



# Civil Resolution Tribunal

Date Issued: December 11, 2018

File: ST-2018-000588

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 3671 v. Turner et al*, 2018 BCCRT 834

B E T W E E N :

The Owners, Strata Plan LMS 3671

**APPLICANT**

A N D :

Andrew Turner and Malcom Hassin

**RESPONDENTS**

A N D :

The Owners, Strata Plan LMS 3671

**RESPONDENT BY COUNTERCLAIM**

---

## REASONS FOR DECISION

---

Tribunal Member:

J. Garth Cambrey, Vice Chair

## **INTRODUCTION**

1. The respondents, Andrew Turner and Malcolm Hassin (owners), co-owned strata lot 10 (SL10) in the applicant strata corporation, The Owners, Strata Plan LMS 3671 (strata). In the counterclaim, Andrew Turner is the applicant and the strata is the respondent.
2. The strata is a bare land, leasehold strata corporation consisting of 15 strata lots located along the Fraser River shoreline in New Westminster B.C.
3. This dispute is about bylaw fines the strata assessed against SL10 while the respondents owned SL10. The strata alleges that the owners allowed construction of their floating home while it was located on SL10, contrary to the strata bylaws. The strata collected \$3,400 on the sale of SL10 which is currently being held “in trust” pending the outcome of this dispute.
4. The strata says the bylaw fines are valid and that the funds should be released to the strata. The owners say the fines are not valid and, in his counterclaim, Mr. Turner seeks release of the fines he and Mr. Hassin paid into trust.
5. A strata council member represents the strata. Mr. Turner represents the respondents in the strata’s claim and himself in the counterclaim.
6. For the reasons that follow, I dismiss the strata’s claim and allow Mr. Turner’s counterclaim.

## **JURISDICTION AND PROCEDURE**

7. 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.

8. 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 there are no significant issues of credibility or other reasons that might require an oral hearing.
9. 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.
10. 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.

## **ISSUES**

11. The issues in this dispute are:
  - a. Should I hear the dispute given the owners sold SL10 during the tribunal decision process?
  - b. If I hear the dispute, is the strata entitled to retain the \$3,400 in bylaw fines assessed against SL10 when the respondents owned SL10, or should that amount be released to the owners?

## **POSITION OF THE PARTIES**

12. The strata says the bylaw fines were properly assessed against SL10 under section 135 of the SPA. It seeks an order that it is entitled to retain the \$3,400 fines it collected at the time SL10 was sold in June 2018, which sum is currently held by the owners' lawyer in trust, pending resolution of this dispute.
13. The owners deny that the fines were properly assessed in that they were never in contravention of the strata's bylaw 3(2) about constructing the floating home on site. They say the strata failed to prove that construction of the floating home was

taking place on site at all. They say they were never given the particulars of the complaint(s) made against them and never given a proper council hearing.

14. They also say the strata acted in bad faith and in a heavy-handed and intimidating manner by threatening to evict them under the strata lot lease. They also say the strata has never signed the strata lot lease for SL10 and therefore they are not bound by the strata lot lease or the strata bylaws.
15. The owners ask that I dismiss the strata's claims and order the \$3,400 fines they paid into trust be released to them.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

16. I have read all of the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
17. In this tribunal proceeding, the strata must prove its claim on a balance of probabilities. In the counterclaim, the burden of proof is on Mr. Turner to prove his claim.
18. The strata was created in September 1998 and was constructed in 3 phases between September 1998 and February 2012 and exists under the *Strata Property Act* (SPA). The homes located on the strata lots are floating homes.
19. The owners became leasehold tenants of strata lot 10, located in phase 3 of the strata, on September 2, 2016 and sold their interest on June 28, 2018. A leasehold tenant is defined to be an owner in the strata under section 1(1) of the SPA.

### ***Should I hear the dispute given the owners sold SL10 during the tribunal decision process?***

20. Under section 189.1 of the SPA, only a strata corporation, separate section, owner or tenant may start a tribunal claim.

