



Civil Resolution Tribunal

Date Issued: March 27, 2019

File: ST-2018-004970

Type: Strata

Civil Resolution Tribunal

Indexed as: *Melnyk v. The Owners, Strata Plan VIS 3357*, 2019 BCCRT 380

B E T W E E N :

Karen Melnyk

APPLICANT

A N D :

The Owners, Strata Plan VIS 3357

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about bylaw enforcement. The applicant, Karen Melnyk, says that the respondent, The Owners, Strata Plan VIS 3357 (strata) erroneously and unfairly imposed fines on her related to the renovation of her strata lot. The strata disagrees with the applicant's position.

2. The applicant is self-represented. The strata is represented by a member of the strata council.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims 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 any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. 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.
5. 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.
6. 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.

ISSUES

7. The issues in this dispute are:
 - a. whether the applicant breached the strata's bylaws such that she should be responsible for fines assessed against her by the strata; and

- b. whether the correspondence regarding this matter should be removed from the applicant's file.

BACKGROUND AND EVIDENCE

8. The strata is comprised of 22 strata lots and is located in Cumberland, British Columbia. The applicant purchased strata lot 20 in 2016.
9. The applicable bylaws were filed at the Land Title Office in 2017. Bylaw 5 requires that an owner obtain approval from the strata before altering a strata lot including, among other things, the exterior of a building or things attached to the exterior of a building. Bylaw 6 states that an owner must obtain the strata's written approval before making alterations to common property (CP), including limited common property (LCP), or common assets.
10. Bylaw 23 permits the strata to fine an owner or tenant a maximum of \$200 for each contravention of a bylaw. Under bylaw 24, the strata may impose a fine every 7 days in the event of a continuing contravention.
11. The applicant planned a renovation in her strata lot, and completed an Assumption of Liability Agreement for Modifications to Strata Lots and Common Property (indemnity agreement). In that undated indemnity agreement, the applicant agreed to comply with the bylaws and the strata's requests regarding parking, debris, noise, and permits. The proposed alteration involved changes to walls and doorways and updates to many rooms in the strata lot. The applicant planned to move the hood fan in the kitchen and stated "no need to change to roof vent until such time as roof is resingled. Current roof vent will be capped in attic and labelled "not in use"". The applicant also proposed to replace the fireplace and hot water tank.
12. The strata approved the proposed work and the applicant commenced her renovation.
13. On February 1, 2018, the strata wrote to the applicant about the fact that her contractor had "changed a vent" in the strata lot without the strata's approval. The

letter cited bylaws 5 and 6 regarding alterations, and bylaw 23 regarding fines. The strata asked the applicant for a guarantee that no further workers would be on the building roof and no further vents would be changed. The strata also asked for the electrical and gas permits. No fine was imposed in this letter, but the strata advised that the matter would be discussed at the next council meeting.

14. On February 23, 2018, the strata wrote to the applicant identifying a number of concerns, including the roof vent, the fireplace vent, and a lack of compliance with the strata's parking requirements for the applicant's contractors. The strata made documentation requests and stated that a new indemnity agreement needed to be completed, as well as an inspection of the roof vent. The strata levied a fine of \$200 "due to the amount of bylaw breaches that have occurred" and asked that the applicant pay that amount by March 15, 2018. The strata did not identify the specific bylaw breaches for which the fine was assessed.
15. The applicant requested a hearing to discuss the bylaw infractions. By way of a March 6, 2018 letter, the strata advised that the hearing would take place on March 21, 2018. The strata also notified the applicant that, on the advice of counsel, they would be seeking information on a number of items, including the installation of a new roof vent for the hot water tank and the installation of a new gas fireplace vent.
16. At the hearing, the applicant expressed her view that she had not been treated fairly by the strata, and asked that the strata retract its letters of February 23 and March 6, 2018. She explained that she had completed the indemnity agreement to the best of her ability, and that any deviations from the original plan were done to meet safety standards and building code requirements. She stated that she was not aware that her new hot water system would require a new vent and, although she knew that she could not cut new holes in the roof, she was not aware that her contractors required permission to access the roof. The applicant stated that another tradesperson replaced a vent for the fireplace on the outside of her unit, which did not require a new hole. She also provided details of other facets of the renovation. As for the parking, the applicant advised the strata that her contractor had tried to comply with the parking requirement in the indemnity agreement, but

stated that in some instances it was not practical to use only 1 visitor spot per day. According to the applicant, her contractor made sure there was at least 1 vacant visitor spot at all times. The applicant also commented on the detrimental effect of having unresolved conflict in the community.

17. A March 23, 2018 letter from the strata stated that, after the hearing, the council decided “not to change our minds”. It also stated that the letters would not be rescinded and the fine would stand.
18. Under cover of a letter dated April 2, 2018, the applicant paid the \$200 fine. She stated that payment of the fine should not be considered to be agreement with the outcome of the hearing.

