



Civil Resolution Tribunal

Date Issued: May 2, 2018

File: ST-2017-005929

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan KAS 1459 v. Leonard*, 2018 BCCRT 159

B E T W E E N :

The Owners, Strata Plan KAS 1459

APPLICANT

A N D :

Nicole Leonard

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant is a strata corporation consisting of 8 residential strata lots in Penticton, British Columbia (strata). The strata is represented by a strata council member.
2. The respondent is the owner of a residential strata lot in the strata. The respondent is self-represented.

3. The strata claims that the respondent owes the strata for unpaid strata fees. The respondent refuses to pay the strata fees because of their concerns over the strata's management, finances and governance.
4. The strata seeks the following orders:
 - (a) an order that the respondent pay unpaid strata fees, penalties and other fees, plus interest;
 - (b) an order giving the strata conduct of sale of the respondent's strata lot; and
 - (c) an order for reimbursement for the strata's tribunal fees of \$225.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.

8. 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

9. The issues in this dispute are:
 - Does the respondent have to pay their unpaid strata fees despite their concerns regarding the strata's management, governance and finances? If so, how much does the respondent owe the strata in strata fees, penalties and other expenses?
 - Does the tribunal have jurisdiction to grant the strata conduct of sale of the respondent's unit?
 - Is the strata entitled to its tribunal fees from the respondent?

BACKGROUND AND EVIDENCE

10. Bylaw 1 of the strata's bylaws requires the owners to pay strata fees on the first day of each month. As of September 2016, the respondent's monthly strata fees were \$124.58.
11. On October 20, 2016, the strata registered a lien on title to the respondent's strata lot for \$373.58, representing unpaid strata fees for September and October 2016.
12. On October 28, 2016, the strata commenced an action against the respondent in the Provincial Court of British Columbia for \$843.00 in unpaid strata fees, legal fees, filing fees and service fees.
13. On November 9, 2016, the respondent filed a reply to the Provincial Court action and agreed to pay the strata \$843.00 in several installments. For reasons that are not clear in the evidence, the respondent did not make the installment payments as

scheduled. However, on January 3, 2017, the respondent paid the strata \$1,216.74, which the respondent says is broken down as:

- \$843.00 judgment from the small claims action.
 - \$373.74 strata fees for November and December 2016 and January 2017.
14. The strata provided inconsistent evidence regarding whether the respondent owed strata fees for January 2017 and February 2017. The strata initially claimed that the respondent did not pay strata fees for January 2017, but later stated that the respondent's arrears date back to February 2017. The strata also provided a bill issued to the respondent by the strata's property manager that states that the respondent's arrears only date back to March 2017, not February 2017.
 15. In its final submissions, the strata states that the respondent owes strata fees from February 2017 through February 2018.
 16. The strata states that at its March 12, 2018 AGM, it raised strata fees from \$124.58 to \$137.46, retroactive to January 1, 2018. The strata did not provide any evidence to support its statement that it had raised strata fees.
 17. The parties agree that the respondent paid strata fees on time for March 2018 and April 2018 in the amount of \$124.58 per month.
 18. The respondent does not dispute that they have failed to pay strata fees to the strata, but the respondent states that the amount they owe is \$1,494.96, being 12 months at \$124.58 per month. The respondent does not admit that they should have to pay the arrears.
 19. The respondent provided a significant amount of evidence dating as far back as 2009 that they believe shows a long pattern of mismanagement, poor governance, reckless spending and bullying by some current and past owners of other strata lots. The respondent believes that in January 2017, the strata caused the sale of the respondent's lot to collapse because the strata failed to provide the necessary documents to the purchaser. The respondent states that despite paying the fact

that they paid the Provincial court judgment in full, the strata has not discharged the lien on the respondent's property. They also believe that the strata has failed to call meetings and hold hearings in compliance with the strata's bylaws and the *Strata Property Act* (SPA) and has failed to respond to the respondent's requests for financial documents, minutes of strata meetings and minutes of strata council meetings.

20. The respondent did not file a claim against the strata.

POSITION OF THE PARTIES

21. The strata argues that the respondent must pay its strata fee arrears, including the increases from the March 12, 2018 AGM. The also strata states that it should be reimbursed for the cost of a bailiff it hired to provide the respondent with the dispute notice and an unspecified amount of money for the time spent dealing with this dispute.

22. The respondent does not dispute that they have failed to pay strata fees, but argues that they should not have to pay because the strata did not comply with its obligations under the SPA and the strata's bylaws. The respondent also believes that they should not have to contribute to the poor spending habits of the strata.

23. The strata argues that the respondent's history of failing to pay strata fees should give the strata the ability to force the sale of their unit. The respondent says that the tribunal does not have jurisdiction to grant an order for the strata to sell their strata lot.

ANALYSIS

Does the respondent have to pay their unpaid strata fees despite their concerns regarding the strata's management, governance and finances? If so, how much does the respondent owe the strata in strata fees, penalties and other expenses?

