



Civil Resolution Tribunal

Date Issued: October 19, 2018

File: ST-2017-007078

Type: Strata

Civil Resolution Tribunal

Indexed as: *Saigeon et al v. The Owners, Strata Plan KAS 1997*, 2018 BCCRT 636

B E T W E E N :

Rodney Saigeon and Laurel Saigeon

APPLICANTS

A N D :

The Owners, Strata Plan KAS 1997

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rose Keith

INTRODUCTION

1. This is a claim by two owners for reimbursement to the strata of \$300 which was withheld by another owner from his strata fees.

2. The applicants are co-owners of a single strata lot within the strata. The applicants are self-represented. The respondent strata corporation (strata) is represented by the council president.
3. The strata is a 4 lot development. Each owner in the strata is a member of the strata council. The president of the strata is the owner that withheld strata fees.

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, order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Can the strata reduce strata fees of an owner to reimburse him for a personal expense?
 - b. Can the strata charge a fine for unpaid strata fees after it permitted payment of reduced strata fees?
 - c. Is the owner entitled to tribunal fees?

BACKGROUND AND EVIDENCE

9. I have read all the evidence presented, but refer only to the evidence I find relevant to provide context to my decision.
10. On the evening of May 6, 2017 the council president's truck was vandalized while it was parked in a visitor's parking stall at the strata. The president paid a \$300 insurance deductible to have the damage repaired. On June 13, 2017 the president provided written notice to the owners of the strata that he would be deducting \$300 from his strata payments to reimburse himself for the cost of the insurance deductible.
11. The strata held a council meeting on July 30, 2017 at which time a vote was passed approving the deduction of \$300 from the president's strata fees.
12. The bylaws of the strata were approved on April 1, 2012. The bylaws provide that an owner must pay strata fees on or before the first day of the month. The bylaws further provide that it is the strata's responsibility to repair and maintain all common property and assets.

POSITION OF THE PARTIES

13. The applicants argue that the bylaws govern the rights and responsibilities of owners within the strata. They argue that the bylaws do not allow the reduction in

strata fees that has been taken by the president. They argue that the strata is failing to enforce its own bylaws. The applicants say that the president should be fined for the non payment of strata fees.

14. The applicant requests that I order the president to pay the money that has been withheld, that I order the strata to follow and enforce the Strata Property Act (SPA) and the strata's bylaws, that the president be fined for withholding payment of strata fees, and that they be reimbursed fees paid to the tribunal.
15. The president on behalf of the strata argues that the strata approved the deduction from his strata fees and that this vote should be honoured. In effect the president's position is that the strata has the authority and jurisdiction to vote to decrease the amount of strata fees paid by an individual owner.
16. The respondent requests that I dismiss the applicant's claim.

ANALYSIS

Can the strata reduce strata fees of an owner to reimburse him for a personal expense?

17. The SPA provides that the strata corporation must not spend money collected as strata fees unless that expenditure is consistent with s. 92 of the SPA. That section requires that strata fees only be spent on common expenses. "Common expenses" is defined in section 1 of the SPA to be:
 - a) Relating to the common property and common assets of the strata corporation, or
 - b) Required to meet any other purpose or obligation of the strata corporation.
18. The strata has no authority to spend money on anything other than common expenses. The deductible incurred by the president to repair damage done to his truck does not fall within the definition of common expense and the strata therefore has no authority to spend strata fees on reimbursement to the president of this expense by way of deduction in the strata fees that he is required to pay. It was

wrong for the strata to approve the deduction as the deductible does not constitute a common expense.

19. The deductible incurred by the president to obtain repairs to his vandalized truck is a personal expense. The strata has no authority to reduce strata fees of an owner to reimburse for personal expenses.
20. I note that the president in his response on behalf of the strata has indicated that the strata is “self governed” and that they voted to have the deduction to his strata fees. He has also indicated that if my ruling is that the strata must reverse the deduction that he has been given, the strata will vote again to provide him with reimbursement of the \$300 he has incurred as an insurance deductible.
21. The strata’s actions are governed by the SPA and its bylaws. It cannot take actions outside the jurisdiction of the SPA or its bylaws. It specifically cannot vote to utilize strata fees for anything other than common expenses. The president’s personal expenses are not common expenses and it would be contrary to the SPA and the strata’s bylaws to authorize reimbursement to the president for this expense.
22. I conclude that the strata wrongly voted to allow the president to withhold a portion of his strata fees to reimburse him for a personal expense. I order that the strata demand payment of the \$300 from the president, to be paid within 2 weeks of the demand.

Can the strata charge a fine for unpaid strata fees after it permitted payment of reduced strata fees?

23. The applicant requests an order that the strata fine the president for unpaid strata fees.
24. Given the circumstances that led to the withholding of strata fees, and in particular the improper vote that approved the withholding of the strata fees, I would not order the strata charge a fine for unpaid strata fees unless the president does not pay the outstanding fees I have ordered the strata to demand.

TRIBUNAL FEES AND EXPENSES

25. 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 in this case to deviate from the general rule. I therefore order the respondent to reimburse the applicants for tribunal fees of \$225.
26. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner.

DECISION AND ORDERS

27. Within 30 days of this order I order that:
 - a. The strata demand payment of the \$300 from the president, with payment to be made within 2 weeks of the demand.
 - b. The strata reimburse the applicant \$225 for tribunal fees.
28. The strata is entitled to post judgment interest under the Court Order Interest Act, R.S.B.C. 1996, c. 79, as amended, if applicable.
29. 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.
30. 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.

Rose Keith, Tribunal Member