



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR 279 v. Morin*, 2018 BCCRT 483

B E T W E E N :

The Owners, Strata Plan VR 279

APPLICANTS

A N D :

Denis Morin

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Samuel A. Hyman

INTRODUCTION

1. The applicant, The Owners Strata Plan VR 279 (strata), is a strata corporation existing under the *Strata Property Act* (SPA). The respondent Denis Morin owns strata lot 17 in the strata.

2. The strata wants the respondent to restore their strata lot and the strata's common property to the condition it was in prior to the installation of a washer and dryer, at the owner's expense. The strata says that the owner's installation sometime prior to 2011 of a washer and dryer was done without property strata council authorization. In addition, the strata seeks payments of fines assessed to the owner for the installation of the washer and dryer, as well as its legal expenses and dispute filing fees.
3. The owner says he had permission to install the washer and dryer, that the fines were imposed in violation of the SPA, and in any case says the strata is out of time to file its dispute due to the 2-year limitation period set out in the *Limitation Act*. The owner asks that the strata's claims be dismissed.
4. The strata is represented by a strata council member. The owner is self-represented.
5. For the reasons that follow I dismiss the applicant's dispute.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
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

The issues in this dispute are:

- a. Is the applicant strata's claim out of time under the *Limitation Act*, and in particular whether the applicable 2-year limitation period had expired before the tribunal issued the May 9, 2017 Dispute Notice?

If not:

- b. Is the owner required to pay a \$13,200.00 in fines for contravention of the strata bylaws?
- c. Must the owner remove the washer and dryer and restore his strata lot and common property to the condition that existed before its installation; and
- d. Is the strata entitled to reimbursement of \$225.00 for tribunal fees and \$2002.77 for legal expenses?

POSITION OF THE PARTIES

10. The strata says the owner is responsible to restore his property to the original condition prior to the installation of the washer and dryer. They say that the owner did not obtain the appropriate council permission to make this alteration to the strata lot in breach of their bylaws. They say that despite its requests to do so the

owner has not removed the washer and dryer. Finally they say the owner has not paid fines assessed for the breach of the bylaws. The strata asks that:

- a. the owner be required to pay a \$13,200.00 in fines for contravention of its bylaws;
 - b. The owner remove the washer and dryer and restore the strata lot and common property to the condition that existed before its installation; and
 - c. The strata be reimbursed its tribunal filing fees and \$2,002.77 for legal expenses.
11. The owner says that he either had permission to install the washer dryer in the first place, that the fines were not assessed properly, or that in any event the entire dispute is out of time due to the *Limitation Act*. He asks that the tribunal dismiss the strata's dispute.

BACKGROUND, EVIDENCE and ANALYSIS

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. I note that the both parties provided significant amounts of evidence about other issues not directly related to this dispute. As there is no counterclaim before me, and the issues are limited to those above, I have not set out the evidence and submissions about those other matters.
13. In a civil proceeding such as this, the applicants must prove their claim on a balance of probabilities.
14. The strata is a residential strata corporation located in Vancouver, B.C. that retains a strata management firm.
15. Land Title Office (LTO) documents show that strata lot 17 is owned by, Denis Harold Morin.

16. In the tribunal decision plan prepared after facilitation and in anticipation of this adjudication, the parties agreed that a washer and dryer had at some point been installed in the owner's lot, though they disagree on exactly when. Given my conclusions in this decision, I have not made any finding about when the washer and dryer were installed. Rather, I accept that it was installed, and that this occurred sometime prior to 2011.
17. The strata's relevant bylaws are those registered on December 24, 2011. Other filed bylaw amendments are not relevant to this dispute. Prior to December 24, 2011 and pursuant to section 120 of the SPA, the bylaws of the strata are the Standard Bylaws found in the SPA. The following bylaws are relevant to this dispute, and to the extent that the installation of the washer and dryer may have occurred prior to the registration of these bylaws only bylaw 3(12) would not apply.

Use of property

3 (1) An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that: ...

