



# Civil Resolution Tribunal

Date Issued: April 16, 2018

File: ST-2017-00305

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR 164 v. Hawco*, 2018 BCCRT 134

**B E T W E E N :**

The Owners, Strata Plan VR 164

**APPLICANT**

**A N D :**

David Hawco

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. The applicant, The Owners, Strata Plan VR 164<sup>1</sup> (strata) asks the Civil Resolution Tribunal (tribunal) to order the respondent owner, David Hawco (owner), to comply with the strata's short-term rental bylaw and pay \$4,000 in outstanding bylaw fines. The strata also seeks reimbursement of \$225 tribunal fees paid.
2. The respondent denies he is in contravention of the strata's bylaws and says that, if he is, the strata acted contrary to the *Strata Property Act* (SPA) when it imposed bylaw fines against him.
3. The respondent says the bylaw fines should be removed and that he should not be responsible for the strata's tribunal fees.
4. The applicant is self-represented. The respondent is represented by a strata council member.
5. For the reasons that follow, I find owner must stop using his strata lot for short-term rentals, including offering use of his strata lot through Air BnB, and pay the strata \$1,200 for bylaw fines and \$225 for tribunal fees.

## JURISDICTION AND PROCEDURE

6. 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, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

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<sup>1</sup> The Dispute Notice and other tribunal documents incorrectly show the strata corporation's legal name as The Owners, Strata Plan VAS 164

7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear 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.
8. 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.
9. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.
10. In his submissions, the owner argues the strata did not provide documents he requested from the strata as required under the SPA, if at all. He also argues that the strata did not address complaints he made about the conduct of certain strata council members. I find that the issues of document requests and complaints about strata council member conduct are not before me as they are not relevant to the strata's claims and the owner has not filed a counterclaim. As a result, I have not addressed the owner's submissions about these issues.

## **ISSUES**

11. The issues in this dispute are:
  - a) Do the strata's bylaws restrict the owner from using his strata lot, or a portion of it, for short-term rentals?
  - b) If so, are the fines the strata imposed against the owner valid?
  - c) Is the strata entitled to reimbursement of \$225 for tribunal fees?

## **BACKGROUND AND EVIDENCE**

12. Though I have read all of the evidence provided, I refer only to evidence I find relevant to provide context for my decision.
13. The strata's relevant bylaws are those filed in the Land Title Office on September 27, 2002 as amended on February 20, 2015 (February 2015 bylaws), and April 8, 2016 (April 2016 bylaws).
14. The February 2015 bylaws included a rental prohibition bylaw as well as what I will reference as a "short-term rental" bylaw. The short-term rental bylaw prohibits an owner from using their strata lot, common property or common assets for "commercial or professional purposes" that included short-term rentals, hotel or hotel-like accommodations and other short-term accommodations, including granting a licence to use their strata lot for short-term stays. The bylaws also prohibit an owner from using their strata lot for any purpose other than a "private dwelling home."
15. At a general meeting held February 17, 2016, the strata repealed and replaced all of its bylaws. Those bylaws are the April 2016 bylaws. The April 2016 bylaws amended the short-term rental bylaw to restrict an owner from "renting less than all of a strata lot" and retained the other short-term rental restrictions set out in the February 2015 bylaws although the bylaw wording was slightly different. The restriction for using a strata for commercial purposes was amended to "solely for commercial purposes" and the prohibition on using a strata lot for any purpose other than a "private dwelling home" was retained.
16. I find the substantive content of the February 2015 bylaws were not altered by the adoption of the April 2016 bylaws even though the April 2016 bylaws renumbered the rental restriction bylaw and altered the wording slightly. Both sets of bylaws included the same content and, when each became effective, were equally enforceable with respect to the short-term rental situations contemplated.

17. Both the February 2015 bylaws and the April 2016 bylaws permit the strata to impose fines every 7 days for uninterrupted, continuing bylaw contraventions in compliance with section 132(2) of the SPA and Strata Property Regulation 7.1.
18. The owner purchased his strata lot in 2010 and was a member of the strata council in 2015 and 2016 during the times the strata amended its bylaws.
19. In its submissions, the strata says it received complaints about the owner's use of his strata lot beginning in 2014 but, based on legal and other advice it received, determined it was unable to restrict the owner's activity until the adoption of the bylaw amendment in February 2015. This position is confirmed in an October 3, 2014 email from a strata council member at that time to the owner.
20. In an October 7, 2014 email to the strata, the owner confirmed he was licencing the use of his spare bedroom through Air BnB.
21. Between July 10, 2015 and January 30, 2017, the strata imposed fines totalling \$4,000 for contravention of its short-term rental bylaws. In the numerous letters sent to the owner, the strata cites encounters with various people from different countries in the building's elevator and lobby areas who confirm they are Air BnB clients using the owner's strata lot. The owner did not dispute the strata's statements and I accept that these events occurred.

