



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Clark v. The Owners, Strata Plan BCS 2785*, 2017 BCCRT 49

B E T W E E N :

Tyson Clark

APPLICANT

A N D :

The Owners, Strata Plan BCS 2785

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shannon Salter, Chair

INTRODUCTION

1. The applicant strata lot tenant (tenant) asks the Civil Resolution Tribunal (the tribunal) to make a default order against the respondent strata corporation, The

Owners, Strata Plan BCS 2785 (strata). The tenant's claim is for the repayment of 2 fines levied by the strata, which the tenant says were levied in error, plus reimbursement of tribunal fees. The tenant also asks for an order that the strata be required to communicate directly with him, rather than only with the strata lot owner (landlord).

JURISDICTION AND PROCEDURE

2. These are the formal written reasons of the 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. The tribunal also recognizes any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

The tribunal's jurisdiction over tenant disputes

3. Under section 3.6(1)(e) of the Act, the tribunal has jurisdiction over an action or threatened action by the strata corporation in relation to an owner or tenant. Under the *Strata Property Act* (SPA), "tenant" includes a person who rents all or part of a strata lot.
4. Section 189.1 of the SPA sets out who may initiate a request under section 4 of the Act for the tribunal to resolve a dispute. It states that a strata corporation, owner or tenant may pursue a claim through the tribunal, so long as the dispute is a matter over which the tribunal has jurisdiction.
5. The tenant submitted a tenancy agreement between him and the landlord, and I find that he is a tenant within the meaning of the SPA. I also find that the tenant's dispute falls within the tribunal's jurisdiction, as it involves actions or threatened actions by the strata in relation to the tenant.

Default decisions and orders

6. Section 7 of the Act states that where no respondent files a response by the deadline in the tribunal's rules, the tribunal must adjudicate the dispute in accordance with its rules. Under tribunal rule 72, a respondent must respond to a Dispute Notice by the deadline shown on a Dispute Response Form. The deadline on the Dispute Response Form states the response is due within 14 days of receiving the Dispute Notice. Under rules 79 and 80, an applicant can ask for a default order if a respondent does not respond to a Dispute Notice which has been properly delivered.

7. Here, the dispute response was due by April 27, 2017, 14 days after April 13, 2017, when the dispute notice was received by the respondent strata. The tenant provided the tribunal with documents to show that it properly delivered the dispute notice to the strata, in compliance with tribunal rule 52:
 - a) The dispute notice dated April 10, 2017; and
 - b) Proof of notice form dated April 13, 2017, which states the tenant certifies they provided the dispute notice to the strata in person at the strata's address on file with the Land Title Office on April 13, 2017.

8. On May 3, 2017, tribunal staff advised the parties that no response had been received from the strata and provided information about how the tenant could make an application for default judgment. Tribunal staff mailed a notice to this effect to the strata on May 3, 2017. On May 5, 2017, the tenant filed a request for default decision and order, certifying that it had received no response to the dispute notice. Tribunal staff confirmed that the tribunal has received no response from the tenant, as of the date of this decision.

9. I am satisfied, on the balance of probabilities, that the strata received the Dispute Notice and did not respond to it by the deadline set out in the tribunal rules. For this reason, the tenant is entitled to apply for a default decision which means the

tribunal will make a binding decision without the tenant's participation. The tribunal will send the strata a copy of the final decision and order.

10. Liability is assumed in an application for default judgment. Further, in a debt claim, generally speaking, the tribunal will grant the amount requested by the applicant, plus applicable interest and reasonable fees and expenses. The evidence set out below is limited accordingly.
11. 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.
12. 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 that may require an oral hearing.
13. Under section 48.1 of the Act, in resolving this dispute the tribunal may make one or more of the following orders:
 - a) Order a party to do something
 - b) Order a party to refrain from doing something
 - c) Order a party to pay money

ISSUES

14. The issues in this dispute are whether the tenant is entitled to default orders against the strata requiring the strata to:
 - a. pay \$400 to the tenant, plus applicable interest and tribunal fees; and

- b. communicate directly with the tenant, rather than only through the owner.

EVIDENCE

15. The tenant states that the strata twice accused him of smoking on strata property, and issued 2 fines against him, totaling \$400 (the fines). The tenant states that he does not smoke, and had quit smoking a year previously.
16. The tenant's evidence is that his landlord paid the fines to the strata, and on April 4, 2017 the tenant repaid his landlord for the fines. In support of this statement, the tenant submitted bank statements from the landlord showing he paid the strata's property management company \$400 on April 3, 2017. The tenant produced an email money transfer receipt, showing he paid the landlord \$400 on April 4, 2017. The tenant submits that the strata should repay the fine amount directly to him since he ultimately paid it.
17. The tenant submitted two letters from the strata's property manager to the landlord, dated May 3, 2017. One letter states the strata dismissed the \$200 smoking fine it issued on February 17, 2017. The other letter dismissed a \$200 smoking fine the strata issued on March 21, 2017. In total, the strata dismissed \$400 in smoking fines.
18. The tenant provided a screenshot of a text message from the landlord, confirming that despite the dismissal of the fines, the strata has not repaid the landlord the \$400 in fines.
19. The tenant also states that the strata refuses to communicate with tenants, and insists on communicating only through the landlord instead.

