



Civil Resolution Tribunal

Date Issued: November 1, 2018

File: ST-2018-001643

Type: Strata

Civil Resolution Tribunal

Indexed as: *Aasland et al v. The Owners, Strata Plan VIS 3478*, 2018 BCCRT 675

BETWEEN :

Kaare Aasland and Carrie Aasland

APPLICANTS

AND :

The Owners, Strata Plan VIS 3478

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicants, Kaare Aasland and Carrie Aasland (owners) own a strata lot in the respondent strata corporation, The Owners, Strata Plan VIS 3478 (strata).

2. The owners say the strata singled them out for a minor pet bylaw infraction, by imposing fines for having 2 cats in their strata lot. The owners say the strata has enforced its bylaws arbitrarily, due to personal bias. They seek an order that the enforcement of the pet bylaw against them be stayed. They also seek orders that the council enforce its bylaws equitably, and that it follow the *Strata Property Act* (SPA) in conducting its business.
3. The strata says that the owners were aware of the pet bylaws before obtaining their 2 cats in June 2017, and that a $\frac{3}{4}$ vote resolution to amend the pet bylaw did not receive the required support at the August 2017 Annual General Meeting (AGM). The strata says the owners were warned about the bylaw violation and potential for fines, but chose to keep the cats.
4. The owners are self-represented. The strata is represented by a strata council member.
5. For the reasons set out below, I find that the owners were not entitled to an exemption from or stay of the pet bylaw.

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.

Order to Follow the SPA

10. As part of this dispute, the owners seek orders that the council enforce its bylaws equitably, and that it follow the SPA in conducting its business. I decline to make these orders, as I find they would be meaningless. The strata is already obligated to act and conduct its business in accordance with the SPA.

ISSUE

11. The issue in this dispute is whether the owners were entitled to an exemption to the strata's pet restriction bylaw.

EVIDENCE, FINDINGS & ANALYSIS

12. I have read all of the evidence provided, but refer only to evidence I find relevant to provide context for my decision.
13. The strata's pet bylaws have been in force since at least 2012. The relevant bylaw, bylaw 31(1), states as follows:

31(1) A Resident must not keep any pets on a strata lot other than one or more of the following:

(d) one dog (not to exceed a maximum height of 15" measured at the shoulder) or one cat;

14. The bylaws also discuss fish, aquarium animals, birds, and guide or medical assistance animals, but these are not relevant to this dispute.
15. Bylaw 31(2) says that all other pets, except for those allowed in bylaw 31(1), are prohibited. Bylaw 31(4) says that a resident shall remove a prohibited pet from the strata lot within the time stipulated in writing by the strata council. Bylaw 31(6) says that a resident in violation of the pet bylaws may be subject to any remedy available to the strata corporation, in addition to fines.
16. The owners, who did not previously have pets in their strata lot, obtained 2 cats in June 2017. Carrie Aasland, who was a strata council member at the time, emailed the other strata council members on June 8, 2017 asking for permission to keep 2 cats in her strata lot. She asked the council members to waive the pet bylaw so she could keep 2 cats instead of 1. She said the cats would not be allowed outside, and no one would know they had a pet.
17. The strata's property manager replied to the email on June 9, 2017. He said that under the SPA, the strata council had no authority to waive a bylaw. The strata council president also replied, stating that the answer to Ms. Aasland's request was no. She cited the property manager's email, and said that without an amended bylaw already in place, "we would be opening Pandora's box". Ms. Aasland emailed back on June 9, 2017, stating that she had already paid for and committed to getting the 2 cats since she did not think it would be a problem.
18. In a July 12, 2017 email to the strata council, Ms. Aasland again asked for an exception to the pet bylaw. She said other owners had contravened bylaws and nothing was done. Ms. Aasland said she would bring the 2 cats home later that week, but she would ensure it was not common knowledge.
19. The owners put forward a $\frac{3}{4}$ vote resolution to change the strata's pet bylaw, which was voted on at the August 30, 2017 AGM. The resolution proposed a change to the existing bylaw to allow a resident to keep 2 dogs, 2 cats, or 1 dog and 1 cat. The resolution did not receive the necessary $\frac{3}{4}$ vote in support, so it failed.

