



Civil Resolution Tribunal

Date Issued: June 18, 2018

File: ST-2017-005976

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan KAS 1459 v. Lawlor*, 2018 BCCRT 263

B E T W E E N :

The Owners, Strata Plan KAS 1459

APPLICANT

A N D :

Tracy Lawlor

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, The Owners, Strata Plan KAS 1459 (strata) is a strata corporation existing under the *Strata Property Act* (SPA). The respondent, Tracy Lawlor (owner), is an owner of a strata lot in the strata.

2. The strata seeks various orders regarding strata fees it says the owner has failed to pay. The owner disputes the strata's claims.
3. The strata is represented by a strata council member. The owner is self-represented.
4. For the reasons set out below, I order that the owner must pay the strata \$976 for unpaid strata fees, plus interest.

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. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
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 issue in this dispute are:
 - a. Does the tribunal have jurisdiction to grant the strata conduct of sale of the owner's unit?
 - b. Should the owner be ordered to pay unpaid strata fees, and if so, in what amount?

BACKGROUND

11. I have read all of the evidence provided, but refer only to that which I find relevant to provide context for my decision.
12. Bylaw 1 of the strata's bylaws requires all owners to pay strata fees on the first day of each month.
13. On October 20, 2016, the strata registered a lien on title to the owner's strata lot for \$4,148, representing unpaid strata fees up to October 1, 2015.
14. On October 28, 2016, the strata commenced an action against the owner in the Provincial Court of British Columbia for \$4,674 in unpaid strata fees and filing fees. The court issued an order dismissing that action on April 24, 2017, on the basis that the Provincial Court does not have jurisdiction over liens against the owner's strata lot, or governance issues under the *Strata Property Act* (SPA).
15. The tribunal issued the Dispute Notice for this dispute on November 3, 2017.

EVIDENCE AND ANALYSIS

Conduct of Sale

16. The strata seeks an order granting it conduct of sale of the owner's strata lot, in order to recover the unpaid strata fees sought in the BC Provincial Court proceeding.

17. 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.
18. As discussed in *The Owners, Strata Plan KAS 1459 v. Leonard*, 2018 BCCRT 159, section 3.6(2)(f) of the *Civil Resolution Tribunal Act* states that the tribunal does not have jurisdiction to make orders under section 117 of the SPA.
19. Because the tribunal does not have jurisdiction, I dismiss the strata's claim for conduct of sale of the respondent's unit.

Strata Fees – November and December 2017

20. The strata seeks an order that the owner pay \$244 for unpaid strata fees accrued in November and December 2016.
21. The strata has not provided any evidence proving that the owner owes strata fees for November and December 2016. Rather, they provided an October 13, 2017 statement of account from the property management company showing that the owner's balance forward on December 31, 2016 was zero. For this reason, and in the absence of any contrary evidence, I find that the owner does not owe unpaid strata fees for November and December 2016.

Strata Fees – January to October 2017

22. The strata says the owner owes \$1,220 for unpaid strata fees for the period from January to October 2017. However, I find that the strata has not provided evidence to support this amount.
23. The statement of account provided by the strata shows that as of October 13, 2017, the owner owed a total of \$976 in unpaid strata fees. In the absence of other evidence, I rely on the October 13, 2017 statement of account and its outstanding balance amount of \$976.

24. The strata submitted that the owner should provide proof of all strata fees paid from the time she purchased her strata lot. However, in a civil dispute such as this, the applicant bears the burden of proof. This means the strata has to provide evidence to prove each of its claims on a balance of probabilities. This “burden of proof” also means that in the context of this dispute, the owner does not have to prove that she paid her strata fees. Rather, in order to be granted a remedy, the strata has to prove that the owner did not pay, and if not, how much she owes and for what period.
25. I find that the owner’s strata fee payment history should be reasonably available to the strata, as it has a statutory duty track and manage the strata corporation’s finances, including strata fees. The strata has not provided any evidence that such records are not available to it.
26. For these reasons, and based on the evidence before me, I find that the owner owes \$976 in unpaid strata fees for the period of January to October 2017.
27. The owner submits that she should not have to pay some or all strata fees because the strata has been poorly managed and “plagued with interpersonal issues”. She submits that the strata has failed to hold meetings, publish minutes, keep financial records, and comply with the SPA. She says it has denied her a hearing and access to records, and has made unauthorized expenditures.
28. In *Leonard*, cited above, the tribunal member considered a similar submission from another owner in the same strata complex as in this dispute. The tribunal member found that an owner has a duty under section 99 of the SPA to pay monthly strata fees regardless of whether they agree with how the strata operates or spends its money. At paragraph 25, the tribunal member said that the evidence about the respondent’s concerns over the management, governance and finances of the strata was irrelevant to the issues in the dispute, given that the respondent did not file a claim against the strata.
29. While *Leonard* is not a binding precedent, I find its reasoning persuasive and the facts essentially the same as those before me in this case. The owner’s

dissatisfaction with the strata's management does not reduce her statutory obligation to pay strata fees. While the owner suggested the need for an audit, I decline to make that order as she did not file a counterclaim.

30. For all of these reasons, I order the owner to pay \$976 for unpaid strata fees accrued from January to October 2017.
31. Under section 107 of the SPA, the strata may only claim interest on unpaid strata fees if allowed under a bylaw. The strata does not have such a bylaw. However, the strata is entitled to interest under the *Court Order Interest Act* (COIA).

Strata Fees After October 2017

32. The strata submitted that the tribunal should order payment of strata fees owed by the owner after the strata filed its dispute with the tribunal on October 19, 2017, on the assumption that she would continue to withhold payment.
33. The strata's concern about efficient collection is understandable. However, the evidence before me does not establish any additional debt by the owner after October 13, 2017. I also find that it would be inappropriate for the tribunal to take jurisdiction over matters that had not yet occurred when the Dispute Notice was filed, based on a presumption about the owner's future conduct. Accordingly, I decline to order payment of strata fees accrued after October 2017.

Collection Expenses

34. In its submissions to the tribunal, the strata requested an order for reimbursement of expenses incurred for the collection of strata fees. Because the strata has not provided any evidence to support that claim, or any particulars such as the nature or amount of collection expenses, I decline to issue this order.

DECISION AND ORDERS

35. I order that within 30 days of this decision, the owner must pay the strata \$976 for unpaid strata fees.
36. Under the COIA, prejudgment interest must be awarded, calculated on the debt owing as of the date the cause of action arose up to the date of this order.
37. I find the cause of action arose on October 13, 2017, the date of the strata's statement of account. I calculate prejudgment interest payable by the owner to be \$6.77.
38. The strata is also entitled to post-judgment interest.
39. 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. As the strata was partially successful in this dispute, I see no reason to depart from this general rule. I therefore order the owner to reimburse the strata \$225 for tribunal fees.
40. 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.
41. 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.

Kate Campbell, Tribunal Member