



# Civil Resolution Tribunal

Date Issued: September 18, 2018

Amended: September 19, 2018

File: ST-2017-002043

Type: Strata

Civil Resolution Tribunal

Indexed as: *Chu v. The Owners, Strata Plan VR 2284*, 2018 BCCRT 529

B E T W E E N :

Lisa Chu

**APPLICANT**

A N D :

The Owners, Strata Plan VR 2284

**RESPONDENT**

A N D :

Lisa Chu

**RESPONDENT BY COUNTERCLAIM**

---

**AMENDED REASONS FOR DECISION**

---

Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION AND JURISDICTION

1. This is a final decision of the Civil Resolution Tribunal (tribunal) made without the participation of the applicant, and respondent by counterclaim, Lisa Chu (owner) due to her non-compliance with the tribunal's directions as required, as discussed below.
2. The owner owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VR 2284 (strata), which is also an applicant by counterclaim. The owner claimed the strata was exercising power in an oppressive manner and that it did not follow the procedural fairness steps set out in section 135 of the *Strata Property Act* (SPA) before imposing bylaw fines.
3. By counterclaim, the strata seeks payment of \$1,400 for bylaw fines and \$400 for the costs it says it incurred to clean up debris and refuse from the owner's yard. It also seeks an order that the owner comply with its bylaw 40.1 about cleanliness.
4. The owner is self-represented. The strata is represented by a strata council member.
5. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over strata property claims brought under section 3.6 of the 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. Section 36 of the *Civil Resolution Tribunal Act* (Act) applies if a party to a dispute fails to comply with the Act or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. After giving notice to the non-compliant party, the case

manager (facilitator) may refer the dispute to the tribunal for resolution and the tribunal may:

- a. Hear the dispute in accordance with any applicable rules;
  - b. Make an order dismissing a claim in the dispute made by the non-compliant party; or
  - c. Refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
7. Under tribunal rule 109, if a party does not comply with the Tribunal Decision Plan, the tribunal may:
- a. Decide the dispute, relying only on the information and evidence provided;
  - b. Dismiss the claims brought by the noncomplying party; and
  - c. Require the non-complying party to pay to another party any fees or other reasonable expenses that arose as a result of the party's non-compliance.
8. 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, or order any other terms or conditions the tribunal considers appropriate.
9. For the reasons that follow, I have decided the strata's counterclaim should be heard and order the owner to pay the strata \$200.00 for bylaw fines.

## **ISSUES**

10. The issues in this dispute are:
- a. Should I proceed to hear the parties' claims, without the owner's further participation given the owner's non-compliance?

- b. If I hear the parties' claims, or either of them, what are the appropriate remedies?

## **BACKGROUND AND EVIDENCE**

11. I have read all of the submissions and evidence provided, but refer only to information I find relevant to provide context for my decision.
12. In a civil proceeding such as this, the owner must prove her claim and the strata must prove its counterclaim on a balance of probabilities.
13. In September 2014, the strata began corresponding with the owner about the condition of her yard saying it contravened bylaw 40.1. Bylaw 40.1 addresses cleanliness of strata lots, common property, limited common property, and common assets.
14. The strata sent letters asking the owner to clear her yard of debris to comply with the bylaw, on September 24 and October 29, 2014, and March 6, 2015. The letters stated the strata may fine the owner or remove the offending items at the owner's cost, but failed to state the owner's ability to respond to the complaint or that bylaw fines might be assessed.
15. On May 7, 2015, the strata wrote to the owner stating Mainland Junk Removal removed the offending items on April 27, 2015 at a cost of \$400.00. The strata advised the cost was charged to the owner's account and requested it be paid. The letter also stated that \$1,000 in bylaw fines had been assessed as of the date of the letter resulting from the owner's failure to clean up her yard pursuant to bylaw 40.1.
16. On September 28, 2015 the strata again wrote to the owner about her contravention of bylaw 40.1 requesting the owner clear her yard of debris by October 10, 2015 failing which the strata may assess fines or clear the yard debris at the owner's expense. This letter included details of the complaint and an opportunity for the owner to respond by October 10, 2015 failing which additional

\$200 fines may be assessed or the yard may be cleared of debris at the owner's cost.

