



Civil Resolution Tribunal

Date Issued: November 29, 2017

File: ST-2017-002004

Type: Strata

Civil Resolution Tribunal

Indexed as: *Johnston v. The Owners, Strata Plan LMS 67*, 2017 BCCRT 124

B E T W E E N :

Hartley Johnston

APPLICANT

A N D :

The Owners, Strata Plan LMS 67

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION AND JURISDICTION

1. This is a final decision of the Civil Resolution Tribunal (tribunal) made without the participation of the respondent, due to the respondent's non-compliance with the tribunal's directions as required, as discussed below.

2. The applicant, Hartley Johnston (owner) is the owner of a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 67 (strata).
3. This dispute is about bylaw fines assessed against the owner's strata lot relating to his tenant and funds withdrawn from the owner's bank account.
4. The owner asks that the tribunal issue the following orders:
 - a. that the strata refund the owner \$400.00, the amount of the strata's unauthorized withdrawal from the owner's bank account;
 - b. that the strata refund the owner \$45, the amount of the banking fee charged to the owner for insufficient funds created by the unauthorized withdrawal of the \$400.00;
 - c. that the strata remove a \$100.00 parking bylaw fine from the owner's strata lot; and
 - d. that the strata reimburse the owner tribunal fees paid the amount of \$225.00.
5. The owner is self-represented. The strata is represented by a strata council member.
6. Section 36 of the *Civil Resolution Tribunal Act* (Act) applies if a party to a dispute fails to comply with the Act or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. After giving notice to the non-compliant party, the case manager (facilitator) may refer the dispute to the tribunal for resolution and the tribunal may:
 - a. hear the dispute in accordance with any applicable rules,
 - b. make an order dismissing a claim in the dispute made by the non-compliant party, or

- c. refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
- 7. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over strata property claims brought under section 3.6 of the 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.
- 8. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
- 9. Under section 48.1 of the Act and tribunal rule 126, 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.
- 10. For the reasons that follow, I decided to hear the applicant's dispute without the respondent's participation and have allowed the applicant's claims.

ISSUES

- 11. The issues in this dispute are:
 - a. Should I proceed to hear the applicant's claims, without the respondent's further participation given the respondent's non-compliance?
 - b. If I hear the applicant's claims, what are the appropriate remedies?

EVIDENCE AND ANALYSIS

Should I proceed to hear the applicant's claim without the respondent's further participation, given the respondent's non-compliance?

12. My summary decision to hear the dispute without the respondent's participation, given the respondent's noncompliance, was previously communicated to the parties by email through the tribunal facilitator. The details supporting that decision are set out below.
13. The respondent is the noncompliant party in this dispute and failed to participate in the case management phase as required by sections 25 and 32 of the Act and tribunal rules 94 to 96, despite multiple attempts by the facilitator to contact the respondent's representative requesting a reply. In particular, the tribunal issued the Dispute Notice on April 18, 2017. The respondent filed its response on August 2, 2017. The facilitator made the following attempts at contact with no response:
 - a. *October 6, 2017*: telephone call to confirm email address and email requesting response by October 11, 2017.
 - b. *October 13, 2017*: email requesting response by October 17, 2017.
 - c. *October 18, 2017*: telephone call leaving a voice mail message that a response was required failing which the facilitator would move the matter forward without further participation from the respondent.
 - d. *November 2, 2017*: email requesting response by November 6, 2017. The facilitator advised the respondent's representative that section 32 of the Act provides that a facilitator may direct the party to provide information respecting the issues or requested resolution in a dispute or the parties position in relation to those issues. The facilitator also warned the respondent's representative that if the respondent failed to respond by November 6, 2017 they would refer the dispute to a tribunal member for adjudication without further participation by the respondent.

14. The facilitator referred the respondent's non-compliance with the Act and tribunal's rules to me for decision as to whether I should hear the dispute in the absence of participation from the respondent.
15. As noted earlier, the respondent filed its Response but provided no explanation about why it suddenly stopped communicating with the tribunal as required. I find the facilitator made a reasonable number of attempts to contact the respondent. Parties are advised by an assigned facilitator at the beginning of a tribunal proceeding that they must actively participate in the dispute resolution process. Given the respondent's representative confirmed their contact information in October 2017, I find it is more likely than not that the respondent's representative was aware of the facilitator's attempts to contact them and chose not to respond.
16. The tribunal's rules are silent on how it should address non-compliance issues. I find that in exercising its discretion, the tribunal must consider the following factors:
 - a. whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute;
 - b. the stage in the facilitation process at which the non-compliance occurs;
 - c. the nature and extent of the non-compliance;
 - d. the relative prejudice to the parties of the tribunal's order addressing the non-compliance; and
 - e. the effect of the non-compliance on the tribunal's resources and mandate.
17. I find this claim does not affect persons other than the parties involved in this dispute.
18. The non-compliance here occurred at the outset of the facilitation process and no substantial discussions between the parties had occurred. In essence, the respondent has abandoned the process after providing a Response.

19. Given the facilitator's repeated attempts to contact in the respondents complete failure to respond despite warnings of the consequences, I find the nature and extent of the non-compliance is significant.
20. I see no prejudice to the applicant in hearing the dispute without the respondent's participation. The prejudice to the respondent of proceeding to hear the dispute is outweighed by the non-compliance. I find it would be unfair to the applicant if I refuse to proceed to hear the dispute as the applicant would be left without a remedy.
21. The tribunal's resources are valuable and its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party does not participate. I find it would be wasteful for the tribunal to continue applying its resources on a dispute by making further attempts to seek participation from the respondent.
22. In weighing all of the factors, I find the applicant's dispute should be heard without the participation of the respondent. In deciding to hear the applicant's dispute I have put significant weight on the following factors:
 - a. persons other than the parties to this dispute are not affected by it;
 - b. the extent of the non-compliance is significant;
 - c. the applicant is not prejudiced if an order is made; and
 - d. the tribunal's resources should be conserved.

What are the appropriate remedies?

23. Where a respondent filed a response but has since failed to comply with the tribunal's directions as required, as is the case here, I find I may draw an adverse inference against that respondent. In other words, if the respondent refuses to participate, it is reasonable that I assume that the applicant's position is correct on the issue. This concept is similar to where liability is assumed when a respondent

has failed to provide any response to the dispute causing the respondent to be in default.

24. Where a dispute involves debt claims no supporting evidence is required. I find the owner's claims in this dispute are akin to debt claims. Given the adverse inference drawn, I order the strata to pay the amounts claimed by the owner and to remove the bylaw assessed to his account.

DECISION AND ORDERS

25. I order that the strata, within 30 days of the date of this decision:
- a. refund the owner the amount of \$400.00 for the unauthorized withdrawal of funds from the owner's bank account;
 - b. refund the owner the amount of \$45 for the banking fee (NSF) charged to the owner for insufficient funds; and
 - c. remove the \$100.00 parking bylaw fine from the owner's strata lot account.
26. 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. I therefore order the strata to reimburse the owner for tribunal fees of \$225.00. No expenses have been claimed by the owner. Accordingly I make no order with respect to expenses.
27. Under section 167 of the *Strata Property Act*, 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 is allocated to the owner.
28. Under the *Court Order Interest Act* (COIA), the owner is entitled to prejudgement interest which I calculate to be \$2.57. This is based on the withdrawal of \$400.00

from the owner's bank account on February 1, 2017 and the \$45.00 NSF charge applied February 2, 2017.

29. The owner is entitled to post-judgement interest under the COIA.
30. 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.
31. Orders for financial compensation or the return of personal property can also 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.

J. Garth Cambrey, Vice Chair