



Civil Resolution Tribunal

Date Issued: December 7, 2018

File: ST-2017-006105

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR2690 v. Simpson*, 2018 BCCRT 782

B E T W E E N :

The Owners, Strata Plan VR2690

APPLICANT

A N D :

Romanda Simpson

RESPONDENT

A N D :

The Owners, Strata Plan VR2690

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Darrell Le Houillier

INTRODUCTION

1. The applicant and respondent by counterclaim, The Owners, Strata Plan VR2690 (the strata), is a strata corporation. The respondent, Romanda Simpson (owner), owns a strata lot in the strata. The strata wants the owner to pay \$3,500.00 in fines for violating the strata's bylaws restricting the rental of strata lots, plus costs and interest. The owner argued she should have to pay nothing to the strata.
2. The owner seeks, by counterclaim, repayment of \$1,500.00 in fines she says were incorrectly levied by the strata and which she paid, plus costs and interest. The strata says those fines were properly levied and nothing should be repaid to the owner.
3. A member of the strata council represents the strata. The owner is self-represented.

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 make 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.

ISSUES

8. The issues in this dispute are:
 - a. Is the strata entitled to fine the owner \$3,500.00, beyond what she already paid, for bylaw violations?
 - b. Is the owner entitled to recover \$1,500.00 in fines she paid?

BACKGROUND AND EVIDENCE

9. I have read all of the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
10. At all relevant times, the strata's bylaws restricted the number of residential strata lots that could be rented within its building. The owner's strata lot was not one of those that could be rented under the bylaws.
11. On February 29, 2012, the owner wrote an email to a member of the strata council, requesting an exemption from the strata's rental restriction bylaw for reasons of hardship. The owner advised she would be living abroad for one to two years and asked for a temporary exemption.
12. On March 20, 2012, the strata property manager wrote a letter to the owner denying her request for an exemption.
13. On April 6, 2012, the owner wrote a letter to the strata's property management company, stating that the strata council had not replied to her in the time designated under the Strata Property Act (SPA). She stated that her request was accordingly allowed and she would be renting her strata lot for up to two years.

14. On June 17, 2014, the strata property manager wrote to the owner at her strata lot. The property manager indicated that he had received a report that the owner was renting her strata lot in violation of the strata's rental restriction bylaws. The property manager informed the owner this was a contravention of the strata's bylaws and that there was an associated fine of \$500.00 per month. The property manager requested a response. According to the owner, she never saw this letter until receiving disclosure as part of the tribunal's process.
15. On June 24, 2014, a member of the strata council wrote emails to the property manager. The emails discussed a rumour about the owner that I did not find at all persuasive.¹ The emails also indicated that the owner had said her exemption expired in April 2014 and she wished to reapply because she was going to school.
16. On August 11, 2014, the strata's property manager wrote to the owner, referencing the letter of June 17, 2014 and stating no reply had been received. The property manager noted the owner's Facebook page indicated she was living abroad. The property manager stated the owner would be fined \$500.00 per month the rental continued, starting September 1, 2014. The property manager also invited a response from the owner.
17. On November 24, 2014, the strata property manager wrote to the owner and advised she had been fined \$500.00 per month from September to November. The letter asked the owner to write a cheque payable to the strata. The owner received this document when she returned to live in her strata lot on December 15, 2014.
18. On December 19, 2014, the owner wrote to the strata council and requested an exemption from the strata rental restriction bylaws due to financial hardship. She described being unemployed, exhausting her available credit, and pursuing further education to improve her job prospects. The owner stated she had secured a part-time job to work while enrolled in school, but it would not cover her expenses

¹ This rumour was repeated by another member of the strata council in an email dated January 5, 2015.

associated with schooling. She expected to return to Vancouver by May 2016, with the intention of moving into her strata lot once more.

