



Civil Resolution Tribunal

Date Issued: July 6, 2018

File: ST-2017-005275

Type: Strata

Civil Resolution Tribunal

Indexed as: *Hamaguchi v. The Owners, Strata Plan LMS 3146*, 2018 BCCRT 307

B E T W E E N :

Trevor Hamaguchi

APPLICANT

A N D :

The Owners, Strata Plan LMS 3146

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

John Chesko

INTRODUCTION

1. This dispute is about strata rental bylaws.

2. The applicant, Trevor Hamaguchi (owner), owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 3146 (strata). The owner claims the strata improperly assessed fines against him for contravention of the strata's rental bylaw and seeks reversal of the bylaw fines and dispute-related expenses. The strata says the fines were properly assessed and the dispute should be dismissed.
3. The owner is self-represented. The strata is represented by an authorized member of the strata council.
4. For reasons that follow, I find the rental bylaw fines of \$3,000.00 are invalid and must be reversed. The owner's claims are otherwise dismissed.

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. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such

an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator).

8. The tribunal may accept 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 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.

PROCEDURAL OBJECTIONS NOTED

10. I note the strata objected that portions of the owner's reply raised new issues and was not a proper reply submission. The strata was permitted to file a further sur-reply in response and did so. As part of the mandate to be "accessible, speedy, economical, informal and flexible" the CRT is not bound by the same strict rules of evidence or procedure as a court (See *Act* sections 2 and 42). I find there is no prejudice to the parties resulting from the procedure followed by the tribunal. I will determine what, if any, weight I give to the reply evidence.
11. The owner also submitted that the strata may have had legal assistance. While section 20 of the *Act* creates as a general rule that parties represent themselves, a party is entitled to have a 'helper' and there is no restriction on receiving legal advice or assistance. See *Booth et al v The Owners, Strata Plan NW 2575*, 2017 BCCRT 61 at paragraph 8.

ISSUES

12. The issues in this dispute are:
 - a. Did the strata act in accordance with the *Strata Property Act* (SPA) and its bylaws when assessing fines against the owner's strata lot?
 - b. Should the strata pay the owner \$150 for moving expenses and \$40 for lost wages to attend the council hearing?
 - c. Should the strata be ordered to have clear protocols for enforcement of the rental bylaws?
 - d. Is the applicant owner entitled to reimbursement of \$225 for tribunal fees?

BACKGROUND AND EVIDENCE

13. The owner is the registered owner of strata lot 78 within the strata.
14. The owner submits he moved into his strata lot in late September 2016. It is not disputed another person other than the owner was living in the strata lot in September 2016 who identified to strata representatives as a renter. It is also not disputed the owner unsuccessfully requested permission to rent his strata lot in August 2016.
15. The strata submitted that it received a complaint in September 2016 that the owner was renting his strata lot contrary to the strata bylaws.
16. The strata bylaws that deal with strata lot rentals are in "Division 10, Bylaw 44 - Rental Restriction Bylaw." Bylaw 44 is currently made up of a number of subparagraphs numbered from 44(1) to 44(15). The bylaws set out specific procedures and rules regulating the rental of strata lots in this strata. Simply put, there are a limited number of strata lots that may be rented out, scope of the rental

restriction is defined, there is a procedure to allocate the rental strata lots, and the ability to fine owners who do not follow the bylaw.

17. The previous rental bylaw 44 was passed at a special general meeting of the strata on November 17, 2015. It was registered at the land title office on November 19, 2015. The older rental bylaw 44 was then replaced at a general meeting of the strata owners on December 8, 2016 and registered at the land title office on December 21, 2016. The new bylaw 44 registered on December 21, 2016 is a different rental bylaw than the older bylaw 44 it replaces. The new bylaw 44 includes new paragraphs defining rentals. Many paragraphs are renumbered. The old bylaw 44(5) was replaced with a newly-worded and renumbered bylaw 44(6).
18. It is undisputed the owner received a letter from the property manager on behalf of the strata dated September 28, 2016. The letter said the strata received a complaint the owner was renting his strata lot without written permission of the strata in violation of bylaw 44(5). The letter cites the exact wording of bylaw 44(5) and a table sets out the date of the alleged infraction as "September 10th, 2016 to current date". The bylaw 44(5) cited is the one registered November 19, 2015. The letter invites the owner to respond to the complaint in writing or at a hearing before the strata council "in relation to the alleged breach of the above noted bylaw." The letter says a response is required by October 12, 2016.
19. The evidence from both parties includes back and forth correspondence about the status of the person living in the owner's strata lot and whether the owner is living in the strata lot at the same time. The correspondence continues over a number of months as the owner is in transit and not easily available. The evidence from the owner is that he is not in 'normal' residence as he travels frequently, works nights and stays often with his girlfriend. At various times the owner comments that he is surprised a decision has not been made. While the correspondence continues into the new year seeking more information from the owner, the strata does not make a determination or levy a fine.

