



Civil Resolution Tribunal

Date Issued: April 17, 2018

File: ST-2017-002050

Type: Strata

Civil Resolution Tribunal

Indexed as: *NCAH BC Holdings Ltd. v. The Owners, Strata Plan EPS 1231*,
2018 BCCRT 137

B E T W E E N :

NCAH BC Holdings Ltd.

APPLICANT

A N D :

The Owners, Strata Plan EPS 1231

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Graeme Nunn

INTRODUCTION

1. The applicant, NCAH BC Holdings Ltd. (owner), owns a strata lot (SL 275) in the respondent strata corporation, The Owners, Strata Plan EPS 1231 (strata).

2. The owner makes the following claims against the strata:
 - (a) the strata withdrew unauthorized funds from its bank account as payment for invalid strata fines;
 - (b) the strata was negligent with respect to the owner's storage locker;
 - (c) the strata made defamatory accusations towards the owner; and
 - (d) the strata caused the owner's long term tenants to terminate their lease with the owner.
3. The strata says the following about the owner's claims:
 - (a) the fines were justified because the payments taken from the owner's account were authorized by a pre-authorized debit agreement;
 - (b) the strata addressed the owner's concerns about their storage locker in a timely manner and were not negligent;
 - (c) the strata and its agents did not defame the owner; and
 - (d) the strata and its agents did not cause the loss of the owner's long term tenants.
4. The applicant is self-represented. The respondent is represented by a strata council member.
5. For the reasons the follow, I dismiss the owner's claims.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (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.

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.

ISSUES

10. The issues in this dispute are as follows:
 - a. Are the strata fines valid?
 - b. Does the pre-authorized debit agreement give the strata the right to withdraw strata fines from the owner's account?
 - c. Were the strata's actions regarding the owner's storage locker negligent?
 - d. Did the strata defame the owner?
 - e. Did the strata cause the owner to lose its long term tenants? If so, what is an appropriate remedy?
 - f. Should the strata pay the owner's tribunal fees?

BACKGROUND AND EVIDENCE

11. I have read all of the evidence provided, and will refer only to evidence I find relevant to provide context for my decision.
12. The strata is located at 1372 Seymour Street, Vancouver, British Columbia.
13. The owner purchased SL 275 in September 2015.
14. The owner owns a second unit in the strata.
15. On March 31, 2015 the strata amended its bylaws. The amendment to bylaw 23 increased the fine for each contravention of a rental restriction bylaw to \$500. The amendments were registered with the Land Title Office on June 2, 2015.
16. On April 5, 2016 the strata amended its bylaws again. The amendment to bylaw 34 restricted short term rentals of any unit in the building to a period shorter than the existing City of Vancouver Rental bylaw for a residential building. At the time of the amendment, the City of Vancouver bylaws restricted rentals in a residential building to not less than 30 days. The amendments were registered with the Land Title Office on April 25, 2016.
17. On June 3, 2016 the owner signed a pre-authorized debit agreement with the strata. Section 1 of the agreement permits the strata to withdraw from the owner's account monthly operating fees, as well as fines and penalties less than \$1,000.
18. The owner provided three long term leases as evidence. The leases were as follows:
 - (a) a lease between the owner and WOW604 Enterprises Inc. The term of the lease was 5 years between March 1, 2016 and March 1, 2021. The rent was \$5,700 per month. The owner and WOW604 Enterprises Inc. are controlled by the same parties. The owner, through a power of attorney, appointed WOW604 Enterprises Inc. as its attorney to deal with strata properties it owned in British Columbia;

- (b) a lease between the owner and two tenants. The term of the lease was 1 year between February 1, 2017 and January 31, 2018. The rent was \$8,500 per month; and
 - (c) a lease between the owner and a single tenant. The term of the lease was between June 1, 2017 and August 11, 2017. The rent was \$10,500 per month.
19. The strata provided detailed evidence showing multiple incidents of alleged bylaw contraventions by the owner. The dates of the alleged contraventions were between May and December 2016. The evidence included a Notice of Infraction and Incident Report for each contravention. Many of the incident reports included time and date stamped pictures. According to the owner, the total amount of fines taken from their account was \$5,325.39.
20. Several of the bylaw contraventions for which the owner was fined were for violation of the strata's short term rental restriction bylaw.
21. The owner did not provide evidence to dispute any particular bylaw contravention.
22. The owner provided emails between its representative and the strata's agent as follows:
- (a) emails from July 13-14, 2016 regarding restricted access to SL 275. The emails do not make it clear what access was restricted and when;
 - (b) emails from Jan 22-24, 2017 regarding fines taken from the owner's account; and
 - (c) emails from February 24, 2017 regarding access to a storage locker for the owner's tenant.

23. The strata provided emails between the owner, the concierge for the building and the developer relating to the following:
- (a) an email from December 14, 2016 from the concierge to the owner regarding storage locker numbers for the owner's units;
 - (b) an email from January 19, 2017 from the owner to the concierge regarding clearing the owner's storage locker; and
 - (c) an email dated January 19, 2017 between the concierge and the developer regarding numbering of the owner's storage lockers.

POSITION OF THE PARTIES

24. The owner argues that:
- (a) the fines were not valid and even if they were, section 143 of the *Strata Property Act* (SPA) provides the owner protection from the fines;
 - (b) the pre-authorized debit agreement did not give the strata the right to take fines from the owner's account;
 - (c) the strata was negligent regarding the owner's storage locker by failing to respond to inquiries quickly and by using the owner's storage locker for its own use;
 - (d) the strata defamed the owner and its tenants and restricted access to amenities in the building, which caused the owner's long term tenant to move out; and
 - (e) the strata should pay the owner's tribunal fees.
25. The owner requests that I order the strata to pay it:
- (a) \$5,325.39 for the fines taken from its account;

- (b) \$68,000 for loss of revenue from its long term tenant; and
- (c) \$225 for its tribunal fees.

