



# Civil Resolution Tribunal

Date Issued: March 12, 2019

File: ST-2018-005985

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 1038 v. Sumra*, 2019 BCCRT 300

B E T W E E N :

The Owners, Strata Plan LMS 1038

**APPLICANT**

A N D :

Kuldip Sumra

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION AND JURISDICTION

1. This is a final decision of the Civil Resolution Tribunal (tribunal) made without the participation of the respondent, due to the respondent's non-compliance with the tribunal's directions as required, as discussed below.

2. The applicant, The Owners, Strata Plan LMS 1038 (strata), is a strata corporation existing under the *Strata Property Act* (SPA). The respondent, Kuldip Sumra (owner), is an owner of a strata lot in the strata.
3. This dispute is about the owner's failure to pay strata fees, special levies, late payment, lien, and insufficient funds (NSF) charges. After a partial payment discussed below, the strata asks for an order that the owner to pay outstanding fees, levies and charges totalling \$676.21.
4. The strata is represented by a strata council member. The owner is self-represented.
5. Section 36 of the *Civil Resolution Tribunal Act* (Act) applies if a party to a dispute fails to comply with the Act or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. After giving notice to the non-compliant party, the case manager (facilitator) may refer the dispute to the tribunal for resolution and the tribunal may:
  - a. hear the dispute in accordance with any applicable rules.
  - b. make an order dismissing a claim in the dispute made by the non-compliant party, or
  - c. refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
6. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over strata property disputes brought under section 121 of the 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. Under section 123 of the Act and the tribunal rules, in resolving this dispute the tribunal may: 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.
8. 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 in part.

## **ISSUES**

9. The issues in this dispute are:
  - a. Should I hear the applicant's claims, without the respondent's further participation given the respondent's non-compliance?
  - b. If I hear the applicant's claims, what is an appropriate remedy?

## **EVIDENCE AND ANALYSIS**

### ***Should I proceed to hear the applicant's claim, without the respondent's further participation, given the respondent's non-compliance?***

10. The respondent is the non-compliant party in this dispute and failed to participate in the case management phase as required by sections 25 and 32 of the Act and tribunal rules 94 to 96, despite the facilitator's written warning that the applicant's claims could be decided without the respondent's participation.
11. The tribunal issued the Dispute Notice on August 31, 2018. The respondent filed its response on October 2, 2018 and agreed they owed the strata its claimed amounts. During the case management phase, the parties agreed on a repayment plan by instalments and the respondent paid \$517.00.
12. On January 21, 2019, the case manager emailed the respondent asking that the respondent confirm payment of the second installment. On January 23, 2019, the case manager telephoned the respondent and requested they reply to the

case manager's emails and, if necessary, request a change in repayment plan. The respondent did not provide an email response to the case manager.

13. On January 28, 2019, the case manager emailed the respondent requesting a reply by February 1, 2019, failing which the matter would be referred to a tribunal member under section 36 of the Act.
14. On February 8, 2019, the case manager emailed the respondent advising the strata was aware the respondent's strata lot was for sale and would accept payment of the outstanding amount at the time of sale. The case manager advised the respondent that they required a response to a consent resolution order with a final deadline of February 20, 2019, reiterating that the matter would be referred to a tribunal member for non-compliance under section 36 of the Act if the respondent failed to respond.
15. On February 27, 2019, the case manager referred this issue to me. The strata had not received any further payments from the respondent.
16. 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.
17. I find this claim does not affect persons other than the parties involved in this dispute.

18. The non-compliance here occurred at the beginning of the case management phase of the tribunal process. The respondent has essentially abandoned the process after providing a response and agreeing to a repayment plan.
19. Given the respondent failed to participate in the tribunal process, I find the nature and extent of the non-compliance is significant.
20. I see no prejudice to the applicant in hearing the dispute without the respondent's participation. The prejudice to the respondent of proceeding to hear the dispute is outweighed by the non-compliance. I find it would be unfair to the applicant if I refuse to proceed to hear the dispute as the applicant would be left without a remedy.
21. 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 to a dispute by making further attempts to seek participation from the respondent.
22. 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. the extent of the non-compliance is significant;
  - b. the applicant is not prejudiced if an order is made; and
  - c. the tribunal's resources should be conserved.

***What is an appropriate remedy?***

23. Where a respondent filed a response but has since failed to comply with the tribunal's directions as required, as is the case here, I find I may draw an adverse inference against that respondent. In other words, if the respondent refuses to participate, it is reasonable that I assume that the applicant's position

on the issue is correct. This concept is similar to where liability is assumed when a respondent has failed to provide any response to the dispute causing the respondent to be in default.

24. Based on the evidence and the respondent's agreement that the funds were owed to the strata prior to the non-compliance, I accept the strata's position and order the respondent to pay the strata \$676.21. This amount is equal to the claimed amount of \$1,193.21 less the \$517.00 installment payment made by the respondent.

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

25. 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 respondent to reimburse the strata \$125.00 for tribunal fees. The strata did not claim dispute-related expenses.
26. The *Court Order Interest Act* (COIA) applies to the tribunal. The strata is entitled to pre-judgement interest on the outstanding amount of \$676.21 from the date the charges were due until the date of this decision. Bearing in mind the tribunal's mandate that includes proportionality, I find it reasonable to infer the charges were due on the date of the Dispute Notice and I calculate the pre-judgement interest to be \$5.81.
27. 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.

## **ORDERS**

28. I order that the respondent pay the strata \$807.02 broken down as follows:
  - a. \$676.21 for outstanding strata fees, special levies and charges,
  - b. \$125 for tribunal fees, and

c. \$5.81 for pre-judgement interest under the COIA.

29. The strata is also entitled to post-judgement interest under the COIA, as applicable.
30. 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.
31. 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.

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J. Garth Cambrey, Vice Chair