



# Civil Resolution Tribunal

Date of Original Decision: June 26, 2019

Date of Amended Decision: July 4, 2019

File: ST-2019-000874

Type: Strata

Civil Resolution Tribunal

Indexed as: *HO v. The Owners, Strata Plan LMS 1178*, 2019 BCCRT 777

B E T W E E N :

CHRISTINA WAI LAN HO

**APPLICANT**

A N D :

The Owners, Strata Plan LMS 1178

**RESPONDENT**

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## **AMENDED REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

### **INTRODUCTION**

1. The applicant, Christina Wai Lan Ho, is the owner of a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 1178 (strata).<sup>1</sup> The strata fined the applicant \$50 for breaching the strata's bylaws during a renovation of her strata lot.

The applicant says that she did not breach any bylaws and asks for an order that the fine be cancelled.

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

## **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 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. Did the applicant breach any bylaws during the renovation of her strata lot?
  - b. Did the strata follow the proper procedures before imposing the fine?
  - c. Did the strata act significantly unfairly by imposing fines against the applicant when it allowed other owners to alter their strata lots without strata approval?

## **BACKGROUND AND EVIDENCE**

8. In a civil claim such as this, the applicant must prove her case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
9. The strata consists of 12 residential strata lots in a 4 floor building. The strata has filed several bylaw amendments with the Land Title Office (LTO), none of which deal with the alteration of a strata lot. I will discuss which bylaws apply to this dispute in more detail below.
10. The applicant started renovating her strata lot in mid-June 2018. It is undisputed that she did not notify the strata or ask for the strata's approval before starting the renovations.
11. On June 19, 2018, the property manager wrote to the applicant about the renovations. The property manager said that they had received several complaints about the renovations. The complaints were about the applicant storing construction materials in her parking stall, her contractor cutting tiles in the building's courtyard, and her contractor causing a mess in common property. The property manager also said that the applicant had failed to obtain strata approval for the renovations and demanded that the applicant stop the renovation until she had obtained strata approval.

12. The applicant continued the renovations, which were complete in early July 2018. The property manager had received several more complaints by the time the renovations were finished.
13. On July 23, 2018, the property manager wrote to the applicant setting out 4 separate bylaw breaches, including that the applicant failed to get strata approval before altering the strata lot. The property manager advised that the strata intended to impose a total of \$200 in fines for the 4 contraventions, noting that the bylaws allowed a maximum fine of \$50 per breach. The property manager gave the applicant an opportunity to respond to the complaints or have a hearing before imposing fines.
14. The applicant asked for a hearing, which the strata held on August 15, 2018. The applicant told the strata the extent of the renovations. She said that she had replaced the shower wall, installed new tile flooring in the bathroom, replaced the cabinet doors in the bathroom and kitchen, replaced 2 toilets, replaced pipes in the shower and bathtub, and replaced the hot water tank. As part of the hearing, the applicant and strata council president inspected common property, which satisfied the strata that the applicant's contractor had not damaged common property.
15. On August 22, 2018, the property manager sent a letter to the owner advising that after the hearing, the strata decided to reduce the fine from \$200 to \$50, presumably for a single bylaw contravention. The reason that the strata gave was that it was the applicant's first bylaw violation.

## **ANALYSIS**

### ***Did the applicant breach any bylaws during the renovation of her strata lot?***

16. The applicant says that there are no bylaws prohibiting her renovations or requiring her to get strata approval. The applicant relies solely on the bylaw amendments that have been filed with the LTO to support her position that there is no bylaw about seeking approval for renovations to a strata lot. As stated above, there are no filed bylaws dealing with renovations to a strata lot.