POSITION OF THE PARTIES

19. The applicant’s position is that the strata unfairly and erroneously fined her \$200 for changing the roof vent for her hot water system during the course of the renovation. She says that the council was aware that she was installing a new hot water system and a new fireplace, and that issues arose during the course of the renovation that required changes. She says these changes did not amount to alterations. The applicant says that she discussed these changes with a member of the strata council, and at the February 21, 2018 strata council meeting.
20. The applicant also states that she was not given an opportunity to respond to the complaint before being fined. The applicant seeks an order that the fine be reversed. and that the correspondence regarding bylaw infractions be removed from her file.
21. The strata says the applicant was not fined \$200 for the vent, but rather she was fined \$100 for the vent and \$100 for parking violations, for a total of \$200. The strata states that the applicant was asked on several occasions whether vents would be changed and her reply was no.

22. The strata submits that the applicant committed several other bylaw infractions related to her renovation for which she was not fined. According to the strata, the applicant failed to comply with the terms of the indemnity agreement on several occasions, and engaged in work that was not approved in the indemnity agreement. The strata's position is that it was the applicant's responsibility to determine exactly what work was required and to obtain approval for it, as well as ensuring that her worker followed the indemnity agreement as it was written. The strata asks that the applicant's claim be dismissed.

ANALYSIS

Bylaw Infractions & Fines

23. Section 129 of the SPA and bylaw 23 give the strata the authority to enforce bylaws and rules by imposing fines. However, the strata must comply with section 135 of the SPA, which says that a strata corporation must not impose a fine against a person for a contravention of a bylaw or rule unless the strata has received a complaint about the contravention, given the owner the particulars of the complaint in writing, and provided the owner with a reasonable opportunity to respond, including a hearing if requested by the owner.

24. In this case, there is no dispute that the applicant agreed to comply with the bylaws and the indemnity agreement when carrying out her renovation project. Based on the evidence before me, I am satisfied that the applicant failed to comply with bylaws 5 and 6, as well as the indemnity agreement in that she allowed work to be performed beyond the scope of the approved project and without the strata's permission. I do not agree with the applicant's submission that replacing vents did not amount to alterations as contemplated by bylaws 5 and 6.

25. I find that the applicant's lack of compliance is not excused by the evolving circumstances in the renovation project. It was up to the applicant to obtain updated information about her project and to seek the strata's approval as required by the bylaws and for work that deviated from the agreed-upon plan. The indemnity

agreement specifically states that the strata has the right to require amendments to the approved scope of work.

26. It was also up to the applicant to ensure that workers on her project complied with the strata's requirement to use not more than 1 visitor parking spot per day, even if it was not convenient to do so. I find that the applicant did not act in compliance with the indemnity agreement in this regard.
27. As noted above, the strata's February 23, 2018 letter imposed the \$200 fine "due to the amount of bylaw breaches that have occurred". No specific reason for the fine was included in that or subsequent letters. The strata has submitted that the fines were for the replacement of the vent and for parking violations, however there is no parking bylaw and the indemnity agreement did not specifically contemplate fines in the event of non-compliance with the strata's requests regarding parking. Given my conclusion below, it is not necessary for me to make a finding as to the specific infractions for which the fines were assessed against the applicant.
28. The strata imposed the \$200.00 fine in the same February 23, 2018 letter that provided particulars of the complaint to the applicant, and before she had an opportunity to respond. The strata decided that the fine would stand after the applicant had a hearing on March 21, 2018. According to the evidence before me, no additional fines were imposed after the hearing.
29. I find that the strata had not met the requirements of section 135 the SPA to assess fines on February 23, 2018. As such, these fines are invalid and must be cancelled. As the applicant has already paid the strata \$200.00 in respect of these fines, she is entitled to a refund of this amount.
30. My decision does not alter the parties' ongoing responsibilities under the indemnity agreement.

Documentation

31. The applicant seeks an order that the documentation relating to this matter be removed from her file. As discussed above, I have found that the applicant failed to

comply with the bylaws and the indemnity agreement. While the applicant may disagree with the strata's position, I do not find that the strata's letters on this matter should be rescinded.

32. In any event, the SPA prevents the destruction of the documentation at this time. Section 35 of the SPA governs the records that must be prepared and maintained by a strata corporation. Section 35(2)(k) requires the strata to retain copies of all correspondence sent or received by the strata corporation and council. Section 4.1 of the *Strata Property Regulation* requires that correspondence be retained for at least 2 years. As such, I make no order that the dispute-related documentation be destroyed.

TRIBUNAL FEES, INTEREST AND EXPENSES

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. As the applicant has been largely unsuccessful, I dismiss her claim for reimbursement of tribunal fees.
34. 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.
35. I find that the applicant is entitled to pre-judgment interest under the *Court Order Interest Act*. Calculated from the date the applicant paid the fine, this amounts to \$2.97.

DECISION AND ORDERS

36. I order that, within 30 days of the date of this decision, the strata must pay to the applicant \$200.00 as reimbursement of the fines paid and \$2.97 in pre-judgment interest, for a total of \$202.97.
37. The remainder of the applicant's claims are dismissed.

38. The applicant is also entitled to post judgement interest under the *Court Order Interest Act*, as applicable.
39. 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.
40. 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.

Lynn Scrivener, Tribunal Member