17. On November 9, 2015, the strata wrote to the owner advising the strata council, at its meeting of October 27, 2015, agreed to fine the owner \$200 for a bylaw 40.1 contravention as set out in its September 28, 2015 letter. The letter also states that continuing bylaw contraventions of \$200 every 7 days could be assessed if the owner continued to contravene bylaw 40.1.
18. A statement of the owner's account dated February 1, 2018, provided by the strata in evidence, shows bylaw fines totaling \$1,400 were assessed between March 24 and November 10, 2015. The statement also shows a \$400 charge was assessed on May 7, 2015, which was referenced on the statement as "C/B INVOICE".

## **ANALYSIS**

### ***Should I proceed to hear the parties' claims, without the owner's further participation, given the owner's non-compliance?***

19. The owner is the non-compliant party in this dispute relating to her claim and the strata's counterclaim. As described below, she has failed to participate in the case management phase as required under section 32 of the Act and tribunal rule 106, as she has not provided evidence as requested by the tribunal facilitator and Director of Case Management.
20. The tribunal issued a Dispute Notice for the owner's claims on April 26, 2017. The strata filed its response on August 8, 2017. The tribunal issued a Dispute Notice for the strata's counterclaim on August 9, 2017. The owner filed her response to the counterclaim on August 23, 2017. The parties participated in facilitation discussions, which failed to resolve the dispute.
21. On January 22, 2018, facilitation ended when the strata asked the tribunal to adjudicate the dispute and paid the required \$100 tribunal fee.

22. The particulars of the non-compliance follow.
23. On January 24, 2018, the tribunal facilitator emailed the owner asking her to submit her evidence by February 8, 2018. On February 14, 2018, the facilitator emailed the owner and asked that she confirm she would not be submitting evidence, given the deadline had passed. The owner replied the following day saying she would be submitting evidence and was in the process of doing that, but was out of the country on business until February 27, 2018. The following day, on February 17, 2018, the owner emailed the facilitator stating she was working on organizing the evidence, which contained a large number of photographs. The letter also stated that the strata had not provided certain requested documents that she required, and that a tribunal order was required to compel the strata to produce the documents, as they were needed as part of her evidence submission.
24. On February 20, 2018, the facilitator advised the owner a final extension to February 23, 2018 to provide evidence was granted. In the email, the facilitator stated the owner could refer to her allegation that the strata refused to provide requested documents at a later point in the process during submissions. The facilitator suggested at that time that the owner could provide arguments to support the owner's allegation that the strata was acting in an unfair and prejudicial manner by not providing the documents. In another email on the same date, the owner asked if the tribunal would issue an order for the strata to produce the requested documents. The facilitator then requested a copy of the correspondence the owner sent to the strata specifying the outstanding documents so the tribunal could remind the strata of its obligation to produce them.
25. Also on February 20, 2018, in a separate email, the owner enquired if the tribunal would have an in-person hearing to adjudicate the dispute, to which the facilitator replied that it would not and that the tribunal was waiting for the owner's evidence before asking the strata for its evidence. The owner responded by asking the facilitator to obtain evidence from the strata. Two hours later, the owner asked the facilitator to raise the matter with her superior, which the facilitator did.