24. Section 99 of the SPA requires owners of a strata lot to contribute to their strata corporation their share of the strata's operating budget and contingency reserve fund. A strata may pass a bylaw setting out a schedule for paying strata fees, which the strata did by establishing monthly payment of strata fees in bylaw 1. The SPA and the strata's bylaws both require the respondent to pay strata fees. Neither the SPA nor the strata's bylaws permit the respondent to withhold strata fees because they disagree with the actions of the strata or the strata council. The respondent must pay their strata fees regardless of whether they agree with how the strata operates or how the strata spends its money.
25. Therefore, while I reviewed all of the evidence provided by the respondent, I find that the evidence related to the respondent's concerns over the management, governance and finances of the strata is irrelevant to the issues in this dispute, given that the respondent did not file a claim against the strata.
26. I have reviewed the strata's bank statements and am satisfied that the respondent paid their strata fees for January 2017, but not for February 2017. I find that the respondent did not pay strata fees between February 2017 and February 2018.
27. With respect to the strata's claim for retroactive increases in strata fees, in *The Owners, Strata Plan NW 2729 v. Haddow et al*, 2018 BCCRT 37, the tribunal determined that retroactive strata fees are contrary to the intent of the SPA and refused to order payment of retroactive strata fees. The tribunal found that a new budget, which may include strata fee increases, takes effect in the first month following the AGM.
28. While not binding on me, I agree with the tribunal's conclusion in *Strata Plan NW 2729*. Therefore, even if the strata had provided evidence of a strata fee increase, I would not have ordered the respondent to pay retroactive strata fees. Any strata fees increase passed at the March 12, 2018 AGM would not have taken effect until April 1, 2018.
29. Ultimately, as stated above, the strata did not provide any evidence that would allow me to conclude that strata fees have been raised.

30. I find that the respondent failed to pay strata fees for 13 months at \$124.58 per month. Therefore, I order the respondent to pay their strata fee arrears of \$1,619.54. I order all other strata fees claimed by the strata up to and including April 2018 be reversed.
31. I recognize that if the strata did pass a bylaw that increased the respondent's strata fees from \$124.58 to \$137.46 as alleged by the strata, the above order will result in the respondent underpaying strata fees for April 2018 by \$12.88. The tribunal has a mandate to recognize the existence of ongoing relationships and to provide speedy, efficient and proportional dispute resolution. I find that these aspects of the tribunal's mandate are best served by an order that reduces the likelihood of unnecessary further conflict between the parties. In my view, the potential that the respondent may underpay their strata fees by \$12.88 is outweighed by the benefit of finality and closure.
32. With respect to the bailiff, the strata does not provide any evidence of the cost of the bailiff. In addition, rule 50 of the tribunal rules permits service of a dispute notice via email. I see no reason why the strata could not serve the respondent in person or via email. Therefore, I am not satisfied that the use of a bailiff was reasonable. Even if the strata had provided evidence as to the cost of the bailiff, I would not have ordered the respondent to reimburse the strata for this expense.
33. Generally, the tribunal does not make awards for time spent dealing with a dispute, which is consistent with the Act's general requirement for self-representation and the tribunal's practice not to reimburse legal fees. I see no reason to deviate from that general practice.
34. The strata does not identify any other fees or expenses associated with the claim, other than the tribunal fees and interest.
35. Under section 107 of the SPA, the strata is entitled to claim interest on unpaid strata fees only if it has bylaw to that effect. I find that strata does not have such a bylaw and therefore I dismiss the strata's claim for interest to the extent it is a claim under the SPA.

36. The strata is entitled to interest under the *Court Order Interest Act* (COIA).
37. There is no evidence that the strata levied any fines or penalties against the respondent.
38. I therefore dismiss the strata's claim for penalties and other fees.

Does the tribunal have jurisdiction to grant the strata conduct of sale of the respondent's unit?

39. Section 117 of the SPA gives a strata corporation the right to apply to the Supreme Court of British Columbia to force the sale of a strata lot where the strata corporation has a lien or judgment over the strata lot.
40. Section 3.6(2)(f) of the Act states that the tribunal does not have jurisdiction to make orders under section 117 of the SPA.
41. Therefore, I dismiss the strata's claim for conduct of sale of the respondent's unit.

Is the strata entitled to reimbursement of its tribunal fees?

42. 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. Both the strata and the respondent have been successful in aspects of this claim. I therefore decline to order the respondent to reimburse the strata its tribunal fees.

DECISION AND ORDERS

43. Within 14 days of the date of this order, I order the respondent to pay to the strata \$1,633.07, broken down as follows:

- \$1,619.54 for unpaid strata fees; and
- \$13.53 in pre-judgment interest under the COIA.

44. Within 14 days of the date of this order, I order the strata to reverse any strata fees exceeding \$1,619.54 for the period up to and including April 2018.
45. The strata is entitled to post-judgment interest, as applicable.
46. 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.
47. 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.

Eric Regehr, Tribunal Member