



Civil Resolution Tribunal

Date Issued: May 31, 2019

File: ST-2018-008081

Type: Strata

Civil Resolution Tribunal

Indexed as: *Chan v. The Owners, Strata Plan VR 1782*, 2019 BCCRT 666

BETWEEN:

Shirley Chan

APPLICANT

AND:

The Owners, Strata Plan VR 1782

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute concerns the enforcement of rental bylaws. The applicant, Shirley Chan, is a joint owner of a strata lot in the respondent strata corporation, The Owners, Strata Plan VR 1782 (strata). The applicant says that the strata unfairly determined that she was in breach of a rental restriction bylaw. She seeks an order that the strata reimburse the \$4,000.00 in fines that she has paid, and that an

alleged contradiction between the strata's bylaws and residential tenancy legislation be clarified. The strata disagrees that any contradiction exists, and says that it assessed the fines in accordance with the bylaws.

2. The applicant is represented by a non-legal representative. 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.

ISSUE

7. The issue in this dispute is whether the strata must refund the \$4,000.00 in fines paid by the applicant.

BACKGROUND AND EVIDENCE

8. The strata is located in Vancouver, British Columbia and is comprised of 13 strata lots. The applicant purchased strata lot 1 in 2016 as a joint tenant with 2 other individuals who are not parties to this dispute.
9. The relevant bylaws were filed at the Land Title Office in 2002. Bylaw 31 imposes a rental restriction, and provides that only 2 strata lots may be rented at any time, with the exception of those rented pursuant to a successful appeal on the basis of hardship. Bylaw 31(1) specifically states that the strata council may limit the time period that an owner can rent a strata lot, and requires that the owner enter into a fixed term lease for no longer than the time period allocated. Where permission to rent has been automatically revoked, withdrawn, terminated or will expire, bylaw 31(6) provides that an owner may re-apply to the council for permission to rent the strata lot, with such an application to be governed by the bylaws and the *Strata Property Act* (SPA).
10. Bylaw 31(7) states that, where an owner leases a strata lot in violation of the bylaws, the strata shall levy a fine against the owner of \$500.00 every 7 days during the period of the lease.
11. The applicant applied for permission to rent the strata lot in December of 2016. In a December 19, 2016 email, the strata's property manager advised that the strata council had approved a 1-year fixed term rental of the strata lot. The email stated specifically that the applicant "will have to resubmit another request for rental in one years' time". The applicant rented the strata lot on a 1-year fixed term running from February 15, 2017 to February 14, 2018.

12. In December of 2017, the residential tenancy legislation was amended such that a landlord can no longer end a tenancy after a fixed term. After the fixed term of the lease expired, the applicant's tenant chose to continue the tenancy. The applicant did not apply to the strata for approval for the continued rental of her strata lot.
13. On April 9, 2018, the strata's property manager sent an email message to the applicant which asked about the status of her rental and stated that she was "supposed to resubmit another request for rental" if she still wanted to rent out her unit. The applicant responded on April 12, 2018, and advised the strata that the lease with the existing tenant was renewed, and would end on February 15, 2019. She asked the property manager for assistance in applying for permission to rent her strata lot for another year.
14. In an April 24, 2018 letter, the property manager advised that, as the applicant had been renting her strata lot without approval since February 16, 2018, the strata council decided to assess fines for contravention of bylaw 31. The strata imposed fines of \$500 per week from February 16 to April 12, 2018 (being the date the applicant re-applied for rental permission), for a total of \$4,000.00.
15. On May 1, 2018, the applicant wrote to the strata to request a hearing to dispute the bylaw infraction and fine. The hearing occurred on May 24, 2018. In a May 28, 2018 email message, the property manager advised the applicant that the strata had decided to uphold the fine. The applicant paid the fine shortly thereafter. Documentation submitted in evidence shows that the strata has granted rental approval until April 12, 2020.

POSITION OF THE PARTIES

16. The applicant says she did not receive any warning that she might be contravening the bylaws. She states that the strata failed to remind her that her allowed rental period expired in February of 2018 and that she would need to apply in advance for approval to continue renting the strata lot. The applicant says she did not receive

proper notice of the bylaw infraction and therefore did not have an opportunity to respond before the fines were imposed.