20. By letter dated February 3, 2017, the owner was advised the strata council still had questions and again invited the owner to a meeting on February 8, 2017. The letter refers to the earlier rental bylaw correspondence and is a continuation of the bylaw complaint in the September 28, 2016 letter. The February 3, 2017 letter does not refer to any new rental bylaws that were recently passed and registered in December 2016. The evidence is that the owner did not meet with the strata council on February 8, 2017, but submitted some documents with his name and the strata lot address.
21. At a strata council meeting on March 8, 2017 the strata council considered the alleged violation of the rental bylaw and found the owner in contravention. The March 8, 2017 strata council minutes specifically refer to bylaw 44(5). At another strata council meeting on April 19, 2017 the strata council assessed a \$500 fine 'effective immediately' to the owner's strata lot and authorized continuing fines every 14 days as per the strata corporation bylaws.
22. By letter dated May 3, 2017 the owner was informed about the strata council decision. The letter tells the owner that the strata council has found him in breach of strata rental bylaw "44(6)" and a \$500 fine has been assessed against his strata lot account. The letter says that further fines of \$500 will be assessed every 14 days, "effective immediately." The May 3, 2017 letter does not cite bylaw 44(5).
23. In subsequent correspondence, the strata advised the owner that bylaw fines will continue to be charged. In correspondence to the owner dated August 28, 2017, the fines on the strata lot total \$4523.91, although not all of these fines are for breach of the rental bylaw. However, further correspondence between the owner and the strata shows the strata later agreed \$1,000.00 of the continuing fines were assessed in error as it was agreed the person in the owner's strata lot had vacated a month earlier in July 2017. In total, the strata submits \$3,000.00 is owed by the owner for breach of the rental bylaw.

POSITIONS OF THE PARTIES

Applicant owner's position

24. The owner submits the strata made a mistake when it found he was in breach of the rental bylaw and the tribunal should reverse the bylaw fines.
25. The owner also claims \$150 for moving expenses on behalf of the person the owner says was improperly forced to move out. The owner claims \$40 for "lost wages" for time attending hearing dates with the strata council.
26. The owner asks the tribunal to order the strata to have a clear protocol and enforcement of rental bylaws. Lastly, the owner seeks reimbursement of the \$225 tribunal fee.

Respondent strata's position

27. The strata submits the proper procedure was followed and the rental bylaw fines should stand.
28. The strata says it received a complaint the owner was improperly renting his strata lot. The strata says it investigated the complaint and followed proper procedures. The strata says it took into account all the facts, including the information supplied by the owner, and came to a proper decision the owner was in continued breach of the rental bylaw.
29. The strata submits the remedies requested by the owner should not be granted. The strata does not agree to moving expenses or payment for time meeting with the strata council. The strata says this dispute should be dismissed.

ANALYSIS

30. I have reviewed all the submissions and evidence, but only address the evidence and arguments to the extent necessary to explain my decision.

TRIBUNAL JURISDICTION OVER BYLAW DISPUTE

31. To succeed the applicant has the burden of proof on the balance of probabilities. That means the tribunal must find it is more likely than not the applicant's position is correct.

32. The jurisdiction of the tribunal over strata disputes such as this is set out in section 3.6 of the Act. Section 3.6 provides the tribunal jurisdiction over the interpretation and application of strata bylaws and rules. Applying the tribunal's rules to this bylaw dispute, the role of the tribunal is to ensure the strata properly applies the SPA and the principles of law and fairness to the interpretation and application of this bylaw dispute.

STRATA PROPERTY LAW AND BYLAWS

33. The powers, duties and required procedures for strata corporations are set out in the SPA and regulations. Section 130 of the SPA authorizes a strata to impose a fine for contravention of bylaws. Section 135(1) of the SPA sets out the following requirements that must be met before a strata can impose a fine:

- i) the strata must have received a complaint;
- ii) the strata must give the owner or tenant a written explanation of what the complaint is about;
- iii) the owner or tenant must be given a reasonable opportunity to respond to the complaint, including the opportunity to have a hearing in person at a council meeting if the owner or tenant requests one.

