not binding, I find the decision of *Rishiraj v. The Owners, Strata Plan LMS 1647*, 2020 BCCRT 593 sets out the applicable law. In that decision, the Vice Chair noted that section 31 of the *Strata Property Act* (SPA) states the standard that strata council members must meet in performing their duties. It says that each council member must act honestly and in good faith, with a view to the best interests of the strata, and exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances. I find a strata council member's standard of care would include the allegations set out above.
13. In *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 (*Sze Hang Holding Inc.*) at paragraph 267, the BC Supreme Court found that the duties of strata council members under SPA section 31 are owed to the strata corporation, and not to individual strata lot owners. This means that a strata lot owner cannot be successful in a claim against a strata corporation for duties owed by its strata council members under section 31.
14. As for the allegations of conflict of interest, in *Wong v. AA Property Management Ltd*, 2013 BCSC 1551, the court considered a claim brought by an owner against the property management company, individual council members, and the strata corporation. The owner alleged that the defendants had acted improperly in the management of the strata's affairs. The court concluded that the only time a strata lot owner can sue an individual strata council member is for a breach of the conflict of interest disclosure requirement under section 32 of the SPA (at paragraph 36). Remedies for breaches of SPA section 32 are specifically excluded from the CRT's jurisdiction, as set out in section 122(1)(a) of the CRTA. Thus, the CRT does not have jurisdiction over claims brought by an owner against an individual strata council member.
15. *Wong* and *Sze Hang Holding Inc.* are binding upon me. I find the CRT has no jurisdiction to decide the owners' section 31 and 32 claims as set out above.
16. For all these reasons, I refuse to resolve the owners' claims against the strata council members.

New Matters Raised

17. The owners also raised new claims and allegations that are not in the owners' application for dispute resolution. As noted by the strata, they include the following matters:

- a. failure to enforce parking and other bylaws, especially against the individual strata council members,
- b. unfair bylaw enforcement in other instances,
- c. a requested reversal of 39 bylaw amendments,
- d. failure to comply with fire regulations (including leaving obstructing items in building stairwells and entrances and a failure to replace a broken door closer),
- e. a decrease in the owners' strata lot's value due to the decisions of the strata council,
- f. issues of financial responsibility (especially regarding choice of repairs and who to bid for such work),
- g. inappropriate use of security cameras and violations of the *Personal Information and Protection Act* and its regulations,
- h. inappropriate subsidies of cable and internet packages by the strata for rental suite customers or tenants of the strata council members,
- i. inappropriate use of strata facilities and equipment to renovate an unrelated property known as the Raffles Inn,
- j. an alleged assault by the strata council vice president against Ms. Renaud,
- k. failure to report a fire to the strata's insurer and adequately insure the strata's property against loss,
- l. failure to maintain common property or assets (particularly the carpets),
- m. failure to take appropriate COVID-19 precautions, and

- n. failure to ensure strata employees are complying with safety standards set out by WorkSafeBC (particularly while operating a manlift).
18. The strata says the matters were raised late and should not be addressed based on the decision in *Zane v. The Owners, Strata Plan BCS 4476*, 2019 BCCRT 991.
19. In *Zane* at paragraphs 22 to 26, the CRT member (now Vice Chair) found that several new claims were not set out in the Dispute Notice. The applicant did not amend the Dispute Notice to include these claims, though she had the opportunity to do so. In those circumstances, the Vice Chair found it appropriate not to decide the additional claims. By raising new claims after the facilitation phase, the applicant had effectively bypassed the facilitation process, and did not give notice of all claims to the respondent strata corporation in the required manner.
20. Although not binding, I agree with the reasoning in *Zane* and find it applicable to these circumstances. I will therefore not address the claims set out above.
21. I also note that the owners say they have raised these issues in order to show gross negligence by the strata council members. Some of these matters also relate to allegations that the strata council members are in a conflict of interest. As noted above, I have refused to resolve the owners' claims against the strata council members. The claims and allegations set out above have limited relevance to the remaining issues within my jurisdiction.