19. On December 31, 2014, the property manager received the owner's letter dated December 19, 2014. The property manager emailed the owner on the same day and confirmed receipt of her request.
20. On January 8, 2015, the property manager wrote to the owner and attached a letter. The property manager stated the strata council had declined her request for an exemption. He attached a copy of a letter saying as much.
21. Also on January 8, 2015, the owner contacted the property manager and "acknowledged receipt of the council's decision". She requested a hearing. The property manager forwarded this request to the strata council on the same date.
22. The owner left her strata lot on January 13, 2015 and she says her friend started to live there. This friend was to stay there for approximately six weeks. He was not expected to pay, but would help select a suitable renter for the owner's strata lot if she was granted an exemption from the prohibition against renting it out.
23. On January 17, 2015, the strata property manager emailed the owner, saying that another owner in the strata's building mentioned people living in the owner's strata lot with a dog. He asked if the owner was renting her strata lot.
24. On January 18, 2015, the owner emailed the strata property manager and explained the arrangement she says she had with her friends who were living in her strata lot.
25. On January 22, 2015, the strata property manager emailed the owner to confirm her participation in a hearing related to her request for an exemption from the strata's rental restriction bylaws. The hearing was to proceed by teleconference on January 23, 2015. The strata property manager emphasized that this was the owner's second request for an exemption from the strata's rental restriction bylaws.
26. On January 23, 2015, the owner met with three of the six members of the strata council for her hearing. She described herself as being in financial hardship after

selling a rental property for a loss, being unemployed, being ineligible for loans or lines of credit, and attending school to increase her prospects of employment.

27. On February 24, 2015, the strata council met. According to the minutes of the meeting, one of the issues discussed was the owner's application for an exemption from the rental restriction bylaw. The minutes indicate that the owner's first application received in January 2015 was denied. With respect to the later application, the three strata council members who participated in the hearing unanimously reported to the strata council that they did not think the council had erred in its earlier decision. The council accepted adopted that position, according to the meeting minutes.
28. On March 10, 2015, the property manager emailed the owner a copy of the minutes from February 24, 2015. According to the owner, this was when she found out about the strata council's decision to deny her request following her hearing.
29. The owner states that she lived in her home again in May and June 2015.
30. On October 7, 2015, the owner wrote to the property manager and summarized that her request for an exemption from the rental restriction bylaw had been denied on January 8, 2015. She added, "To follow up on this request/denial I asked Council to speak with me in person at a hearing as I felt the evidence was adequate."
31. On October 25, 2017, the strata filed a dispute notice with the tribunal, with respect to this dispute.

POSITION OF THE PARTIES

32. The strata says the owner rented her strata lot contrary to the strata's bylaws and she should pay the associated fines. The strata asks that I order the owner to pay \$3,500.00 in fines, plus costs and interest.
33. The owner asks that I not order her to pay any fines. She raises three arguments that she says answers the strata's claim, in whole or in part:

- a. Her strata lot was not rented from some point in December 2014 to the end of February 2015, and in May and June 2015.
 - b. She had received an exemption from the rental restriction bylaw because the exemption granted in 2012 never expired and/or her application for an exemption in January 2015 was automatically granted because the strata did not respond within the designated time after her teleconference hearing.
 - c. The strata brought this dispute forward after the expiry of the limitation period for doing so, established under the *Limitation Act*, R.S.B.C. 2012, c. 13.
34. In response, the strata's representative says he assumed the strata council had done proper due diligence in accordance with their duties.
35. In the counterclaim, the owner says that the fines levied by the strata were inappropriate because they were not in response to a complaint,² the strata did not give her a chance to respond to the complaint, and the strata did not inform her promptly of its decision, instead allowing months of fines to accumulate before informing her. She asks me to order the strata to repay her the \$1,500.00 she paid in inappropriately levied fines, plus costs and interest.
36. The strata says that it should not have to repay the owner any of the fines she already paid, stating the issue seems to involve whether the owner received notice of her impending fines.

ANALYSIS

37. Because there are various legal issues arising at different points of time relevant to this dispute, I will approach this case from a chronological perspective. This requires that I consider the counterclaim first and the claim second.

² The owner referenced *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449 (CanLII) (*Terry*) in support of her argument that a fine for a bylaw contravention must stem from a complaint, which must be disclosed to the owner to be fined so that they can respond.

Is the owner entitled to recover \$1,500.00 in fines she paid?

