Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Biddle v. The Owners, Strata Plan NWS 1670*, 2017 BCCRT 34

B E T W E E N :

Patricia Biddle

APPLICANT

A N D :

The Owners, Strata Plan NWS 1670

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Maureen E. Baird

INTRODUCTION

1) The applicant, Patricia Biddle (the applicant), owns a strata lot in a strata corporation known as The Owners, Strata Plan NWS 1670 (the strata).

2) The applicant asks the Civil Resolution Tribunal (tribunal) to set aside a statement in the amount of $11,000 delivered to her by the strata, on the basis that the amount is not owing or is unproved or unfair. The applicant also asks the tribunal to award damages for mental distress for the conduct of the strata council in relation to the events leading up to and subsequent to the delivery of the $11,000 statement as well as an order that the strata communicate in writing directly with her and not her tenant in the future. The applicant asks for an order that the strata provide written confirmation that it will no longer "bully or harass" either her or her tenant. The applicant also asks for reimbursement by the strata of the $250 tribunal fees she has paid.

JURISDICTION AND PROCEDURE

3) These are the formal written reasons of the Civil Resolution Tribunal. The tribunal has jurisdiction over strata property claims brought under 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.

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 that there are no significant issues of credibility or other reasons that might require an oral hearing.

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 section 48.1 of the Act and tribunal rule 121, 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.

7) The applicant also requested an order that the strata not make allegations of bylaw infractions against her tenant without evidence and an order that all notices of Council Meetings, Annual General Meetings and Special General Meetings be mailed to the applicant's home address. The tribunal issued a Consent Resolution Order on May 1, 2017 establishing a procedure for delivery of notice of any alleged bylaw infraction to the applicant through the property management firm together with a summary of the alleged bylaw infraction and any evidence it received. In addition, the strata directed the property management company to mail meeting notices to the applicant's home address.

ISSUES

8) The issues in this dispute are:

   a) Is $11,000.00, or any amount, owed by the applicant to the strata?

   b) Is the applicant entitled to an award of damages for mental distress arising from the conduct of the strata?

   c) Is there a remedy available to the applicant for any improper conduct of the strata?

   d) Should the strata reimburse the $250 tribunal fees paid by the applicant?

BACKGROUND AND EVIDENCE

9) The strata in this case is a 30 unit complex which has an age restriction bylaw so that it is occupied primarily by persons over 45 years of age.

10) The applicant is over 80 years old. She does not live in the strata lot, suite 207, which has been occupied by her son since 2012. The applicant's son is referred to in the evidence of both parties as a tenant and I will refer to him either as the applicant's son or as the tenant in these reasons.

Facts which are not in dispute

11) In the period between the Fall of 2012 and November, 2014 the strata utility bills experienced an increase attributable to increased residential water use. Strata lots are not individually metered for water consumption.

12) In February 2014, the plumbing company regularly used by the strata was called in to investigate complaints about delivery of hot water to strata lots. The plumbing company provided a letter stating that between the Fall of 2012 and November, 2014 it had not been called upon to attend to any major leak or water loss in the building. That letter made reference to a graph indicating between 80 – 200% increase in water consumption during that period. It also provided data on average household use and average use for a 30 unit condominium building.

13) In November, 2014 the strata council president began to monitor temperature changes in the strata's hot water tank. On the afternoon of November 15, 2014, he was monitoring the temperature and saw that in the space of one hour the temperature in the hot water tank had dropped by at least 10 degrees. This caused him to go around the parkade to feel the water pipe stacks servicing the various suites. His evidence is that the pipe stack which services suites 107, 207 and 307 was the only one which was hot and which had water flowing. The strata president lives in suite 307. The applicant's son lives in suite 207 and a long term owner resides in suite 107.

14) At the time of this monitoring on November 15, 2014, the applicant's son was walking through the parkade. The strata president asked him if he was running the water in his unit. The answer was no.

15) In the Spring of 2016 the strata president revisited the issue of the water usage increase and performed certain calculations from which he concluded that the increase in water usage was caused by the applicant's son running hot water down the drain.

16) By letter dated September 1, 2016 addressed to the applicant's son, a lawyer representing the strata demanded payment of $11,000 for loss and harm to the strata arising from alleged nuisance and breach of the strata bylaws. The $11,000 was said to compensate the strata for the increase in municipal water and sewage charges and extra cost of gas to heat the water as well as unnecessary wear and tear on the boiler system of the strata. The letter said that if terms were not agreed that court proceedings for damages and an injunction could be commenced against the applicant's son. The letter was not copied to the applicant.