20. On December 8, 2017, a group of owners, including some strata council members, sent a written complaint to the strata council about the owners' ongoing violation of the pet restriction bylaw by keeping 2 cats.
21. On December 18, 2017, the property manager sent the owners a letter stating that they were violating strata bylaws by keeping 2 cats in their strata lot. The letter included the relevant text of the bylaw, and warned that under bylaws 23 and 24 the strata could levy a fine of up to \$200 for each bylaw infraction, to be imposed every 7 days. The letter said the owners were entitled to an opportunity to respond to the complaint, and could do so in writing or request a hearing within 14 days.
22. The owners answered by letter dated January 5, 2018. They said that based on the wording of the bylaws, each "resident" was entitled to one dog or one cat. The owners requested a hearing before the strata council, which was held on January 24, 2018.
23. Following the hearing, the property manager sent the owners a January 29, 2018 letter setting out the strata council's decision. The letter said that while the owners had requested an exemption to the pet restriction bylaw, there was no provision under the SPA to grant such an exemption, and the resolution to change the bylaw had not passed at the August 2018 AGM. The letter said the owners had 60 days to provide evidence that they had re-homed 1 or both cats, after which fines would begin to be imposed every 7 days.
24. On April 11, 2018, the property manager wrote to the owners stating that since they had not provided evidence of re-homing 1 or 2 cats, council had decided to fine them \$100, to be repeated every 7 days due to the continuing bylaw violation until evidence of re-homing was provided.
25. The owners provided a bill of sale showing that they sold both cats on May 12, 2018.

Pet Bylaw Enforcement

26. In their January 5, 2018 letter, the owners argued that bylaw 31(1) says that each resident is entitled to 1 dog or 1 cat, so since they were 2 people, they were entitled to keep 2 cats. I disagree with this interpretation, based on the wording of bylaw 31(1). The text of the bylaw clearly indicates that there cannot be more than 1 dog or 1 cat in each strata lot. Ms. Aasland's June 8, 2017 email to the strata council members confirms that she also interpreted the bylaw in this manner, as she wrote as follows:

What I'm requesting is that Yorkshire Court Strata council give Kaare and I special permission and waive the bylaw regarding pets so that we can have two pets instead of just the one.

27. For this reason, and based on the wording of the bylaws, I find the bylaws did not permit the owners to keep 2 cats in their strata lot. The bylaw is mandatory, and I there is no provision in the bylaw or in the SPA that would allow the strata to make an exception to allow 2 cats unless one was a medical assistance animal.

28. The owners say the strata has failed to enforce other bylaws, so enforcing the pet bylaw against them is arbitrary, unfair, and an example of personal bias. The owners sent a February 8, 2018 letter to the strata council setting out alleged bylaw violations by various other owners, including the following:

- Leaving chairs, planters, and umbrellas on patios.
- Changing garden areas by removing strata plantings and/or adding plants, shrubs, mulch, and rocks.
- Adding statues, edging, pots, lights, ricks, and knick-knacks to gardens.
- Affixing decorative plaques and other items to outside walls or fencing.
- Hanging laundry outside of the patio area.
- Changing an outside light.

- Adding a wooden patio structure without strata approval.
29. In their February 8, 2018 letter, the owners said that other owners violated bylaws with impunity, so the strata council clearly made exemptions for other infractions in the past by failing to enforce its bylaws. The owners said the strata's enforcement of the pet bylaw against them was arbitrary, unfair, and discriminatory, given the fact that other owners' bylaw violations have gone unpunished.
 30. I do not agree that the strata acted in a manner that was arbitrary, unfair, or discriminatory against the owners. Based on the extensive evidence provided by the owners, I accept that other owners have violated bylaws. However, the evidence does not indicate that other owners complained about these bylaw infractions, prior to the owners' February 8, 2018 letter. As stated in bylaw 23(1)(a), the council must not impose fines for bylaw contraventions unless the strata corporation has received a complaint, and under bylaw 23(4), the council is only required to deal with bylaw violations brought to its attention in writing. Also, while a strata corporation has a duty under section 26 of the SPA to enforce bylaws, although the manner of enforcement is discretionary.
 31. The language of section 48.1(2) of the *Civil Resolution Tribunal Act* mirrors that of section 164 of the SPA. These provisions allow the BC Supreme Court, or this tribunal, to issue an order to prevent or remedy a significantly unfair act by a strata corporation, in relation to an owner. However, I find that the strata's decision to enforce the pet bylaw against the owners was not significantly unfair.
 32. The courts and the tribunal have considered the meaning of "significantly unfair" in a number of contexts, equating it to oppressive or unfairly prejudicial conduct. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 128, the BC Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith and/or unjust or inequitable.
 33. The BC Court of Appeal considered the language of section 164 of the SPA in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44. The test established in that case was restated by the Supreme Court of BC in *The Owners, Strata Plan*