21. The Act and tribunal rules are silent on the effects of a change in ownership of a strata lot that occurs during the tribunal decision process. I addressed this issue in *Kervin v. The Owners, Strata Plan LMS 3011*, 2017 BCCRT 146, finding the tribunal has discretion to dismiss, refuse to resolve, or continue to resolve a dispute when an applicant sells their strata lot.
22. In *Kervin*, I set out a number of factors the tribunal should consider when exercising its discretion, which I find apply equally to the circumstances before me in this dispute, where it is the respondents in the dispute (and applicant in the counterclaim) that have sold their strata lot before the tribunal decision process is complete.
23. One of those factors is whether the parties agree that the tribunal should resolve the claim or dispute. Based on the parties' submissions, I find they essentially agree the dispute before me should be resolved by the tribunal, given their agreement that the disputed fines totalling \$3,400 be paid into the owners' lawyer's trust account to allow the dispute to be resolved.
24. For that reason, I find that I should continue to hear this dispute.

***Is the strata entitled to retain the \$3,400 in bylaw fines assessed against SL10 when the respondents owned SL10 or should that amount be released to the owners?***

25. While the structure of the strata corporation may appear complex, it operates no differently than any other strata corporation existing under the SPA, except that Part 12 of the SPA (sections 199 to 216) also applies.
26. The strata bylaws relevant to this dispute are those registered in the Land Title Office on March 27, 2013, which replace the Schedule of Standard Bylaws under the SPA. I note the bylaws refer to strata lots as "Water Lots."
27. At issue in this dispute is Bylaw 3(2) that says "An owner may not construct or permit to be constructed the floating home on the Water Lot or elsewhere on the personal or strata foreshore lands."

28. I also find that, contrary to the owners' submissions referenced above, section 208(3) of the SPA states that the strata is conclusively deemed to have a bylaw that requires the leasehold tenants to comply with the requirements of their strata lot leases.
29. It is undisputed that the owners' floating home was moved to SL10 on April 30, 2017. Prior to that date, SL10 was vacant. It is also undisputed that, save for the railings on the upper roof deck, the exterior construction of the floating home was complete at the time it was moved to SL10.
30. On May 11, 2017, the strata council received a complaint that the owners were engaged in "construction" of their floating home contrary to bylaw 3(2).
31. On May 12, 2017, the strata council emailed the owners giving 14 days for them to respond to the complaint or request a hearing, failing which the strata "may be required to proceed with further action for enforcement."
32. Between June and early July, 2017 the parties exchanged emails that included strata council requests for permission to inspect the interior of the owners' floating home, or alternatively a copy of the owners' marine survey, and the owners' request for copies of the complaint(s) that lead the strata council to issue its May 12, 2017 email. The owners denied the council access to their floating home and the strata council provided copies of the complaint letter with the name of the complainant blacked out.
33. In a July 9, 2017 email to the owners, the strata council advised that it had not yet determined a breach of the bylaws had occurred. The email stated access to the floating home, or a complete copy of the owners' marine survey, would be of great assistance in allowing the strata council to determine the current construction status of the floating home and therefore, if a bylaw contravention had occurred. The email did not expressly request access to the owners' floating home or a copy of their marine survey but invited the owners to submit "the information" prior to 2 PM on July 11, 2017, the date of the next strata council meeting.

34. At 10 AM on July 11, 2017, the owners emailed the strata council requesting a council hearing to discuss the complaint against them as well as request information on a conflict of interest with the strata council member suspected of making the complaint against the owners.
35. The strata council held its meeting at 6:30 PM on July 11, 2017. The owners were not present for their requested hearing. The minutes state the council “received multiple correspondence” about bylaw violation notification sent to “#10” on May 11 and May 12, 2017. The minutes do not specifically state the owners had requested a hearing with the strata council, and there is no mention of the owners’ concern about conflict of interest.
36. However, the July 11, 2017 council minutes show the council approved the following motions:
  - a. “...that #10 had been under construction from the day it moved in”,
  - b. “...that we proceed with {strata lot lease] enforcement...”, and
  - c. “that we proceed with bylaw enforcement under 3.2 for \$200.00 per week until completion of construction.”
37. On July 12, 2017, the strata council emailed the owners advising it had assessed a \$200 fine against them because it had found the owners to be in violation of bylaw 3(2).
38. On July 17, 2017, the strata’s lawyer wrote to the owners stating they were in breach of the strata lot lease, which does not allow the construction of a floating home on-site at the strata. The letter further stated that it was formal notice by the strata under the terms of the strata lot lease and that the strata was permitted to terminate the strata lot lease after 60 days.
39. On July 18, 2017, the owners emailed the strata council stating they requested a hearing on July 11, 2017 and that the council had fined them for contravening a bylaw without a hearing. The owners made a new, second request for a hearing stating they wanted to discuss and dispute the council’s decision to move forward

with its allegation and fines without following due process. The owners advised that Mr. Turner would be away for work and they would be unavailable to attend a hearing until after August 9, 2017.

