



# Civil Resolution Tribunal

Date Issued: December 1, 2020

File: ST-2020-002411

Type: Strata

Civil Resolution Tribunal

Indexed as: *Alani v. The Owners, Strata Plan VR437*, 2020 BCCRT 1361

B E T W E E N :

RIZWAAN ALANI

**APPLICANT**

A N D :

The Owners, Strata Plan VR437

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

## INTRODUCTION

1. This dispute is about bylaws. The applicant, Rizwaan Alani, says he is a tenant in a strata lot in the respondent strata corporation, The Owners, Strata Plan VR437 (strata). He says that the strata passed sweeping bylaw changes at a January 15,

2020 special general meeting (SGM) without them being properly considered by the owners. He also says that some of the bylaws are unenforceable as they contravene the *Strata Property Act* (SPA). Mr. Alani asks for an order that the strata reverse all bylaw changes approved at the SGM. The strata's position is that the new bylaws were approved in accordance with the SPA, and are valid and enforceable. The strata also questions whether Mr. Alani is a tenant.

2. Mr. Alani is self-represented. The strata is represented by a member of the strata council.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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.
5. 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.
6. 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.

7. Mr. Alani made allegations that the strata's property management company acted inappropriately around the collection of proxies from strata lot owners. As the property management company is not a party to this dispute, I cannot make any orders against it and will not address this matter further.

## **ISSUES**

8. The issues in this dispute are:

- a. Whether Mr. Alani has standing under section 189.1 of the SPA to bring this dispute,
- b. Whether the bylaws were approved in accordance with SPA, and
- c. Whether any of the bylaws are unenforceable.

## **EVIDENCE AND ANALYSIS**

9. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. Although I have considered all of this information, I will refer to only what is necessary to provide context to my decision.

10. In 2019, the strata decided to update its bylaws. It says it consulted with a lawyer to draft "revised and modernized" bylaws.

11. In September of 2019, the strata uploaded the proposed bylaws to its web portal so that they would be accessible to the owners. In an October 2019 newsletter, the strata notified the owners of the proposed changes, and gave the owners the opportunity to provide their input. The newsletter also advised owners that, if they did not have access to the digital version, they could request a paper copy.

12. In a December 2019 newsletter, the strata reminded owners of the proposed bylaws and asked owners to read them before the upcoming SGM. The newsletter highlighted "some of the significant changes" in the proposed bylaws involving pets, barbecues,

maximum occupancy of strata lots, smoking prohibition, pet restrictions, and insurance deductibles.

13. On December 19, 2019, the strata gave the owners written notice of the January 15, 2020 SGM to deal with the proposed bylaws along with several other agenda items. The notice included the wording of the  $\frac{3}{4}$  vote resolution, which stated that the existing bylaws would “be amended in their entirety and replaced with the attached new Bylaws”. The notice package included a copy of the proposed bylaws.
14. At the January 15, 2020 SGM, the owners voted approximately 80% in favour of the resolution to repeal and replace the bylaws. The meeting minutes show that, of the owners present in-person and represented by proxy at the time of the vote, 131 were in favour, 29 opposed, and 4 owners abstained.
15. The new version of the bylaws was filed at the Land Title Office on January 24, 2020. The January 2020 newsletter advised residents that the new bylaws were in force. I note that some of the pages in the filed bylaws are out of order and pages 22 to 26, 31, 35, and 36 appear to be missing.
16. In an April 10, 2020 email, Mr. Alani requested a hearing with the strata council to discuss “the validity/legality of the approval of the bylaw changes” as “[o]nly a few changes to the bylaws were discussed and given their due consideration”.
17. The strata council held a hearing on April 22, 2020. An April 29, 2020 letter from the strata’s property manager communicated the strata council’s view that the process of repealing and replacing the bylaws complied with the SPA. Further, the strata council said that it could not overturn the  $\frac{3}{4}$  vote resolution to repeal and replace the bylaws as requested by Mr. Alani, as this would violate the SPA.

### ***Mr. Alani’s Standing in the Dispute***

18. Strata lot 113 is owned by Mr. Alani’s mother. She is not a party to this dispute.
19. Section 189.1(1) of the SPA says that only a strata corporation, owner or tenant may apply for dispute resolution with the CRT. Although Mr. Alani says he is a tenant in his

mother's strata lot and has lived there for almost six years, the strata says it does not have any information to suggest that Mr. Alani is a tenant or holds a power of attorney for his mother. The strata therefore questions Mr. Alani's standing to bring this dispute against it.

20. Section 1 of the SPA defines a "tenant" as a person who rents all or part of a strata lot, and includes a subtenant but does not include a leasehold tenant in a leasehold strata plan as defined in section 199 or a tenant for life under a registered life estate. I note that the SPA defines tenants and occupants separately.

21. The evidence contains a January 1, 2015 Residential Tenancy Agreement between Mr. Alani and his mother. The lease had a 5-year term, with an automatic 5-year renewal. The evidence also contains a Form K Notice of Tenant's Responsibilities identifying Mr. Alani as a tenant of the strata lot as of January 1, 2015. This document is stamped received on November 13, 2018, although it is not entirely clear by whom. Mr. Alani says this document was delivered to the strata's property manager at the on-site office.

