



# Civil Resolution Tribunal

Date Issued: July 27, 2018

File: ST-2017-004337

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan KAS 2660 v. Kwan*, 2018 BCCRT 386

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

The Owners, Strata Plan KAS 2660

**APPLICANT**

**A N D :**

Sheldon Kwan

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. The applicant, The Owners, Strata Plan KAS 2660 (strata), is a strata corporation existing under the *Strata Property Act* (SPA). The respondent, Sheldon Kwan (owner), co-owns strata lot 52 in the strata.

2. This dispute involves collection of a bylaw fine.
3. The strata fined the owner for storing his boat in the strata's underground parkade contrary to its bylaws. It asks that the owner be ordered to pay fines totalling \$200.
4. The owner says the strata is out of time to file its dispute due to the 2-year limitation period set out in the *Limitation Act* (LA). Alternatively, the owner says he was not notified of the infraction until May 13, 2016 and that the strata did not follow proper procedures before imposing the fine. The owner asks that the strata's claim be dismissed.
5. The strata is represented by a strata council member. The owner is self-represented.
6. For the reasons that follow, I dismiss the strata's dispute.

## **JURISDICTION AND PROCEDURE**

7. 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.
8. 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.
9. 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.

10. 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, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

## **ISSUES**

11. The issues in this dispute are:
  - a. Is the strata's claim out of time under the LA?
  - b. If not, is the owner required to pay a \$200 fine for contravention of a boat storage bylaw?
  - c. Is the strata entitled to reimbursement of \$225.00 for tribunal fees and \$39.28 for dispute-related expenses?

## **BACKGROUND AND EVIDENCE**

12. I have read all of the submissions and evidence provided, but refer only to information I find relevant to provide context for my decision.
13. In a civil proceeding such as this, the owner must prove their claim on a balance of probabilities.
14. The strata is a 185-unit residential strata corporation located in Osoyoos, B.C. that retains a strata management firm.
15. Land Title Office (LTO) documents show strata lot 52 is owned by the owner, Nicolas Shane Douglas Berg, and Kameron Kurtis Kwan.
16. The strata's relevant bylaws are those registered on May 30, 2011, together with amendments filed on July 30, 2014. Other filed bylaw amendments are not relevant to this dispute.

17. Bylaw 6(2) filed at the LTO on May 20, 2011 reads:

No boats or trailers may be parked in the underground parkade after Monday of the May Victoria Day weekend up to the Friday of the September Labour Day weekend.

18. On July 30, 2014, Bylaw 6(2) was amended to read in part:

No boats or trailers may be parked or stored in a parking stall within the underground parkade after the Monday of the Victoria Day weekend in May, up to the Friday of the Labour Day weekend in September. Furthermore, any boat or trailer stored in the permitted times will require....”

19. In the Dispute Notice, the strata initially asked for an order of \$550 for bylaw fines. However, it reduced the amount to \$200 during the tribunal’s facilitation phase by abandoning \$150 that related to continuing fines.

20. A letter entitled “NOTICE OF ALLEGED BYLAW OR RULE CONTRAVENTION” date stamped June 5, 2015 was provided as evidence (bylaw contravention letter). The letter shows a unit number but does not show a strata lot number, parking stall number or any owner or tenant information. In the body of the letter, the strata alleges that bylaw 6(2) was contravened on May 19, 2015 and explains the owner’s right to respond to the complaint within 14 days and the right to request a council hearing. The letter references the May 20, 2011 version of bylaw 6(2), although nothing turns on this error. Finally, the letter advises that the strata council would review the matter at its next meeting and that bylaw fines of \$200 may be assessed as well as fines for continuing bylaw infractions.

21. In a letter dated August 14, 2015 from the strata’s property manager to Nicholas Berg and Kimberly Kwan (bylaw fine letter), the strata advises the strata council had assessed a fine of \$550 for the May 19, 2015 bylaw contravention at its August 11, 2015 strata council meeting. There is no reference to the bylaw contravention letter in the bylaw fine letter.

