



Civil Resolution Tribunal

Date Issued: May 27, 2019

File: SC-2018-008032

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vo v. The Owners, Strata Plan BCS 3444*, 2019 BCCRT 639

B E T W E E N :

Phi Vo

APPLICANT

A N D :

The Owners, Strata Plan BCS 3444

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, Phi Vo, is a former owner in the respondent strata corporation, The Owners, Strata Plan BCS 3444 (strata). In this small claims dispute, the applicant says the strata improperly demanded payment of \$5,940 in fines, which the applicant paid so he could obtain a Form F in order to complete the sale of their

strata lot, strata lot 157 also known as unit 2004. The applicant claims \$5,000, the maximum allowed under the Civil Resolution Tribunal (tribunal) small claims' monetary jurisdiction.

2. The strata denies liability and says the \$5,000 was part of an outstanding balance for fines assessed against the unit 2004 tenant, under the strata's bylaws. The strata says it followed the required procedure under the *Strata Property Act* (SPA) for giving notice of the complaints and an opportunity for a hearing, which was not requested before a decision was made to impose fines. The strata says under the SPA it was entitled to collect the fines from the applicant owner.
3. The applicant is self-represented and the strata is represented by a strata council member. For the reasons that follow, I dismiss the applicant's claims.

JURISDICTION AND PROCEDURE

4. These are the tribunal's formal written reasons. The tribunal has jurisdiction over small claims brought under section 118 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

6. 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.
7. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

8. The issue is whether the respondent strata properly collected bylaw fines from the applicant former owner, which had been assessed against the applicant's tenant, and if not, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the burden of proof is on the applicant, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision. While the applicant noted a variety of concerns about the strata's governance, those are not before me in this small claims dispute and I will not address them in any detail.
10. The strata is a high-rise building located in Surrey, BC with about 180 units. The applicant owned unit 2004 between about February 28, 2018 and September 7, 2018.
11. On around May 15, 2018, the applicant rented out unit 2004 to tenants. The fines at issue in this dispute relate to the tenants' conduct. When the applicant sold unit 2004 on July 30, 2018, they needed a Form F under section 115 of the SPA to show the buyer the applicant owner did not owe money to the strata. September 7, 2018 was the completion date for the applicant's sale.

12. The applicant agrees that on July 26, 2018 they received 2 notices of complaints containing multiple alleged bylaw contraventions, which was 4 days before they signed an offer to sell unit 2004. The applicant says they received a third notice of complaint on August 3, 2018, also containing multiple bylaw contraventions, though the strata says the applicant was notified of them on August 1. The parties agree that the applicant's tenants moved out on July 27, 2018.
13. On September 11, 2018, the strata emailed the applicant with its September 5, 2018 "Notices of Decision", that followed its August 28, 2018 strata council meeting.
14. On September 21, 2018, the applicant asked the strata for a hearing, but at that point he was a former owner and the decision had already been made. The time to request a hearing was after the strata sent the notice of complaint to the applicant. By his own evidence, the applicant says at that time he chose not to pursue a hearing because he was selling his unit.
15. The applicant did not clearly describe what the fines at issue were for. I find it is not necessary to set out all of the detail. Broadly speaking, they were for moving into the unit without notice to the strata, using elevators without pad protection, using the firefighter's elevator, failing to pay a mandatory move-in fee of \$100, causing damage to the common property on numerous occasions by using a bicycle and a scooter in a prohibited fashion, and smoking on common property.
16. As set out in the strata's Notice of Complaint letters (which on their face were addressed to unit 2004 and note they were sent by email and to the street address), the frequency of the tenant's infractions varied between near daily or weekly, beginning on May 16, 2018. The first notice of complaint, dated July 26, 2018, listed 5 separate infractions occurring on May 16. The second notice of complaint, dated August 1, 2018, listed 26 separate infractions occurring in June and between July 1 and 10, 2018. There are a few instances where the same conduct occurred more than once on the same day, such as improperly using a visitor's parking stall twice on June 4 and failing to supervise the parkade gate's closure twice on June 6. The third notice of complaint is also dated August 1, 2018, with 18 infractions occurring

between May 27 and July 27, 2018. These relate to using a bicycle and scooter in the lobby, smoking on common property, using elevators improperly, all contrary to the strata's bylaws.