## **POSITION OF THE PARTIES**

22. The strata argues the owner contravened its bylaws, including its short-term rental bylaws that became effective on February 20, 2015 and April 8, 2016. The strata requests orders that the owner pay \$4,000 in bylaw fines and comply with the bylaws.
23. The respondent owner argues that he is not, and never has been, in contravention of the strata's short-term rental bylaws.
24. In the alternative, he argues the strata did not follow due process when it imposed bylaw fines against him. He says strata council members made the bylaw

complaints against him and did not comply with the conflict of interest provisions of the SPA. He says that the complaining strata council members were present during discussion and voting on the bylaw fines, contrary to section 32 of the SPA.

25. The owner further argues that the strata did not comply with section 135 of the SPA before it imposed the bylaw fines.
26. The owner requests that I dismiss the strata's claims.

## **ANALYSIS**

### **Do the strata's bylaws restrict the owner from using his strata lot, or a portion of it, for short-term rentals?**

27. The owner admits he used Air BnB to advertise use of a spare bedroom in his strata lot and that this activity is licencing the use of the bedroom as opposed to renting the bedroom. He does not deny he has received fees for the use of the bedroom and says that because he continues to occupy his strata lot during the times others use his spare bedroom, he has not contravened the short-term rental bylaw. Given the overall evidence, I find the owner received payment for allowing others to use his strata lot.
28. The strata says the February 2015 bylaws and the April 2016 bylaws restrict the owner from permitting his spare bedroom to be occupied through Air BnB or any other method of short-term rental. The strata also says its bylaws do not permit the owner to use his strata lot in a way that is illegal or contrary to any government or municipal ordinances as set out in bylaw 4.1, noting that the owner does not have a licence to operate a bed and breakfast.
29. While the parties disagree on the bed and breakfast licencing requirements of the City of Vancouver, I find it is not necessary to determine if the owner was operating a bed a breakfast. As discussed below, I find the strata's bylaws prohibit any short-term accommodations that involve commercial purposes or that involve using a strata lot for purposes other than a private dwelling home.

30. The February 2015 bylaws and April 2016 bylaws prohibit an owner from using their strata lot for commercial purposes, short-term rentals and for any purpose other than a private dwelling home. By his own admission, I find the owner has used and continues to use his spare bedroom in a way that is contrary to the bylaws that have been in place since February 20, 2015. That is, he is using his strata lot for commercial purposes by charging a fee for its short-term accommodation use, which I find is clearly a purpose other than a private dwelling home.
31. That the owner occupies the strata lot during any short-term rentals does not assist the owner. There is no such exemption in the February 2015 bylaws or the April 2016 bylaws.
32. To the extent the owner argues he is protected by section 143(1) of the SPA, which exempts certain strata lots from a rental restriction bylaw, the BC Supreme Court decided in *HighStreet Accommodations Ltd. v. The Owners, Strata Plan BCS 2478*, 2017 BCSC 1039, that the protection set out in section 143 applies only to rentals of strata lots and not to licencing of strata lots. As a result, I find that the enforcement delay set out in section 143(1) of the SPA does not apply here.
33. For these reasons, I find the strata's bylaws restrict the owner from permitting his strata lot, or a portion of it, to be used for short-term rentals.
34. I find it clear that the strata is entitled to an order that the owner comply with the strata's bylaws. In particular, and without limitation, I find the owner must stop offering the use of his strata lot, or any portion of it, through Air BnB or in any other way that is contrary to the strata's bylaws. The current bylaws prohibit the use of his strata lot for any purpose other than a private dwelling home, which means commercial purposes are not permitted.

**Are the fines the strata imposed against the owner valid?**

35. The strata alleges the owner owes \$4,000 for short-term rental bylaw fines between July 2015 and January 2017.

36. As the owner submits, the evidence confirms the bylaw fines were imposed at four separate times. The evidence also confirms that separate letters for different alleged violations were issued on the same day. Based on the evidence, I find that the bylaw fines were imposed as follows:

- \$200 on July 10, 2015 – 1 letter following a hearing held July 10, 2015,
- \$1,400 on September 10, 2015 – 7 separate letters each imposing a \$200 fine following a hearing held September 1, 2015,
- \$600 on November 25, 2016 – 2 separate letters, the 1st imposing 2 fines of \$200 each and the 2<sup>nd</sup> letter imposing a \$200 fine, and
- \$1,800 on January 27, 2017 – 9 separate letters each imposing a \$200 fine.

37. Under section 135 of the SPA, before imposing a fine, the strata must have received a complaint, provided the owner written particulars of the complaint, and a reasonable opportunity to respond to the complaint, including the opportunity for a hearing. Further, the strata must give its decision to the owner in writing within a reasonable time after the hearing.

38. I agree with the owner that the strata did not comply with section 135 of the SPA in every instance.

39. I find the strata complied with section 135 of the SPA with regard to the July 10, 2015 fine of \$200. The owner was provided with written particulars of the complaints received and was given a hearing with the strata council before the fines were imposed.