26. The strata argues that:

- (a) the fines were properly assessed and that the section 143 of the SPA does not protect the fines related to the owner's breaches of the rental restriction bylaw;
- (b) the pre-authorized debit agreement was valid and allowed the strata to take fines from the owner's account;
- (c) the strata was not negligent regarding the owner's storage locker and responded quickly to all the owner's requests. The strata was not responsible for the owner's storage locker; and
- (d) the strata did not defame the owner and its actions did not cause the owner's tenants leave.

27. The strata requests that I dismiss the owner's claim.

ANALYSIS

Are the strata fines valid?

- 28. Section 135 of the SPA says that a strata corporation may impose a fine for a bylaw contravention if the strata has received a complaint and given the owner and tenant written particulars of the complaint, as well as a reasonable opportunity to answer the complaint, including a hearing before the strata council if requested.
- 29. The short term rental restriction bylaw came into force on April 25, 2016. The allowable fine for contravention of the rental restriction bylaw was \$500 per occurrence.
- 30. There is a legal distinction between a rental of a property and a license to occupy a property. A rental gives a party exclusive use and possession of a property for a

specific period of time. A license to occupy gives a party non-exclusive permission to use a property for a period of time. Short-term rentals of less than 30 days are generally considered to be a license to occupy.

31. During the time period the owner was fined for contraventions of the rental restriction bylaw, SL 275 was rented to WOW604 Enterprises Inc. under a long term lease. During that period, the owner was controlled by WOW604 Enterprises Inc. through a power of attorney. There is no evidence that any long term tenants were residing in SL275 during that period. I find that the owner was primarily renting out SL275 during that period to short term tenants. I further find that any short-term rentals of SL 275 during that period constituted licenses to occupy.
32. Section 143 of the SPA provides certain exemptions for some strata lots from rental restriction bylaws, however, I find those exemptions do not apply here.
33. In *HighStreet Accommodations Ltd. v. The Owners, Strata Plan BCS2478*, 2017 BCSC 1039 the court ruled that section 143 of the SPA does not provide protection for the type of licenses to occupy for which the owner was fined. Given I have found the rentals at issue to be licences to occupy, section 143 of the SPA does not protect the owner from those fines.
34. The owner did not provide any additional evidence to dispute any of the specific incidents of the strata fines imposed against it. The owner did not provide evidence it was not given particulars of the complaints against it. The owner did not provide evidence it was not given a reasonable opportunity to answer the complaints against it. As a result, I accept that the strata properly followed the requirements of section 135 of the SPA before imposing fines.
35. I find that all the strata fines levied against the owner were valid.

Does the pre-authorized debit agreement give the strata the right to withdraw strata fines from the owner's account?

36. A contract is binding when the parties to it have come to a mutual agreement about its terms. A contract does not need to be written and signed. However,

when a contract is written and signed, it creates certainty regarding its terms and the intentions of the parties.

37. The pre-authorized debit agreement was signed by the owner and there is no evidence it was revoked.
38. Section 1 of the agreement allows the strata to withdraw recurring monthly operating fees, as well as fines and penalties up to \$1,000. None of the fines withdrawn by the strata were greater than \$1,000.
39. I find that the agreement was a binding contract that gave the strata the right to withdraw all of the fines levied against the owner from its account.

Were the strata's actions regarding the owner's storage locker negligent?

40. The owner claims the strata was negligent regarding its storage locker by using it for its personal use as well as ignoring the owners access requests.
41. A claim for negligence requires that the owner show that through the negligent action or inaction of the strata, the owner suffered damage. The damage suffered must also be reasonably foreseeable and must result directly from the negligent action.
42. I find that the evidence shows that the strata was responsive to the owner's requests regarding the storage locker. I find there is no evidence the strata used the owner's storage locker for personal use. I find that the owner has not shown the strata was negligent regarding its storage locker.

Did the strata defame the owner?

43. Under the Act, the tribunal does not have jurisdiction to resolve claims of defamation. I am unable to make a decision on this issue.

Did the strata cause the owner to lose its long term tenants?

44. In general, a party cannot recover damages for economic losses resulting from the actions of another unless at least one of the following are true:
- (a) the economic losses were the result of some physical injury to the party or their property;
 - (b) the economic losses happened while there was a contract between the parties; or
 - (c) the actions of the party causing the economic losses were illegal.
45. The owner claims that the actions of the strata caused them to lose their long term tenants that began renting SL 275 between in February 2017. It is not clear from the evidence when those tenants terminated their lease. The owner was able to enter into a new lease on June 1, 2017.
46. I find there is no evidence that supports the owner's claim that the strata caused it to lose its long term tenants. I decline to make an order that strata pay \$68,000 to the owner for the loss of revenue from its long term tenants.

Should the strata pay the owner's tribunal fees?

47. The owner has not been successful in this dispute.
48. 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. I see no reason to depart from the general rule in this case and decline to order the strata reimburse the owner's tribunal fees as the owner was not successful.

DECISION AND ORDERS

49. I order that the owner's claims are dismissed.

50. Under section 189.4(b) of the SPA, 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 defending this claim are allocated to the owner

Graeme Nunn, Tribunal Member