34. Section 135(2) requires a strata must provide written notice of bylaw decisions as soon as feasible.
35. After the strata follows the proper procedure for the initial bylaw fine, it may impose continuing fines where appropriate without having to go through the repeated notice process each time. (See: SPA section 135(3))
36. One purpose of section 135 is to ensure a fair process so strata lot owners can appreciate what the complaint is about and provide a meaningful response. The ability to fine an owner is a serious responsibility to be exercised fairly. At the same time, strata lot owners need to follow the bylaws of the strata community and the ability to impose fines gives 'teeth' to the strata to ensure compliance. See Terry v The Owners, Strata Plan NW 309 2016 BCCA 449.
37. Whether there is enough information to allow an owner to understand and respond to a complaint will depend on the situation. Some will be more obvious than others. I find the particulars of the alleged infraction must clearly identify the factual issue and the bylaw or bylaws that are alleged to have been breached. This is critical as the bylaw sets out the yardstick against which the owner's conduct is measured and any fine justified. I also find the written explanation of the strata decision must be sufficient to appreciate the decision made and basis for any fine.

ISSUES TO RESOLVE

Did the strata act in accordance with the SPA and its bylaws when assessing fines against the owner's strata lot?

38. The owner is alleged to have breached rental bylaw 44(5) on September 10, 2016 and continuing. The strata found the owner in contravention of the rental bylaw and assessed fines totalling \$3,000.00 against the owner's strata lot.

CHANGE IN RENTAL BYLAW 44 DURING DISPUTE

39. There was a change in the strata rental bylaws during the relevant time of this dispute and it is an issue how the changing bylaws apply. As set out above, the rental bylaw 44 was registered at the land title office on November 19, 2015. The owner is alleged to have breached the rental bylaw 44(5) on September 10, 2016 in the letter to the owner dated September 28, 2016.
40. While the owner and the strata were corresponding about the alleged breach of the bylaw 44(5) registered in November 2015, a new rental bylaw 44 was registered in the land title office on December 21, 2016. The new strata bylaw 44 makes changes to the rental bylaw that take effect on December 21, 2016 (See SPA section 128(2)) The new bylaw 44 contains substantive changes to the rental bylaw. Bylaw 44(5), that the owner was alleged to have breached in September 2016, was one of the specific bylaw paragraphs changed in December 2016, along with other paragraphs of bylaw 44.
41. I find bylaw 44 and 44(5) was replaced December 21, 2017 by new bylaw 44 and 44(6) and would generally be effective from that date. Section 128(2) of the SPA provides that a bylaw can only be effective from the date it is filed at the land title office. However, section 143(1)(a) of the SPA postpones application of a new rental bylaw to a strata lot occupied by a tenant on the day the new bylaw is passed. As it is undisputed the tenant moved into the strata lot in September 2016 and was occupying the strata lot on December 8, 2016, the new bylaw 44 would not be applicable according to section 143(1)(a) and instead the old bylaw 44(5) would remain in place for this strata lot.

COMPLIANCE WITH SECTION 135 OF STRATA PROPERTY ACT

Are the bylaw fines valid against the owner?

42. The next question is whether the strata met the requirements of the SPA in levying the fines for breach of the rental bylaw 44(5).
43. As set out above the strata must meet the requirements of the SPA and the law.
44. The evidence was that the strata received a complaint the owner was allegedly renting his strata lot without written permission of the strata. On investigation, the strata determined there were questions and followed up with the owner. The strata sent a notice to the owner dated September 28, 2016 letting him know generally what the bylaw complaint was and citing the rental bylaw 44(5). The notice also set out an alleged date of the breach of September 10, 2016 and continuing.
45. The evidence shows there was ongoing correspondence between the owner and the strata as the owner sought to get further information to understand the alleged contravention and the information sought by the strata. I find the evidence also shows the strata itself had questions about whether the owner was in breach of the rental bylaw and there was some misunderstanding about the circumstances.
46. I find the notice from the strata of the alleged bylaw complaint dated September 28, 2016 to the owner did not adequately set out the details of the alleged bylaw contravention as determined by the strata. I find the owner has met the balance of probabilities in proving that the details of the alleged contravention did not meet the required standard so the owner could properly respond. I find the notice to the owner sets out an alleged contravention of bylaw 44(5) in September 2016 without adequate particulars. Subsequent correspondence from the strata further complicates the matter by referring to various letters with different time frames and new strata bylaw sections that were not part of the complaint in September. I find it

would be difficult for an owner to understand and respond to the alleged bylaw contravention, especially as it continued without resolution.

47. I find on the facts the procedure followed for the bylaw complaint against the owner did not meet the requirements set out in section 135 of the SPA and the law and the initial \$500 fine assessed for breach of the rental bylaw is not valid and must be set aside. Having found the initial \$500 fine for breach of the rental bylaw was not valid I find that the continuing fines assessed at the same time are also not valid and must be set aside.

