



Civil Resolution Tribunal

Date Issued: February 25, 2019

File: ST-2018-003084

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 2969 v. Salvo and Teves*, 2019 BCCRT 222

B E T W E E N :

The Owners, Strata Plan NW 2969

APPLICANT

A N D :

Stephen Salvo and Daisy Teves

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Megan Volk

INTRODUCTION

1. This is a final decision of the Civil Resolution Tribunal (tribunal) made without the participation of the respondent, Stephen Salvo (owner), due to the respondent's non-compliance with the tribunals rules. Only the evidence and submissions relevant to this issue is referenced below.

2. The applicant strata corporation, The Owners, Strata Plan NW 2969 (strata), claims against the owner for payment of \$1,700 in fines and \$401.10 for bylaw enforcement expenses.
3. The applicant reached an agreement with Ms. Teves prior to this adjudication, and the claim against her is not before me in this decision.
4. The strata is represented by a strata council member. The owner did not respond to the Dispute Notice and is not represented.

JURISDICTION

5. The tribunal has jurisdiction over strata property claims under section brought under section 121 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 relationships between parties that may continue after the dispute resolution process has ended.
6. Section 36 of the Act applies if a party to a dispute fails to comply with the Act or its regulations.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing 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.
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 123 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.

10. For the reasons that follow, I decided to hear the applicant's dispute without the respondent's participation and have allowed the applicant's claims.

ISSUES

11. The issues in this dispute are

- a. Should the strata's claim be heard, or should I dismiss or refuse to resolve the claim or dispute?
- b. If the claim should be heard, to what extent, if any, should the owner have to:
 - i. Pay the strata \$1,700.00 in bylaw fines?
 - ii. Reimburse the strata \$401.10 for enforcing bylaws?
 - iii. Reimburse the strata its tribunal fees?

BACKGROUND AND EVIDENCE

12. I have read the submissions and evidence provided. I refer only to relevant information necessary to give context for my decision.

13. The strata is a phased residential strata corporation located in Surrey, B.C. It is made up of 60 strata lots in multiple buildings with a common facility area. In 2010 the owner purchased strata lot 60, located in block 4, as a joint tenant with Ms. Teves. The strata lot has 2 limited common property decks.

14. The strata registered a complete set of new bylaws at the Land Title Office on December 13, 2001. The strata also filed unrelated amendments in 2014 and 2016. I find that the Schedule of Standard Bylaws does not apply.

15. The strata's relevant bylaws are:

Use of Property, Bylaw 1: An owner ... must not use a strata lot ... in a way that ... (c) unreasonably interferes with the rights of other persons to use and enjoy the common property or common assets or another strata lot ...

Cleanliness, Bylaw 1: An owner shall not allow the area around his premises to become untidy. Rubbish, dust, garbage, boxes, packing cases, shoes, carpets, or the like shall not be thrown, piled, or stored on any other parts of the common property. The council shall be at liberty to remove rubbish and clean up the common property and charge the expense to the owner involved.

Disturbance of Others, Bylaw 3: No restrictions or hinderances shall be caused to sidewalks, entrances, exits, passages, stairways, or other parts of the common property.

Enforcement of Bylaws and Rules, Bylaw 1: The strata corporation may fine an owner or tenant a maximum of up to (a) \$200.00 for each contravention of a bylaw, and (b) \$50.00 for each contravention of a rule.

16. Between May 2015 and October 2016, the strata received multiple complaints that the owner was leaving garbage bins and other debris on the common property outside his strata lot. The bins, in particular, prevented another owner from accessing their strata lot.
17. In May 2015 and December 2015, the strata notified the owner of complaints, the applicable bylaws, the right to a hearing, and warned of possible fines and remediation costs for continued contraventions.
18. On May 24, 2016 the strata requested the owner reimburse the strata \$385.88 for costs incurred by the strata in hiring someone to remove and dispose of items in the front and rear yards of the owner's strata lot. Subsequently, the strata fined the owner on June 28, 2016, July 11, 2016, July 15, 2016, September 12, 2016 and October 10, 2016 for a total of \$1,700 arising from 15 bylaw offences relating to 3 bylaws.

POSITION OF THE PARTIES

19. The strata says the owner breached the bylaws. As such, the strata says the owner must pay the bylaw fines from June 2016 to October 2016 totaling \$1,700. And, the owner must reimburse the strata \$401.10 for expenses incurred in enforcing the bylaws. The applicant also says that the owner should reimburse the strata's tribunal fees totaling \$225.

