



Civil Resolution Tribunal

Date Issued: December 18, 2018

File: ST-2018-000183

Type: Strata

Civil Resolution Tribunal

Indexed as: *Liapis v The Owners, Strata Plan BCS 1073*, 2018 BCCRT 878

B E T W E E N :

Amalia Liapis

APPLICANT

A N D :

The Owners, Strata Plan BCS, 1073

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Helene Walford

INTRODUCTION

1. The applicant Amalia Liapis (owner) owns a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS 1073 (strata). The owner says that the strata had 2 years to act and collect on fines levied against her account, but it did not do so. The owner seeks an order that all bylaw violation fines be removed from her strata lot account.

2. The strata says the owner rented out her strata lot in contravention of the rental restriction bylaw. The strata says that the owner never disputed the particulars of the fines in the amount of \$800 levied against her account. The strata says that the *Strata Property Act* (SPA) does not state that the fines need to be removed from the owner's account.
3. The owner is self-represented. The strata is represented by the strata council president.
4. For the reasons set out below, I order that the strata remove the bylaw violation fines.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether 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.

8. 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

9. The issues in this dispute are:
 - a. Is the owner entitled to an order that the strata remove rental bylaw violation fines from her strata lot account?
 - b. Is the owner entitled to reimbursement of \$225 for tribunal fees?

BACKGROUND AND EVIDENCE

10. I have read all the evidence provided but I refer only to evidence I find relevant to provide context for my decision.
11. The strata's relevant bylaws are those filed in the Land Title Office (LTO) on December 8, 2004, as amended on April 24, 2006, April 30, 2007, and June 19, 2008 (June 2008 bylaws).
12. Section 3 of the June 2008 bylaws relates to use of the property and indicates that an owner, tenant, occupant or visitor must not use a strata lot in any way that causes a nuisance or hazard to another person, causes unreasonable noise, unreasonably interferes with the rights of others, is illegal, or is contrary to a purpose for which the strata lot is intended as shown expressly or by necessary implication on or by the strata plan.
13. Section 34 of the June 2008 bylaws states that an owner must not rent or lease a strata lot for a period of less than 6 months, unless the owner applies to the strata council for a hardship exemption.
14. The strata provided a revised bylaw dated April 30, 2012 and section 32(1) states that an owner must not rent or lease a strata lot to a tenant for a period of less than

6 consecutive months unless the owner applies to the strata council for a hardship exemption under section 144 of the SPA. Although section 32(1) is similar to section 34 of the June 2008 bylaws, the revised bylaw dated April 30, 2012 was not registered in the LTO. A Form I registered in the LTO on May 5, 2012 shows a $\frac{3}{4}$ vote resolution was passed on April 30, 2012 to repeal and replace the strata's bylaws with an entirely new set of bylaws, but only 1 new bylaw (section 29(3)) was attached to the Form I. According to sections 120 and 121 of the SPA, a bylaw is only enforceable if it is registered in the LTO so I find that the June 2008 bylaws are the relevant bylaws at the time the fines were levied.

15. On July 7, 2014 the strata manager, at the direction of the strata council, wrote to the owner stating that the owner was in contravention of the bylaws, and was subject to a fine up to \$500. The letter said the fine may be issued without further notice if the owner chose not to contest the contents of the letter. The letter asked the owner to advise in writing prior to July 18, 2014 if she disagreed with the particulars of the complaint. The strata filed copies of an Airbnb advertisement dated July 7, 2014 with reviews from renters between August to October 2013 and March to May 2014.
16. The owner wrote a letter to the strata dated July 14, 2014 advising that she had not rented her lot and that if she did it would be within full adherence to any and all relevant bylaws. The owner says that she was not in contravention of the strata bylaws and that her company used photos of the lot to show on Airbnb for marketing purposes, not rentals. The letter says that the strata council should keep in mind that not everything they read on the Internet is true, and that her business reasons for cultivating an online (Airbnb, craigslist, etc.) presence is not the strata council's concern.
17. On July 22, 2014 the strata manager wrote to the owner advising that her account was levied a \$200 fine for violation of bylaws. The letter says that on July 16, 2014 a couple approached the concierge desk to access the pool and advised they were staying at the B&B in the owner's lot. The owner wrote to the strata on July 28, 2014 stating that the strata's facts were mistaken and that she had some friends from out

of town staying with her. The strata says that the owner was levied another \$200 fine on August 12, 2014.