(e) is contrary to a purpose for which the strata lot or common property is intended as shown expressly or by necessary implication on or by the strata plan.

3(12) An owner, tenant or occupant must not: ...

(i) permit a condition to exist within a strata lot which will result in the waste or excessive consumption of the building's domestic water supply or heated water;

Obtain approval before altering a strata lot

5 (1) An owner must obtain the written approval of the strata corporation before making an alteration to a strata lot that involves any of the following:

a) the structure of a building;

b) the exterior of a building;

...

c) common property located within the boundaries of a strata lot;

d) those parts of the strata lot which the strata corporation must insure under

e) section 149 of the Act...

5 (2) The strata corporation must not unreasonably withhold its approval under subsection (1), but may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration.

Obtain approval before altering common property

6 (1) An owner must apply for and obtain the written approval of the strata corporation before making an alteration to common property, including limited common property, or common assets.

6 (2) The strata corporation may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration and to provide, at the request of the strata corporation, evidence of appropriate insurance coverage relating to the alteration.

Division 4 - Enforcement of Bylaws and Rules, Maximum fine

23 (1) Subject to these bylaws, the strata corporation may fine an owner or tenant a maximum of (a) \$200 for each contravention of a bylaw, and (b) \$50 for each contravention of a rule. (2) The strata corporation may impose a fine on an owner or tenant for a continuing contravention of a bylaw or rule every 7 days.

18. The tribunal issued the Dispute Notice on May 9, 2017 which paused the limitation period.

Is the Strata's Claim out of Time under the Limitations Act?

19. Though the respondent clearly raised the matter of the *Limitation Act*, the applicant did not provide any submissions on this point. However, I have relied upon both the applicant and respondent's documentary evidence in coming to my conclusions below.
20. In June 2013, the *Limitation Act* was amended so that a 2-year limitation period applies to most claims. As set out above, though they disagree as to when, both parties agree that the washer dryer was installed sometime prior to 2011, which is prior to the *Limitation Act* being amended in June 2013. As a result, I considered whether the former *Limitation Act* with a 6-year limitation period might apply. Neither party was able to provide any evidence showing that the parties discussed this specific washer and dryer prior to June 2013. In light of this, I find the post-June 2013 *Limitation Act* and the 2-year limitation period applies to this dispute.
21. Section 6 of the *Limitation Act* provides that a proceeding "must not be commenced more than 2 years after the day on which the claim is discovered". Section 8 of the *Limitation Act* sets out "general discovery rules", which for the purposes here are that a "claim is discovered by a person **on the first day** on which the person **knew or reasonably ought to have known** all of the following (my emphasis added):
 - a) That injury, loss or damage had occurred,
 - b) That the injury, loss or damage was caused by or contributed to by an act or omission,
 - c) That the act or omission was that of the person against whom the claim is or may be made, and
 - d) That, having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage.
22. In this dispute there are two distinct questions to answer about the *Limitation Act*. One is whether the *Limitation Act* applies to the claim for the owner to remove the washer and dryer and restore the lot to its original state. And the second is

whether the *Limitation Act* applies to the collection of fines for that breach. First, I will address the application of the *Limitation Act* to the remediation claim.