ANALYSIS

Should the strata's claim be heard, or should I dismiss or refuse to resolve the claim or dispute?

20. The respondent is the noncompliant party in this dispute and failed to file a response to the Dispute Notice. Under tribunal rule 72, a respondent must respond to a Dispute Notice by the deadline shown on a Dispute Response Form. The deadline on the Dispute Response Form states the response is due within 14 days of receiving the Dispute Notice.

21. Here, the Dispute Response was due by June 7, 2018, 14 days after May 24, 2018 when the Dispute Notice was received by the respondent owner. The strata provided the tribunal a Proof of Notice form showing that it properly delivered the Dispute Notice to the owner in person on May 24, 2018, in compliance with tribunal rules 49 and 50. I am satisfied that it is more likely than not the owner received the Dispute Notice and did not respond to it by the deadline set out in the tribunal rules.

22. The tribunal's rules are silent on how it should address non-compliance issues. I find that in exercising its discretion, the tribunal must consider the following factors:

- a. whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute,
- b. the stage in the facilitation process at which the non-compliance occurs,
- c. the nature and extent of the non-compliance,

- d. the relative prejudice to the parties of the tribunal's order addressing the non-compliance; and
 - e. the effect of the non-compliance on the tribunal's resources and mandate.
23. I find this claim does not affect persons other than the parties involved in this dispute.
24. The non-compliance here occurred at the outset of the dispute and no discussions between the parties had occurred.
25. Given the respondents complete failure to respond despite warnings of the consequences, I find the nature and extent of the non-compliance is significant.
26. Any prejudice to the respondent in hearing the dispute without his participation is outweighed by the prejudice to the applicant of not proceeding to hear the dispute. In particular, if I refuse to proceed to hear the dispute the applicant would be left without a remedy.
27. The tribunal's resources are valuable and its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party does not participate. I find it would be wasteful for the tribunal to continue applying its resources on a dispute by making further attempts to seek participation from the respondent.
28. In weighing all of the factors, I find the applicant's dispute should be heard without the participation of the respondent. In deciding to hear the applicant's dispute I have put significant weight on the following factors:
- a. persons other than the parties to this dispute are not affected by it,
 - b. the extent of the non-compliance is significant,
 - c. the applicant is not prejudiced if an order is made, and
 - d. the tribunal's resources should be conserved.

Should the owner have to pay the strata \$1,700 in bylaw fines?

29. Sections 129 and 130 of the SPA allow a strata corporation to fine an owner to enforce a bylaw contravened by an owner of a strata lot. However, the procedural requirements of section 135 of the SPA must be strictly followed before a fine is assessed. In particular, a fine for a bylaw contravention must not be charged unless the strata corporation has received a complaint, given the owner the particulars in writing and allowed a reasonable opportunity to answer the complaint including a hearing, if requested. (See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449).
30. Based on the evidence, I find that the strata fines were validly imposed. The owner was notified in writing of the complaints, including provided photographs in some cases and allowed a reasonable opportunity to answer the complaint including a hearing, if requested. Given my finding, I order that the owner pay \$1,700 to the strata in fines.

Should the owner have to reimburse the strata \$401.10 for enforcing bylaws?

31. The strata's bylaws allow the strata to require an owner to pay the strata for remediating property. As well, section 133 of the SPA permits the strata to do what is reasonably necessary to remedy a contravention of its bylaws.
32. On the evidence, I find the strata paid \$385.88 for the removal of debris from the owner's strata lot. No submissions or evidence was provided regarding other fees the strata incurred. As such, I order the owner to pay the strata \$385.88 for removal costs.

TRIBUNAL FEES AND INTEREST

33. 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 owner to reimburse the strata for tribunal fees of \$225.

34. The strata is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA). Pre-judgment interest is calculated on the debt owing as of the date the cause of action arose up to the date of this order. I find the cause of action arose on May 9, 2016, the date of the debris removal. I calculate prejudgment interest payable by the owner on \$385.88 to be \$10.55.

DECISION AND ORDERS

35. I order that within 14 days of the date of this order the owner pay to the strata a total of \$2,321.56 broken down as:

- a. \$1,700.00 in bylaw fines,
- b. \$385.88 for debris removal,
- c. \$10.68 in pre-judgment interest under the COIA, and
- d. \$225.00 in tribunal fees.

36. The strata is entitled to post-judgement interest under the COIA, as applicable.

37. 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.

38. 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.

Megan Volk, Tribunal Member