



# Civil Resolution Tribunal

Date Issued: August 27, 2018

File: ST-2017-002416

Type: Strata

Civil Resolution Tribunal

Indexed as: *Barpoutis et al v. The Owners, Strata Plan BCS 3805*, 2018 BCCRT 477

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

Alice Barpoutis and George Barpoutis

**APPLICANTS**

**A N D :**

The Owners, Strata Plan BCS 3805

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. This is a dispute about fines levied against a strata lot owner for noise, parking and failing to give file a required form about a new tenant.

2. The applicants, Alice and George Barpoutis, are the owners of strata lot 49, which is unit 906 in the respondent strata corporation, the Owners, Strata Plan BCS 3805 (strata).
3. The applicants contest certain noise, parking and move-out fines imposed on them by the strata. The applicants' son and his girlfriend lived in unit 906 beginning in August 2015.
4. Some of the bylaw contraventions occurred while the applicants' son and his girlfriend were living in unit 906. A Form K regarding these tenants was not filed with the strata until October 2016.
5. A further tenant moved into the unit sometime later, and a Form K for that tenant was not filed with the strata until April, 2017.
6. While the applicants acknowledge the validity of the noise fine, they feel the amount levied is too high at \$600. They propose to pay \$200 "split three ways".
7. The applicants say that a car associated with unit 906 parked in the visitor's parking for three days in each of two weeks (6 days total), and never parked there again after being warned not to.
8. They say charges associated with the unauthorized move, which included damage to a common property fire door are unfounded, and should be reversed.
9. The strata submits that all fines levied against the applicants were reasonable and that it complied with the *Strata Property Act* (SPA) in imposing the fines.
10. The applicants are self-represented. The respondent appears through a member of its strata council.

## **JURISDICTION AND PROCEDURE**

11. 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.

12. 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.
13. 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.
14. 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.

## **ISSUE**

15. The issue in this dispute is whether the applicants are responsible to pay the fines levied against them for bylaw violations including unauthorized use of visitor parking, noise and disturbance, and failure to file a Form K regarding a new tenant.

## **EVIDENCE AND ANALYSIS**

16. Before a fine can be levied in respect of a strata bylaw violation, section 135 of SPA requires the strata to receive a complaint, provide written particulars of the complaint to the owner, or in the case of tenant to the tenant, their landlord and the owner, and to give a subject owner or tenant a reasonable opportunity to answer the complaint, including a hearing.

17. Section 27(2) of SPA provides the strata council with the discretion to determine whether a person has contravened a bylaw, whether they should be fined, and the amount of the fine.

### ***Visitor Parking Fine***

18. I will start by considering the visitor parking fine.
19. Bylaw 44.2 requires that any car parked in visitor parking must display a valid permit. Anyone parking for longer than three consecutive days a month must have written advance permission from the Building Manager. Bylaw 44.1 says that owners or residents are not permitted to use the visitor parking at any time. Violators, which may be owners or residents, are subject to be towed at their own expense, or to a maximum fine of \$200.
20. Bylaw 25.1 provides that the strata may fine an owner a maximum of \$200 per bylaw contravention. Under bylaw 26, if there is a continuing contravention for longer than 7 days, a fine may be imposed every 7 days.
21. The strata says that a white Kia Vue was parked in visitor parking on July 8, 2016 and was parked there for more than three consecutive days. It is uncontested, and I find, that the Kia Vue was driven either by the Unit 906 residents or a visitor to their unit. The applicants and/or the current resident of Unit 906 were offered the chance to respond in writing and/or to have a hearing before strata council.
22. Photographs filed in evidence establish that the white Kia was parked in the visitors parking on August 15, August 17 and August 18, 2016. On the applicants' own evidence, the Kia was parked in the visitors parking on at least six days during this period.
23. An August 19, 2016 letter from the property management company to the applicants, with a copy to the current resident, noted that the same car was parked in the visitor's parking on a daily basis starting July 8, 2016, parking each morning and leaving each afternoon. The letter offered an opportunity for the applicants or their tenants to answer the complaint in writing or request a hearing.