17) The applicant contacted the lawyer for the strata corporation asking for details of the $11,000 claimed. The lawyer did not respond.

18) The October 12, 2016 strata council minutes record that a demand letter dated September 1, 2016 had been sent from a lawyer representing the strata to the applicant's son demanding "reimbursement of $11,000". The minutes also record that a demand letter was sent to the estate of the owner of the unit including an invoice in the amount of $11,000 charged back to the unit in question. The applicant disputes this last statement because after she learned of the demand letter to her son, she requested an invoice from the strata detailing the basis for the $11,000 amount demanded. On November 3, 2016 the applicant received a one page statement from the strata's property management company.

19) The statement the applicant received on November 3, 2016 is dated October 26, 2016 (the statement). The description on the statement is:

INV #224. Orig. Amount $11,000.00

Compensation for extraordinary water usage Aug/12 – Nov/14 per Bylaw 4.4

Bylaw Infraction/Fine $11,000.00

20) The applicant requested a copy of invoice #224 from the strata management company but never received it. The applicant asked the strata to provide proof to support the claim that it was owed $11,000. No independent documentary support was ever provided by the strata. No statement as to how the $11,000 amount was calculated was ever provided to the applicant. The applicant used the *Freedom of Information and Protection of Privacy Act* to obtain the strata utility bills for the period in question.

21) On November 26, 2016 the applicant submitted her application to the tribunal.

22) The first response the applicant received to her request to the strata to explain the basis for the $11,000 charge was an email dated November 30, 2016 from the strata president. That letter sets out, in general terms, the theory of the president about the source of the water use and his approach to calculation. It does not provide a detailed calculation of the $11,000 figure.

23) The applicant provided to the tribunal an email she had received from an Engineering Technician, Water, at the municipality in response to a question she had asked about how an $11,000 bill could occur between June 2012 and November 2014. The engineering technician responded that ".. a toilet running with the flapper wide open can use 25,000 litres a day – that is approximately $45.00 per day for water and sewer. Looking at the data for your building the overage (above the daily average) was approximately 2-10+m3/day…Since the leak went over 2 years, it can very easily run to $11k.". Another employee of the municipality said that there was no way to determine water usage for individual units as things are currently structured at this building.

24) Prior to the September 1, 2016 demand letter, and the delivery of the statement to the applicant on November 3, 2016, there had been no communication between

the strata and either the applicant or the applicant's son in respect of any investigation conducted by the strata president into water usage. At no time did the strata deliver to the applicant or the tenant particulars of any complaint or any alleged contravention of bylaw 4.4 or any bylaw by the tenant. No hearing was held prior to the demand letter or the delivery of the statement.

Other evidence

25) The calculations done by the president of the strata are based largely on his charting of temperature decreases in the strata hot water tank in February and November, 2014 and in particular on November 15, 2014, the afternoon that he asked the applicant's son if he was running water in his suite. The strata president says that he did not believe the tenant's response that he was not running water in his suite. The strata president believed that the temperature drop in the strata hot water tank that he had charted was caused by the tenant running hot water down the drain for long periods of time. Nothing was said to the tenant or to the applicant in November, 2014.

26) In the various correspondence submitted, the strata president stated his opinion that the excess water usage ended immediately following his questioning of the tenant on November 15, 2014.

27) Nothing further occurred until the Spring of 2016. In an email to the applicant of November 30, 2016, the strata president says that in the Spring of 2016 he remembered that he had "..caught [the tenant] running his water" in 2014 and that caused the strata president to go back and review what he had seen in November 2014. The strata president used data from the municipality to determine that in February, 2014 there was an excess of 2700 gallons of water daily. That email also contains the comment that "..The fiscal year 2013/14 showed a marked increase in re-circulating line leakages, and boiler problems. February 2014 was the worst.".

28) The strata provided a timeline detailing complaints it said it had received about the applicant's son between July 26, 2012 and November 26, 2014 unrelated to the water usage issue.