18. The strata manager wrote to the owner again on August 29, 2017 again stating that the owner was in contravention of the bylaws and was subject to a fine up to \$500. The letter states that the week prior, guests of the owner were observed wandering around the lobby and when asked if they required assistance, advised that they were staying until the end of September 2017. The letter also states that according to section 27 of the bylaws, if an activity that constitutes a contravention of a bylaw continues, without interruption, for longer than 7 days, a fine may be imposed every 7 days. The strata says that on September 9, 2014 the strata levied a \$200 fine for violation of bylaws.
19. The strata says that on November 4, and December 31, 2014 the applicant was found to be in contravention of the bylaw restricting rentals and was levied further fines of \$200 on each date for total fines of \$800.

FINDINGS AND REASONS

20. The owner says that the strata cannot collect the unpaid fines because the *Limitation Act* [RSBC 1996] c.266 (*Limitation Act*) bars recovery after two years. However, in *The Owners, Strata Plan KAS 3549 v. 0738039 B.C. Ltd.*, 2015 BCSC 2273, affirmed by *The Owners, Strata Plan KAS 3549 v. 0738039 B.C. Ltd.* 2016 BCCA 370, the BC Supreme Court found that the *Limitation Act* applies to claims which are defined as “a claim to remedy any injury, loss or damage that occurred as a result of an act or omission”. The Court found that as payment of a penalty is not a claim to remedy an injury, loss, or damage, the *Limitation Act* was not applicable.
21. Section 13 of the Act states that the *Limitation Act* applies to the tribunal as if it were a court. As the bylaw fines are not to remedy an injury, loss or damage with the meaning of the *Limitation Act*, I find that the *Limitation Act* does not apply.
22. The owner seeks an order removing the fines from the strata lot. Although the owner has continuously told the strata that she has not rented her lot, the Airbnb

posting dated July 7, 2014 indicates that the owner allowed someone to occupy her lot approximately 15 times between August 2013 and May 2014. While the owner states that she has an online presence for business purposes, she has not provided any evidence indicating that the Airbnb reviews are fictitious. I find that the owner allowed people to occupy the lot.

23. As set out in *Semmler v The Owners, Strata Plan NES3039*, 2018 BCSC 2064 (*Semmler*), a person may occupy a strata lot under a tenancy agreement or a license agreement. A tenant is a person who rents all or part of a strata lot and who, through that arrangement, receives an interest in the property including exclusive possession of the premises. An occupant is a person other than an owner or tenant who occupies a strata lot and a licensee is an occupant but not a tenant.
24. As set out in both *Semmler* and *HighStreet Accommodations Ltd. V The Owners, Strata Plan BCS478*, 2017 BCSC 1039, occupants do not become tenants as a result of a license agreement. In particular, *Semmler* indicates that the use of the word “rent”, within the meaning of the SPA, must be read as describing an intention to create a tenancy, but does not apply to licenses. In *Semmler*, the Court held that the terms used in the bylaws must carry the same meaning those words have in the SPA. Here, I find that the term “rent” must also carry the same meaning as in the SPA.
25. Section 34 of the bylaws only restricts short-term rentals or leases of less than 6 months but does not restrict the length of occupancies under any commercial agreement other than a rental. As the evidence indicates that the owner has allowed people to occupy her lot through Airbnb, I find that the owner licenses short-term occupancies of her strata lot. I find that the owner enters into license agreements, and not tenancy agreements, and the license agreements are unaffected by section 34 of the June 2008 bylaws.
26. As the June 2008 bylaws regarding rental restrictions do not apply to the owner’s license agreements, I find that the bylaw fines were not valid and must be reversed.

As the bylaw fines were not valid, I order the strata to remove the bylaw fines from her strata lot account.

TRIBUNAL FEES AND EXPENSES

27. 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. As the owner was successful in this dispute, I find she is entitled to reimbursement of \$225 for tribunal fees paid. The owner did not claim any dispute-related expenses so I make no finding in that regard.
28. 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

29. I order that: Within 30 days of the date of this decision, the strata:
- a. reverse the rental restriction bylaw fines levied against the owner's strata lot account; and
 - b. reimburse the owner \$225 for her tribunal fees.
30. The owner is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.
31. 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.

32. 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 have 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

Helene Walford, Tribunal Member