POSITION OF THE PARTIES

20. The tenant argues that he was wrongfully fined for smoking on strata property. He requests that the tribunal order the strata to reimburse him for the fines he paid his landlord, and which the landlord had previously paid to the strata. He also asks for

an order that the strata must communicate directly with the tenant, rather than insisting that all communications go through the landlord.

ANALYSIS

Is the tenant entitled to be reimbursed for the fines?

21. This is a debt claim in a default judgment application where liability is assumed. I am satisfied that the tenant paid the fines, indirectly through the landlord, and that neither he, nor his landlord, have been reimbursed despite the strata dismissing the fines. I therefore find the tenant is entitled to an order for \$400, the amount claimed in the April 10, 2017 dispute notice.
22. The tenant did not expressly claim interest. Under the *Court Order Interest Act* (COIA) and section 48(3) of the Act, I must add pre-judgment interest from the date the cause of action arose to the date of this order. The prejudgment interest rate established by the Supreme Court of British Columbia from time to time.
23. Here, I find the cause of action arose on April 4, 2017, the date the tenant paid the fines, through his landlord. Therefore, I find that the applicable interest payable by the strata on the \$400 is \$0.94 calculated as follows:

Prejudgment Interest Period	Prejudgment interest rate amount	Prejudgment interest
April 4, 2017 – August 3, 2017	0.70%	\$0.94

24. Under section 49 of the Act, and tribunal rules 14 and 15, 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 stray from the general rule. I find the strata must reimburse the tenant \$150 for its tribunal fees, consisting of the \$125 application fee and the \$25 fee to request a default order.

Must the strata communicate directly with the tenant with respect to alleged bylaw contraventions?

25. The tenant requests that I order the strata to communicate directly with the tenant, rather than only through the landlord. This is a non-debt claim in a default judgment, so liability is assumed, although I must consider whether there is a legal basis for the requested order.
26. In other words, the question I must decide is whether the strata is obligated to communicate directly with a tenant about a tenant's alleged contravention of a bylaw or rule. For the reasons which follow, I find that the strata has this obligation.
27. When dealing with an alleged contravention of the strata bylaws or rules, section 135 of the SPA prevents a strata from imposing fines or remedial costs, or denying the use of a recreational facility, unless certain requirements are met. These requirements include that the strata must have received a complaint about the contravention, and have given notice to the owner or tenant about the complaint, in writing, as well as an opportunity to answer the complaint and a hearing, "if requested by the owner or tenant." 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.
28. One interpretation of section 135 is that as long as the strata gives the required communication to the owner **or** the tenant, the requirements of the SPA are met, regardless of whether the tenant or the owner is alleged to have contravened the bylaw or rule.
29. However, I find this interpretation is inconsistent with the purpose of section 135, and the SPA generally, as it would frustrate the statute's notice and hearing requirements. For example, if the strata only had to provide the owner, but not the

tenant, with notice of a tenant's alleged contravention, how could a tenant exercise their right under section 135(1)(e) of the SPA to request a hearing? The tenant's right to request a hearing necessarily requires that the strata give the tenant notice of the alleged contravention. In this regard, I also note that under section 130 of the SPA, the strata must fine the tenant if the bylaw is contravened by the tenant. It does not permit the owner to be fined. This too would entail direct communication.

30. I therefore interpret section 135 to mean that where an owner or tenant is alleged to have contravened the bylaws or rules, the person who is the subject of the allegation is entitled to the notice and hearing rights provided in section 135 of the SPA. My interpretation in this regard is supported by the fact that section 135(1)(f) specifically also requires the strata to give notice to a landlord and the owner, where a tenant is the subject of the alleged contravention. This provision would be unnecessary if the strata is not required to communicate with the tenant directly where the tenant is the subject of the alleged contravention.
31. I find that the strata is required to communicate directly with the tenant, as required by SPA section 130 and 135, with respect to alleged contraventions of the strata bylaws or rules, and that is my order. I note that the strata is also required to give notice to the landlord in such cases.

DECISION AND ORDERS

32. I order the strata to pay the tenant:
 - a) \$400 for the fines;
 - b) \$0.94 in prejudgment interest under the COIA; and
 - c) \$150 in tribunal fees.

33. I also order the strata to communicate directly with the tenant in the event of any alleged strata bylaw or rule contraventions, as required by section 135 of the *Strata Property Act*.
34. Orders for financial compensation or the return of personal property can be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the Act, the applicant can enforce this final decision by filing in the Provincial 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 Provincial Court of British Columbia.
35. Under section 57 of the Act, a party can also 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.

Shannon Salter, Chair