29) The strata provided a statement from two of the owners saying that in November, 2014 they had seen the charting of the hot water tank temperature done by the strata president. One of these owners added that in the latter part of October (no year stated) he had witnessed water running in the pipe in the garage that services suites 107, 207 and 307 for over an hour. Another owner provided a statement that on November 15, 2014 she felt the water stack of units 107, 207 and 307 and felt it to be very warm in comparison to two other water stacks that had felt cold.

30) The applicant described health issues she and her son have experienced since the delivery of the demand letter from the strata lawyer. No medical information was provided to the tribunal.

31) No evidence was received from the owner of suite 107 about water use during the relevant time. No evidence was received from the applicant's son.

POSITION OF THE PARTIES

32) The applicant says that there is no proof that the actions of her son were the cause of the $11,000, or any, loss claimed by the strata. The applicant points to the fact that there is no expert or independent assessment or opinion confirming the calculations done, or method used, by the strata president, which the applicant does not accept. Further, the applicant says that the strata president did not investigate any other possible source of the leakage other than by the applicant's son, who denied that he was running water on November 15, 2014. The applicant says that the strata president decided in November 2014 that the source of any excess water use was the applicant's son and that was why he did not investigate any other source. The applicant relies on the evidence from the municipal engineering technician as proof that other sources were possible. The applicant says that the strata is using the alleged water misuse as a method of forcing the applicant's son to move out. The applicant says that the manner in which she has

been treated amounts to bullying and harassment, which has caused her and her son to suffer mental distress.

33) The position of the strata is that it has proved that the excess water use and charges were the result of a deliberate act of the applicant's son. The strata says that any health or mental anxiety that was suffered by the applicant was as a result of defending her son. The strata says that at all times the applicant was treated with respect.

ANALYSIS

Is $11,000, or any amount, owed by the applicant to the strata?

34) The statement describes the $11,000 charge as both "compensation for extraordinary water usage Aug/12 – Nov/14 per Bylaw 4.4" and "Bylaw Infraction/Fine $11,000.00". The demand letter to the tenant from counsel for the strata describes the $11,000 as compensation for a breach of the bylaws of the strata which has caused loss and harm to the owners including the significant increase in municipal charges for water and sewage use, extra cost of gas to heat the water, and unnecessary wear and tear on the boiler system of the strata.

35) These two documents show that the strata was requiring the applicant, as owner of the strata lot, to pay the costs the strata determined were necessary to remedy the alleged contravention of bylaw 4.4 of the strata and possibly a fine. Bylaw 4.4 requires an owner to indemnify the strata from the expense of any maintenance, repair or replacement rendered necessary by the owner's or tenant's act, omission, negligence or carelessness.

36) It is not contested that prior to the delivery of both the demand letter and the statement that neither the tenant nor the applicant, as owner of the strata lot, had been provided with a copy of a complaint or particulars of a complaint, in writing. Not having received this notice, it follows that the applicant did not have a reasonable opportunity to answer the complaint before the costs were charged to

her, nor did the applicant have the opportunity to request a hearing to dispute the charge.

37) Sections 135 (1) (a), (b), (d) and (e) of the *Strata Property Act,* S.B.C. 1998, c.43 (SPA) provide that a strata corporation must not impose a fine or require a person to pay the costs of remedying a contravention unless a complaint has been received about the contravention and the strata corporation has given the owner or the tenant written particulars of the complaint and a reasonable opportunity to answer it, including a hearing if one is requested. Section 135 (1) (f) of the SPA requires that if a tenant is the subject of a fine or requirement to pay the costs of remedying a contravention that notice of the complaint must be given to the person's landlord and to the owner. After a hearing the owner or tenant is entitled to notice in writing of a decision of the strata corporation.

38) In *Terry v. The Owners, Strata Plan NW 309,* 2016 BCCA 449, the British Columbia Court of Appeal considered these sections of the SPA. The court accepted that for a fine or a requirement to pay the costs of remedying a bylaw contravention to be validly imposed that the owner or tenant must be given, in advance of the fine or the requirement to pay, notice of the complaint particulars and an opportunity to be heard. If the requirements of section 135 of the SPA are not met before the fine or requirement to pay is imposed then they are invalid and must be set aside.

39) In the present case there is no evidence that the strata provided either the tenant or the applicant with notice of the complaint or alleged bylaw contravention or of any proposed fine or requirement to pay to remedy the contravention. In this case the requirement to pay and any fine preceded any notice. As a result, in accordance with the *Terry* decision, I find that the $11,000 charge set out in the statement is invalid and must be set aside.

