



Civil Resolution Tribunal

Date Issued: August 15, 2017

File: ST-2017-002124-A1

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan KAS 2814 v. Bauman*, 2017 BCCRT 40

B E T W E E N :

The Owners, Strata Plan KAS 2814

APPLICANT

A N D :

Daryl Bauman

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The Owners, Strata Plan KAS 2814 (the strata) claim Daryl Bauman, owner of strata lot 30 in the strata (the owner), has a long history of failing to pay strata fees on time resulting in the assessment of \$3,200 in bylaw fines. The strata also claims that the owner does not pay strata fees by pre-authorized direct deposit, contrary to the strata's bylaws.

2. The strata asks the Civil Resolution Tribunal (tribunal) to make default orders that the owner pay \$3,200 in outstanding fines, complete a pre-authorized payment form as required by its bylaws, and reimburse the strata \$160.50 for tribunal fees and dispute-related expenses.

JURISDICTION AND PROCEDURE

3. 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.
4. The applicable tribunal rules are the rules in place at the time the Dispute Notice is issued.
5. 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 tribunal 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.
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. Tribunal staff provided copies of a number of documents. These documents include:

- a. The Dispute Notice issued by the tribunal on May 12, 2017,
 - b. Registered bylaws of the strata obtained from the Land Title Registry on June 17, 2017, and
 - c. A title search of the owner's strata lot obtained from the Land Title Registry on June 20, 2017.
8. The strata provided the tribunal with information and documents to show that it properly delivered the Dispute Notice to the owner, in compliance with tribunal rule 52. These include:
- a. proof of notice electronically filed May 17, 2017 through the tribunal's on line portal certifying the Dispute Notice was delivered to the owner by registered mail on May 17, 2017,
 - b. A registered mail receipt from Canada Post with the owner's mailing address, dated May 15, 2017, and
 - c. A tracking history from Canada Post showing delivery of 1 item on May 17, 2017 indicating the delivery had been signed for.
9. I find the date the Dispute Notice was provided to the owner was May 17, 2017. The Dispute Response was due by May 31, 2017, 14 days after the Dispute Notice was received by the owner. On May 27, 2017, through the tribunal's online portal, the owner requested an extension of time to provide their response due to their consultation with legal counsel and work commitments. On May 29, 2017, by email, tribunal staff granted the owner's request that the tribunal extend the deadline to provide a response, to June 5, 2017.
10. On June 7, 2017, tribunal staff advised the strata by email and the owner by email and regular mail, that no response had been received and that a request for a default decision could be made by the strata. On June 9, 2017, the strata requested a default decision and order through the tribunal's online portal. Tribunal

staff confirmed that the tribunal has received no response from the owner, as of the date of this decision.

11. I confirm the address shown on the Canada Post receipt is the same address as shown on the title search tribunal staff obtained for the owner's strata lot. I also confirm that the Canada Post tracking history identifies the correct receipt number.
12. I am satisfied, on the balance of probabilities, that the owner received the Dispute Notice and did not respond to it by the deadline set out in the tribunal rules, which in this case was at the owner's request extended by the tribunal to June 5, 2017. For this reason, the strata is entitled to apply for a default decision which means the tribunal will make a binding decision without the owner's participation. The tribunal will send both parties a copy of the final decision and order.
13. Generally, in an application for default judgment such as this, liability of the respondent is assumed. In this case, the bylaw fines claimed are a debt claim, whereas the claim for completion of a pre-authorized debit form is a non-debt claim. While liability is assumed for the non-debt claim, the evidence provided in support of the requested remedy must be assessed.
14. 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 might require an oral hearing.
15. 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

16. The issues in this dispute are:
 - a. Should the owner be required to pay the strata \$3,200 in outstanding bylaw fines?
 - b. Should the owner be compelled to complete a pre-authorized payment form as required by the strata's bylaws?

EVIDENCE, ANALYSIS AND DECISION

17. As noted above, generally, the tribunal will assume liability for a default claim. That is, it is assumed that the owner has acted in the way the strata says they has acted. As a result, I have not reviewed the merits of the strata's claim for bylaw fines including the amount or any limitation period issues. I order the owner to pay the strata \$3,200 for outstanding bylaw fines.
18. Also as noted above, the evidence provided in support of the requested remedy for the non-debt claim must be assessed.
19. The bylaws show the strata contains 2 sections. The dispute is between the strata and the owner and neither section is a party to this dispute. Bylaw 3.7 is the applicable bylaw that requires an owner, within 3 weeks of the operating budget being approved, to provide "...an executed Pre-Authorized Debit Agreement for the strata's portion of the strata fee..." I am satisfied the bylaw is valid and I order the owner to provide an executed pre-authorized debit agreement to the strata to be used for collection of strata fees by the strata. The bylaw is restricted to the collection of strata fees and does not stipulate the form of pre-authorized debit agreement that must be executed by the owner.
20. In *Strata Plan BCS 3648 v. Podwinski*, 2016 BCSC 2253, the court considered strata fees paid by way of a pre-authorized payments and the ability of a strata corporation to allocate how the funds were applied to strata lot charges based on a bylaw to collect fines. The preauthorized payment form in *Podwinski* permitted the

strata to only collect strata fees. The court found the bylaw to be invalid as it might preclude an owner from contesting or refusing to pay fines while continuing to pay strata fees. While the circumstances here are different than in *Podwinski*, I want to be very clear on my reading of the strata's current bylaws. I do not want the parties to potentially face a similar dispute to that of the parties in *Podwinski* nor do I want the strata to feel it is authorized to collect any fees other than strata fees. As a result, the owner is at liberty to choose the form of agreement they prefer and is only required to authorize the strata to collect its strata fees from the owner's bank account.

21. 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 dispute-expenses. In a default order such as this where the respondent has properly received a copy of the Dispute Notice, I see no reason to deviate from this general rule.
22. The strata paid a total of \$150.00 in tribunal fees comprised of \$125.00 for the application fee and \$25.00 for the Request for Default and Order fee. I find the owner must reimburse the strata \$150.00 paid by the strata.
23. The strata has claimed dispute-related expenses of \$10.50 for providing the Dispute Notice to the strata by way of registered mail. I find the expense valid and order the owner to reimburse the strata \$10.50.

ORDERS

24. I order the owner to provide an executed pre-authorized debit agreement to the strata for collection of strata fees due to the strata. The owner is at liberty to choose the form of pre-authorized debit agreement.
25. I order that within 30 days of the date of this order, the owner pay to the strata:
 - a. \$3,200.00 in outstanding bylaw fines, and

- b. \$160.50 for the following:
 - i. tribunal fees of \$150.00, and
 - ii. dispute-related expenses of \$10.50.
26. 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.
27. 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.

J. Garth Cambrey, Vice Chair