22. The strata's records show a \$550 fine was assessed against strata lot 52 on September 1, 2015.
23. The tribunal issued the Dispute Notice on August 29, 2017, which paused the limitation period.

## **ANALYSIS**

### **Is the strata's claim out of time under the LA?**

24. Section 13 of the Act states that the LA applies to the tribunal as if it were a court. It also says reference to a claim in the LA is deemed to include a claim under the Act. The LA defines a "claim" as "a claim to remedy an injury, loss or damage that occurred as a result of an act or omission". The 2-year limitation period only applies to claims, as defined.
25. The Supreme Court of British Columbia has confirmed that a claim to enforce a bylaw fine under the SPA is not caught by the LA because a claim under the LA does not include a penalty, which is what a bylaw fine is. (See *The Owners, Strata Plan KAS 3549 v. 0738039 B.C. Ltd.*, 2015 BCSC 2273, affirmed in 2016 BCCA 370.).
26. Even if this were not so, I note the letter assessing the fine was issued on August 14, 2015 and assessed against the owners strata lot on September 1, 2015. Allowing a reasonable period time for the owner to pay the fine, I would not find the cause of action arose prior to September 1, 2015, which means the strata had to start the claim had to start by September 1, 2017. The claim was started within the 2-year limitation period.
27. As a result, I find the LA does not apply to the strata's claim for a \$200 bylaw fine, but even if it did, the claim was started in time.

**Is the owner required to pay a \$200 fine for contravention of a boat storage bylaw?**

28. I accept that the strata conducted an inspection of the strata's underground parkade on May 19, 2015 and that inspection resulted in a complaint being issued about a number of boats being stored in contravention of strata bylaw 6(2), including a boat stored in the parking stall allocated to the owner's strata lot.
29. I also accept the owner's submissions that he did not receive the bylaw contravention letter or the bylaw fine letter when those letters were issued in 2015 for the following reasons.
30. A copy of an envelope provided by the strata post-marked "2016 06 05", which I infer relates to the bylaw contravention letter, was addressed to Nicholas Berg and Kimberly Kwan and not to the respondent owner. It also appears to have been mailed to an address that is not the owner's registered address, although I recognize the owner's registered address at the LTO may have changed.
31. The bylaw fine letter and accompanying envelope are also addressed to Nicholas Berg and Kimberly Kwan and not to the respondent owner.
32. I find it is more likely than not, the owner did not receive either the bylaw contravention letter or the bylaw fine letter issued by the strata's property manager at the material time of this dispute.
33. That the owner admits to receiving the bylaw contravention letter by email on May 13, 2016 does not correct the procedure the strata is required to follow under section 135 of the SPA, given the fine had already been assessed in September 2015. In *Cheung v. The Owners, Strata Plan VR 1902*, 2004 BCSC 1750, the court found that a procedural error under section 135 of the SPA may be corrected by reversing the fines, and essentially re-starting the procedural requirements of section 135. That is not the case here as the fine was not reversed and the procedural requirements were not restarted.

34. Given my conclusion, the strata has not met its burden of proof that the owner received the bylaw letters at the material times of this dispute. I dismiss the strata's claim for payment of \$200 in bylaw fines.

**Is the strata entitled to reimbursement of \$225 for tribunal fees and \$39.28 for dispute-related expenses?**

35. 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. Given the strata was not successful, I find it is not entitled to reimbursement of tribunal fees or dispute-related expenses.

**ORDERS**

36. I order the strata's dispute is dismissed.
37. Under section 189.4 of the SPA, an owner who brings a tribunal claim against the strata corporation is not required to contribute to the expenses the strata corporation incurs in defending that claim or in any monetary order issued against it. I order that the strata ensure that no expenses incurred by it in defending the applicants' dispute are allocated to either of the applicant owners.

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J. Garth Cambrey, Vice Chair