24. On August 22, 2016, strata council met and considered the applicant's response regarding the visitor parking bylaw violation. A decision was taken to levy a \$200 fine.
25. On September 26, 2016, the strata wrote to both the applicants and the tenant indicating that the applicants' response had been considered and a \$200 fine was levied in violation of the visitor parking bylaw. The letter levying the fine was provided to the tenants by letter addressed to the "Current Resident."
26. The correspondence on August 19 and September 26, 2016 shows that the strata following section 135 of the SPA by sharing particulars of the complaint in writing, and providing a reasonable opportunity for the owners or tenant(s) to respond, including the option of a hearing, before imposing the fine.
27. After a late appeal including the applicants' appearance before Strata Council on November 23, 2016, the fine was reduced to \$100.00.
28. Given the evidence that the white Kia was in visitor parking for more than three days in July and at least three full days in August, I find that the visitor parking bylaw was violated by a resident to unit 906, likely the tenant(s). The strata heard from the applicants in person about the bylaw contravention and fulfilled their obligations under s. 135 of SPA. The strata gave the tenant(s) an opportunity to respond or request a hearing, but they did not do so.
29. I find that the fine of \$100.00 is warranted and reasonable. By the time it reduced the fine on November 23, 2016, the strata was aware that tenants were occupying unit 906 at the time of the visitor parking violation. Due to the operation of section 130 of SPA, the fine must be levied against the tenant(s), not the owners. I find that it was here, by the correspondence sent on September 26, 2016. The tenants did not respond, or pay the fine at any point.
30. The strata then gave the applicants an in person hearing, even though a reasonable time had passed and a decision had already been made. At that hearing, the fine was reduced to \$100. Once the strata levies the fine against the

tenant, by operation of SPA section 131, the strata may collect the \$100 fine from either the tenant or the applicants (owners).

31. I find that the tenants received proper notice of the \$200 fine but did not pay it or respond. Given the tenants' non response throughout, I do not find it necessary for the strata to give new written notice of the reduced fine to them, in these circumstances where a late hearing was granted but not required given that SPA section 135(1) and (2) had already been fulfilled. I also find that the requirements of SPA section 130 were met. In my view, the \$100 fine may now properly be collected from the applicants and I order that it be paid immediately.

### ***Noise Bylaw Fine***

32. Bylaw 4.1 requires that any resident or visitor must not use the strata lot in a way that causes unreasonable noise or nuisance or hazard to another person.
33. Bylaw 37.8 says that a resident or visitor must not do anything that will cause a safety hazard to the building and/or other occupiers.
34. On January 9, 2017, the strata says the residents of unit 906 caused noise disturbances to the surrounding units, evidenced by three complaints made at 1:20 pm, 2:05 pm and 2:30 pm. The police were called and a report was filed. This was the fourth time police had been called to address similar disturbances at unit 906 in early January.
35. On January 11, 2017 and January 24, 2017, the property manager, on behalf of the strata, wrote to the applicants, and provided a copy to the attention of the "Current Resident" to inform the tenants, informing them of bylaw violations that occurred on January 9, which included noise, verbal abuse of building staff and kicking a Canada Post parcel. At that time, the strata had been informed of tenants in the unit. The letter offers the applicants and their tenants an opportunity to answer the complaint in writing and/or to request a hearing. The correspondence specifies that the strata was considering a \$600 fine for the incidents, saying there had been a breach of Bylaws 4.1 and 37.8.

36. I find the January 2017 letters fulfil the strata's obligations under section 135(1) of the SPA to write to the owners and the tenant(s), with particulars and offering an opportunity to be heard.
37. The written response of the applicants was considered. The strata decided to levy a \$600 fine and wrote to the applicants on February 16, 2017 to levy the fine against them. The February 16, 2017 letter does not appear to have been issued to the tenants.
38. In submissions, the strata acknowledged that one \$200 charge was made in error, which they agreed to reverse.
39. The strata says it gave notice of the bylaw infraction and an opportunity to respond as required by section 135 of SPA. Neither the applicants nor the tenants requested a hearing regarding the noise bylaw fines within the 14 day time to do so but, when the applicants appealed, strata council considered their materials and decided not to waive the fines.
40. The strata seeks \$400 payment for the applicant's noise bylaw violations.
41. The correspondence demonstrates that the strata gave the applicants and/or their tenant(s) an opportunity to respond in writing and to appear before strata council. Neither the applicants nor their tenant(s) requested a hearing during the required timeframe. I find that strata council made a reasonable decision that at least 2 bylaws were violated on January 9, 2017 by occupants of the applicants' suite.
42. As a result, I find \$400 fine appropriate. The operation of section 130 of SPA, requires the fine to be levied against the tenant(s), not the owners. Because the February 16, 2017 letter levying the fine was not copied to the tenants, the requirements of SPA section 135(2) were not met. That is, the strata was obliged to give notice in writing of its decision to levy the fine both to the tenants and the owners.
43. Once the strata levies the fine, by operation of SPA section 131, the strata may collect the \$400 fine from either the tenant or the applicants (owners).

