



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Danford v. The Owners, Strata Plan NW 3354*, 2020 BCCRT 882

B E T W E E N :

GRAHAM DANFORD and WENDY DANFORD

APPLICANTS

A N D :

The Owners, Strata Plan NW 3354

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about whether a service dog can access common property (CP) in a strata, either with his handler or another person.
2. The applicants Graham and Wendy Danford jointly own a strata lot (unit 105) in the respondent strata corporation The Owners, Strata Plan NW 3354 (strata). The

Danfords say that the strata is wrongly enforcing a pet restriction bylaw to prevent their service dog, Gus, from using CP.

3. The Danfords claim \$2,500 for “ongoing harassment”, and “discrimination causing unnecessary anxiety and stress ...resulting in serious illness and discomfort.” They also seek a \$2,200 payment for the strata’s disregard toward them and \$300 for time spent on the dispute.
4. The Danfords also ask for an order to stop the strata from applying the bylaw or rules banning service dogs, permitting them to use CP and to stop harassment and discrimination against service dog owners.
5. The strata denies any wrongdoing and asks me to dismiss the dispute.
6. The applicants are represented by Mr. Danford as primary applicant. The strata is represented by strata council member DG.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.
9. 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.

10. 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.

ISSUES

11. The issue in this dispute are:
- a. Is Gus entitled to access CP, without Ms. Danford as his handler?
 - b. If so, what remedies are appropriate?

EVIDENCE AND ANALYSIS

12. I have read all of the evidence and submissions provided, but I refer only to them as I find relevant to provide context for my decision.

Bylaws

13. The applicable bylaws (Bylaws) are those filed at the Land Title Office (LTO) on June 27, 2019.
14. Bylaw 3.15 provides that an owner, tenant or occupant must not keep any pets in a strata lot without the prior written consent of strata council, except no more than:
- a. 1 dog of a height not exceeding 16 inches measured from the floor to the top of the shoulder, when full grown, or
 - b. one cat.
15. Bylaw 3.15 also says that all animals must be leashed while on CP.

Law re: Guide and Service Dogs

16. 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, CP and common assets of the strata, among other things.

17. 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).
18. SPA section 123 allows the strata to prohibit pets, with specific exemptions for dogs.
19. SPA section 123(1.01)(a) says a bylaw that prohibits a pet or animal or that restricts the access of a pet or other animal to a strata lot or CP does not apply to a guide dog or service dog.
20. SPA section 123(1.01)(b) says that a bylaw prohibiting pets or that restricts the pet or animal's access to a strata lot or CP does not apply to retired guide or service dog teams, provided the person who is a member of the team is an owner, tenant or occupant in the strata.
21. SPA section 123(1.02) says that the terms "guide dog", "service dog" and "retired guide or service dog team" are defined in the *Guide Dog and Service Dog Act* (GDSDA).
22. The GDSDA defines a "service dog" as a dog trained to perform specific tasks to assist a person with a disability, who is certified as a service dog. A "service dog team" means a person with a disability and a service dog, together certified as a service dog team.
23. Under section 8 of the Code says that unless there is a *bona fide* and reasonable justification, a person must not, because of a physical or mental disability, discriminate against another person regarding any accommodation, service, or facility customarily available to the public.

Background Facts

24. On December 4, 2017, Ms. Danford wrote to strata council to inform it that she and Mr. Danford had purchased unit 105 and would be moving in shortly. In her letter, Ms. Danford explained that they would have a cross black lab/ridge back named

Gus who would visit or stay with them from time to time. At the time, Gus was registered as an Emotional Support Dog with the Official Service Dog Registry (OSDR), which I find is a form of certification outside the GDSDA. Ms. Danford asked strata council to advise her of Gus' legal status and rights to stay in the strata complex.