17. The strata's bylaw 23(1) states the strata may fine up to \$200 for each bylaw contravention and up to \$50 for each rule contravention. Bylaw 23(3) states that fines must be added to the owner's account and are due and payable on the first day of the month following assessment. The strata's letters setting out the Notice of Complaints all set out the proposed fines being considered and gave the opportunity to respond to the complaint, as required by section 135 of the SPA.
18. The thrust of the applicant's dispute is that he says the strata should have given him notice of the tenant's breaches at the time they occurred, so he could stop the behavior. Yet, there is nothing in the SPA or bylaws that says the strata was required to do so. In any event, I find the passage of time, between the infractions and the delivery of the notices of complaint, was not unreasonable.
19. The applicant says the strata's building manager did not follow the rules for issuing fines or "repeat fines", which I infer refers to fines for continuing contraventions under the SPA. However, the strata says none of the fines were for continuing or repeated contraventions. I have reviewed the descriptions of the complaints in the "notice of complaint". While similar conduct led to a separate fine, the evidence does not show the strata relied on the 'continuing contravention' provisions to issue additional fines.
20. I turn to the first underlying issue: whether the applicant has proved his tenant did not breach the bylaws as alleged in the notices of complaint. I find he has not done so.
21. The applicant speculates, "or even, I may suspect these fines are not true, and may be made up by the building manager". In their reply submission, the applicant states, "I did not live there so I did not know if my tenant did all mistakes or the building manager made up all fines". The applicant says the strata manager was not

transparent in other ways and, “so who know if the building manager made up all stories to give fines to the tenant when my tenant had left”. I find this is speculation about improper motives without any reasonable foundation in evidence.

22. The applicant says he called his tenant after they left and the tenant denied the alleged misconduct. However, the applicant did not provide a statement from the tenant. Further, the applicant had emailed the strata on August 7, 2018 and said that he asked his tenant on July 27, 2018 to stop breaking the strata’s rules and that the tenant said they “would discuss with me further” the next day, but that the tenant “escaped” the next day. In the same August 7, 2018 email to the strata, the applicant wrote “everything that the manager sent to me I believe they are correct” but asked for confirmation given some infractions appeared to be repeats. I draw an adverse inference against the applicant for failing to provide evidence from the tenant. I find the applicant has not proved his tenant did not commit the bylaw infractions that led to the fines in issue. Indeed, the applicant’s August 7, 2018 email to the strata indicated the applicant took responsibility for his tenant’s misconduct, but wanted the strata to negotiate with him because his tenant “ran away” the day after the notices were received.
23. Next, based on the evidence before me, I find the applicant has not proved the strata improperly issued fines against the tenant. The fact that the tenant had moved out on July 27, 2018 does not mean the strata cannot issue notices about conduct that occurred prior. It is undisputed the strata gave the 5 notices of complaint it had received to the tenant and applicant owner on July 26 and August 1, 2018.
24. The strata says that in every case complied with the procedural requirements of section 135 of the SPA in terms of giving the applicant and their tenant notice of the complaint and an opportunity to be heard. The applicant admits he did not ask for a council hearing, saying that this was because he was going to sell unit 2004 and a hearing process would take too long. I find the applicant has not proved the strata failed to comply with section 135 of the SPA.

25. The strata's August 28, 2018 council meeting minutes set out their decision with respect to the fines at issue in this dispute. Sometimes the maximum fine of \$200 was levied, in other cases, a smaller amount. The amount of each assessed fine falls within the strata's bylaws' limits. While the overall amount of fines, \$5,940, is high, the applicant bears the burden of proof in this dispute. He has not shown the amount was excessive as he has not addressed the substance of the misconduct in any way. The applicant chose not to pursue a council hearing to address the amount of the fines, despite being given the clear opportunity to do so.
26. Next, was the strata entitled to collect the fines from the applicant for the tenant's bylaw breaches? The answer is yes, for the reasons that follow. On September 5, 2018, the strata wrote the applicant and advised that in order to receive the Form F the applicant needed to sell unit 2004, the applicant had to pay outstanding strata fees plus \$5,940 in fines registered against unit 2004's account. I find the strata was permitted to require the applicant to pay the tenant's fines. I say this because sections 130 and 131 of the SPA states that while the strata may fine the owner for the owner's breaches and fine the tenant for the tenant's breaches, the strata can collect all debts from the owner. In other words, the strata cannot fine the owner for the tenant's breaches, but the strata can collect the tenant's fines from the owner (here, the applicant). The strata is also correct that the owner could have pursued his tenants for the debt, given section 131(2) of the SPA. That section says that a strata may collect a fine from either the tenant or the strata lot's owner and if the owner pays some or all of the tenant's fines, the tenant owes the landlord or owner for the amount paid.
27. Given my conclusions above, I find the applicant's claims must be dismissed. In accordance with the Act and the tribunal's rules, I find the unsuccessful applicant is not entitled to reimbursement of any tribunal fees or dispute-related expenses.

ORDER

28. I dismiss the applicants' claims and this dispute.

Shelley Lopez, Vice Chair