



# Civil Resolution Tribunal

Date Issued: May 2, 2018

File: ST-2017-004034

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan KAS 2660 v. Brooks*, 2018 BCCRT 162

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

The Owners, Strata Plan KAS 2660

**APPLICANT**

**A N D :**

Ken Brooks

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Graeme Nunn

## **INTRODUCTION**

1. This is a dispute about bylaw fines. The applicant strata corporation, The Owners, Strata Plan KAS 2660 (strata), wants an order that the respondent, Ken Brooks

(owner), pay 3 fines for alleged bylaw breaches. The strata also wants an order that the owner pay its tribunal fees.

2. The strata claims that the owner or his tenant breached the strata's bylaws as follows:
  - (a) On June 26, 2015 by spraying chemicals on the trees located on the strata property, causing them to die.
  - (b) On June 29, 2015 by feeding ducks on the strata property, causing them to be a nuisance.
  - (c) On February 4, 2016 by feeding ducks on strata property, causing them to be a nuisance.
3. The strata is represented by a strata council member. The owner is self-represented.

## **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 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.

6. 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.
7. 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**

8. The issues in this dispute are:
  - a. Should the owner be ordered to pay the strata fines?
  - b. Should the owner be ordered to pay the strata's tribunal fees?

## **BACKGROUND AND EVIDENCE**

9. 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.
10. The strata alleges the owner or his tenants breached the strata's bylaws on 3 separate occasions. The strata has imposed fines against the owner for those alleged breaches.
11. The relevant bylaws the strata alleges the owner breached are:
  - 4(1) An owner, tenant, occupant or visitor must not:
    - (a) Use a strata lot, the common property, including limited common property, or common assets in a way that:
      - (i) causes a nuisance or hazard to another person.

[...]

(q) cause damage to trees, plants, bushes, flowers or lawns or act in any way to prevent growth or to interfere with the cutting of lawns or the maintenance of the grounds, including, without limiting the generality of the foregoing, placing furniture or other objects on the lawns.

12. Both bylaws were in effect on the dates of the alleged breaches.
13. The strata provided a ledger showing the owner owes \$300 in outstanding fines for the alleged breaches. The owner stated he would not pay the fines in an email to the strata's representative dated November 4, 2017.

#### **Alleged Breach 1 of June 26, 2015**

14. The strata provided the following evidence of the alleged breach of the strata bylaws on June 26, 2015 as follows:
  - (a) An email dated June 26, 2015 stating a resident of the strata observed the owner and his tenant spraying chemicals on the new trees on the beach.
  - (b) A Notice of Alleged Bylaw or Rule Contravention stating the owner's tenants breached bylaw 4(1)(q) by spraying chemicals (roundup) on the trees located at the beach causing them to die off. The notice was mailed on July 2, 2015.
  - (c) A letter dated August 14, 2015 addressed to both the owner and his tenants informing them that the strata assessed a fine of \$200 at the August 11, 2015 council meeting for the breach of the bylaw.
  - (d) Two envelopes as follows:
    - i. One addressed to the owner at 84 – 7200 Cottonwood Drive, Osoyoos, BC, V0H 1V3; and
    - ii. One addressed to "tenant" at 23 – 7600 Cottonwood Drive, Osoyoos, BC, V0H 1V3.

- (e) An email from the owner dated September 21, 2015 regarding several strata issues. The email contained a reference to the circumstances of the alleged breach on June 26, 2015.
  - (f) A letter from the strata's representative to the owner dated October 23, 2015 about a hearing regarding concerns raised by the owner in his September 21, 2015 email. The letter states the hearing was held on October 15, 2015.
15. In his response to the Dispute Notice, the owner admitted that he did spray herbicide on the strata property to eliminate weeds. The owner also admitted the same in an email to the strata's representative dated November 2, 2017.

**Alleged Breach 2 of June 29, 2015**

16. The strata provided the following evidence of the owner's alleged breach of the strata bylaws on June 29, 2015 as follows:
- (a) An email dated June 29, 2015 stating a resident of the strata observed ducks feeding on grain spread around the owner's tenants' unit.
  - (b) A Notice of Alleged Bylaw or Rule Contravention stating the owner's tenants breached bylaw 4(1)(a)(i) by feeding ducks which caused them to be a nuisance on the property. The notice was mailed on July 2, 2015.
  - (c) A letter dated August 14, 2015 addressed to both the owner and his tenant informing them that that strata assessed a fine of \$50 at the August 11, 2015 council meeting for the breach of the bylaw.
  - (d) Two envelopes as follows:
    - i. One addressed to the owner at 84 – 7200 Cottonwood Drive, Osoyoos, BC, V0H 1V3; and
    - ii. One addressed to "tenant" at 23 – 7600 Cottonwood Drive, Osoyoos, BC, V0H 1V3.

- (e) An email from the owner dated September 21, 2015 regarding several strata issues. The email contained a reference to the circumstances of the alleged breach on June 29, 2015.
  - (f) A letter from the strata's representative to the owner dated October 23, 2015 about a hearing regarding concerns raised by the owner in his September 21, 2015 email. The letter states the hearing was held on October 15, 2015.
17. The strata provided several photos showing:
- (a) evidence of bird seed on the grounds of the strata;
  - (b) ducks congregating on the grounds of the strata; and
  - (c) numerous duck tracks in the snow on the grounds of the strata.
18. In his response to the Dispute Notice, the owner admitted that his tenants fed the ducks.

