



Civil Resolution Tribunal

Date Issued: August 8, 2018

File: ST-2017-005175

Type: Strata

Civil Resolution Tribunal

Indexed as: *Himmelmann v. The Owners, Strata Plan LMS 2064*, 2018 BCCRT 426

B E T W E E N :

Thorsten Himmelmann

APPLICANT

A N D :

The Owners, Strata Plan LMS 2064

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicant, Thorsten Himmelmann (tenant), rents a strata lot from an owner in the respondent strata corporation, The Owners, Strata Plan LMS 2064 (strata).
2. This dispute involves \$400 in pet bylaw fines about the applicant's dogs.

3. The strata assessed the owner's strata lot two \$200 fines for the tenant's alleged contraventions of the strata's pet bylaws. The tenant alleges the strata did not receive a complaint about the dogs and acted contrary to section 135 of the *Strata Property Act* (SPA) when assessing the fines.
4. The applicant asks for orders that the strata reimburse him \$400 for the bylaw fines he paid and \$9,000 for "his time, undue stress and opportunity costs".
5. The tenant is self-represented. The strata is represented by a strata council member.
6. For the reasons that follow, I find the strata must reimburse the tenant \$400 for bylaw fines paid. I dismiss the tenant's \$9,000 claim.

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. Did the strata act contrary to section 135 of the SPA when it assessed pet bylaw fines? If so, is the tenant required to pay the \$400 fines?
 - b. Is the tenant entitled to reimbursement of \$225 for tribunal fees paid and \$9,000 in compensation for “his time, undue stress and opportunity costs”?
 - c. Is the strata entitled to reimbursement of \$9,000 in compensation for the strata council’s time related to this dispute?

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 tenant must prove his claim on a balance of probabilities.
14. The strata is a 382-unit residential strata corporation located in Vancouver, B.C.
15. The strata’s relevant bylaws are those registered on May 21, 2002, which repealed all previously filed bylaws and the Standard Bylaws under the SPA, together with amendments filed on June 11, 2012. Other filed bylaw amendments are not relevant to this dispute.
16. The relevant parts of bylaw 5 filed at the Land Title Office (LTO) on May 21, 2002 that relate to pets are:

5.2 A resident or visitor must ensure that all animals are leashed or otherwise secured when on the common property

5.6 A resident or visitor must not permit a loose or unleashed Permitted Pet at any time within [or] on the common property or on land that is a common asset...(I note a Permitted Pet is defined as one which a resident must apply to the strata council for permission to keep in a strata lot).

5.14 A resident who contravenes any of bylaws 5.1 to 5.7... will be subject to a \$25.00 fine.

17. Bylaw 27 filed at the LTO on June 11, 2012 allows the strata, unless otherwise provided for in the bylaws, to fine an owner or tenant up to \$200 for each contravention of a bylaw.
18. Between February and June 2017, the strata's property manager (strata manager) wrote to the owner of the strata lot 3 times about the tenant's dog(s), including that one of his dogs bit an owner while unleashed in the garbage room. No fines were assessed during this time.
19. On June 15, 2017, the strata manager wrote to the owner stating the owner was alleged to be in violation of the strata bylaws because "the dog" was again seen to be unleashed on common property at a specific time. The letter referenced bylaw 5.2 and provided the owner with an opportunity to answer the complaint or request a council hearing under section 135 of the SPA within 14 days of the date of the letter or "a fine may be levied against your account."
20. On August 8, 2017, the strata manager again wrote to the owner advising it was alleged to be in violation of the strata's bylaw 5.2, had chosen to disregard the council's previous warnings, and the strata reserved the right to assess a fine of \$200 every 7 days. The letter again the provided the owner with an opportunity to respond or request a council hearing under section 135 of the SPA within 14 calendar days or face a fine.

21. On September 1, 2017, the strata manager again wrote to the owner along the same lines as the August 8, 2017 letter, except noting a person associated with owner's strata lot had brought 2 dogs through the common areas and that 1 was unleashed. The letter provided the identical wording relating to a response or requesting a hearing and that fine may be assessed. This time the letter referenced an alleged violation of bylaw 5.6.
22. On September 5, 2017, the tenant wrote to the strata manager requesting a council hearing and copies of the complaints filed respecting the alleged bylaw violations. The tenant says he did not receive copies of the written complaint as he requested, until evidence was provided by the strata in this dispute.
23. The September 5, 2017 strata council minutes show that correspondence was received from "the Owners and Tenants of a unit disputing some Bylaw fines that were charged to the unit" and that a hearing had been requested.
24. A September 21, 2017 letter from the strata manager to the tenant confirms a council hearing about the tenant's unleashed dogs was held on September 18, 2017 and that the council "decided that the past fines that were charged to the account (\$400.00) will stay...."
25. The strata, to support its allegations of the bylaw complaints, provided several photographs that appear to be from closed circuit television camera footage.

POSITION OF THE PARTIES

26. The tenant says the strata has improperly fined him and alleges that the complaints about unleashed dogs did not come from strata residents but rather from an employee of the strata manager after reviewing closed circuit television camera footage. The tenant says the letter complaint provided by the strata is fabricated.
27. He says the original intent of section 135(d) was that a strata resident must file a bylaw complaint and that the strata cannot make a complaint to itself. He says if

the strata is permitted to make a complaint, section 135(d) would be “redundant” enabling the strata to issue fines at will.