Matters Raised with No Remedy Requested – Water Pressure

22. The owners say that they had little water pressure at times, and no water at all for almost 2 months. The strata says it is only aware of 2 incidents of low water pressure. One lasted 10 days in late 2017 and another occurred on the morning of February 5, 2020, that lasted approximately 2 hours. The strata says in both situations it diagnosed and completed repairs as quickly as possible.
23. The owners described the water pressure problems in their application for dispute resolution. However, the owners did not request a specific remedy. I find the

submissions and evidence do not show any ongoing water pressure problem. Given this, I dismiss this claim.

Jurisdiction over Access to the Office and Recreation Building

24. As stated above, the owners request reimbursement of \$2,427, which is their share of the special levy for rebuilding and remodeling the strata's office and recreation building. The strata says the CRT has no jurisdiction over this claim because it is about the strata's decision not to repair the original recreation facilities. They cite CRTA section 122(1)(g). It says that the CRT has no jurisdiction over a claim that may be dealt with by the BC Supreme Court under SPA section 160. SPA section 160 says an owner may apply for an order in the BC Supreme Court about a strata corporation's decision not to repair or replace damaged property.
25. The owners says that they are not asking the CRT to rule on whether the strata's repair and renovation decisions should be reversed. Instead, they want the CRT to "take note of the decisions and path strata council took". They have also not requested the strata to reverse its decision (which I find would be impractical in any event, as the building work is complete).
26. SPA section 164 sets out the BC Supreme Court's authority to remedy significantly unfair actions. The CRT has jurisdiction over significantly unfair actions under CRTA section 123(2). I find that, in substance, the owners' claim is about whether they have been wrongfully denied access to the strata's recreation facilities. Although not expressly raised in submissions, I find the owners' claim is one of significant unfairness. I therefore conclude that I have jurisdiction over this issue and will consider its merits below.

ISSUES

27. The remaining issues in this dispute are as follows:

- a. Did the strata act in a significantly unfair manner by denying the owners access to the strata's recreation and office building, and if so, what is the appropriate remedy?
- b. Should the owners be permitted to contact the strata by using email, regular mail, the strata office mailbox, or by phone?
- c. Should the strata provide the owners access to its office to examine strata documents?

BACKGROUND, EVIDENCE AND ANALYSIS

28. In a civil dispute like this one, the owners must prove their claims on a balance of probabilities. Although I have reviewed all the evidence and submissions, I only refer to them as needed to provide context for my decision.
29. As I will explain below, I find that the strata acted in a significantly unfair manner when it did not provide the owners access to the recreation and office building after mid-August 2019. I find the owners are entitled to an order for access to these facilities and \$500 as compensation. I also find that the strata's bylaw that restricts correspondence to registered mail (or email, by agreement) is unenforceable. I find it appropriate to order the strata to provide the owners an email address and other contact information for emergency use. Finally, I find that the strata failed to comply with the owners' request for documents. I find it appropriate to order the strata to provide the owners a list of all strata lot owners. My reasons follow.
30. I will begin with the undisputed background facts. The owners have owned a strata lot in the strata since late 2011. The strata consists of 5 separate buildings of mostly apartment-style housing. One building is unique. It is entirely common property and is used as a recreation and office building.
31. On March 31, 2017, a fire broke out in the strata's sauna. The fire destroyed most of the strata's recreation and office building. In an April 27, 2017 letter to all strata lot owners, the strata council wrote that it preferred to repair and renovate the building

without making an insurance claim. The strata advised that it would call a special general meeting (SGM) to vote on approving a special levy to complete repairs and remodeling of the building.

32. The parties submit their relationship was never ideal and worsened after this email. Mr. Renaud had concerns about the strata's recommendation and contacted the strata's fire insurer. He says the deductible was much less than what the strata council members thought it was. He also had other concerns which I need not fully describe for this decision.
33. The strata eventually held the SGM on June 2, 2017 and the attending members unanimously voted to approve a special levy for \$120,000. The owners did not attend. Building construction began in April 2017 and ended in March 2019.
34. I now turn to the issues in this dispute.