BCS 1721 v. Watson, 2017 BCSC 763, in an application for leave to appeal a decision of the tribunal at paragraph 28:

The test under s. 164 of the Strata Property Act also involves objective assessment. *[Dollan]* requires several questions to be answered in that regard:

- 1) What is or was the expectation of the affected owner or tenant?
- 2) Was that expectation on the part of the owner or tenant objectively reasonable?
- 3) If so, was that expectation violated by an action that was significantly unfair?

34. In this dispute, the owners expected the strata council to allow them to keep 2 cats.

35. The owners' June 2017 emails establish that they were aware that the strata's bylaws did not permit 2 cats in a strata lot. They asked for permission to keep 2 cats anyway, and the property manager and the council president accurately replied that a waiver was impossible. Even after this exchange, which clarified the bylaws and denied permission to keep 2 cats, the owners chose to bring the 2 cats to their strata lot. Based on the information set out in the email exchange, I find that the owners' expectation that they would be permitted to keep the 2 cats without penalty was not objectively reasonable.

36. While the owners have subsequently asserted that another owner kept 2 pets without penalty, they provided no evidence about the time period, or the type of pets. They also did not raise this, or other bylaw infraction by strata lot owners, at the time they bought 2 cats. The owners only raised this argument after the strata council's January 29, 2018 decision that they must re-home 1 or both cats within 60 days. Thus, I find that the owners, who bear the burden of proof in this dispute, have not established that their June 2017 expectation of keeping the 2 cats was based on a history of permissive bylaw exemptions by the strata.

37. Because I have found that the owners' expectation to keep 2 cats contrary to the bylaws was not objectively reasonable, I find that the strata's actions in enforcing the bylaw were not significantly unfair.
38. I also note that the strata followed the mandatory procedures for bylaw enforcement set out in section 135 of the SPA, and gave the owners a 60 day grace period to re-home the cats. I find that this was fair in the circumstances. Also, as stated in *Link et al v. The Owners, Strata Plan KAS 828*, 2017 BCCRT 128, once a strata council has determined that a bylaw contravention has occurred, it cannot choose not to enforce the bylaw.
39. For these reasons, I find the owners are not entitled to an exemption or stay of the pet bylaw. The owners' claims are dismissed.

Bylaw Violation Fines

40. The strata did not file a counterclaim seeking payment of bylaw violation fines, and did not request such an order, so I do not order payment. However, I find that the owners are liable to pay fines in this regard.
41. Ms. Aasland says she put a copy of the bill of sale for the cats in the strata council president's mailbox on May 13, 2018, but the president says she did not receive it. Section 63(1) of the SPA states that a notice or other record or document that is required or permitted under the SPA, the bylaws or the rules to be given to the strata corporation must be given to the strata corporation
- (a) by leaving it with a council member,
 - (b) by mailing it to the strata corporation at its most recent mailing address on file in the land title office,
 - (c) by faxing it or emailing it to
 - (i) the strata corporation using the strata corporation's fax number or email address, or

(ii) a fax number or email address provided by a council member for the purpose of receiving the notice, record or document, or

(d) by putting it through the mail slot, or in the mailbox, used by the strata corporation for receiving notices, records and documents.

42. I find that the notice of re-homing the cats is equivalent to a notice to the strata corporation under the bylaws, as contemplated in section 63(1). Ms. Aasland did not leave the notice with a strata council member, but instead left it in her mailbox. Since the president's mailbox was not the mailbox used by the strata corporation for receiving notices and other documents, I find that the owners did not provide notice of re-homing the cats on May 13, 2018. Rather, based on the emails exchanged between the parties, I find that the owners provided notice of re-homing by hand delivery to the president on July 27, 2018.

43. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The owners' were unsuccessful, so I dismiss their claim for reimbursement of tribunal fees and dispute-related expenses. While the owners claimed \$60 in dispute-related expenses, I would not have ordered reimbursement in any event, as the owners did not provide receipts or particulars to support that claim.

ORDERS

44. I dismiss the owners' claims and this dispute.

Kate Campbell, Tribunal Member