



# Civil Resolution Tribunal

Date Issued: December 4, 2017

File: ST-2017-003550

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS 1352 v. Wall*, 2017 BCCRT 129

B E T W E E N :

The Owners, Strata Plan BCS 1352

**APPLICANT**

A N D :

Clinton Wall

**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, The Owners, Strata Plan BCS1352 (strata) is a strata corporation existing under the *Strata Property Act* (SPA). The respondent, Clinton Wall (owner), is an owner of a strata lot in the strata.
3. This dispute is about the owner's rental of his strata lot contrary to the strata's bylaws. The strata asks that I order the owner to comply with the strata's rental prohibition bylaw and pay outstanding bylaw fines of \$1,250.
4. The strata is represented by a strata council member. The owner is self-represented.
5. 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.
6. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over strata property disputes 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.

7. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
8. 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.
9. 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**

10. 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 for the claims about the respondent's breaches of the rental restriction bylaw?

## **EVIDENCE AND ANALYSIS**

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

11. 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.
12. The respondent is the non-compliant 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 the facilitator's October 18, 2017

written warning that the applicant's claims could be decided without the respondent's participation.

13. The tribunal issued its Dispute Notice on July 24, 2017. The respondent filed its response on August 11, 2017. The facilitator made arrangements for a telephone conference to be held on November 6, 2017 at 10 AM. The facilitator and applicant waited on the conference call line for the respondent to join the call until 10:20 AM but the respondent failed to do so.
14. I am advised by the facilitator that he had a telephone discussion with the respondent on November 7, 2017, at which time the respondent confirmed he has no interest in participating in the tribunal process. I accept the facilitator's evidence.
15. 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.
16. As noted earlier, the respondent filed a Response but provided no explanation prior to his telephone discussion with facilitator on November 7, 2017 about why he suddenly stopped communicating with the tribunal as required. Parties are advised by an assigned facilitator at the beginning of a tribunal proceeding that they must actively participate in the dispute resolution process.
17. 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.
18. I find this claim does not affect persons other than the parties involved in this dispute.
19. 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.
20. Given the respondent's admission that he will not participate in the tribunal process, I find the nature and extent of the non-compliance is significant.
21. 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.
22. 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.
23. 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 being 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 for the claims about the respondent's breaches of the rental restriction bylaw?**

24. 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.
25. At my request and subsequent to my decision to hear this matter, I received evidence from the applicant and relevant Land Title Office records from the facilitator.
26. As noted above, this dispute was filed in July 2017. The evidence shows that the respondent sold his strata lot on September 11, 2017 and that the respondent paid \$1,250 to the strata on September 8, 2017. Based on the evidence, I infer that the owner was required to pay outstanding bylaw fines in order to obtain a Form F from the strata to allow the conveyance of the owner's strata lot. No evidence has been provided to suggest payment of the fines was made into trust under section 114 of the SPA pending the outcome of this dispute. I find there is nothing preventing the strata from retaining the funds it has received.
27. I note from the evidence that rental restriction bylaw fines total \$1,100 and other bylaw fines total \$150. Given the adverse inference drawn, I find the respondent owed the \$1,100 claimed in outstanding fines, which as noted has already been paid by the owner before he sold his strata lot.
28. As a result, I find the strata's claim for payment of outstanding bylaw fines is resolved.

29. Further, I need not consider an order that the owner abide by the strata's rental prohibition bylaw given the owner has sold his strata lot.

## **DECISION AND ORDERS**

30. I order that the strata's claim for payment of outstanding bylaw fines against the owner is resolved and that the strata may retain the money it has received in that respect.
31. 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. The strata has been the successful party in this dispute and I order the owner to reimburse the strata for tribunal fees of \$225. No dispute-related expenses have been claimed by the strata. Accordingly I make no order with respect to expenses.
32. Under the *Court Order Interest Act* (COIA), the strata is entitled to pre-judgement interest of \$1.45 calculated from the date the rental bylaw fines were first assessed until September 8, 2017 when the fines were paid.
33. 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.
34. 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