40. Following a further email exchange between the parties, a hearing date was set for August 14, 2017. At the hearing, the owners provided their position in writing and did not ask or answer questions of the strata council members. In summary, the owners' position was that they:
  - a. Disagreed they were constructing their floating home within the context of bylaw 3(2), as the strata alleged,
  - b. Were instructed by the owner developer, from whom they purchased their leasehold interest in SL10, and who was a council member at that time, that they "get the house to lock-up and finish it [at the strata]",
  - c. Were advised by the City of New Westminster (City) that interior work on their floating home was permitted on-site at the strata and that they had documentation "showing the home is only one step away from finalizing the occupancy permit, and
  - d. Were advised by several other owners that those owners had completed interior work in their floating homes without repercussions from the strata.
41. The owners also requested the strata council "drop their fines, levies, and lease-lot termination against them."
42. The August 14, 2017 strata council minutes show the strata council approved a motion that it request the documents referred to in the owners' August 14, 2017 written submission "in order to make the decision requested by the homeowners #10."
43. On August 20, 2017, the strata council emailed the owners. In the email the strata's thanked the owners for their written submission on August 14, 2017, stated it looked forward to the completion the owners' floating home, and stated "it did see



the need to withhold documentation given that the on-going bylaw enforcement can be closed as soon as adequate document (sic) is provided to Strata Council.”

44. In addition to the July 12, 2017 fine described above, the strata levied \$200 fines every 7 days from August 1, 2017 through to November 20, 2017, the date the strata determined the occupancy permit for SL10 was issued by the City. The strata says this is the date they consider construction of the floating home to be complete.
45. The parties agree the fines total \$3,400. The parties also agree that, in exchange for the strata providing the owners with a Form F under the SPA to allow their June 28, 2018 sale of SL10 to complete, the owners paid the bylaw fine amount into their lawyer’s trust account to be held pending the outcome of this dispute.
46. For the reasons that follow, I find in favour of the owners.

**Interpretation of bylaw 3(2)**

47. There is no dispute the owners’ floating home was initially constructed off site and towed to their strata lot where interior finishing was completed. The owners say the interior finishing of their float home is not captured by bylaw 3(2) and I agree.
48. A common definition of the word “construction” is “the action of building something, typically a large structure.” Applying this definition to the language used in bylaw 3(2), I agree with the owners that the intention of the bylaw is to restrict the construction or building of the floating home itself, a large structure, on site. The bylaw does not restrict owners from renovating or making upgrades to their floating homes and I find those types of work are not captured by bylaw 3(2). In my view, there is no difference between an owner remodeling part of their floating home, such as a kitchen, bathroom or other room, and an owner installing the interior finishes of a kitchen or bathroom or other room for the first time, as the owners were doing here. I find bylaw 3(2) does not apply to interior finishing or renovations to a floating home, which is what I find the owners were doing.

49. That other owners completed renovations or upgrades to their floating homes without any alleged contravention of the strata bylaws, as evidenced by written statements provided, supports my conclusion.
50. Given the owners were not in contravention of bylaw 3(2), I find the \$3,400 bylaw fines assessed against SL10 to be invalid.

**SPA section 135 procedure**

51. If I am wrong in my interpretation of strata bylaw 3(2), I would find the strata failed to follow the requirements of section 135 of the SPA when it assessed \$3,400 in bylaw fines against SL10.
52. Section 135 of the SPA states that a strata corporation is not entitled to impose a fine against an owner for a bylaw contravention unless it has first:
  - a. Received a complaint about the contravention,
  - b. Given the owner written particulars of the complaint and reasonable opportunity to answer the complaint, including a hearing if requested by the owner, and
  - c. Given the owner written notice of its decision as soon as feasible.
53. It is established law that these procedural requirements must be strictly followed before a fine can be assessed (see *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449).
54. The strata clearly received a complaint; a copy of it was entered as evidence, and a redacted version was provided to the owners.
55. However, I agree with the owners that they were not provided with the particulars of the complaint. The July 12, 2017 email from the strata says the owners were contravening bylaw 3(2). The evidence shows the owners questioned the strata's interpretation of "construction on the floating home" used in bylaw 3(2). The strata did not respond to the owners and provided no additional details in future emails.

