



Civil Resolution Tribunal

Date of original decision: September 25, 2018

Date of amended decision: July 9, 2019

File: ST-2017-006521

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan K 669 v. 1104456 B.C. Ltd.*, 2018 BCCRT 553

B E T W E E N :

The Owners, Strata Plan K 669

APPLICANT

A N D :

1104456 B.C. Ltd.

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

Susan MacFarlane

INTRODUCTION

1. The applicant is a strata corporation (strata). The respondent (owner) is a company that owns 2 strata lots in the strata.
2. The strata has a bylaw setting the minimum age of residents. The strata says that the owner allowed a person who was under that minimum age (tenant) to live in one

of its strata lots. The strata levied fines for bylaw violation, and wants an order enforcing those fines. The owner says that the age bylaw violates the *Human Rights Code*.

3. The applicant is represented by the secretary-treasurer of the strata council. The respondent company is represented by both the company president and a company director.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.
7. 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.
8. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the

tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator). Tribunal documents incorrectly show the name of the respondent as The Owners, Strata Plan, KAS 669, whereas, based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan K 699. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the style of cause above.

ISSUES

9. There are two issues in this dispute:
 - a. Does the strata bylaw restricting age violate the *Human Rights Code*?
 - b. Must the owner pay the strata fines for bylaw violation?

BACKGROUND AND EVIDENCE

10. The strata has bylaws that are relevant here:
 - a. Bylaw 23 concerns fines for bylaw violations. It cites section 130 of the *Strata Property Act* (SPA), and says the strata may impose fines for bylaw violation. The maximum fine is set by the Strata Property Regulation (regulation). Regulation 7.1 sets \$200 as the maximum fine for a bylaw violation.
 - b. Bylaw 24 says that the strata may impose a fine for each 7 days that the violation continues. This is consistent with regulation 7.1. It sets the maximum fee at \$200 for each 7-day period that the violation continues.
 - c. Bylaw 30 says that an owner, occupant or tenant in the strata must be at least 55 years old.

11. The tenant moved into the owner's strata lot on July 2, 2017. He was the owner's employee.
12. The tenant attended the strata's general meeting on July 15, 2017. He met other owners and council members. He admitted that he was renting, and that he was not yet 55 years old.
13. At the general meeting on July 15, 2017 the strata amended its Bylaw 30:
 - a. Bylaw 30 had previously said that no owner, occupant, or tenant may be less than 55 years old. The amendment kept that age restriction for occupants, owners, or tenants, but added that visitors might be any age.
 - b. Visitors were defined as guests of owners or tenants who were not compensating those owners or tenants.
 - c. Visitors were restricted from staying more than 90 days: "A person who is a visitor for more than 90 days in the preceding 365 days is an occupant."
 - d. Bylaw 30 says the burden to prove compliance is on the owner, occupant, or tenant. It also says that council may demand that an owner, occupant, or tenant prove compliance.
 - e. Bylaw 30 does not give strata any discretion to excuse non-compliance.
14. By letter dated July 16, 2017 the strata asked the owner to attend a meeting of strata council on July 25, 2017 to discuss the tenant. The owner did not attend.
15. The strata wrote to the owner on August 10, 2017. The strata said that the new bylaw allowed visitors to live in the strata for up to 90 days. The tenant would need to vacate by October 2, 2017. If he failed to vacate by then, he would no longer be a visitor. As he would not be 55, he would be violating the bylaws.
16. On August 10, 2017 the owner wrote to the strata saying that the tenant would leave the strata lot by October 2, 2017.