23. This statute applies to a tribunal proceeding as if it were a court proceeding, as set out in section 13 of the Act. Section 14 of the Act provides that if the tribunal issues an initiating notice (also known as a Dispute Notice) the basic limitation period applicable to the claim is suspended. The Dispute Notice was issued on May 9, 2017. If the strata's claim that the owner installed a washer and dryer without permission was discovered before May 9, 2015, then the strata's claim to remedy that breach is out of time.
24. The limitation period is like a countdown clock. The limitation period starts when the strata knew or ought to have known it had a claim against the owner for installing a washer and dryer without the strata's proper approval. I find the claim is deemed to have been discovered on the first day when the strata knew or ought to have known that the owner, allegedly without council approval, had completed their installation of the washer and dryer and that a tribunal or court proceeding would be an appropriate means to resolve the issue. There is no dispute that the strata knew a proceeding was an appropriate means to resolve this type of issue.
25. The strata provided a copy of the complaint it received about the washer and dryer in its evidence. The complaint is dated April 15, 2015 and was drafted by a member of the council at the time. The letter clearly indicates that the writer is concerned about a washer and drying installed in the respondent's suite without council approval in violation of by-laws. The letter is specific with respect to the bylaws in question and to whether the washer dryer may also violate city of Vancouver bylaws.
26. The applicant provided a copy of the minutes of the May 4, 2015 meeting in its evidence. The minutes clearly show that they had received a complaint about a washer and dryer. The minutes state that the strata instructed its management company (who were in attendance at the meeting) "to instruct one unit to remove a dryer that has been installed without permission." It is not in dispute that this correspondence and the related minutes are about the owner's strata lot and the washer and dryer in question.
27. The strata's management company sent the owner a letter on June 15, 2015 detailing its concerns and requesting that the washer and dryer be removed.

28. I find that the strata failed to act with reasonable diligence in pursuing its claims. I find that the claim was capable of being discovered and in fact was discovered by at least May 4, 2015 when the strata instructed its management company to send a demand letter to the owner. I find that this is the latest date by which the claim was discovered for the purposes of the *Limitation Act*. In doing so, I find the limitation period expired on May 4, 2017 – 5 days prior to the tribunal issuing the Dispute Notice.
29. The *Limitation Act* stops the strata from requiring the owner, at its own expense to remove the washer and dryer and restore the strata lot and common property to the condition that existed before its installation.
30. I turn now to whether the *Limitation Period* applies to the bylaw fines assessed by the strata.
31. The Supreme Court of British Columbia has confirmed that a claim to enforce a bylaw fine under the SPA is not caught by the *Limitation Act* because a claim under the *Limitation Act* 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.)
32. Even if this were not so, I note the first fines were assessed after a council meeting on September 21, 2015. Therefore, the cause of action did not arise prior to September 21, 2015, which means the strata had to start the claim by September 21, 2017. The claim, with respect to the bylaw fines was started within the 2-year limitation period.
33. As a result, I will address the merits of the bylaw fine claim below.

Claim for Payment of the Bylaw Fines

34. I now turn to the strata's claim for fines. The strata claims \$13,200 in bylaw fines related to the respondent's refusal to remove the washer and dryer from his unit. This figure is based upon fines of \$200 per week for 66 weeks.
35. Section 132(2) and 132(3) of the SPA permit a strata to enact bylaws that set different fines for different bylaws, and how often fines may be imposed for continuing contraventions of the bylaws – provided that the maximum amount

and frequency of the fine does not exceed the maximums set out in the *Strata Property Regulation* (regulations). I find that the amount of the fines and frequency of the fines set by the strata's bylaws in issue are consistent with the regulations.

36. Section 135 of the SPA sets out the procedure to be followed by a strata when imposing a fine for breach of a bylaw. Strict compliance with section 135 of the SPA is necessary in order for the strata to collect fines. (See: *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449)
37. Before imposing a fine, section 135 requires that a strata must have: a) received a complaint; and b) given the owner written details of the complaint and an opportunity to answer, including a hearing if requested. The strata must also give notice, in writing, of the decision, as soon as reasonably possible. Once the strata has met the requirements of section 135, it may impose further fines or other penalties for continued contraventions of the same bylaw without having to go through the same exercise.

Receipt of Complaint

38. I am satisfied the strata received a complaint about the washer and dryer by May 4, 2015 (as detailed above).

Providing Written Particulars of the Complaint Details

39. I find that the strata initially provided written details about the complaint to the owner on June 15, 2015 through its property management company. The particulars of the complaint are clearly set out, including the bylaws the strata relied upon.
40. That letter goes on to detail that the owner is in contravention of the bylaws and requires the owner to remove the washer and dryer within 4 weeks of receipt of the letter. The letter also explains that failure to comply may result in a request that the owner attend a meeting to discuss the matter further.

