



Civil Resolution Tribunal

Date Issued: June 12, 2017

File: ST-2016-00400

Type: Strata

Civil Resolution Tribunal

Indexed as: *S.M. v. The Owners, Strata Plan ABC*, 2017 BCCRT 23

BETWEEN:

S.M.

APPLICANT

AND:

The Owners, Strata Plan ABC

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

- 1) The applicant owner S.M. (the owner) wants a \$150 fine waived that the respondent strata corporation, The Owners, Strata Plan ABC¹ (the strata), imposed following a May

¹ As noted in my order at the end of this decision, in the copy of this decision made available to the public, I have anonymized the parties to protect the privacy and identities of the applicant owner's family members. Under section 48.1 of the Act, in resolving this dispute the tribunal may make one or more of the following orders.

2016 vandalism incident involving a member of the applicant's family. The owner also seeks reimbursement of tribunal fees. While other claims were advanced initially, at the time this dispute was referred to me for adjudication, she had withdrawn her other claims.

JURISDICTION AND PROCEDURE

- 2) 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. It must also recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
- 3) 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.
- 4) The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I heard this dispute through written submissions because I find there are no significant credibility issues or other reasons requiring an oral hearing.
 - a) order a party to do something;
 - b) order a party to refrain from doing something;
 - c) order a party to pay money.

ISSUES

- 5) The issues in this dispute are:
 - a) Did the strata follow the appropriate procedure when it imposed a \$150 fine against the owner's strata lot?

- b) Is the owner entitled to reimbursement of the \$125 in fees paid to the tribunal?

BACKGROUND AND EVIDENCE

- 6) I have only set out the evidence and submissions below that relate to the issues arising in this decision. Apart from two video clips, all of the evidence was provided by the applicant.
- 7) Excerpts from the strata's bylaws and rules include the following:
 - a) *Bylaw 4.1*: A resident or visitor must not cause damage to the common property.
 - b) *Bylaw 27.1*: The strata may fine an owner \$100 for each bylaw contravention and \$50 for each rule contravention.
 - c) *Bylaw 27.2*: If the council determines in its discretion that a resident is in repeated contravention of any bylaws or rules, the council must levy fines and those fines shall be immediately added to the strata fees for the strata lot, payable in the next month with the strata fees.
 - d) *Bylaw 28.1, 'Continuing contravention'*: Except where specifically stated otherwise in the bylaws, if an activity that constitutes a contravention continues, without interruption, for longer than 7 days, a fine may be imposed every 7 days.
 - e) *Rule 'Damage, Vandalism and Theft'*: No resident or guest of a resident may deliberately cause willful damage or vandalism to any strata property, and any person in violation will be fined (the Rule).
- 8) At this point, a brief chronology is helpful:
 - a) *July 2015*: the strata wrote the owner about an April 2015 incident of vandalism by the owner's spouse to the parkade elevator lobby door, which the strata noted was contrary to the Rule and bylaw 4.1 (misstated in the letter as bylaw 4.2). The strata stated the letter was a warning that any incidents of a "similar nature" caused by any member of the owner's household would result in a fine being levied against her strata lot.

- b) *June 19, 2016*: Council meeting minute states council “decided to assess a fine” against the owner for a “repeated bylaw violation”, noting the owner had received a warning letter “regarding the first incident of the same type of bylaw violation within the last year”. No particular bylaw or rule is mentioned.
 - c) *June 21, 2016*: The strata wrote the owner that the May 2016 vandalism incident by another member of the owner’s family had “come to the attention of the strata council”: deliberate spraying a liquid into an electrical outlet, into the surveillance camera, into the fire safety panel, into the fire alarm pull station, onto the strata’s notice board, into owners’ individual mailboxes, and onto the carpeted lobby floor. The letter stated this was a “repeated violation” by a registered resident of the owner’s strata lot and in violation of bylaw 4.1 and the Rule. Noting a July 2015 warning of the consequences of repeated contraventions, the strata advised it had levied a bylaw fine of \$100 and a \$50 rule violation fine, for a total of \$150. The letter concluded with an invitation to contact the strata council if the owner had any questions or if she wished to discuss the matter further. This letter did not make a request for payment.
 - d) *August 14, 2016*: The strata held a council meeting at which the owner attended to discuss her request to have the fines levied against her strata lot waived. The strata council minutes reflect the owner’s attendance and her request for reconsideration of “a repeated bylaw and rule violation”. The minutes state the council did not find reason to reverse their original decision to issue a fine for the contravention.
 - e) *August 15, 2016*: The strata wrote the owner and advised that following the hearing, the \$100 Bylaw 4.1 fine and \$50 Rule contravention fine would not be waived. The letter demanded payment of the \$150 by September 1, 2016, as per bylaw 27.2.
- 9) I have reviewed the videos provided by the strata (there were 3 clips, but only 2 had anything visible). Of the two visible clips provided, I found them to be very grainy, in part because the camera surface appeared to be partly covered with water. At best I could

see two people moving around through the lobby, at times with something in their hands.

POSITION OF THE PARTIES

- 10) The applicant wants the strata to waive the \$150 in fines it imposed for acts of vandalism. She says a waiver is appropriate because the strata imposed the fine before receiving a complaint and giving her the particulars and a reasonable opportunity to answer it, as required in section 135 of the *Strata Property Act* (SPA).
- 11) The strata says through its June 21, 2016 letter it gave the owner ample opportunity to discuss the issuance of a fine for a repeated bylaw contravention, as required by section 135 of the SPA. The owner immediately accepted the invitation to discuss the matter and a hearing was scheduled for August 14, 2016 at which the owner attended. The next day, the strata wrote the owner the fine would not be waived and demanded payment.

