



# Civil Resolution Tribunal

Date Issued: October 30, 2018

File: ST-2018-001134

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 588 v. De St. Remy et al.*, 2018 BCCRT 666

**B E T W E E N :**

The Owners, Strata Plan NW 588

**APPLICANT**

**A N D :**

Coulson McCrae De St. Remy and Brodie Delray De St. Remy

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Samuel. A. Hyman

## INTRODUCTION

1. The applicant, The Owners Strata Plan NW588 (strata), is a strata corporation existing under the *Strata Property Act* (SPA). The respondents Coulson McCrae

De St. Remy and Brodie Delray De St. Remy (owners) own strata lot 12 in the strata.

2. The strata wants the owners to reimburse it for security costs they say were necessary due to the owner's former tenant. In addition, the strata seeks payments of fines assessed to the owners for various alleged bylaw infractions. The strata also seeks an order that the owners employ a property management company in the future to oversee tenants. Finally, the strata asks that the owners be ordered to provide full information regarding prospective tenants in the future.
3. The owners say they are not responsible for any security costs incurred by the strata. They also say they were not advised of fines, and are not responsible for them. Finally, they say they should not be ordered to have a property management company employed.
4. The strata is represented by the strata council president. The owners are self-represented. The owners adopt each others submissions so I refer to them collectively below.
5. For the reasons that follow I dismiss the strata's dispute.

## **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. 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.
10. The strata makes various allegations about actions of the owners' tenant in the dispute notice. In the tribunal decision plan prepared after facilitation the parties agreed that the tenant had moved out. As a result no orders are now sought as against the former tenant. As the former tenant is not named in this dispute, I will simply refer to them as the former tenant.

## **ISSUES**

11. The issues in this dispute are:
  - a. Whether the former tenant misused the strata property?
  - b. Whether the owners are responsible for the costs of additional security in the building in the amount of \$15,095.50?;
  - c. Whether the owners must pay bylaw fines in the amount of \$1,200.00?;
  - d. Whether the owners should be ordered to hire a property management company in the future? ; and
  - e. Whether the owners should be required to provide full information regarding prospective tenants to the strata?

## **POSITION OF THE PARTIES**

12. The Strata says that as a result of the actions of the owner's former tenant they have incurred significant additional security costs that the owners should pay for. In addition, they say that the tenant and owners breached bylaws and are responsible for fines for misuse of the property grounds, and failure to provide a Form K under the SPA. The strata says that due to the owners' history with the tenant that they should be ordered to hire a property management company, and to provide full information regarding prospective tenants to the strata in the future.
13. The owners say that the strata's dispute is without merit. They say that the strata has failed to show that the former tenant misused the property. As a result, they ask that the dispute be dismissed.

## **BACKGROUND**

14. I have read all of the submissions and evidence provided, but refer only to information I find relevant to provide context for my decision. In particular, I note that I do not refer to significant portions of the owners' submissions as, for the reasons set out below I have found that the strata has not proven its claims on a balance of probabilities.

## **EVIDENCE & ANALYSIS**

15. Between August 2017 and March 2018 the strata alleges that the owners' former tenant was engaged in use of the property that was contrary to the bylaws, and potentially illegal.
16. At the strata's February 15, 2018 annual general meeting (AGM), the strata approved an expenditure of \$18,257.40 from the contingency reserve fund (CRF) to pay for a third-party security company for the prior year. In addition, a special levy in the amount of \$17,000 was approved to pay for the estimated costs of the third-party security company to provide for the safety of residents and prevention

of vandalism. Both resolutions were approved by all owners present at the meeting.

17. The bylaws applicable to this dispute were filed in the Land Title Office on April 7, 2016.

**Bylaw 3.0 states:**

- 3** (1) An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that:

- (a) causes a nuisance or hazard to another person,
- (b) causes unreasonable noise,
- (c) unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot
- (d) is illegal, or in contravention of any statute, ordinance, bylaw or regulation of any government authority, whether federal, provincial, local government or otherwise,
- (e) is contrary to a purpose for which the strata lot or common property is intended as shown expressly or by necessary implication on or by the strata plan,
- (f) contravenes any bylaw or rule of the strata corporation.

**3.2** Residents are responsible for the acts of their visitors.

18. The strata alleges that the owner's former tenant violated the bylaw above.

***Whether the former tenant misused the strata property?***

19. The strata submits the former tenant was engaged in illegal activity on the strata's common property and within the owners' own unit.