17. The applicant submits that the strata did not comply with the SPA or address what she says is a contradiction between the rental restriction bylaw and the residential tenancy legislation. The applicant seeks an order that the strata to refund the \$4,000 in fines she paid.
18. The strata says it acted in accordance with the bylaws and the SPA. It denies that there is any contradiction between the bylaws and the residential tenancy legislation, and says that it was justified in levying the fines against the applicant. According to the strata, the applicant was aware of the procedure to rent her unit but did not submit a new application as required. The strata says that it does not have an obligation to send strata lot owners reminders of their responsibilities under the bylaws, but that it does have a duty to enforce the bylaws in a way that is just and reasonable for all owners and in the best interests of the strata as a whole.

ANALYSIS

19. The applicant has requested clarification about what she calls the contradiction between the bylaws and pertinent legislation, as the bylaws require fixed term leases which are no longer permitted. It is not clear to me whether the applicant is seeking an amendment to the bylaws. I would not have the jurisdiction to make such a change. I would point out that the strata does not appear to be enforcing the requirement for fixed term leases, as the applicant has received permission to continue renting despite her tenant's decision to continue the tenancy.
20. There is no dispute that the applicant did not request permission from the strata to continue renting her strata lot as required by bylaw 31. The applicant suggests that she should not have had to request permission as there had been no change in tenant and, in any event, the strata should have reminded her of the need to re-apply for permission to rent her strata lot.

21. Bylaw 31(6) addresses the requirement to re-apply to the strata for permission to rent when the original term expires. The bylaw does not state that a renewal of permission is tied in any way to the tenant. In addition, the property manager's December 19, 2016 email message explicitly states the requirement to submit another request in 1 year. Further, there is no requirement in the SPA or the bylaws that the strata remind an owner of their obligations. I am satisfied that it was up to the applicant to arrange for a permission to continue to rent her strata lot, even after the legislative changes. I find that, by failing to obtain permission to continue renting her strata lot, the applicant breached bylaw 31.
22. Section 135 of the SPA states that a strata must not impose a fine against a person, require a person to pay the costs of remedying a contravention, or deny a person the use of a recreational facility for a contravention of a rule or bylaw unless the strata has received a complaint about the contravention, given the owner or tenant the particulars of the complaint, and a reasonable opportunity to answer the complaint, including a hearing if requested. Section 135(3) states that, once a strata corporation has complied with this section in respect of a bylaw or rule, it may impose a fine or other penalty for a continuing contravention without further compliance with this section.
23. It is not entirely clear when the strata became aware of the applicant's contravention of bylaw 31, although the applicant says this occurred in February of 2018. The April 9, 2018 email message from the property manager asked about the status of the applicant's strata lot, but did not mention any bylaws, or the possibility that the applicant could be facing fines for her contravention of bylaw 31. It was not until the April 24, 2018 letter that the strata advised the applicant that she was in contravention of bylaw 31, and that it had decided to assess the \$4,000.00 in fines.
24. The Account History Report confirms that the fine was applied against the applicant's strata lot on April 24, 2018. As the applicant says she did not receive the April 24 letter until April 27, 2018, the fines were assessed before she was aware of the bylaw contravention.

25. The contents of strata council meeting minutes in evidence suggest that the strata takes a proactive approach to rental issues. However, it must comply with section 135 of the SPA before it may impose fines for contravention of the rental bylaw. This is not a situation where there was a minor procedural irregularity surrounding a bylaw contravention that was rectified prior to the imposition of fines or costs. The strata assessed fines against the applicant before she had received notice of the bylaw infraction or had an opportunity to respond to the complaint.
26. Although she was in breach of bylaw 31, the strata did not comply with the requirements of section 135 of the SPA before assessing fines against the applicant's strata lot. As the fines are not valid, they must be reversed. The strata must reimburse the \$4,000.00 paid by the applicant.

TRIBUNAL FEES, EXPENSES AND INTEREST

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. I therefore order the strata to reimburse the applicant for tribunal fees of \$225.00. She did not make a claim for dispute-related expenses.
28. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act*. Calculated from June 5, 2018, being the date she paid the fines, I find that the applicant is entitled to \$64.93.
29. 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.

DECISION AND ORDERS

30. I order that, within 30 days of the date of this decision, the strata must pay the applicant a total of \$4,289.93, broken down as follows:
 - a. \$4,000.00 as reimbursement of the fines paid;

- b. \$225.00 as reimbursement of tribunal fees; and
- c. \$64.93 in pre-judgment interest.

31. The applicant is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
32. 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 123.1 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.
33. 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 123.1 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