44. I order the strata to reverse the \$400 charge from the applicants' strata lot account. Given that the tenants were provided with appropriate SPA section 135(1) correspondence, the strata may now issue a letter to the tenants, as they were in January 2017, levying the fine. The strata will then have the option to collect the fine from either the tenants or the applicants.

### ***Unscheduled Move and Property Damage Bylaw Fines***

45. Bylaw 4.2 says that a resident or visitor must not cause damage to common property.
46. Bylaw 42.2 says that, within two weeks of renting a strata lot, a landlord must give the strata a copy of a "Form K – Notice of Tenants Responsibilities", signed by the tenant.
47. Bylaw 42.3 says that when an owner fails to submit a completed Form K, the owner shall be subject to a \$200 fine, and that the strata may impose this fine for continuing contravention every 7 days.
48. Bylaw 47.2 says that a resident must give the strata at least 48 hours' notice of any move, and that moves must take place between 8:00 a.m. and 4:00 p.m.
49. The strata says that on April 26, 2017, the applicants' tenant conducted an unscheduled move out and caused some property damage. The strata says the applicants were in violation of Bylaws 4.2, 42.2, 42.3 and 47.2.
50. The strata indicated, in submissions, that it would reverse the fines associated with the infractions of Bylaws 4.2 and 47.2. In light of this concession, I am considering only whether the \$200 fine levied against the applicants is valid, due to the failure to submit a Form K.
51. The strata says the owners had an unauthorized tenant in their unit on January 9, 2017, and failed to submit a Form K for the tenant until April 20, 2017.



52. On April 26, 2017, the property manager on behalf of the strata wrote to the applicants advising them of the unauthorized move from their unit, and that during the move, the residents pried open a fire door leaving it damaged (a photo of the damage to the door was attached). The letter also notes that a Form K was not received regarding a new tenant who, the evidence shows had been living there for over two weeks, until April 21, 2017. Again, an opportunity to respond in writing and/or appear before the strata council in person was offered to the applicants.
53. At one point the applicants appear to argue that this new tenant was only in the unit for short period, such that a Form K was never required. I disagree. The tenant was observed by the property manager to be living in the suite with a pet. The applicants' emails in evidence appear to acknowledge this tenant, which is inconsistent with describing the tenant as a mere visitor.
54. The applicants had an opportunity to address strata council about these bylaw infractions and failed to do so. Strata council decided to impose a fine of \$200.
55. A fine was applied to the applicants' strata lot account on June 30, 2017, in the amount of \$200. The fine was described as a fine for an "unscheduled move". I find that the failure to file a Form K is one component of an unscheduled move, details of which had been provided to the applicants, and therefore the description is adequate for the purposes of levying the fine.
56. The applicants submit that because the strata now has the Form K that "cancels" any associated fine. I do not agree given bylaw 42.2 requires a Form K to be provided within 2 weeks of the tenant moving into the strata lot and the Form K was not provided in this interval.
57. Given that this was a bylaw contravened by the owners, it was appropriate for the strata to levy the fine against the applicants. I order that the applicants pay the \$200 fine immediately.

## DECISION AND ORDERS

58. I order that, within 7 days of this decision:
- a. the applicants pay the \$100 visitor parking fine;
  - b. the strata reverse the \$400 fine for noise violations;
  - c. the strata is free to levy \$400 for noise violations against the applicable tenant(s), and then to collect from the tenant or the applicants;
  - d. the applicants pay \$200 for their failure to file a Form K in respect of the early 2017 tenant in their unit; and
  - e. the strata reverse one \$200 it says was charged to the applicants' strata lot account in error for the noise bylaw violation, if it has yet to do so.
59. 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. In my view, the strata has been successful on the substantive issues in this dispute. As the respondent strata did not pay any tribunal fees, I make no order on this issue.
60. Under section 189.4 of the SPA, an owner who brings a tribunal claim against a strata corporation is not required to contribute to any monetary order issued against the strata corporation or to any expenses the strata corporation incurs in defending the claim. I order the strata to ensure that no expenses incurred by it in defending this claim are allocated to the applicants.
61. The respondent is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.
62. 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.

63. 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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Julie K. Gibson, Tribunal Member