Issue #1. Did the strata act in a significantly unfair manner by denying the owners access to the strata's recreation and office building, and if so, what is the appropriate remedy?

35. Bylaw 38(1) says that the strata may collect a refundable deposit for each key fob issued in an amount set at the discretion of strata council. It is undisputed that the owners paid \$20 and picked up 2 key fobs on April 12, 2019, from the strata's office. The parties agree this was the appropriate charge at the time. It is undisputed that the fobs worked for one day only.
36. The owners say the strata intentionally deactivated the fobs in retaliation for their complaints about the use of security cameras in the gym, hot tub, sauna, and change room areas. I am not persuaded this is the case. It is undisputed that the strata council president activated the owners' fobs himself. I find it unlikely he would then intentionally deactivate the fobs a day later.
37. Having said that, the strata provides no clear explanation for why the fobs stopped working. The strata also says it was unaware that the fobs did not work until it

received the Dispute Notice. However, I find that the strata was aware that the owners' fobs did not work since mid-August 2019. I base this on the following:

- a. The owners wrote an August 6, 2019 letter to the strata about the fobs. They say they put it in the strata's mailbox. The strata uses the mailbox for receiving strata fees payments. I accept the owners placed it there and find it likely that the strata received and read this correspondence.
- b. The owners also say they returned their original fobs to the strata's office manager several weeks after they stopped working. They also say that their \$20 deposit was not returned. Consistent with this, the owners wrote an August 20, 2019 letter advising they had left the fobs with the office manager. As the strata's office manager has provided no evidence to the contrary, I accept the owners' version of events. I also find it likely that the strata received the August 20, 2019 letter as well.
- c. Consistent with the above, the owners also provided a September 5, 2019 email from SL, a visiting friend. SL wrote that the strata council vice president refused to provide SL access to the office and recreation building when he learned she was the owners' guest.

38. As noted above, SPA section 164 sets out the BC Supreme Court's authority to remedy significantly unfair actions. The CRT has jurisdiction over significantly unfair actions under CRTA section 123(2), which has the same legal test as cases under SPA section 164. See *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164. The test, from *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, is as follows:

- a. What is or was the expectation of the affected owner?
- b. Was that expectation on the part of the owner objectively reasonable?
- c. If so, was the expectation violated by an action that was significantly unfair?

39. In *Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, the Court defined a significantly unfair action as one that is “burdensome, harsh, wrongful, lacking in probity or fair dealing, or has been done in bad faith”.
40. I conclude that the owners had an objectively reasonable expectation to be provided access to the recreational facilities. In particular, the owners had a reasonable expectation that they would be provided building access once they advised the strata of the situation. This expectation was violated when the strata did not provide the owners’ access after it became aware of the fob issue in mid-August 2019.
41. The strata says it issued 2 new key fobs to the owners and will activate them once a further refundable deposit of \$20 is paid. I do not find the owners to be in the wrong for objecting to payment of another deposit. They were initially denied access to the recreation and office building without justification. I find that asking for payment of the deposit exacerbated the unfairness of the situation. I find that the owners have established that the strata acted in a significantly unfair manner towards them as described in *Reid*.
42. This leaves the question of the appropriate remedy. Although the owners did not seek an order for access to the building, it was clearly an issue for the parties. I order the strata to immediately reinstate access to the recreation and office building and all other common areas of the strata to the owners if it has not already done so. I find making this order now is consistent with the CRT’s mandate and role (under CRTA section 2) to provide dispute resolution in a manner that is informal, flexible, and in recognition of the fact that the parties’ relationship will likely continue after this proceeding is concluded.
43. The owners also seek an order for reimbursement of \$2,427. On a judgment basis, I find it is reasonable for the owners to be compensated and I order the strata to pay the owners \$500. I decline to order the entire claimed amount as the owners will be able to use the recreational facilities in the future.

Issue #2. Should the owners be permitted to contact the strata by using email, regular mail, the strata office mailbox, or by phone?