40. I do not agree with the owner's submission that due process was not followed. As noted above, the owner says that the complaints were made by strata council members and those members did not excuse themselves from the strata council meetings during discussion and voting on the bylaw fines contrary to section 32 of the SPA.



41. First, neither the SPA nor the strata's bylaws restrict a strata council member from making a bylaw complaint.
42. Second and finally, it is up to the owner to prove, on a balance of probabilities, that a strata council member failed to disclose a conflict of interest under section 32 existed. There is no evidence before me to support the owner's assertion that strata council members made the complaints against him.
43. For the same reasons I described above for the July 20, 2015 fines, I find the strata complied with section 135 of the SPA when it imposed \$1,000 in fines on September 10, 2015. I note I have allowed the \$200 fine set out in the September 10, 2015 letter for a June 20, 2015 bylaw violation. I find the June 20<sup>th</sup> date noted in the letter is a typographical error and should be June 6<sup>th</sup> given all other particulars of the bylaw contravention details are identical.
44. I decline to find in favour of the strata for fines it imposed in a September 10, 2015 letter for July 21 and 24, 2015 bylaw contraventions totalling \$400 as no evidence was provided that the owner received written particulars of the complaints made against him prior to the hearing.
45. For these reasons, I find the \$200 fines imposed July 10, 2015, and \$1,000 of the fines imposed September 20, 2015 to be valid. I therefore order the owner to pay \$1,200 in bylaw fines to the strata.
46. With respect to the November 25, 2016 fines, the 2 letters imposing \$600 in fines state the strata had already imposed the fines when it gave the owner an opportunity to respond to the complaint, including the opportunity for a hearing. Despite these letters referencing earlier correspondence that is not before me, I find the fines were imposed before the owner was given the opportunity to respond contrary to section 135 of the SPA. I therefore dismiss this part of the strata's claim for bylaw fines.
47. The strata's actions with respect to the January 2017 fines were similar in that the 9 letters dated January 27, 2017 the strata sent to the owner imposed fines before

the owner was given the opportunity to respond. I therefore dismiss the \$1,800 claim for bylaw fines arising from the January 27, 2017 letter, given the failure to comply with section 135 of the SPA.

48. To the extent the strata relies on imposing fines for continuing bylaw contraventions as permitted under the SPA and its bylaws, I find the April 2016 bylaws permit the strata to impose fines every 7 days only for bylaw contraventions that continue, "without interruption, for longer than 7 days." The strata has not provided evidence to support that the owner permitted his strata lot to used contrary to its bylaws for periods longer than 7 days.
49. That the owner may have advertised his strata lot through Air BnB for periods of longer than 7 days, which has not be proven, is not a violation of the strata's current bylaws. It is not the intent of using a strata lot for purposes other than a private dwelling home that contravenes the current bylaws but rather the actual use of the strata lot for such purpose that permits the strata to impose ongoing fines. Additionally, I note the November 25, 2016 and January 27, 2017 letters did not identify that the strata might impose ongoing fines.
50. In summary, I dismiss the strata's claims for bylaw fines in the total amount of \$2,800, being \$400 for July 21 and 24, 2015 alleged contraventions, \$600 for November 25, 2016 fines, and \$1,800 for January 27, 2017 fines. I allow the strata's claims for bylaw fines in the total amount of \$1,200, arising from the July 10 and September 20, 2015 letters.

### **Is the strata entitled to reimbursement of \$225 for tribunal fees?**

51. The strata has been successful in its claim about enforcement of its short-term rental bylaw and partially successful in it claim for payment of bylaw fines.
52. 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 dispute-related expenses. I see no reason in this case to deviate from the general rule. The strata has been the most successful party and has not

claimed any dispute-related expenses. I find the owner must reimburse the strata \$225 for tribunal fees paid.

53. Under section 48 of the Act, the *Court Order Interest Act* (COIA) applies to the tribunal. Prejudgement interest is calculated on the debt owing from the date the cause of action arose to the date of this decision. Here, the cause of action arose on the date the bylaw fines were imposed, being July 10 and September 20, 2015. I calculate prejudgement interest payable by the owner to be \$7.36.

## **ORDERS**

54. I order that the owner:

- a. Immediately comply with the strata's bylaws. In particular, and without limitation, I order the owner to stop permitting use of his strata lot through Air BnB or in any other way that is contrary to the strata's bylaws that prohibit the use of his strata lot for any purpose other than a private dwelling home, including for commercial purposes.
- b. within 30 days of the date of this decision, pay the strata the total amount of \$1,432.36, which includes the following:
  - i. \$1,200 for bylaw fines,
  - ii. \$225.00 for tribunal fees, and
  - iii. \$7.36 for prejudgement interest under the COIA on the \$1,200.

55. The strata is also entitled to post judgement interest.

56. 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.

57. 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.

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J. Garth Cambrey, Vice Chair