Civil Resolution Tribunal

Date Issued: April 19, 2018

File: ST-2017-006276

Type: Strata

Civil Resolution Tribunal

Indexed as: *Waldman v. Ng et al*, 2018 BCCRT 143

B E T W E E N :

Ken Waldman

APPLICANT

A N D :

Shirley Ng and The Owners, Strata Plan EPS 2669

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant Ken Waldman (owner) owns a strata lot in the respondent strata corporation, The Owners, Strata Plan EPS 2669 (strata). The respondent Shirley Ng was at all material times the strata council president.

2. This dispute arose because the strata fined the owner $10 for tailgating in the strata's parkade. In addition to wanting the strata to reverse the $10 fine, the applicant owner wants an order that the strata review and clarify its tailgating rule and the bylaws. The owner also wants an order that the strata not use 'WEChat' in Chinese on the basis that it violated his human rights because the applicant does not speak Chinese. The WEChat concern arose because the tailgating complaint was made in Chinese to the council and because council members may have used WEChat in Chinese to communicate with each other about the issue.

3. The owner and Shirley Ng are self-represented. The strata is represented by another strata council member.

JURISDICTION AND PROCEDURE

4. 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.

5. 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.

6. 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 that there are no significant issues of credibility or other reasons that might require an oral hearing.

7. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make one or more of the following orders:

   a. order a party to do or stop doing something;

   b. order a party to pay money;

   c. order any other terms or conditions the tribunal considers appropriate.

8. Section 11(1)(b) of the Act give the tribunal authority to refuse to resolve a claim within its jurisdiction if the request for resolution does not disclose a reasonable claim or is an abuse of process. Section 11(2) of the Act says that the tribunal can exercise this authority either at the time it considers the request for tribunal resolution or at any time before the tribunal makes a final decision resolving the dispute.

9. Section 35 of the Act permits a case manager to refer the dispute to a tribunal member if the case manager considers a claim in a dispute has no reasonable likelihood of success or gives rise to an abuse of process. Under this section, the tribunal member has discretion to order the claim dismissed if the tribunal member considers the claim is frivolous, vexatious or an abuse of process, or, direct that the claim continue.

10. Section 61 of the Act says the tribunal may make “any order” in relation to a proceeding it thinks necessary to “achieve the objects” of the tribunal, given its mandate.

11. The case manager did not refer this dispute under section 35 of the Act. However, given section 35 and sections 11 and 61 of the Act, I find I may refuse to resolve or dismiss a particular claim if I conclude it is frivolous.

12. Finally, I note the owner's December 19, 2017 email to the tribunal, which was part of the evidence package provided to me for adjudication. In it, the owner lays out separate and new concerns about the strata and the property manager's handling of the strata's "water feature". I decline to address this issue as I find it is not properly before me, and to that end I note it was not listed as one of the owner's claims in his submissions package and the strata did not make submissions about it. For clarity, given the owner's submissions, the tribunal decision plan before me in this dispute is framed based on the applicant owner's application for dispute resolution, as set out in the tribunal's Dispute Notice. Tribunal rule 107 states that once the facilitator (also known as case manager) has given the tribunal decision plan to the parties, they cannot add any other party or claim without the tribunal's permission. Overall, I find it is not appropriate for the owner to continue to add additional claims at the submission stage of this dispute.

ISSUES

13. The issues in this dispute are:

    a. Should the strata reverse its $10 tailgating fine against the owner?

    b. Should the strata be ordered to review and revise its tailgating rule?

    c. Should the strata be ordered to stop using WEChat and/or stop communicating in Chinese?

EVIDENCE AND ANALYSIS

14. In a civil claim such as this, the applicant bears the burden of proof. While I have reviewed all of the materials submitted, I have only referenced what is necessary to give context to my decision.

The tailgating rule and the $10 fine

15. I find that the applicant's primary claim in this dispute is that the $10 fine was improperly imposed and that it should be reversed. I say this because this dispute only arose because the strata imposed that fine.

16. The strata says it received complaints that on December 5 and 10, 2016, the owner was seen following too closely without stopping, or tailgating, another vehicle into the parkade. The strata says this violated one of its rules, as discussed below.

17. The strata wrote the owner on February 20, 2017 about the rule breach, that it could attract a $10 fine, and invited the owner to respond or request a hearing, in accordance with section 135 of the *Strata Property Act* (SPA). I note there is nothing in the strata's bylaws about tailgating. Rather, as discussed below, the strata's rules contain the tailgating provision.

18. The strata's February 20, 2017 letter to the owner set out the tailgating rule as follows:

> **3. Visitor Parking**
>
> 9. Wait for the gate to close completely before proceeding, no tailgating.

19. At the owner's request, a hearing was held on February 27, 2017. After that hearing, council decided to impose a $10 fine and on March 3, 2017 the strata sent a letter to the owner accordingly.