25. The Danfords admit that Gus exceeds the height restriction for dogs set out in Bylaw 3.15.
26. Strata council met several times to consider Gus' status.
27. On July 3, 2018, strata council met and decided to refuse to allow dogs over the size limit to stay in the strata, unless the dog was a service or guide dog licensed under the GDSDA.
28. On October 9, 2018, the strata wrote to Mr. Danford to say that his request to have an "oversized therapy dog" reside in his unit was refused. The strata noted that Gus was not within the Bylaw size guidelines, that therapy dogs are not exempt from the Bylaws, that certification of Gus under the GDSDA had not been provided to council and the owners favoured enforcing the Pet Bylaw at the most recent annual general meeting (AGM).
29. The strata asked that Gus be rehomed by November 18, 2018 and that the Danfords provide it with written confirmation.
30. On November 7, 2018, Ms. Danford obtained a British Columbia Guide Dog and Service Dog Certificate. The Certificate expires on November 6, 2020. The Certificate shows that Gus, is "a certified guide dog or service dog" under the *GDSDA*. The Certificate lists Ms. Danford as Gus' handler. I find that, as of November 7, 2018, Gus became a certified service dog.
31. On November 19, 2018, the Danfords informed strata council that Gus was now a certified service dog under the GDSDA. The Danfords asked that the strata update its bylaws to include guide and service dogs.

32. Also on November 19, 2018, strata council met and noted that it had received “official confirmation” that Gus obtained a service dog certification.
33. In an undated letter, the strata then wrote to Mr. Danford to confirm that given Gus’ status as a certified service dog, Gus was allowed into the strata lot and on CP if Ms. Danford, as his handler, was present and “in charge”, including for walking within the strata complex.
34. The strata also declined to change its bylaws, writing that BC guide and service dogs were already exempted from the access limitations in Bylaw 3.15, under provincial law.
35. On February 8, 2019, the strata wrote to Mr. Danford to say that Gus had been observed walking in the complex without Ms. Danford as his handler. Strata council requested that Ms. Danford be the only one permitted to walk Gus through the strata complex.
36. On February 18, 2019, Mr. Danford wrote back to the strata council objecting to their request.
37. On August 6, 2019, the strata wrote back to Mr. Danford, reporting that he had been observed walking Gus on CP on several occasions in June and July 2019.
38. The strata added that because “...there may be times that Mrs. Danford is unable to exercise the dog” the council would grant dispensation for Mr. Danford to take Gus to exit and re-enter the complex directly by the back gate, located near the Danfords’ strata lot, onto public property to take exercise.
39. On August 19, 2019, Mr. Danford wrote to strata council requesting a strata council meeting appearance to discuss the service dog issue.
40. On October 29, 2019, Mr. Danford appeared at a strata council meeting to discuss his concerns.

41. On November 1, 2019, the strata wrote to Mr. Danford enclosing a legal opinion supporting the strata's position that Gus would not be permitted access to CP unless his handler was with him.

Is a service dog allowed to access common property in a strata when accompanied by someone other than his handler?

42. This dispute is about whether Mr. Danford can walk Gus on CP while Gus is "off-duty" or at any other time. Put differently, is Gus permitted to use CP when accompanied by someone other than his handler, by virtue of being a GDSDA certified service dog? For the reasons I give below, I find that the answer is yes.
43. Mr. and Ms. Danford submit that Gus must be allowed to live in the strata lot and access CP "without restriction" because he is a service dog. The Danfords submit that Gus can access CP even though he is over 16 inches tall, and even though the Danfords also have a cat.
44. The strata disagrees. The strata takes the position that Gus can live in the Danfords' strata lot, but can only use CP if his handler, Mrs. Danford, is present and in charge.
45. The strata has agreed to allow Mr. Danford to walk Gus through the back gate of the complex to public property, if needed, for Gus to take exercise if Mrs. Danford is unavailable.
46. In support of its position, the strata relies on section 2 of the GDSDA which says that a service dog team may enter and use any place to which the public is invited or has access. The strata submits that Gus and Ms. Danford, together, make up the service dog team. That is, Mr. Danford is not part of the service dog team. While I agree that Ms. Danford is Gus' only handler under the GDSDA, I find that strata CP is a form of privately held property. CP is not public property as contemplated in section 2 of the GDSDA. As a result, I find that GDSDA section 2 does not resolve the issue in dispute.
47. In Gus' situation, I find that the SPA section 123(1.01)(a) applies.