22. The strata suggests that, because there is no proof that Mr. Alani pays rent to his mother, the rental agreement is not *bona fide* (made in good faith) and Mr. Alani does not meet the definition of a tenant.

23. Mr. Alani says he has a long-term lease and has assumed the powers and duties of his landlord under section 148 of the SPA. Although Mr. Alani's mother wrote a letter to the strata advising that Mr. Alani could represent her for strata matters, I find that this does not meet the notice requirements set out in section 148(3) of the SPA. While I find that Mr. Alani has not established that his mother assigned him her powers and duties, this is not determinative of whether he meets the definition of a tenant.

24. Although it is not clear from the evidence which portion of the strata lot Mr. Alani rents, there is no requirement that a tenant rent the entire strata lot. There is also no requirement in section 1 of the SPA that a tenant prove the details of the financial transactions between themselves and the landlord. For the purposes of this decision,

and based on the evidence before me, I find that it is more likely than not that Mr. Alani is a tenant of strata lot 113.

25. As Mr. Alani meets the definition of a tenant in section 1 of the SPA, he is eligible to bring this dispute under section 189.1(1) of the SPA. I make no other findings about Mr. Alani's possible entitlements or responsibilities that may flow from his status as a tenant.

***Were the Bylaws Approved in accordance with the SPA?***

26. A strata corporation is required to have bylaws under section 119(1) of the SPA. According to section 128(1) of the SPA, amendments to bylaws for a strata plan composed entirely of residential strata lots (as is the case here) must be approved at an annual or special general meeting by a resolution passed by a  $\frac{3}{4}$  vote.

27. Mr. Alani's position is that the  $\frac{3}{4}$  vote resolution that approved the bylaw amendments was not legal or valid. Mr. Alani submits that the strata used a deceptive and unfair process to repeal and replace the bylaws. He says that the strata told the owners about only a few changes, and did not tell them that there were more than 300 changes between the existing and proposed bylaws. He states that it was an unnecessary burden on owners to require them to compare the existing and proposed bylaws to see what all of the changes would be. Mr. Alani also says that, as many of the owners have a first language other than English and are not computer literate, the strata had an obligation to explain the proposed bylaws and provide translated copies.

28. Mr. Alani says that, at the SGM, other agenda items were addressed first so that by the time the bylaws were discussed, the owners were tired and wanted to go home. He says that the strata only permitted discussion of some of the proposed changes, and that many owners believed that they were voting only for the changes that were discussed. He also submits that the strata misled the owners into believing that the changes were all required to bring the bylaws into compliance with the SPA. Mr. Alani states that the strata forced the owners to vote without adequate time for discussion, and that the owners only agreed to the changes to bring an end to a lengthy meeting.

29. The strata says that the bylaw amendments were properly approved by the owners in accordance with the SPA. The strata points out that, as there was no demand to reconsider the bylaw replacement resolution under section 51 of the SPA, the resolution stands.
30. There is nothing in the SPA that prevents a strata corporation from revising its bylaws, for compliance with the SPA or for any other reason, even if the changes from previous versions of the bylaws are significant. There is no limit to the number of bylaws that may be amended at a time, and no separate procedural requirements in the SPA for situations where a strata corporation repeals its existing bylaws in their entirety and replaces them with a new version.
31. As for providing notice of proposed changes, there is no requirement in the SPA or bylaws for the strata to provide translated documents to owners. I note that paper copies of the proposed bylaws were available on request to those owners who could not access the digital copy, and that a copy of the proposed changes was included with the SGM notice package mailed to owners. The fact that the strata highlighted several proposed changes that it thought would be of particular interest to the owners does not mean that it failed to give notice to owners about the proposed changes that it did not highlight. I find that the strata gave the owners a reasonable opportunity to review the proposed bylaws and, in addition, met the notice requirements for an SGM set out in section 45 of the SPA.
32. The next consideration is the conduct of the SGM. Although the strata's past practice in dealing with bylaw amendments may have involved discussing and voting on each change individually, there is no requirement for this in the SPA.
33. The evidence contains an audio recording of a portion of the SGM. Parts of the recording are difficult to hear due to background noise and people talking over each other. The recording establishes that the strata council was very clear that the intention of the resolution was to repeal the entire set of bylaws and replace them with new, modernized bylaws. The strata council member who addressed this resolution

indicated that he had received and responded to a number of questions from owners before the SGM.