56. The BC Provincial Court found that the phrase “particulars of complaint” does not have a specific meaning under the SPA but notes the Court of Appeal in *Terry* said the particulars in this context must be “sufficient to call to the attention of the owner or tenant the contravention at issue.” I find the strata’s failure to address the owners’ concern with its interpretation of “construction” as used in bylaw 3(2) amounts to its failure to provide the owners with the particulars of the complaint, which is contrary to section 135(1) of the SPA. (See *The Owners, Strata Plan NW 3075 v. Stevens*, 2018 BCPC 2.)
57. That the owners were never provided with the particulars of the complaint is sufficient reason for me to find the strata’s bylaw fines invalid. However, that is not the only reason why the strata’s claim must fail under section 135 of the SPA.
58. The strata had received, before its July 11, 2017 strata council meeting, an email request from the owners for a council hearing. Given the strata included a printed copy of the owners’ email in its evidence, with the date and time highlighted, I find the council received the email in advance of its July 11, 2017 council meeting.
59. Despite having received the request for a hearing, the strata ignored the request and proceeded to assess a \$200 fine at its July 11, 2017 meeting. The strata also assessed \$200 fines on August 1 and August 10, 2017 before holding a hearing on August 14, 2017, contrary to section 135(1) of the SPA.
60. Accordingly, I would find the \$200 bylaw fines assessed July 11, August 1, and August 10, 2017 were invalid.
61. Section 135(2) requires the strata to give written notice of its decision to the owners. At the August 14, 2017 council hearing, the owners, in their written submissions, asked the strata to “drop” their fines, which I infer meant to remove the fines.
62. An email sent to the owners on August 18, 2017 stated the strata council, at its August 1, 2017 meeting, found the owners to “continue to be in contravention” of bylaw 3(2) and assesses another \$200 fine. The email does not reference the

hearing, or any decision made as a result of the hearing, so it cannot be the written decision following the hearing required under section 135 of the SPA. Therefore, I would also find the August 18, 2017 \$200 bylaw fine invalid.

63. The strata did not provide the owners with a written decision following the August 14, 2017 hearing until August 20, 2017 as noted above.
64. I find the strata's August 20, 2017 email does not align with the motion passed by the council at its August 14, 2017 meeting, which was to request the documents referred to in the owners' August 14, 2017 written submission "in order to make the decision requested by the homeowners #10." [My emphasis]
65. I find that the strata council decided that it required additional documentation before it could determine if the fines were valid. Yet, it continued to assess \$200 bylaw fines each week. Put another way, the strata continued to assess fines even though it was not certain the owners were contravening bylaw 3(2).
66. For all of these reasons, I would find that the fines the strata assessed against the owners were invalid.
67. For all of these reasons, I order the \$3,400 in bylaw fines that are currently held in trust, to be released to the owners.
68. I dismiss the strata's claim that it is entitled to bylaw fines.
69. Given my findings above, I need not consider the remaining owners' arguments.

## **TRIBUNAL FEES, EXPENSES AND INTEREST**

70. 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. Mr. Turner paid \$125 in tribunal fees and did not claim any dispute-related expenses. I therefore order the strata to reimburse Mr. Turner \$125 for tribunal fees. I dismiss the strata's claim for reimbursement of tribunal fees.
71. The *Court Order Interest Act* (COIA) applies to the tribunal. Details of the agreement that the owners' lawyer hold the funds in trust were not provided in submissions. If the parties agreed on how interest on the \$3,400 bylaw fines paid into trust would be calculated and shared, I make no order on pre-judgement interest. To the extent the parties did not have any agreement on such interest, I find the owners are entitled to pre-judgement interest under the COIA for the \$3,400 bylaw fines paid into trust from June 28, 2018, the date they sold their strata lot, until the date of this decision. I calculate pre-judgement interest to be \$22.24, if applicable.
72. 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**

73. I order that strata's claims are dismissed.
74. I order that the owners are entitled to the \$3,400.00 in bylaw fines they paid into trust and that this amount be released to them.
75. I order that, within 15 days of the date of this order, the strata pay to the owners:
- a. \$125.00 for tribunal fees, and
  - b. If applicable, \$22.24 in pre-judgement interest under the COIA.

76. The owners are entitled to post-judgement interest under the COIA, as applicable.
77. 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.
78. 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