44. Bylaw 38(11) previously said that all correspondence had to be treated as “informal” unless delivered by registered mail. Bylaw 38(11) was repealed and replaced on July 18, 2017 by a special resolution. It now says that all correspondence with the strata shall be delivered by registered mail, unless the parties agree to accept email. I note that bylaw 38(11) was numbered as bylaw 38(12) in the special resolution, but I find this is a typographical error and nothing turns on this.
45. The owners say bylaw 38(11) contravenes the SPA section 63, discussed below. They say they should be able to communicate to the strata council by using email, regular mail, the strata office mailbox, or by phone. I note that bylaw 38(11) does not restrict verbal communication, telephone communication, or access to the strata’s office. In any event, the owners also expressed concern about reaching the strata on short notice.
46. The strata says the owners are free to contact the strata through registered mail or email under the most recent bylaws. The strata says the bylaws are necessary as the owners and the strata council members have had personal interactions that resulted in calls to the RCMP.
47. For the following reasons, I find bylaw 38(11) contravenes SPA section 63(1) and is unenforceable.
48. SPA section 121 says a bylaw is not enforceable to the extent that it contravenes the SPA. SPA section 63(1) says that a notice or other record or document that is required or permitted under the SPA, bylaws, or rules to be given to the strata corporation must be given to the strata corporation
- a. by leaving it with a council member,
 - b. by mailing it to the strata corporation at its most recent mailing address on file in the land title office,
 - c. by faxing it or emailing it to

- i. the strata corporation using the strata corporation's fax number or email address, or
 - ii. a fax number or email address provided by a council member for the purpose of receiving the notice, record or document, or
- d. by putting it through the mail slot, or in the mailbox, used by the strata corporation for receiving notices, records and documents.

49. In *The Owners, Strata Plan VR 766 v. Hayatshahi*, 2020 BCCRT 451 (*Hayatshahi*), the CRT Vice Chair considered the strata's request for an order than an owner only communication through mail to the strata's property manager. The Vice Chair decided that section 63(1) did not require the strata to provide access for all these possible forms of document delivery. In particular, the strata was not compelled to provide any of the methods listed in section 63(1)(c) or (d). However, the strata had to accept communication given directly to a strata council member or mailed to the strata under section 63(1)(a) and (b). The Vice Chair also noted that under *Strata Property Regulation* section 4.1(1)(a), the strata must prepare a record of each council member's telephone number, or some other way of contacting them on short notice.

50. Although not binding, I find the reasoning in *Hayatshahi* applicable and persuasive. The strata must accept notices, other records, or documents left with a strata council member or by regular mail. The evidence and submissions also indicate the strata has a mailbox for receiving documents (in particular, strata fee payments). I find that the strata must also accept documents at the mailbox as well. I am satisfied that bylaw 38(11) is unenforceable as it conflicts with SPA section 63(1).

51. This leaves the question of the appropriate remedy. Under the CRTA 123(1)(a), I may order a party "to do something". The owners are already permitted to contact the strata council members in person or by regular mail. Based on bylaw 38(11) and the strata's submissions, email is one of the strata's preferred forms of communication. The owners also requested the ability to communicate by email.

52. I find it appropriate to order the strata to provide the owners an email address for receiving correspondence, including a notice or other record or document that is required or permitted under the SPA, bylaws, or rules. The owners are entitled to contact the strata using this email address.
53. I also order the strata to provide the owners a record of each strata council member's telephone number or some other method by which the council member may be contacted at short notice.
54. I order that the strata provide the above within 14 days of the date of this decision.
55. As noted in *Tenten v. The Owners, Strata Plan VR113*, 2019 BCCRT 1427, the strata is not obligated to respond to every item of correspondence from an owner. Although not binding, I find the same considerations in *Tenten* would apply to any concerns reported by the owners to the strata. I leave this for the parties to consider.

Issue #3. Should the strata provide the owners access to their office to examine strata documents?