17. In a letter from the owner to the strata dated May 17, 2018, a director of the owner company described these events. She wrote that the tenant had been a guest of the owner from July 2 until September 30. Then he became a tenant. When he became a tenant in October 2017 he shared the strata lot with another tenant, a man aged 56.
18. On October 5, 2017 the strata wrote to the owner saying the tenant was still there. The strata reminded the owner of bylaw 30, and said that the bylaw was being violated. The strata invited the owner to attend a meeting of strata council on October 10 to discuss the matter.
19. The owner said he was unable to attend a meeting on October 10, 2017. He suggested a meeting later in the month.
20. The strata says that, according to its records, which are not disputed by the owner, the tenant attended that meeting on October 10. I find as a fact that the tenant did attend. When strata council met on October 10, they decided to impose bylaw fines of \$200 on the owner, effective October 2, 2017. They imposed one fine due October 2 and one fine for a continuing violation due October 10, 2017.
21. On October 17, 2017, the strata sent email to the owner (both the president and director of the owner company). The strata said that the strata council had voted at the council meeting on October 10, 2017 to impose a fine for bylaw violation. There would be an additional fine of \$200 for every week the violation continued.
22. The owner's strata account shows fines of \$200.00 levied starting October 10, 2017. One fine is levied on October 10 but described as being "due" October 2, 2017. The owner's account also shows other amounts in arrears.
23. The strata invited the owner to meet to discuss his accounts on October 26, 2017. The owner did not respond or attend.
24. On February 15, 2018 the owner asked for an explanation of the \$200 weekly fines levied on his strata account. He insisted the council could only levy a fine once. He acknowledged that the strata can charge interest up to 10% annually.

25. On February 15, 2018 strata council wrote to the owner. Strata reminded the owner that the bylaw fines had been imposed for ongoing non-compliance with the age bylaw. Strata asked for a Form K to be signed by the tenant.
26. On February 19, 2018 the owner agreed to provide the strata with a Form K. One was provided to the strata on March 5, 2018. The tenant signed and dated it October 3, 2017. It described the date of tenancy as commencing October 3, 2017. The owner also provided a residential tenancy agreement between the owner and the tenant dated October 1, 2017.
27. On February 20, 2018 the owner wrote to the strata. He said the maximum fine concerning the age bylaw would be \$1,800 for 9 weeks. He said the fine violated the *Human Rights Code*. He also said the tenant had been a co-tenant with another man who was over 55.
28. In a letter to the owner dated February 21, 2018 the strata describes the situation. The letter says the parties agree on some things, including that the tenant occupied the strata lot before he turned 55 for a period of about 9 weeks. The owner responded to the letter on May 28, 2018 asking for evidence. The owner did not dispute the strata's position on these points.

POSITION OF THE PARTIES

29. The strata says that its Bylaw 30 restricts the age of strata residents. Strata residents must be at least 55 years old. The strata says that the owner knowingly violated this strata bylaw.
30. The strata says that it told the owner that the tenant was underage and would no longer be considered a visitor after 90 days in residence. He would need to vacate by October 2, or he would be in violation of the bylaws.
31. The strata says that from October 2, 2017 to early December 2017 the tenant living in the owner's strata lot was under 55. The tenant turned 55 in early December. The

strata says that it is entitled to levy a bylaw fine of \$200 plus weekly fines of \$200 for that period because there was a continuing violation of its bylaw.

32. The strata asks that I order the owner to make these payments to the strata:
 - a. \$1,800.00 for bylaw violation fines,
 - b. \$10.00 for unspecified expenses, and
 - c. \$225.00 for tribunal fees.
33. The owner says that the strata bylaw violates the *Human Rights Code*. The owner says that section 10 of the BC *Human Rights Code* prohibits denying someone the opportunity to rent based on that person's age.
34. The owner also says that the bylaw is meant to keep out noisy children or young people, which does not apply to their tenant. He was 54 and quiet.
35. The owner asks that I dismiss the applicant's claim.

ANALYSIS

Does the bylaw restricting age violate the Human Rights Code?

36. The SPA, section 123(1.1), allows a strata to pass a bylaw restricting the age of people who may live in a strata lot.
37. The *Human Rights Code*, in sections 8 and 10, generally prohibits discrimination in housing and tenancy. However, section 41(2) of the *Human Rights Code* says that nothing in the Code prevents distinctions being made due to age in other statutes.
38. Indeed, the Supreme Court of BC found a bylaw restricting the age of occupiers in a strata complex to 55 and over was valid in *Marshall v. Strata Plan No. NW 2584* (1997), 1996 CanLII 8500 (BC SC). That finding was supported in *Drummond v. Strata Plan NW 2654*, 2004 BCSC 1405, where the BC Supreme Court upheld a strata bylaw restricting occupancy to those 19 years and older. Also, the BC Human

Rights Tribunal found a bylaw restricting occupiers to those 55 or older was valid in *Ryan and Ryan v. Strata Plan VIS 3537*, 2005 BCHRT 559.