20. In support of their claim the strata submitted various reports from a third party security firm hired by the strata from August 2017 to May 2018. In addition they submitted complaints from various other owners in the strata and security footage provided from the security firm. The security footage and reports set out various comings and goings of the owners' tenant, including actions in the parkade, allowing people in the building and to and from the owners' strata lot. In some of the footage submitted the former tenant can be seen bracing open the entrance door to the building. The strata says that all of the activities were suspicious, and contrary to the strata's bylaws.
21. In October 2017 the strata received a complaint from another undisclosed owner in the strata, that alleges that the former tenant was allowing people into the building for the purpose of illegal activity. The owners and the strata management company exchanged emails about the allegations of misuse of the property by the tenant. The property management company advised the owners of the allegations, and the owners requested further evidence of it, upon which they would be agreeable to evicting the tenant.
22. In January of 2018 the property management company followed up with the owner by email to advise that security had observed further misuse of the property by the former tenant and a formal letter would follow.
23. On January 12, 2018 the strata management company on behalf of the strata sent a letter to the owners about the alleged activities of the tenant. That letter cited bylaw 3 as set out above. The strata stated that because of the security and tenant reports there was reason to believe that illegal activity was taking place.
24. The letter is noted to be a warning of the possible misuse of the property, and that if further misuse occurred, a fine of \$100.00 would be assessed. In addition, it requests a Form K under the SPA be given to the strata by January 31, 2018 failing which a fine would be assessed until it was received. The letter concludes by inviting the owners to respond or request a hearing with the council within 14 days of the letter.

25. I reviewed the security reports and captured pictures. The respondents do not deny that the footage captures their former tenant's comings and goings with various unknown persons from the building. I find that I am able to rely upon this footage as establishing activities of the former tenant.
26. However, I am unable to conclude from the footage alone whether the activities of the former tenant were contrary to the bylaws regarding the use of the property, and in particular the serious allegation of illegal activity. There is no clear violation of the strata bylaws, including bylaw 3. The activities observed in the photographs and reports are mostly of the security personnel observing the former tenant's comings and goings with various unknown parties. On one occasion the former tenant was observed to be jamming the building's main entrance door open.
27. The reports of the security company claim each observed activity was suspicious. However, if that were the case, I would expect reports of the police being called and some sort of formal report being prepared about that. Ultimately, while I acknowledge that the hours and comings and goings may give an appearance of something untoward, they do not show on a balance of probabilities that the former tenant in fact violated the bylaws or was engaged in any illegal activities.
28. In light of my findings above, I find that the evidence fails to show that the former tenant misused the property either in violation of the bylaws or for some illegal purpose.

**Whether the owners are *responsible* for the costs of additional security in the building in the amount of \$15,095.50?**

29. The strata asked that the owners pay for a portion of the expense relating to the resolutions approved at the February 2018 AGM. The owners paid their portion of the approved special levy, and the original costs of the security firm was paid from the CRF. However, as I have found above, I do not agree that the strata has proven the allegations against the former tenant. In addition, the strata has not pointed to any bylaw, or section of the SPA, nor am I aware of any, that would

allow the strata to charge back the special levy or expenditure from the CRF to the owners.

30. As a result of my conclusions above, I decline to make this order.

***Whether the owners must pay bylaw fines in the amount of \$1,200.00?***

31. Sections 132(2) and 132(3) of the SPA permit a strata to enact bylaws that set different fines for different bylaws, and how often fines may be imposed for continuing contraventions of the bylaws – provided that the maximum amount and frequency of the fine does not exceed the maximums set out in the *Strata Property Regulation* (regulations). I find that the amount of the fines and frequency of the fines set by the strata's bylaws in issue are consistent with the regulations.
32. Section 130 of the SPA permits a strata to levy fines against owners and tenants separately. Where a bylaw is alleged to have been breached by a tenant, only the tenant may be fined.
33. In this dispute, the strata made various allegations against the former tenant and the owner. The allegations against the former tenant and the fines assessed for those alleged violations cannot be levied against the owner. As there is no claim against the former tenant, for this reason and the reasons below I dismiss the claim for the bylaw fines that were assessed for the tenant's alleged misuse of the property. However, the fines assessed by the strata against the owners for the failure to provide a Form K requires further consideration below.
34. Section 135 of the SPA sets out the procedure to be followed by a strata when imposing a fine for breach of a bylaw. Strict compliance with section 135 of the SPA is necessary in order for the strata to collect fines. (See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449)
35. Before imposing a fine, section 135 requires that a strata must have: a) received a complaint; and b) given the owner written details of the complaint and an opportunity to answer, including a hearing if requested. The strata must also give notice, in writing, of the decision, as soon as reasonably possible. If the



contravention is alleged against a tenant, the strata must also give notice of the complaint to the tenant's landlord and the owner (presumably if these are different people). The strata must also give notice, in writing, of its decision to the "persons referred to in subsection (1) (e) and (f)," namely, the owner, tenant, and landlord, as applicable.