56. SPA section 35 and section 4.1 of the *Strata Property Regulation* (SPR) require the strata to prepare and retain various records. Under SPA section 36(1), if an owner requests access to any of these records, the strata must make the records available for inspection by an owner within 2 weeks of the request, or within 1 week if the request is for bylaws or rules. Under SPA section 36(4) and section 4.2 of the SPR, the strata must also provide copies of any requested records to an owner. However, the strata may charge an owner up to 25 cents per page for copies of the requested records, and it may require payment before providing the copies to the owner.
57. The strata says the owners have not made a written request for documents. It says the owners did make 2 verbal requests in May and July 2017, but the statements appeared to be made as threats rather than good faith attempt to coordinate viewing records. The strata says it will accommodate any request to access records as required under SPA sections 35 and 36.

58. The owners produced as evidence an August 20, 2019 letter requesting a list of owners and a copy of the strata's bylaws. The owners referred to this letter in their submissions and say they left it in the strata's mailbox. I find it likely the strata received it and had the opportunity to consider it. However, the owners also say that they have not made a "formal request" to examine the strata's documents or identified the documents they wish to examine.
59. Under SPA section 35(1)(c), the strata must prepare a list of owners along with other information, including their strata lot addresses. SPA section 35(2)(d) says the strata must retain copies of all bylaws and rules.
60. I find that the strata failed to comply with the owners' August 20, 2019 request for a list of owners and a copy of the bylaws. Under the SPA, an owner may request these documents. However, I am not persuaded that the strata failed to comply with any other request for documents. The owners' submissions and evidence were vague on this point.
61. The owners have already been provided a copy of the bylaws through this proceeding. Given this, I order that within 14 days of the date of this decision, the strata must provide the applicant owners a list of owners, with their strata lot addresses, mailing addresses if different, strata lot numbers as shown on the strata plan, parking stall and storage locker numbers, if any, and unit entitlements. I order that the strata may charge the owners for copies of the documents produced, as permitted by the SPR.
62. The strata also expressed willingness to accommodate document access for the owners. The owners may therefore wish to consider requesting access or copies of the records permitted under SPA section 35 and SPR section 4.1.

CRT FEES, EXPENSES AND INTEREST

63. 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. I see no reason in this case not to follow that general rule.

64. The owners experienced some success in this dispute. However, they also raised numerous matters that were irrelevant or outside the CRT's jurisdiction. As such, I find that the owners have been only partially successful and should be entitled to 50% of CRT fees and dispute-related expenses. The owners paid \$225 in CRT fees and \$12.27 in registered mail fees to serve the strata. I therefore order the strata to reimburse the owners \$112.50 in CRT fees and \$6.13 in dispute-related expenses within 14 days of the date of this decision.
65. The *Court Order Interest Act* (COIA) applies to the CRT. The owners are entitled to pre-judgement interest on the \$500 as compensation for significant unfairness from August 6, 2019 (the date of the owners' letter about the fobs) to the date of this decision. This equals \$8.95.
66. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners.

ORDERS

67. I order the strata to immediately reinstate access to the recreation and office building and all other common areas of the strata to the owners if it has not already done so.
68. Within 14 days of the date of this order,
 - a. I order the strata to provide the owners an email address for receiving correspondence, including a notice or other record or document that is required or permitted under the SPA, bylaws, or rules. The owners are entitled to contact the strata using this email address.
 - b. I order the strata to provide the owners a record of each strata council member's telephone number or some other method by which the council member may be contacted at short notice.

69. Within 14 days of the date of this order, I order strata to provide the applicant owners a list of owners, with their strata lot addresses, mailing addresses if different, strata lot numbers as shown on the strata plan, parking stall and storage locker numbers, if any, and unit entitlements. I order that the strata may charge the applicant owners for copies of these documents produced, as permitted by the SPR.
70. Within 14 days of the date of this order, I order the strata to pay the owners a total of \$627.58, broken down as follows:
- a. \$500.00 as compensation for significant unfairness,
 - b. \$8.95 in pre-judgment interest under the COIA, and
 - c. \$118.63, for \$112.50 in CRT fees and \$6.13 for dispute-related expenses.
71. The owners are entitled to post-judgment interest, as applicable.
72. Under sections 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. The order can also be enforced by the Provincial Court of British Columbia if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

David Jiang, Tribunal Member