STRATA DID NOT COMPLY WITH SECTION 135(2) TIME REQUIREMENT TO PROVIDE DECISION

48. I also find on the facts the strata did not meet the requirement of section 135(2) of the SPA in that it did not address the bylaw issue as soon as feasible.
49. As set out in the facts, the bylaw contravention was alleged to have occurred in September 2016 and yet the written notice of decision was not made until May 3, 2017 - more than 7 months later.
50. One of the requirements for a valid bylaw complaint that the strata must meet in section 135 of the SPA is to follow through and provide written reasons as soon as feasible. I find that section 135(2) can apply to the bylaw process as a whole - that is from the time of the initial complaint to final resolution. I also find section 135(2) may apply to the timeframe from when the strata council makes a decision about a bylaw complaint to the time it provides the owner with the written decision.
51. I find the section 135(2) requirement to provide a written decision as soon as feasible is a significant and mandatory requirement. By providing a decision in writing as soon as it is feasible allows the owner to remedy the situation as soon as possible if necessary or otherwise put the situation behind them. The owner is not left hanging. It would be especially important to provide timely notice of a bylaw

decision where there may be a continuing contravention that could attract ongoing bylaw fines or aggravate a bad situation.

52. I take some guidance in my interpretation of what is meant by 'feasible' time to provide a decision in section 135(2) of the SPA from other parts of the SPA setting out time lines for a strata response. While not applicable to the facts of this dispute because the owner never requested a hardship exemption, it is instructive that the SPA sets 2 weeks as the amount of time a strata must respond to a request for a rental hardship exemption. Also instructive is section 34.1 of the SPA, which sets out that a strata council must hold a hearing within 4 weeks after it is requested and then provide a written decision within 1 week after the hearing.
53. In my opinion, what will meet the requirement to provide a decision as soon as feasible within section 135(2) will depend on the facts and circumstances in each case. The use of the word 'feasible' in the SPA suggests there must be some flexibility and appreciation for the circumstances.
54. On the facts in this dispute as a whole, I find that failure to deliver a decision to the owner from September 28, 2016 to May 3, 2017 - more than 7 months - is not in compliance. I also find the time line between March 3, 2017 when the strata made a decision about the bylaw complaint and May 3, 2017 when the strata provided a written decision - a time of almost 2 months - does not meet the requirement of section 135(2) that the strata "must, as soon as feasible, give notice in writing of a decision" to the owner.
55. As such I find the strata did not meet the requirement of section 135(2) of the SPA to provide the owner with a decision 'as soon as feasible' in all the circumstances and the resulting fines must be set aside.
56. I find the procedure followed for the bylaw complaint against the owner did not meet the requirements set out in the SPA and the law and the initial \$500 fine assessed for breach of the rental bylaw is not valid and must be set aside. Having

found the initial \$500 fine for breach of the rental bylaw was not valid, I find the additional continuing fines of \$2500 that were assessed are also not valid and must be set aside.

Should the strata pay the owner \$150 for moving expenses and \$40 for lost wages to attend the hearing date with council?

57. The owner claims the strata should pay \$150 for moving expenses because the tenant was required to move and \$40 for 'lost wages' to attend strata council meetings on this issue.
58. I find the owner is not entitled to \$150 moving expenses. I find the moving costs claimed by the owner are not supported by evidence. This tribunal does not have jurisdiction to award unsubstantiated moving expenses to compensate a person who is not a party to this dispute.
59. I also dismiss the owner's claim for \$40 for 'lost wages' to attend strata council meetings on this issue. I agree with the strata that the owner has provided no proof to substantiate this claim. Also, the tribunal does not generally award costs for time spend dealing with disputes and I do not depart from that in this case.

Should the strata be ordered to have clear protocol and enforcement of the rental bylaws?

60. The owner asks the tribunal to order the strata to come up with a clear protocol and enforcement of rental bylaws.
61. I find it would not be appropriate to make an order requiring the strata to develop protocols and enforcement of rental bylaws, as the strata is legally required to follow the requirements of the SPA and strata bylaws.

Is the applicant entitled to reimbursement of \$225 for tribunal fees?

62. 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 decline to order reimbursement of fees as success was somewhat divided.

DECISION AND ORDERS

63. I order the strata, within 30 days of the date of this decision, to reverse all rental bylaw fines charged to the owner's strata lot account.
64. The owner's claims are otherwise dismissed.
65. Under section 189.4 of the SPA, an owner who brings a tribunal claim against a strata corporation is not required to contribute to expenses the strata corporation incurs in defending that claim or in any monetary order issued against it. I order the strata to ensure that no expenses incurred by it in defending this claim, are allocated to the applicant owner.
66. 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.
67. 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.

John Chesko, Tribunal Member