36. Once the strata has met the requirements of section 135, it may impose further fines or other penalties for continued contraventions of the same bylaw without having to go through the same exercise.

### ***Receipt of Complaint***

37. I am satisfied the strata received a complaint about the alleged activities of the former tenant in October of 2017 (as detailed above).

### ***Providing Written Particular of the Complaint Details***

38. I find that the strata initially provided written details about the complaint to the owners on October 5, 2017 through its property management company. The particulars of the complaint are clearly set out, including the bylaws the strata relied upon. The complaint details that a complaint had been received about the tenant's alleged illegal activity, propping the door of the building open, leaving their mail box unlocked, and buzzing residents numerous times at night because he did not have a key. However, the strata did not provide notice to the former tenant about these alleged infractions.
39. Due to the failure to comply with section 135, and by operation of section 130 as above, I find that any bylaw infractions by the tenant cannot be collected from the owners.
40. The strata also sent a letter dated January 12, 2018 as set above detailing further bylaw infractions, including the failure of the owners to provide a Form K.
41. Both letters of October 5, 2017 and January 12, 2018 set out that they are warning letters, and that if a further contraventions are noted, fines will be assessed.

42. The January 2018 letter also states that the owner must provide a Form K by the end of January or fines will be assessed.

***Reasonable Opportunity to Respond***

43. Both letters explained that the owners had 14 days to respond or request a hearing.
44. I find that the owner's had a reasonable period of time to respond to the complaint prior to fines being assessed.

***Right to Request a Hearing***

45. Both letters clearly provide the owners' with an opportunity for a hearing if so requested. I find that strata complied with this requirement.

***Written Notice of the Outcome***

46. After the October 5, 2017 correspondence, the next formal correspondence from the strata in evidence is dated January 12, 2018 with the additional warning about further bylaw infractions. The owners' evidence includes an email exchange dated May 14, 2018 where the proper manager states that the reasons for the fines would have been set out in monthly statements. The strata did not provide copies of these statements.
47. There is no evidence from the strata that they ever provided written notice that fines were accruing against the owners' strata lot after either the October 5, 2017 or January 12, 2018 letters. This does not comply with section 135 of the SPA.
48. I note that the strata provided evidence that they were in email communication with the owners after the October 5, 2017 letter, but started fining the owners in November 2017, as set out in the owner's balance sheet, without further notice.
49. I find that the strata failed to comply with section 135 of the SPA by not providing, as soon as feasible, written notice of the outcome of the allegations made in the October 5, 2017 and January 12, 2018 letters. In failing to do so they did not

provide notice that the strata had decided to impose fines, nor what the amount of those fines were.

50. I find that the strata has not met the requirements of the SPA to impose any fines, including those regarding the Form K. It is only after the strata had complied with the requirements of the SPA that they could impose fines. As a result, I find that the \$1,200 in bylaw fines, and any other fines associated with the October 5, 2017 and January 12, 2018 letters are invalid and must be set aside.

***Whether the owner's should be ordered to hire a property management company in the future?***

51. As I have found above, I do not agree that the strata has proven the allegations against the former tenant.
52. The strata has provided no other basis either under the SPA or in its bylaws to direct the owners to hire a property management company aside from the allegations about the former tenant. As a result I decline to make this order.

***Whether the owners should be required to provide full information regarding prospective tenants in the future?***

53. Although it is unclear why the strata wishes to have additional information on prospective tenants, see s. 141(1) of the SPA which, together with the use of the prescribed Form K, implies information on the tenants other than set out in the Form K, might be contrary to the SPA.
54. This does not mean that the owners, like any other residential landlords in a strata complex, are exempt from providing a Form K under section 146 of the SPA, it simply means that the owner's like all other residential landlords in a strata need not pre-vet tenants with the strata. I note that the strata discussed this in their February 2018 AGM and advised the attendees that they cannot control who owners choose as tenants. I agree.
55. As a result of my findings above I decline to make the order sought by the strata.

## **TRIBUNAL FEES AND EXPENSES**

56. The strata seeks an order that the owners reimburse it for its tribunal fees in the amount of \$225.00.
57. Pursuant to section 49 of the Act, and the tribunal's rules, the tribunal generally orders an unsuccessful party to reimburse the successful party's tribunal fees. The owners were entirely successful in this dispute. As a result, the strata is not entitled to be reimbursed their tribunal fees.

## **DECISION AND ORDERS**

58. I order that the strata's dispute is dismissed.

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Samuel A. Hyman, Tribunal Member