39. In this dispute, the strata has passed an age bylaw. I find that the bylaw is expressly permitted under the SPA.
40. The *Human Rights Code* recognizes that other statutes allow distinctions based on age. I find that there is no violation of the *Human Rights Code* in this dispute.
41. The tribunal has limited jurisdiction over matters involving the *Human Rights Code*. Under the Act, section 3.8, the tribunal does not have jurisdiction to consider whether there is a conflict between the *Human Rights Code* and the *Strata Property Act* (SPA).
42. The owner does not raise the question of whether there is a conflict between the *Human Rights Code* and another act. The owner says the strata bylaw violates the *Human Rights Code*. I have found that the bylaw does not violate the *Human Rights Code*. As I have read the claims of the parties and the two statutes in the paragraph above, there is no issue in this dispute as to any conflict between these acts.
43. The SPA expressly allows a strata to pass bylaws restricting the age of strata residents. In this dispute, the strata has a bylaw restricting the age of people living in the strata lots to 55 years of age or more. I find that the bylaw is valid.

Must the owner pay the fines for bylaw violation?

44. The SPA, section 130, permits a strata to fine an owner who violates the bylaws.
45. The SPA, section 135, governs the process for imposing fines. A strata must not impose a fine for violating a bylaw unless the strata has advised the owner or tenant of the complaint, in writing, and given the tenant or owner a reasonable opportunity to respond. Once a strata has decided to impose a fine, it must give notice in writing. Once the strata has complied with this section, it may impose fines while the contravention continues.

46. The BC Court of Appeal provided guidance for applying SPA section 135 in *Terry v. Strata Plan NW 309*, 2016 BCCA 449. *Terry* said that what amounts to a reasonable opportunity to respond depends on the context. In this case, I find that the owner and tenant had been well aware for many months of the bylaw violation and strata's position.
47. In August 2017 the strata had agreed to consider the tenant to be a "visitor" so long as he vacated the strata lot by October 2, 2017. The owner agreed that the tenant would vacate by October 2, 2017. That did not happen.
48. The owner and tenant were given notice in July and August 2017 that the strata would consider the tenant to be in violation of the bylaw if he was still there after October 2, 2017. In early October when the strata council invited the owner to attend a hearing about the matter on October 10, the owner was well aware of the complaint. I have found as a fact that the tenant attended that meeting. At that meeting the strata council decided that bylaw violation was continuing, and council decided to levy fines.
49. Council gave written notice of its decision to the owner on October 17, 2017 by email. The owner did not respond until months later when he expressed surprise at the fines. In the context of this dispute I find that the owner had been aware of the strata council's position on the bylaw violation for at least 2 months before the council decided to levy fines. The tenant was present when council made its decision. Council gave written notice a week later, on October 17, 2017. In the context of this dispute I find that council should have waited one week after giving written notice of its decision before levying fines. That would have given the owner a reasonable opportunity to answer the complaint, as required under the SPA section 135.
50. I also find that the strata was not entitled to levy fines until October 24, 2017. By that time they had made the decision, provided written notice to the owner, and given the owner a reasonable opportunity to respond.

51. I find that the strata was entitled to levy a \$200.00 fine on each of October 24 and 31, and November 7, 14, 21 and 28.

DECISION AND ORDERS

52. I order that the owner pay the strata \$1,200.00 in fines for bylaw violation.

53. I order that the strata reverse the \$200.00 fines imposed on the owner's account due October 2, 10 and 17 of 2017.

54. 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. The strata has asked for reimbursement of \$10.00 in expenses, but has not provided details or receipts to support that claim. I decline to order reimbursement without evidence of the expense. As for tribunal fees, I order the owner to reimburse the strata for tribunal fees of \$225.00.

55. 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-judgment interest under the COIA. I calculate the pre-judgment interest owing on the \$1,200.00 in fines, as calculated from the date each \$200.00 fine was assessed to the date of this decision, to be \$104.38.

56. The strata is entitled to post-judgment interest, as applicable.

57. 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.

58. 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.

Susan MacFarlane, Tribunal Member

Amendment Note

Pursuant to section 64 of the Act, paragraph 38 of this decision was amended to clarify inadvertent wording as to the age of "occupiers" of the strata lot.