26. Later on February 20, 2018, the tribunal's Director of Case Management emailed the owner stating the importance of providing evidence in order that it may be provided to the tribunal member who decides the dispute. The owner was also advised of the facilitator's delegated authority under the Act and tribunal rules to direct parties to produce evidence and set deadlines, and the possibility of the dispute being referred to a tribunal member for non-compliance. The Director of Case Management also advised the owner of the tribunal's electronic and on-line nature but that witness statements could be provided together with a request for an in-person or oral hearing. The owner was advised to make such a request at the appropriate time in her written submissions, and that the same directions for submitting evidence were provided to the strata and that its evidence had been received by the tribunal. The owner was encouraged to follow the facilitator's direction and provide her evidence so the process could continue and an exchange of written submissions could be made.
27. Later on February 20, 2018, the owner responded by suggesting the Director of Case Management was acting as an advocate for the strata and asked that the matter be assigned to a tribunal member. In response to the owner's further enquiry about providing sworn testimony, the Director of Case Management confirmed that the tribunal's process was as described in her earlier email, and that the opportunity for the owner to submit written arguments would arise after the evidence was collected. The owner was given until February 23, 2018, the date provided by the facilitator, to provide her evidence.
28. The February 23, 2018 deadline for the owner to provide her evidence passed. On March 2, 2018, the tribunal facilitator emailed the owner a final warning that if her evidence was not provided by March 6, 2018, the matter would be referred to a tribunal member for non-compliance under section 36 of the Act, a copy of which was contained in the email.
29. The facilitator has referred the owner's non-compliance with the Act and tribunal's rules to me for a decision as to whether I should hear the dispute in the absence of participation from the owner.

30. The tribunal's rules are silent on how it should address non-compliance issues. As I have noted in other decisions about non-compliance, I find that in exercising its discretion, the tribunal must consider the following factors:
- a. Whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute;
  - b. The stage in the facilitation process at which the non-compliance occurs;
  - c. The nature and extent of the non-compliance;
  - d. The relative prejudice to the parties of the tribunal's order addressing the non-compliance; and
  - e. The effect of the non-compliance on the tribunal's resources and mandate.
31. I find the issues raised in this dispute are of importance only to the parties.
32. The non-compliance here occurred at the end of the facilitation process after facilitation discussions between the parties had occurred.
33. Given the tribunal staff's repeated attempts to contact the owner and her failure to respond to the evidence request despite warnings of the consequences, I find the nature and extent of the non-compliance is significant.
34. I see no prejudice to the owner in hearing the dispute without her participation given there is no doubt she has been advised of the non-compliance procedures of the tribunal. In these circumstances, I find the owner has essentially abandoned her claim and waived her right to participate the strata's counterclaim despite being fully aware of the options available to the tribunal given her non-compliance. I also find there would be no prejudice to the strata in proceeding to hear the dispute. I find it would be unfair to the strata if I refuse to hear the dispute as the strata would be left without a remedy.
35. The tribunal's resources are valuable and its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely



impaired if one party does not wish to participate. I find it would be wasteful for the tribunal to continue applying its resources on a dispute by making further attempts to seek participation from the owner.

36. In weighing all of the factors, I find the applicant's dispute should be heard. In deciding to hear the applicant's dispute I have put significant weight on the following factors:
- a. The extent of the non-compliance is significant;
  - b. The owner is not prejudiced if an order is made; and
  - c. The tribunal's resources should be conserved.

***What are the appropriate remedies?***

37. The dispute before me is unique in that it involves the owner's claim and a counterclaim.
38. Generally speaking, where an applicant files a claim and then abandons it, as is the case with the owner here, the actions of the applicant can be considered akin to withdrawing their claim. Unlike the strata's counterclaim discussed below, no evidence was provided to support the owner's claims.
39. As a result, I dismiss the owner's claims.
40. Where a respondent filed a response but has since failed to comply with the tribunal's directions as required, as is also the case with the owner here for the strata's counterclaim, I find I have discretion to draw an adverse inference against that respondent. This concept is similar to where liability is assumed when a respondent has failed to provide any response to the dispute causing the respondent to be in default. In other words, if the owner refuses to participate in the counterclaim, it is reasonable that I assume that the strata's position is correct on the issue.