ANALYSIS

- 12) First, nothing turns on the grainy videos provided by the strata. I say this because the owner has not disputed the nature and scope of the vandalism the strata alleges occurred in either April 2015 or May 2016.
- 13) In particular, the applicant's only remaining claim is that when the strata imposed the fine it failed to follow the proper procedure under section 135(1)(a), (d), (e) and (3) of the SPA. She argues that the strata fined her before holding the hearing, when section 135 requires that she has the opportunity to be heard before the fine is levied.
- 14) As for the procedure to be followed when there is a complaint and in issuing fines, the relevant provisions of the SPA state (my bold emphasis added):
 - a) A strata may fine an owner to enforce a bylaw or rule contravened by the owner or occupant of the strata lot (sections 129 and 130).
 - b) The strata must not "impose a fine" for a bylaw or rule contravention unless the

strata has received a complaint about it and given the owner the particulars in writing and a reasonable opportunity to answer the complaint (section 135 (1) (a), (d), and (e)).

- c) Once the strata has complied with section 135 “in respect of a contravention of a bylaw or rule”, it may impose a fine for a **continuing contravention** without further compliance with the section (section 135 (3)).

15) I am mindful of the tribunal’s mandate, and in particular to recognize ongoing relationships between parties. I find that the 2015 vandalism incident, an isolated event a year prior, does not qualify as a “continuing contravention” within the meaning of both the strata’s bylaw 28.1 and section 135 of the SPA. The strata’s bylaw 27.2 that references “repeated contravention”, which is not necessarily the same thing as “continuing contravention”, still must be enforced in compliance with section 135 of the SPA. In other words, even though the 2015 vandalism incident occurred, section 135(1) must still be complied with in any fines for the May 2016 incident.

16) I turn then to the May 2016 vandalism incident. The strata states that it received a complaint, a requirement set out in section 135(1)(d). The owner has not particularly disputed that assertion, which perhaps is not surprising given the particulars of the vandalism complaint detailed in the strata’s June 21, 2016 letter. There is no requirement for a strata to produce a written complaint or to identify who made it. Based on all of the evidence before me, I find that the strata received a complaint about the May 2016 vandalism incident and that in its June 21, 2016 letter to the owner it provided written particulars of it and a reasonable opportunity to answer it.

17) The only issue in this dispute then is that in its June 19, 2016 council minutes and June 21, 2016 letter, the strata stated that it had imposed fines while at the same time inviting the owner to respond. The owner then asked to be heard and the August 2016 council meeting was held, following which the strata issued the letter giving its written decision not to waive the \$150 fine and to demand payment.

18) In my view, the strata’s June 21, 2016 letter stating fines had already been levied did not comply with section 135 of the SPA as required. The strata should have provided

the owner with the opportunity to be heard before imposing the fines for the May 2016 incident.

- 19) However, in *Cheung v. The Owners, Strata Plan VR1902*, 2004 BCSC 1750, the court held that section 135 of the SPA is a procedural section. I agree. In that case, like here, the strata imposed fines before an opportunity to be heard was given. The strata in the Cheung case then reversed the fines, held a hearing, and then imposed fines. The court held that while section 135 was not initially complied with, the irregularity was rectified prior to the imposition of the fines ultimately imposed.
- 20) I find that the scenario in Cheung is essentially what has occurred in this case. Here, the strata sent a letter detailing the complaint and stated it had levied the fines. While the fines were not expressly reversed, the strata did not demand payment initially and instead invited the owner to make contact if she had any concerns. She did, and the hearing was held. After the hearing, the strata then stated it would impose the fines and at that point demanded payment. Like in Cheung, I find here the irregularity in the section 135 process was corrected by the time the strata sent its August 15, 2016 letter.
- 21) Finally, I have found above that there was no “continuing contravention” within the meaning of the SPA and bylaw 28.1. I do note that in its August 15, 2016 letter, in demanding payment the strata referenced bylaw 27.2, which as noted above deals with “repeated” violations. While arguably not strictly relevant to whether the section 135 process was followed, I find that it was not inappropriate for the strata to demand payment as per bylaw 27.2. I say this given that by August 15, 2016 the section 135 process had been followed, and, because it was not unreasonable for the strata to treat the May 2016 incident as a “repeated violation” given the July 2015 incident. In any event, the material point in this decision is that the August 15, 2016 letter confirms that the violations were of bylaw 4.1 and the Rule, and the fines then imposed for those violations followed the hearing with the owner. In summary, the strata ultimately complied with section 135 and thus the owner’s claim cannot succeed.

DECISION AND ORDER

- 22) The owner’s claim that the fines should be reversed on the basis that section 135 was

not complied with must be dismissed. I will not order that the fines be waived. In light of this conclusion, the owner is not entitled to reimbursement of tribunal fees. Finally, as the strata did not make a counterclaim for an order that the owner pay the \$150 fines, I have not made that particular order.

23) I order that the applicant's claims are dismissed.

24) I further order that the public version of this decision anonymize all parties, to protect the privacy and the identities of the applicant owner's family members.

Shelley Lopez, Vice Chair