28. The tenant also says the strata contravened section 135(e) of the SPA by not providing him with the evidence detailing the particulars of the complaint in a timely manner.
29. The tenant asks for an order that the strata refund the \$400 he paid for bylaw fines.
30. As for the tenant’s claim for compensation, he says he has suffered substantial losses over the 6 months he was trying to resolve “the situation”, including the violation of his right to peaceful enjoyment and a substantial amount of time. He asks for punitive damages equal to 1 month’s rent, being 1/6th of the number of months he spent trying to remedy the issues. He seeks a further 1-month’s rent as additional punitive damages for the written compliant letter he alleges is fabricated.
31. The strata says complaints do not need to be in writing and may be made by strata council members in their capacity as owners. It denies the written complaint is a fabrication. It also says the fact the tenant paid the fine is an admission of the bylaw violation.
32. The strata says the tenant’s claim for losses and punitive damages totaling \$9,000 was not part of the original Dispute Notice. It says the tenant has not provided any evidence to support his claim. It also says the strata now claims \$9,000 for its strata council’s time related to this dispute.
33. The strata asks for an order that the tenant’s claims be dismissed.

ANALYSIS

Did the strata act contrary to section 135 of the SPA when it assessed pet bylaw fines? If so, is the tenant required to pay the \$400 fines?

34. Section 135 of the SPA states a strata corporation must not impose a fine against a person for a contravention of a bylaw unless it has:

- a. Received a complaint about the contravention,
 - b. Given the owner or tenant written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant; and,
 - c. If the person is tenant, given notice of the complaint to the person's landlord and to the owner.
35. It is established law that these procedural requirements must be strictly followed before a fine can be assessed. (See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.)
36. I agree with the strata that a complaint made about a bylaw contravention can be made verbally and can be made by a strata council member. I disagree with the tenant that providing particulars of a dispute means providing copies of the complaint letters. Neither of these assertions is required under section 135 of the SPA.
37. I also disagree with the strata that payment of the fines constitutes admission of the bylaw contravention. It is unclear when the fines were paid, but I find it was reasonable for the tenant to pay the fines to avoid further action being taken against him.
38. However, the procedure followed by the strata in assessing fines creates 2 fatal errors that I find deny the strata the ability to collect those fines from the tenant.
39. First, the evidence shows the strata did not give the tenant any written particulars of the complaint as it only wrote to the owner, contrary to section 135(e) of the SPA. It was not until the tenant requested a hearing to discuss the bylaw fines assessed against the owner's strata lot that the strata wrote directly to him. While, the procedural defect could have been cured if the strata had reversed the fines, given the tenant written particulars of the complaint(s), with a copy to the owner and landlord, and given the tenant a reasonable opportunity to respond, that is not what occurred. (See *Cheung v. Strata Plan VR 1902*, 2004 BCSC 1750). I do not

find that the procedural defect was cured when the hearing was held. Further, that the owner may have notified the tenant does not relieve the strata from notifying the tenant directly.

40. Second, I find the fines were assessed before the tenant was given the opportunity to be heard. As earlier noted, the September 5, 2017 strata council meeting minutes refer to a dispute about fines that had been charged. Although the minutes do not refer to the owner and tenant by name, based on the overall evidence, I find it is more likely than not that the minutes were referring to this dispute. Further, the strata manager's September 21, 2017 letter to the tenant following the hearing states the council "decided that the past fines that were charged to the account (\$400.00) will stay...."
41. For these reasons, I find the strata acted contrary to section 135 of the SPA when it collected \$400.00 in bylaw fines from the tenant. Accordingly, I order the strata reimburse the tenant that amount.
42. As for the tenant's allegation the written complaint was fabricated, I find there is no evidence to suggest this is the case. As earlier noted, I do not interpret section 135(e) of the SPA to mean when a strata corporation provides the owner or tenant with the particulars of the complaint it must also provide a copy of any written complaints received. In any event, nothing turns on whether the strata received a written complaint, given I have found the strata can act on a verbal complaint it may receive.

Is the tenant entitled to reimbursement of \$225 for tribunal fees paid and \$9,000 in compensation for "his time, undue stress and opportunity costs"?

43. 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. I see no reason to deviate from this general rule. The tenant was successful in his claim for reimbursement of bylaw fines paid and I find he is entitled to reimbursement of \$225 for tribunal fees.

44. As for the tenant's claim for "his time, undue stress and opportunity costs", he has not provided any supporting evidence regarding his assertion. For that reason, I decline to order any such compensation claimed by the tenant.
45. For the same reason, I find the strata is not entitled to compensation for its strata council's time related to this dispute. In any event, the tribunal generally does not order compensation for "time spent" on a dispute, as to do so is generally inconsistent with the tribunal's practice of not awarding legal fees. I would see no reason to deviate from that practice here.
46. The *Court Order Interest Act* (COIA) applies to the tribunal. The tenant is entitled to pre-judgement interest under the COIA from the time the bylaw fines were paid until the date of this decision. However, the date the bylaw fines were paid was not provided so I calculate pre-judgement interest on the \$400 from the date of the Dispute Notice to be \$3.15.

DECISION AND ORDERS

47. I order the strata, within 14 days of the date of this decision, to pay the tenant \$628.15 broken down as follows:
 - a. \$400.00 for reimbursement of bylaw fines paid,
 - b. \$225.00 for tribunal fees; and,
 - c. \$3.15 for pre-judgement interest under the COIA.
48. The tenant's remaining claims are dismissed.
49. The tenant is entitled to post-judgement interest under the COIA.
50. 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.

51. 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.

J. Garth Cambrey, Vice Chair