17. However, section 120 of the SPA says that the Standard Bylaws apply to the strata except to the extent that the strata has filed different bylaws with the LTO. The strata has not filed any bylaws about alterations to strata lots, so I find that bylaw 5 of the Standard Bylaws applies to the strata. I note that the property manager's letters to the applicant both referred to the applicable Standard Bylaws, including bylaw 5.
18. Under bylaw 5(1), not all alterations to a strata lot require strata approval. Bylaw 5(1) lists the types of alterations that require strata approval. The strata relies on bylaw 5(1)(g), which says that an owner must get approval if an alteration involves those parts of the strata lot that the strata must insure under section 149 of the SPA.
19. The strata relies on section 149(1)(d) of the SPA, which says that the strata must insure fixtures built or installed on a strata lot if the fixtures were built or installed by the owner developer. In other words, section 149(1)(d) of the SPA says that the strata must insure original fixtures.
20. The strata says that the applicant's own description of the renovations proves that the renovations involved original fixtures. In particular, the applicant installed new tile flooring, a new hot water tank, and new bathroom fixtures with associated plumbing. The applicant did not make any submissions denying that her renovations involved original fixtures within the meaning of section 149 of the SPA, despite having the opportunity to do so in reply. There is no evidence that the applicant's strata lot had been renovated since it was originally built.
21. On balance, I find that the applicant breached bylaw 5(1)(g) by failing to obtain strata approval before making alterations to her strata lot that involved original fixtures. I find that the strata's decision to impose a \$50 fine for the breach was reasonable.
22. The strata made other arguments about why the applicant required strata approval. For example, the strata says that the applicant required approval to let the contractor perform work in common areas or to use electricity from a common

property outlet. In addition, both parties made submissions about whether the applicant's contractor dirtied common property and failed to properly clean up, presumably because the strata had previously alleged a contravention of bylaw 3, which governs the use of common property. Because the strata reduced the fine to \$50 for a single contravention of the bylaws, I find that I do not need to decide these issues.

***Did the strata follow the proper procedures before imposing the fine?***

23. The applicant says that the strata did not follow the proper steps in enforcing the bylaws. I infer that her submissions are about whether the strata complied with section 135 of the SPA because it sets out the process that the strata must follow before imposing a fine.
24. Section 135 of the SPA says that before imposing a fine for a bylaw contravention, the strata must receive a complaint about the contravention, give the owner the particulars of the complaint, provide a reasonable opportunity to answer the complaint, including a hearing if requested, and give written notice of its decision.
25. The strata provided several emails from owners complaining about the renovations. In its letter of July 23, 2018, the strata set out the details of the complaints, informed the applicant that it intended to impose fines for the bylaw breaches, and gave the applicant the opportunity to respond. The applicant requested a hearing, which the strata provided. The strata gave the applicant a written response of its decision on August 22, 2018.
26. Therefore, I find that the strata followed the proper process before imposing the \$50 fine.

***Did the strata act significantly unfairly by imposing fines against the applicant when it allowed other owners to alter their strata lots without strata approval?***

27. The applicant says that other owners have renovated their strata lots without strata approval. I interpret her submissions as being about section 123(2) of the Act, which

mirrors section 164 of the SPA. Section 123(2) of the Act gives the tribunal jurisdiction to remedy a significantly unfair action by the strata.

28. The BC Court of Appeal considered the language of section 164 of the SPA in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44. The BC Supreme Court restated the test in the context of section 123(2) of the Act in *The Owners, Strata Plan BCS 1721 v. Watson*, 2017 BCSC 763:

- 1) What is or was the expectation of the affected owner?
- 2) Was that expectation on the part of the owner objectively reasonable?
- 3) If so, was that expectation violated by an action that was significantly unfair?

29. The applicant says that another owner renovated their strata lot between mid-April and mid-June 2018. She says that the work was remediation after a flood, which I find is not persuasive evidence that the strata lot was being altered because remediation could involve returning the strata lot to its pre-flood condition.

30. The applicant also provided a photograph that shows that windows in another strata lot are covered. I am not satisfied that this photograph proves that there were any alterations in that strata lot.

31. The applicant did not provide any other evidence that other owners had altered their strata lots without strata approval and without being fined. I note that the applicant was on strata council for nearly 2 decades and so she should have been able to give specific evidence to support her assertions.

32. I find that the applicant has failed to provide sufficient evidence that the strata has failed to enforce bylaw 5 against other owners. Therefore, I find that the applicant has not proven that she had an objectively reasonable expectation that the strata would not impose a fine for breaching bylaw 5(1).

33. For these reasons, I dismiss the applicant's claim for an order cancelling the fine.

## **TRIBUNAL FEES AND EXPENSES**

34. 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. The applicant was unsuccessful so I dismiss her claim for tribunal fees and dispute-related expenses. The strata did not claim any dispute-related expenses.

35. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the applicant.

## **DECISION AND ORDER**

36. I dismiss the applicant's claims, and this dispute.

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Eric Regehr, Tribunal Member

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<sup>i</sup> Decision amended pursuant to section 64 of the Act to correct a typographical error.