



Civil Resolution Tribunal

Date Issued: March 6, 2019

File: SC-2018-007520

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fenney v. EE Management Corp.*, 2019 BCCRT 268

B E T W E E N :

Paul Fenney

APPLICANT

A N D :

EE Management Corp.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant owned a unit in Edgewater Estates, which he describes as a “strata-like” partial interest property in North Vancouver, owned by the respondent EE Management Corp (EE). The applicant asks to be refunded \$3,397.74 which he says EE wrongly deducted from the proceeds of sale of his shares in the property. He says the \$3,397.74 relates to legal advice obtained by EE, arising from behavior

by a tenant the applicant's unit. The applicant says EE is not entitled to those funds and should reimburse him.

2. EE says the applicant's tenant was the subject of valid complaints about noise, having too many pets in the unit, and other disruptive behavior. The respondent says that under its User Agreement with the applicant, the applicant is responsible for paying the actual legal fees incurred by EE in enforcing its terms. The respondent asks that the dispute be dismissed.
3. The applicant is self-represented. EE is represented by principal or employee David Nostwold.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal 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.
5. 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.
6. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issue in this dispute is whether EE must reimburse the applicant for the claimed \$3,397.74?

EVIDENCE AND ANALYSIS

8. The applicant was the owner of unit 208 in the respondent-owned property, Edgewater Estates.
9. It is undisputed, and I find, that the owners of Edgewater Estates are governed by the contractual commitment laid out in the User Agreement. The property is not a strata corporation and therefore not subject to the *Strata Property Act*.
10. Based on the respondent's evidence, which the applicant did not contest on this point, I find that part 17.4 of the User Agreement provides that an owner is responsible for paying the legal fees, taxes and disbursements incurred by EE as a result of EE enforcing the terms of the User Agreement as against the unit owner, in this case the applicant. I find that this contractual obligation applies to the applicant, who signed the User Agreement when he purchased his unit.
11. On April 3, 2017, the applicant rented unit 208 to ME.
12. In June 2018, EE became aware that there was a new occupancy in unit 208. An owner is required to complete a Form K regarding any new tenant, within 1 day of a new tenancy. The applicant had yet to do so. EE requested that the applicant complete and return a Form K.
13. On June 29, 2017 EE received a completed Form K from the applicant. The Form K bears the applicant's signature and, I find, that it expressly imposes responsibility on the unit owner for a tenant's violation of the User Agreement. As well, it says that if EE incurs costs for remedying a contravention, the owner is responsible to pay those costs.

14. From June 2017-July 2018, EE received a series of complaints about noise and other disturbances caused by the unit 208 tenant.
15. EE imposed some fines for the conduct that it found to violate the User Agreement. EE also attempted to have the applicant evict ME.
16. The issue before me is whether the applicant was contractually obligated to pay the legal expenses incurred by the respondent in trying to enforce the User Agreement. I find that the applicant agreed to pay those legal expenses under the User Agreement, and that he also agreed to pay any costs incurred by EE associated with trying to remedy a contravention of the User Agreement, due to the conduct of ME, under the Form K.
17. The applicant argued that because he contested the fines imposed on him, and may have prevailed in some of those contests, he should not be responsible for EE's decision to take legal advice and use a lawyer for some of its correspondence with him. I disagree. The User Agreement provides that he will pay EE for its legal fees, taxes and disbursements incurred due to enforcing the terms of the User Agreement against him. On a strict interpretation of the User Agreement, it does not matter whether EE was right in terms of the position it took in doing so, only that it incurred the fees.
18. Having said that, I find it was an implied term of part 17.4 of the User Agreement that EE act reasonably in incurring legal fees.
19. It is not necessary for me to itemize all of the complaints against the applicant's tenant, nor to weigh them against the applicable parts of the User Agreement. Suffice it to say, while for the pet-related complaints the owner may have had some arguments to contest the fines, the noise complaints were from multiple sources, on many different dates, and describe intrusive noise from the applicant's unit. In considering the noise and other complaints and, given the correspondence between EE and the applicant, I find that the evidence establishes that EE acted reasonably to obtain legal advice as they did.

20. Based on the invoices filed in evidence, which detailed EE's lawyer's time spent on the dispute with the applicant, I find that the \$3,397.74 was properly deducted from the proceeds of the applicant's sale.

21. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. The respondent did not pay tribunal fees and so I make no order about them. I dismiss the unsuccessful applicant's request for reimbursement of tribunal fees.

ORDER

22. I dismiss the applicant's claims and his dispute.

Julie K. Gibson, Tribunal Member