48. The SPA section 123(1.01)(a) specifically provides that a bylaw restricting an animal access to CP does not apply to a guide dog or service dog. That is, a bylaw restricting a pet from living in a strata lot or using CP does not apply if the dog is a GDSDA guide dog or service dog. The issue is about Gus' access to CP, not the access allowed to his handler, the service dog team or some other person.
49. The SPA section 123 distinguishes between retired guide or service dogs and active ones. Active service or guide dogs are exempt from pet restriction bylaws entirely, regardless of whether their handler is an owner, tenant or occupant: section 123(1.01)(a). Retired service or guide dogs are exempt only if their handler is an owner, tenant or occupant: section 123(1.01)(b).
50. In this strata, Bylaw 3.15 would restrict Gus' access, as the animal, because he is over-height. I find that, because Gus is a service dog under the GDSDA, the access restrictions in Bylaw 3.15 do not apply to him. I therefore find that Gus can access CP without limitation, whether he is accompanied by his handler or another person.
51. As set out in *N.K. v. The Owners, Strata Plan LMS YYYY*, 2018 BCCRT 108, the question of certification as a guide or service dog is not the sole issue. The Danfords submissions raise the issue of discrimination and reasonable accommodation under the Code.
52. According to the Code, the strata must not, without a "bona fide and reasonable justification", discriminate against a person requiring accommodation due to a disability. Section 121 of the SPA says that a bylaw is not enforceable to the extent that it contravenes the Code.
53. Given my conclusion that the strata lot and CP access restrictions in Bylaw 3.15 do not apply to Gus by operation of the SPA, I find it unnecessary to consider whether the Code would require an accommodation by the strata's.

What remedy is appropriate?

54. I order the strata to stop applying the pet restriction and property access portions of Bylaw 3.15 to Gus, with immediate effect. By this I mean that the strata must permit

Gus to access CP, regardless of who accompanies him, if he is leashed and otherwise complies with the Bylaws.

55. I dismiss the Danfords' claim for \$2,500 for "ongoing harassment" and "discrimination" by the strata that they say caused anxiety and stress, serious illness and discomfort. The Danfords did not prove that the strata's actions towards them were wrongful and gave rise to these damages. I acknowledge that Mr. Danford submitted a medical letter confirming that he was ill for some time. The Danfords did not provide a medical opinion that the strata's actions caused illness.
56. I dismiss the Danfords' claim for \$2,200 for "disregard of Strata law". I find that they did not prove a loss in this amount, caused by the strata's conduct.
57. I dismiss the Danfords' claim for \$300 for time spent on the dispute. This finding is consistent with the CRTA section 20(1), which provides that parties must generally represent themselves, unless permission is granted for representation in the dispute. Also, CRT rule 9.5(5) says that except in extraordinary circumstances, the CRT will not order compensation for time spend dealing with a CRT proceeding. I find there are no such extraordinary circumstances in this case.
58. Because the strata was unsuccessful, I dismiss its claim for \$5,715.58 in dispute-related expenses, made up of legal fees it incurred.

CRT FEES, EXPENSES

59. 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. I therefore order the strata to reimburse the Danfords for CRT fees of \$225. The Danfords did not claim dispute-related expenses, other than the claim for their time addressed above, and so I make no order for reimbursement.
60. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the Danfords.

ORDERS

61. I order that:

- a. strata immediately stop applying the pet restriction and property access portions of Bylaw 3.15 to Gus, and
- b. that the strata pay the Danfords \$225 in CRT fees, within 30 days of this decision.

62. 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.

Julie K. Gibson, Tribunal Member