20. The owner provided evidence and submissions about his view that the tailgating complaints were not adequately substantiated. Given my conclusions below, I find I do not need to address this in great detail. However, given the tribunal's mandate that recognizes the ongoing relationship between parties, I will say this. The strata must act reasonably, and in my view what is reasonable will depend on the circumstances. A relatively minor tailgating fine likely does not require intensive corroboration and photos of the tailgating when it happened, which may not be

possible. It is open to the strata to hear the evidence before it and come to a reasonable conclusion. I have no evidence before me that the strata unreasonably concluded the owner had been tailgating when he entered the parkade on the 2 occasions in question. Further, I am not prepared to find the strata was unreasonable in limiting the amount of time the owner had to present his 16-point case about the $10 fine or in failing to follow Robert's Rules of Order in conducting the owner's council hearing about the $10 fine.

21. The owner's central submission is that because the rule falls under a 'Visitor Parking' heading, rather than a 'Residents' heading, that the rule does not apply to him because he is an owner not a visitor. Under the *Interpretation Act*, headings do not form part of the enactment itself, and the strata's bylaws and effective rules qualify as an enactment. I find it would not make sense for the strata to say visitors cannot tailgate but leave it open for owners to do so. I find the owner's interpretation that the tailgating rule did not apply to him is unreasonable and inconsistent with common sense. If the rule was in force at the time the tailgating occurred, I find the owner should have complied with the tailgating rule, even though he is an owner, not a visitor.

22. However, I have no evidence the tailgating rule was in force on December 5 and 10, 2016, when the owner was found to be tailgating. The owner submits that it was not in force and the strata did not address this submission or provide any evidence about when the rule was implemented or ratified. Therefore, I find the strata was not entitled to fine the owner for tailgating. For clarity, I come to this conclusion because I find on the evidence before me that the tailgating rule was not in force at the material time, which is when the alleged tailgating occurred and not when the strata first wrote the owner about it.

23. Given the low monetary value and the fact that the tribunal's resources are valuable, under sections 11 and 61 of the Act I would have dismissed the $10 claim as frivolous, had it been a claim for reimbursement. However, after the tribunal issued the Dispute Notice in November 2017, the strata stated in its December 2017 council minutes that it acquiesced on the issue of the $10 fine. It

is unclear to me why the strata has apparently not yet reversed the fine, given those council minutes. I order the strata to reverse the $10 fine, if it has not already done so.

Other requested remedies

24. I turn then to the other remedies requested by the owner, which arise from his being fined $10 for breaching the tailgating rule.

25. First, I accept the strata's submission that it is reviewing its bylaws and rules, and I agree there is no need for an order that it do so, contrary to the owner's request. The tailgating issue is discrete and straightforward. I dismiss the owner's request for such an order.

26. I turn then to the owner's claim that the strata council members received one or both of the tailgating complaints in Chinese, via an application called WEChat, and/or communicated with other council members in Chinese. There is nothing inappropriate in their doing so, contrary to the owner's submission. It may be that the strata has forms for complaints, but it is not necessarily inappropriate for the strata to receive a complaint that was not set out in the form. The owner submits that a council hearing or strata meeting should be conducted in English (or French), rather than Chinese. The owner's hearing was conducted in English. However, there is nothing in the SPA or the strata's bylaws that says council members cannot communicate with each other in whatever language they prefer. Those communications between council members are not producible as records under sections 35 and 36 of the SPA. Further, there is nothing in the SPA or the strata's bylaws that require a complaint to be made in writing. Thus, there was nothing improper in the strata receiving the complaint in Chinese and reducing its substantial terms to writing in its correspondence to the owner, which was written in English. Contrary to the owner's submission, I cannot agree the strata has acted significantly unfairly towards him with respect to its investigation of the tailgating complaints or in its conduct of the council hearing. I dismiss the owner's request on the issue of using WEChat or communicating in Chinese.

27. Next, I do not have jurisdiction to determine whether the property manager has complied with its own regulatory standards through the Real Estate Council of BC, as requested by the owner. That said, I have insufficient evidence before me that would lead me to conclude the strata council and its property manager have acted improperly, save for fining the owner under the not-yet-effective rule, as discussed above. I dismiss the owner's requested remedy on this issue.

28. Finally, I find the applicant has not established that the respondent Shirley Ng has done anything inappropriate. At all material times she acted in her role as a council member and there is nothing before me to support a conclusion that she did not do so in good faith. I dismiss the applicant's claims against Shirley Ng.

29. In accordance with the Act and the tribunal's rules, in exercising my discretion I find the applicant is entitled to reimbursement of $62.50 for tribunal fees and $10.50 for dispute-related expenses, given the divided success and given the owner paid $125 to start the tribunal proceeding. I have not allowed any reimbursement of the $100 the owner paid to have this decision issued. I make this finding given the divided success and the owner's refusal of the strata's January 2018 offer to reverse the $10 fine and pay $225 for tribunal fees.

ORDERS

30. I order the strata to immediately reverse the $10 fine against the owner's strata lot, if it has not already done so.

31. Within 30 days of this decision, I order the strata to reimburse the owner $73.00 for tribunal fees and dispute-related expenses.

32. The owner's claims against Shirley Ng are dismissed.

33. The owner is entitled to post-judgment interest, as applicable.

34. As set out in sections 167 and 189.4 of the SPA, I order the strata to ensure that no part of its expenses in defending this proceeding are allocated to the applicant owner.

35. 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.

36. 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.

Shelley Lopez, Vice Chair