34. The recording demonstrates that the items that the strata felt would be significant to owners were presented in detail as these were the issues that were the subject of the most concern and inquiries by owners (such as the use of barbeques on balconies). The strata made several amendments to the wording of the proposed bylaws to reflect the owners' wishes.
35. Section 50(2) of the SPA says that, during an SGM, amendments may be made to the proposed wording of a resolution requiring a  $\frac{3}{4}$  vote if those amendments do not change the resolution substantially and are approved by a  $\frac{3}{4}$  vote prior to the vote on the resolution. Here, I find the amendments to the wording did not change the resolution substantially. I also find that these amendments were voted on as required by section 50(2).
36. It is apparent that the strata council made efforts to keep the discussion on-topic. There was a discussion about whether there had been enough time to address all the questions that the owners had about the proposed bylaws. One owner accused the strata of attempting to hide things and another said the strata was trying to "sneak thorough" the changes that were not being discussed in detail at the meeting. There was also a discussion about the fact that voting "yes" would result in all of the proposed changes being approved, and that owners could vote "no" if they wanted. A strata council member listed the agreed-upon amendments to the individual proposed bylaws attached to the resolution before proceeding to the  $\frac{3}{4}$  vote.
37. I disagree with Mr. Alani's suggestion that the strata somehow forced the owners to vote in favour of the resolution to change the bylaws. I find that Mr. Alani's comments about the owners' knowledge about the proposed changes, feelings about the process, and motivation for voting are speculative and not supported by the evidence. Even if some owners would have preferred additional time to discuss the proposed changes, it would have been open to them to vote against the resolution or abstain

from the vote if they wished. I find that the vote on the resolution to repeal and replace the strata's bylaws was valid.

38. Although Mr. Alani did request a hearing about the vote, the SPA does not give the strata council the authority to reverse a  $\frac{3}{4}$  vote passed by the owners. I agree with the strata's submission that the remedy for a person dissatisfied with the result of the  $\frac{3}{4}$  vote at the SGM would have been a demand for reconsideration under section 51 of the SPA. This section applies to situations where a  $\frac{3}{4}$  vote resolution is passed by persons holding less than 50% of the strata corporation's votes (as was the case here with approximately one-third of the strata lots represented). As no demand under section 51 was submitted, the vote on the resolution stands.

39. I find that there is no indication in the evidence that the strata acted in a way to deceive or mislead the owners about any aspect of the bylaw revisions, or in a way that involved any abuse of power. The fact that Mr. Alani disagrees with the result of the vote does not establish that the vote was invalid or unfair. I find that the owners exercised their democratic rights and approved the resolution to repeal and replace the bylaws in accordance with the SPA.

40. I would point out that according to section 120(1) of the SPA, the bylaws of a strata corporation are those filed at the Land Title Office. As noted above, the version of the bylaws filed at the Land Title Office on January 24, 2020 is missing several pages. Although the approval of the proposed bylaws at the SGM was valid, those portions of the bylaws that are not included in the filing are not in force.

41. Mr. Alani made submissions about whether there was a procedural issue with the approval of the SGM minutes at the subsequent AGM. I find that the evidence before me does not establish that the minutes were not approved but, even if they were not, this does not alter my conclusion.

### ***Are any of the Bylaws Unenforceable?***

42. Section 121(1)(a) of the SPA says that a bylaw is not enforceable to the extent that it contravenes the SPA.

43. Mr. Alani submits that the following bylaws contravene the SPA:

- a. bylaw 4(4)(aa) – prohibits the feeding of birds or animals, with the exception of hummingbirds, on strata lots or common property (CP),
- b. bylaw 4(4)(nn) – prohibits solicitation of occupants for any reason,
- c. bylaw 23(1) – places limitations on a tenant’s eligibility for membership on the strata council,
- d. bylaw 36(1) – allows the strata to charge costs associated with bylaw violations to a strata lot’s account, and
- e. bylaw 51(1) – requires owners to maintain insurance for their strata lots.

44. As discussed above, the version of the bylaws filed at the Land Title Office is incomplete. As the filed version does not contain bylaw 23(1), it is not in force. Accordingly, I will not consider it in my analysis.

45. Mr. Alani did not identify particular sections of the SPA that he says these bylaws contravene. Based on the evidence before me, and keeping in mind that Mr. Alani bears the burden of proof, I am unable to conclude that the identified bylaws contravene the SPA.

46. Mr. Alani raised a concern that bylaw 17(5) would interfere with an owner’s ability to sell the strata lot, which would make it unenforceable under section 121(1)(c) of the SPA. Bylaw 17 concerns approval for alterations to common property (CP). Bylaw 17(5) says that the strata will require, as a condition of approving such alterations, to agree to restore the CP to its former state on the sale of the strata lot. This requirement applies to only those owners who receive approval to alter CP areas, not the strata lot itself.

47. I disagree with Mr. Alani’s suggestion that the bylaw would require him to restore the entire strata lot to the condition it was in when built in 1977. If an owner alters a CP area such as a balcony, the requirement to restore would not extend past that area or

the state of the area at the time of the alteration. Given its limited application, I find that this bylaw does not interfere with an owner's ability to sell a strata lot.

48. I acknowledge Mr. Alani's view that the new bylaws are against the best interests of owners and decrease their property values. However, I find that the described bylaws do not contravene the SPA and are enforceable.

49. I dismiss Mr. Alani's claims about the bylaws.

## **CRT FEES AND EXPENSES**

50. Under section 49 of the CRTA, and the CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Mr. Alani was not successful, I dismiss his claim for reimbursement of tribunal fees. The strata made no claim for reimbursement, and I make no such order.

## **ORDER**

51. I dismiss Mr. Alani's claims and this dispute.

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Lynn Scrivener, Tribunal Member