38. Section 141 of the SPA permits stratas to limit the number of residential strata lots that may be rented.
39. Section 144 of the SPA allows a strata lot owner to apply to the strata of which he or she is part for an exemption from a bylaw prohibiting the rental of strata lots in cases where that bylaw creates hardship for the owner. The owner must indicate if he or she wishes a hearing to discuss the matter and, if so, the strata must hold that hearing within four weeks.
40. Section 144 of the SPA also states that an application for an exemption from a bylaw prohibiting the rental of a strata lot is allowed if the strata does not hold a hearing within four weeks if the owner requested one in his or her application. An application for an exemption is likewise allowed if the strata does not give a written decision within two weeks of being given an application where no hearing is requested, or within one week of the hearing if a hearing occurs.
41. Bylaws #6.1 and #6.2 provide that there are a set number of strata lots that may be rented by owners. In order to rent a strata lot, an owner must secure the written permission of the strata. Bylaw #6.7 provides that a monthly penalty of \$500.00 will be payable by any owner violating bylaws #6.1 and/or #6.2.
42. I find that the owner received an exemption from the rental restriction bylaws of the strata in 2012. The owner requested an exemption from the rental restriction bylaws of the strata on February 29, 2012 and the strata failed to reply within the timeframe established under section 144 of the SPA: two weeks. As such, her request was granted effective March 15, 2012.
43. The owner's application was for a two-year exemption. That is the application that was granted. She did not provide to the tribunal any support for her position that she was exempted from the rental restriction bylaws until such time as the strata wrote her to confirm the end date of the rental restriction. The owner knew she requested a two-year exemption and acted accordingly. She knew the date her request was

allowed by virtue of section 144 of the SPA. I find that the owner's exemption expired after March 14, 2014.

44. While the owner informed a member of the strata council that she wanted to request another exemption from the strata's rental restriction bylaws, the email in June 2014 does not count as such a request. Section 144 of the SPA requires that such a request must contain information as to whether the owner wishes a hearing. The email from June 2014 was not provided to me and the only description of it does not mention whether a hearing was requested. Because the owner asserts she was exempt from the rental restriction bylaws, she bears the burden of proof. She did not provide enough evidence to prove that she was exempt because of the email she sent to a strata council member in June 2014.
45. The owner rented out her strata lot in June 2014 while she was out of the country. The strata property manager wrote to the owner in June 2014 and August 2014 about this contravention of the strata's bylaws. The owner says she did not get the letter from June 2014 but she did not make the same claim about the letter from August 2014. As such, I conclude that the owner did not receive the letter from June 2014 but did receive the letter from August 2014.
46. Section 135 of the SPA states that a strata must not fine an owner for a bylaw contravention unless it has received a complaint about the contravention, given particulars to the owner about the complaint in writing, and provided the owner with a reasonable opportunity to reply.
47. The owner has argued there was no complaint received by the strata council. The SPA does not provide guidance how to define a complaint. I consider it sufficient that the strata property manager brought the issue to the attention of the strata council.
48. The Court of Appeal provided further guidance in *Terry*, which the owner referenced in her written arguments to me. For the court, Fitch J.A. wrote at paragraph 28 that the requirements under section 135 of the SPA were to notify an owner who may be subject to a fine:

- a. the strata is contemplating a fine in response to an infraction of a specified bylaw or rule;
- b. enough particulars that the owner's attention can be called to the contravention at issue;
- c. enough opportunity to gather enough evidence or information to answer the complaint; and
- d. a reasonable opportunity to reply.

49. The property manager's letter of August 11, 2014 provided all necessary information required by section 135 of the SPA, as explained in *Terry*. The letter stated that a fine would be levied for a violation of the rental restriction bylaw. The strata lot was identified and the owner accordingly had enough particularly to call her attention to the specific contravention. She was provided three weeks' notice before a fine was to be levied. Given that the contravention does not require much investigation, I consider this to have been ample opportunity to gather needed evidence or information and to reply. As such, I find that the strata was entitled to fine the owner starting in September 2014 for contravening the strata rental restriction bylaw after not hearing back from the owner after the letter of August 11, 2014.

50. The strata was entitled to continue fining the owner for violating the strata rental restriction bylaw until and including December 2014. While the owner moved back in on December 15, 2014, she has not denied that she had the strata lot rented for some of December 2014. The strata's bylaws allow for a \$500.00 each month, without specifying that the strata lot must be rented for the whole of the month for the fine to apply.

51. The owner paid three months in fines, totalling \$1,500.00. This represents payment of the fines from September to November 2014, inclusive. The *Limitation Act* does not apply to these months. Section 9 of the *Limitation Act* states that the two-year limitation period begins when a person knows or reasonably ought to know that, among other things, a court proceeding is the appropriate remedy to deal with the

injury, loss, or damage that gives rise to a claim. In this case, the worker paid her fines for those months. There was no reason for the strata to consider a court proceeding would be appropriate once the owner had paid her fine.

52. The *Limitation Act* does not apply to fines related to any bylaw violations from December 2014 onward. The strata filed its dispute notice with respect to alleged contraventions of the rental restriction bylaws in November 2015, meaning that the limitation period had not passed for any fines related to any bylaw violations raised by this dispute from December 2014 onward.