Reasonable Opportunity to Respond

41. On August 19, 2015 the strata sent a further letter to the respondent. This letter reiterated that the installation of the washer and dryer was in contravention of the

strata's bylaws. That letter went on to request that the owner attend the council meeting on September 21, 2015 where fines would be discussed.

42. The minutes of the September 21, 2015 council meeting indicate the owner did not attend nor respond in any way despite the owner having ongoing correspondence with the strata about other unrelated issues during this time.
43. I find that the respondent had a reasonable period of time to respond to the complaint prior to fines being assessed.

Right to Request a Hearing

44. Section 135 of the SPA does not require the strata corporation to inform the owner of the right to hearing, and the notice does not fail because of a failure to do so. But if the owner had required a hearing, the strata would have been obliged to hold one. (See: *The Owners, Strata Plan NW3075 v. Stevens*, 2018 BCPC 2 (CanLII)).
45. The owner confirmed in his submissions that he did not request a hearing. I find that the strata complied to the extent necessary.

Written Notice of the Outcome

46. After the August 19, 2015 correspondence, the strata council met on September 21, 2015. At that meeting the strata decided to assess a \$200 fine for violation of the bylaws.
47. The next formal correspondence from the strata about the washer and dryer provided by the applicant is dated July 29, 2016. That letter indicates that fines had been assessed and that the matter would be considered again at the August 8, 2016 council meeting. The letter does not detail what the amount of the original fine was, or how much had been assessed since. Rather, it states that the owner is aware of the fines – however, as I explain below this does not comply with section 135 of the SPA.
48. I note that the strata provided evidence that they were in email communication with the owner since the original council meeting where they assessed fines, but did not provide any notice of the decision or fines in the emails provided. In particular, I note that the strata manager sent an e-mail on Monday November 30, 2015 regarding a variety of issues, and mentioned the outstanding issues about the

washer and dryer. However, the e-mail only states that the council would be discussing the matter again in December. There was no notice of a fine or final decision.

49. Between September 21, 2015 and January 31, 2017 the strata council met multiple times and assessed ongoing fines against the owner.
50. I find that it was not until February 22, 2017 that a formal letter was sent by the strata's legal counsel that detailed the amount of the fines that had been assessed to date. That letter requested payment of the \$13,200 in dispute here.
51. I find that the strata failed to comply section 135 of the SPA by not providing , as soon as feasible, written notice of the outcome of the September 21, 2015 council meeting. In failing to do so they did not provide notice that the strata had decided to impose a fine, nor what the amount of those fines were.
52. I find that the strata had not met the requirements of the SPA to assess the original fines on September 21, 2015. It is only after the strata had complied with the requirements of the SPA that they could impose fines. As a result, I find that the \$13,200 in bylaw fines are invalid and must be set aside.
53. Because I have found that the fines are invalid, it is not necessary for me to assess whether the evidence of the strata was sufficient to prove the fines were justified. Further it is not necessary for me to assess the respondent's further grounds to dismiss this claim.

Responsibility for Tribunal Fees and Expenses

54. The strata seeks an order that the respondents reimburse it for its tribunal fees in the amount of \$225.00 in addition to its legal expenses in the amount of \$2,002.77.
55. Pursuant to section 49 of the Act, and the tribunal's rules, the tribunal generally orders an unsuccessful party to reimburse the successful party's tribunal fees. The respondent was entirely successful in this dispute. As a result, the strata is not entitled to be reimbursed their tribunal fees nor dispute-related expenses.
56. The respondent seeks an order that the strata reimburse it for its legal expenses in the amount of \$2,070.00.

57. I decline to make the order requested by the respondent. As noted in the tribunal's rules, generally speaking the tribunal does not award reimbursement of legal expenses except in extraordinary circumstances, which I find do not exist here.

DECISION AND ORDERS

58. I order that the applicant's dispute is dismissed.

Samuel A. Hyman, Tribunal Member