40) Because I have found the $11,000 charge to be invalid, it is not necessary for me to assess whether the evidence of the strata was sufficient to prove that, or any, amount as owing to it by the applicant.

Is the applicant entitled to an award of damages for mental distress arising from the conduct of the strata?

41) The applicant asked the tribunal to award damages for mental distress which were alleged to be caused by the conduct of the strata in imposing the $11,000 charge. The applicant specified $10,000.00 as an appropriate amount. In making this claim, the onus is on the applicant to prove that the distress she says she has suffered and its consequences were caused by the conduct of the strata. Evidence was provided by the applicant about deterioration in her health and that of her son that she attributed to anxiety over receipt of the demand letter and the statement. A friend of the applicant expressed her view about the applicant's health problems following receipt of the $11,000 demand for payment. In my view, such evidence is not sufficient to meet the legal burden to prove a claim for damages for mental distress. In particular, without receiving independent evidence, usually from a medical practitioner, demonstrating that the condition described by the applicant was caused by the actions of the strata and not by pre-existing or other conditions or causes, I am unable to find the necessary causal connection to find that this claim has been proved.

Is there a remedy available to the applicant for any improper conduct of the strata?

42) The applicant also requests the tribunal to require the strata to confirm in writing that it will not "harass or bully" the applicant or the tenant in the future. I have considered whether this is something that is within the jurisdiction of the tribunal under section 48.1 of the Act. Considering the mandate of the tribunal as described in section 2 (2) (b), which is to apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the tribunal proceeding is concluded, I have concluded that I can make an order addressing the concerns of the applicant.

43) A review of the correspondence to the applicant from the president of the strata discloses a troubling pattern of impropriety. This includes inappropriate and

unnecessary opinions about the character and mental health of the applicant's son and threats of potential criminal action against him, as well as expulsion from the suite he occupies. I find that the content and tone of these communications was designed to threaten, bully and intimidate the applicant, both in respect of the subject matter of this dispute and generally. I have not included samples of these offensive communications so as not to cause harm or embarrassment to the applicant or her son.

44) The evidence discloses that the strata, through the communications of its council president, has acted in a manner that can best be described as heavy handed, disrespectful and inappropriate. I have found the correspondence was meant to intimidate the applicant, including reference to potential criminal prosecution. The refusal to provide the applicant with information to substantiate the $11,000 demand is indicative of the approach that was taken by the strata. The language used in the correspondence between the strata president and the applicant is evidence that the strata president does not understand his role. The strata president must be considered to be speaking for the strata council, his conduct must be attributed to it as a whole. The applicant and the tenant have, of necessity, an ongoing relationship with the strata council. The relationship as demonstrated by the correspondence is dysfunctional to the detriment of the applicant and her son.

45) As a result, I order that, except in an emergency, the strata council not have any direct communication with the applicant or her son as long as any of the current members are on the strata council. All communication with the applicant and any tenant of the applicant will be by the strata management company. At any time, the applicant can advise the strata council, in writing, through the strata management company, that direct communication can resume.

Should the strata reimburse the $250 tribunal filing fee paid by the applicant?

46) Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and

reasonable expenses related to the dispute resolution process. I see no reason in this case to deviate from the general rule. No expenses were requested by the applicant. I therefore order the respondent to reimburse the applicant for tribunal fees of $250.

DECISION AND ORDERS

47) Under sections 189.4 and 167 of the *Strata Property Act* SBC 1998 c.43, an owner who brings a tribunal claim against the strata corporation is not required to contribute to the expenses of bringing that claim. I order the strata to ensure that no part of the strata's expenses with respect to this claim are allocated to the owner.

48) I order that:

a) The charge of $11,000 set out in the statement is set aside as invalid.

b) The applicant's claim for damages for mental distress is dismissed.

c) Except in the case of emergency, the respondent will not communicate directly with the applicant or any tenant of the applicant as long as the current strata president is on the strata council. All communication with the applicant and any tenant of the applicant will be by the strata management company. At any time, the applicant can advise the strata council, in writing, through the strata management company, that direct communication can resume.

d) The respondent will reimburse the applicant $250 for tribunal fees.

e) the respondent is to ensure that no part of its expenses with respect to this claim are allocated to the owner consistent with section 167 of the *Strata Property Act*

49) Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to

appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

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Maureen Baird, Tribunal Member