53. In conclusion, the strata has shown that the owner rented her strata lot from September to December 2014, in violation of the bylaws. The owner has not shown that, for any of the reasons she argued, the strata is unable to enforce that bylaws by levying the fines that it did. I find that the strata was entitled to fine owner the \$1,500.00 in fines which she paid, plus an additional \$500.00, for the period from September to December 2014. I also find that the owner is not entitled to recover the \$1,500.00 in fines she paid. I dismiss the counterclaim.

Is the strata entitled to fine the owner \$3,500.00, beyond what she already paid, for bylaw violations?

54. On December 19, 2014, the owner requested another exemption from the strata's rental restriction bylaws. The property manager received the request on December 31, 2014. The request was denied and that denial was communicated to the owner on January 8, 2015. The owner understood her request had been denied, according to an email she wrote to the property manager on January 8, 2015 and in a letter she wrote to the property manager in October 2015.

55. I find that the owner lived in her strata lot until mid-January 2015. I also find that she allowed a friend to live in her strata lot for the balance of January 2015 without paying any rent. The owner has indicated as much and her statements were convincing to me.

56. I am not concerned that the owner's guests had a dog in her strata lot. I am unwilling to speculate that one would not travel overseas with his or her dog or that the dog did not belong to the guests. I conclude that the owner did not receive any rent for January 2015 and, as such, that she did not contravene the strata's rental restriction bylaws in those months.
57. While the strata council denied the owner's request for an exemption from December 2014 on January 8, 2015, the owner made another request shortly thereafter and requested a hearing to discuss the matter. The strata council made clear that it considered this to be a separate application. I agree with that characterization. The request was to be discussed at a hearing.
58. The owner attended a teleconference hearing on January 23, 2015. The strata was obligated under section 144 of the SPA to inform her of its decision on the requested exemption from the rental restriction bylaws within one week, or the exemption would be deemed to be granted. The strata did not do so. As a result, I conclude that the owner's request for an exemption from the rental restriction bylaws was granted on January 31, 2015.
59. The owner's request was for a time-limited exemption from the strata rental restriction bylaws, until May 2016. She described her intention to return to live in her strata lot and engage in the social fabric of the building. It was unclear at what point in May 2016 the owner anticipated returning. As a result, I find the exemption was requested to run to the end of that month: May 31, 2016. That request was granted, based on the effect of section 144 of the SPA.
60. I conclude that the strata was accordingly not entitled to fine the owner for contraventions of the rental restriction bylaw from January 2015 until May 2016. I find that the only month the strata was entitled to fine the owner for bylaw violations that the owner has not already paid was December 2014. Accordingly, I conclude that the strata was entitled to fine the owner \$500.00, beyond what she already paid, for bylaw violations.

61. I order that the owner pay the strata \$500.00 in fines for violating the strata's rental restriction bylaw in December 2014.

TRIBUNAL FEES AND EXPENSES

62. 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. The strata was the successful party in both the claim and the counterclaim. I therefore order the owner to reimburse the strata for tribunal fees of \$225.00. The strata did not request reimbursement of any dispute-related expenses.

63. I calculated pre-judgment interest based on the *Court Order Interest Act*, R.S.B.C. 1996, c. 79 (*Court Order Interest Act*), as amended, if applicable. Interest was payable from December 1, 2014, the date the owner first violated the rental restriction bylaw in December 2014. The interest applied to the fine of \$500.00.

64. The strata is also entitled to post judgement interest, under the *Court Order Interest Act*, as amended, as applicable.

65. 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, unless the tribunal orders otherwise.

DECISION AND ORDERS

66. I order the owner to pay to the strata, within 30 days of when this decision is issued, \$743.13. This amount is broken down as follows:

- a. \$500.00 in fines for violating the strata's rental restriction bylaw in December 2014;
- b. \$18.17 in pre-judgment interest under the *Court Order Interest Act*, from December 1, 2014; and

c. \$225.00 in tribunal fees.

67. Under section 57 of the Act, a party can enforce this final tribunal decision by filing a validated copy of the attached order in the Supreme Court of British Columbia. 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 without leave to appeal having been sought or consented to. Once filed, the order has the same force and effect as an order of the Supreme Court of British Columbia.
68. 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 that court'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 a validated copy of the attached order in the Provincial Court of British Columbia. 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 without leave to appeal having been sought or consented to. Once filed, the order has the same force and effect as an order of the Provincial Court of British Columbia.

Darrell Le Houillier, Tribunal Member