**Alleged Breach 3 of February 4, 2016**

19. The strata provided the following evidence of the owner's alleged breach of the strata rules on February 4, 2016 as follows:
- (a) An email dated February 4, 2016 attaching a picture showing bird seed spread across what appears to be the patio of a strata lot.
  - (b) A Notice of Alleged Bylaw or Rule Contravention stating the owner's tenants breached bylaw 4(1)(a)(i) by feeding ducks which caused them to be a nuisance on the strata property. The notice was mailed on February 10, 2016.
  - (c) A February 16, 2016 summary and notice that the strata assessed a fine of \$50 for breach of the bylaw.

(d) Two envelopes as follows:

- i. One addressed to the owner at 84 – 7200 Cottonwood Drive, Osoyoos, BC, V0H 1V3; and
- ii. One addressed to “tenant” at 23 – 7600 Cottonwood Drive, Osoyoos, BC, V0H 1V3.

(e) An email from the owner to the strata’s representative dated November 2, 2017 requesting a meeting with the owner and the tenant to review 2 fines for feeding ducks and 1 for spraying herbicide.

20. The strata also provided a letter from the strata’s representative to the owner dated December 7, 2015 about a hearing held on November 30, 2015. The hearing was about the owner’s concerns about several issues related to the strata property, including a canoe rack and parking.

## **POSITION OF THE PARTIES**

21. The strata argues that the fines were validly assessed. The strata requests I order that the owner pay it \$300 for the outstanding fines and \$225 for its tribunal fees.

22. The owner argues that he or his tenant did not breach the bylaws. In particular, the owner argues that his actions were not breaches of the bylaws. The owner also argues that other residents of the strata were not fined for doing the same things he did.

23. The owner requests that I dismiss the strata’s claim against him.

### **Should the owner be ordered to pay the strata fines?**

24. Section 135 of the *Strata Property Act* (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. The SPA does not specify the form in which notice of the particulars of complaint must be given, nor does it define what constitutes a reasonable opportunity to answer the complaint.

25. Section 130 of the SPA requires that when a strata fine is issued, the person who is the subject of the allegation is entitled to the notice and hearing rights provided in section 135 of the SPA.
26. The owner or his tenants are alleged to have breached bylaws 4(1)(q) and 4(1)(a)(i). Both bylaws were in force at the times of the alleged breaches.
27. The strata made the determination that the owner or his tenants breached the bylaws. The owner disputes those claims saying the bylaws did not prohibit the activities he was fined for.
28. Bylaw 4(1)(q) states that an owner or tenant must not cause damage to trees, plants or flowers on the strata property. Based on the evidence provided, I find as follows:
  - (a) That the owner and his tenants did spray herbicide on the strata property;  
and
  - (b) The spraying of the herbicide caused damage to the trees on the strata property.
29. The owner argues that the plants sprayed were weeds and that his actions were justified. I reject this argument. Bylaw 4(1)(q) expressly prohibits an owner or tenant from causing damage to trees or plants. Whether the owner thought the plants were weeds is irrelevant if damage was caused. I conclude the bylaw prohibits the activities of the June 26, 2015 fine.
30. Bylaw 4(1)(a)(i) states that an owner or tenant must not do anything on the strata property that causes a nuisance. A nuisance is defined as something that causes inconvenience or annoyance. I find that attracting numerous ducks or other birds to the strata property constitutes a nuisance for the purpose of the bylaw. I



conclude that the bylaw prohibits the activities of the June 29, 2015 and February 4, 2016 fines.

31. I conclude that bylaws 4(1)(q) and 4(1)(a)(i) prohibited the activities for which the fines were issued.
32. For the fines to be valid, the strata must comply with the requirements of sections 130 and 135 of the SPA. There is nothing in the evidence before me to suggest the strata did not comply with the requirements of the SPA and the owner did not make such an argument. Therefore, I accept the strata's submission that they complied with the SPA on these points. Based on the evidence I find as follows:
  - (a) The strata received complaints of the 3 alleged breaches;
  - (b) The strata provided both the owner and tenant with notice of those alleged breaches. I rely on the copies of the envelopes addressed to both the owner and the tenant in making this finding;
  - (c) The owner and tenant were provided reasonable opportunity to answer the complaints. I rely on the letters provided which reference two hearings held at the request of the owner on October 15, 2015 and November 30, 2015 in making this finding. Further, there is no evidence that the strata did not allow the owner or tenants reasonable opportunity to answer the complaints.
33. I conclude the strata followed the requirements of the SPA before issuing the fines. I conclude the owner should be ordered to pay the strata fines as assessed.
34. The SPA does not permit interest to be charged on fines. However, the *Court Order Interest Act* (COIA) applies to tribunal disputes and I find the strata is entitled to pre-judgment interest under the COIA as follows:
  - (a) From August 11, 2015 on \$250; and
  - (b) From February 16, 2016 on \$50.

## **Should the owner be ordered to pay the strata's tribunal fees?**

35. The strata was the successful party in this dispute.
36. 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. I conclude the owner should pay the strata's tribunal fees in the amount of \$225.

## **DECISION AND ORDERS**

37. Within 30 days of this decision, I order the owner to pay to the strata a total of \$531.19, broken down as follows:
  - a. \$300.00 in fines for breaches of the strata bylaws;
  - b. \$6.19 in pre-judgment interest under the COIA; and
  - c. \$225.00 in tribunal fees.
38. The strata is entitled to post-judgement interest, as applicable.
39. 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.
40. 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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Graeme Nunn, Tribunal Member