41. However, given the strata provided evidence in anticipation of having its counterclaim adjudicated, and that the owner, in her email to the Director of Case Management, requested the dispute be adjudicated, I have elected to hear the dispute based on the evidence provided by the strata.
42. It is established law that the procedural requirements of section 135 of the SPA must be followed before a strata corporation can assess fines or require a person to pay the costs of remedying a bylaw contravention: *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.
43. I have reviewed the evidence provided by the strata and, as described below, decline to order the owner reimburse it \$400 claimed for cleaning up the debris in the owner's yard.
44. Also as described below, except for one \$200 fine assessed on October 27, 2017, I decline to order the owner to pay the strata for bylaw fines.
45. As a result, I order the strata's claims as varied and described below.

**\$400 charge for cleanup of yard debris**

46. The strata's May 7, 2015 letter to the owner stated the owner had been charged \$400 for the cleanup of the owner's yard. There is no evidence to suggest the procedural steps of section 135 of the SPA were followed before the cost of the cleanup was charged to the owner. I find this is contrary to the requirements of section 135 and, as a result, the strata is not entitled to the \$400 charged.
47. Further, the *Limitation Act* applies to a tribunal claim, which, after June 1, 2013 set the limitation period for the strata to collect the charged amount to 2 years. Given the strata's May 7, 2015 letter stated the invoice had been charged to the owner's account, I find the limitation period started running from that date. I find the limitation period was not extended as there was no evidence provided to suggest the owner agreed to pay the amount charged. Therefore, I find the strata had until May 7, 2017 to start a claim to recover this amount and did not do so until August

9, 2017, so I find the strata's claim for reimbursement of the \$400 invoice charged back to the owner is statute-barred.

### **\$1,400 for bylaw fines**

48. As earlier noted, the only letter written by the strata relating to the owner's contravention of bylaw 40.1 that set out the procedural requirements of section 135 was the letter dated September 28, 2015.
49. Further, the strata's letter dated November 9, 2017 properly advised the owner that a \$200 fine had been assessed October 27, 2017, after the deadline given to the owner to comply, and was written within a reasonable time frame after the fine was assessed. I find that the \$200 fine set out in the November 9, 2017 letter complied with section 135 of the SPA and is a valid bylaw fine.
50. For these reasons, I find the owner owes \$200 in fines for contravening bylaw 40.1 and order the owner to pay the strata this amount.

### **Compliance with Bylaw 40.1**

51. I see no reason not to order the owner to comply with bylaw 40.1 as requested by the strata. It is only to emphasize that future bylaw contraventions of the owner may result in additional fines being assessed or costs of remedying a bylaw contravention being validly charged to the owner under section 135 of the SPA.

## **DECISION AND ORDERS**

52. 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 expenses related to the dispute resolution process. I see no reason in this case to deviate from the general rule. I therefore order the owner<sup>1</sup> to reimburse the strata<sup>1</sup> \$225.00 for tribunal fees.
53. Neither party has claimed dispute-related expenses.

54. The SPA does not permit interest to be charged on bylaw fines. However, the *Court Order Interest Act* (COIA) applies to tribunal disputes and I find the strata is entitled to pre-judgement interest under the COIA. I calculate the pre-judgement interest on the \$200 fine from November 9, 2017, the date it was assessed, to the date of this decision, to be \$1.39.
55. I order that, within 14 days of the date of this order, the owner pay the strata \$426.39 broken down as follows:
  - a. \$200.00 for bylaw fines relating to the condition of the owner's yard,
  - b. \$225.00 for tribunal fees, and
  - c. \$1.39 in pre-judgement interest under the COIA.
56. I further order that the owner comply with the strata's bylaw 40.1.
57. The strata is also entitled to post-judgement interest under the *Court Order Interest Act*.
58. The owner's claims and all remaining strata claims are dismissed.
59. 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.
60. 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

---

<sup>1</sup> Paragraph 52 has been amended clarify my original intention to order the owner to reimburse the strata for tribunal fees