



# Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 677 v. Halatsis et al*, 2019 BCCRT 799

B E T W E E N :

The Owners, Strata Plan LMS 677

**APPLICANT**

A N D :

Stephanie Halatsis, Panayotis Halatsis and Heather Clark

**RESPONDENTS**

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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 677 (strata), is a strata corporation existing under the *Strata Property Act* (SPA). The respondents, Stephanie Halatsis, Panayotis Halatsis, and Heather Clark (owners), co-own strata lot 20 in the strata.
3. This dispute is about whether the owners' dog exceeds the size restriction of the strata's pet bylaw and if the dog has urinated or defecated on the owners' balcony contrary to the strata's bylaws and resulting in cleanup costs of the common property.
4. The strata asks for orders that the owners pay \$1,500.00 for bylaw fines, \$2,256.42 in cleanup costs, that the owners follow the strata's bylaws and that the dog be removed from the building.
5. The strata is represented by a member of its strata council. The owners are self-represented.
6. 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.
7. 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.

8. 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.
9. For the reasons that follow, I decided to hear the strata's dispute without the respondent's participation and have allowed the strata's claims in part.

## **NON-COMPLIANCE ISSUE**

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

10. The respondents are the non-compliant parties in this dispute and failed to participate in the tribunal decision process as required by sections 25 and 32 of the Act, despite the case manager's written warning that the strata's claims could be decided without the respondent's participation.
11. The tribunal issued the original Dispute Notice on September 4, 2018. All of the respondents provided a Dispute Response to the strata's claims but only the resident owner provided a meaningful response, given she is the only owner that resides in the strata lot.
12. Further, none of the respondent owners participated in the tribunal decision process or provided any evidence despite being given several opportunities to do so by the case manager. In particular, I accept that the case manager advised the owners to reply to the strata's submissions and arguments on February 21, 28 and March 7, 2019 giving the owners an opportunity to file their

submissions by March 9, 2019. The resident owner was also contacted by telephone on March 7, 2019 and said she would provide a response by March 9, 2019 but failed to do so.

13. 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.

14. I find this claim does not affect persons other than the parties involved in this dispute.

15. The non-compliance here occurred at the end of the case management phase of the tribunal process. The owners have essentially abandoned the process after providing an initial response.

16. Given the owners failed to participate in the tribunal process, I find the nature and extent of the non-compliance is significant.

17. I see no prejudice to the strata in hearing the dispute without the respondents' participation. The prejudice to the owners of proceeding to hear the dispute is outweighed by the non-compliance. I find it would be unfair to the strata if I refuse to hear the dispute as the strata would be left without a remedy.

18. 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 this dispute by making further attempts to seek participation from the owners.

19. In weighing all of the factors, I find the dispute should be heard without the participation of the owners. In deciding to hear the strata's dispute I have put significant weight on the following factors:

- a. the extent of the non-compliance is significant;
- b. the strata is not prejudiced if an order is made; and
- c. the tribunal's resources should be conserved.

## **ISSUES**

20. The issues in this dispute are:

- a. Is the strata entitled to payment of \$1,500.00 for bylaw fines?
- b. Is the strata entitled to payment of \$2,256.42 for the cost of cleaning common property of the owners' dog waste?
- c. Should I order the owners to abide by the strata's bylaws and remove the dog from the building?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

21. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.

22. In a civil proceeding such as this, the applicant strata must prove its claims on a balance of probabilities.

23. The strata was created in 1992. It is located in Langley, B.C. and consists of 30 residential strata lots in a single 3-storey building.

24. The owners purchased their strata lot in June 2017, which is located on the second floor of the building above another strata lot and an exit from the first floor common hallway.
25. The respondent Stephanie Halatsis (resident owner), resides in the strata lot, whereas Panayotis Halatsis and Heather Clark do not.
26. On April 10, 2012, the strata filed an updated and consolidated set of bylaws at the Land Title Office (LTO). Two subsequent bylaw amendments were filed at the LTO, but those amendments are not relevant to this dispute. The bylaws relevant to this dispute are as follows:

a. Bylaw 4: An Owner tenant or occupant must not:

- (b) Make, cause or produce undue noise, smell, vibration or glare in or about any strata lot or common property or do anything which will interfere unreasonably with any other Owner, tenant or occupant.
- (f) No material substances, especially burning material such as cigarettes, matches or fireworks shall be thrown out or permitted to fall out of any window, door, balcony, or other part of the Strata Lot or common property.
- (j) Shake any mops or dusters of any kind, or throw any refuse out of the windows or doors or from the balcony of a strata lot.
- (m) Allow a strata lot to become unsanitary or a source of odour.

b. Bylaw 39(2): An Owner, tenant or occupant may keep pets on a strata lot in accordance with the following criteria:

- Aquarium capacity not to exceed 25 imperial gallons.
- Up to 2 caged birds.

- One (1) domestic dog or up to (2) domestic indoor cats. Height of full-grown dog shall not exceed 14” measured at the shoulder and or up to 25lbs in weight.

[...]

- (4): An Owner of a pet shall not permit the pet to urinate or defecate on the common property, and if any pet does defecate on the common property, the Owner shall immediately and completely remove all of the pet’s waste from the common property and dispose of same in a waste container or by some other sanitary means.

27. It is undisputed the resident owner obtained the subject dog as a puppy in December 2017 at about 8 weeks of age.

***Is the strata entitled to payment of \$1,500.00 for bylaw fines?***

28. The strata has not provided any evidence to support that the owners’ dog is over the height set out in its bylaws. However, in her Dispute Response, the resident owner admits the dog became oversized in April 2018 due to growth. I accept the resident owner’s admission, however, the strata must still follow the procedural requirements set out in section 135 of the SPA before imposing fines.

29. Section 135(1) of the SPA states that a strata corporation may not impose fines or require a person to pay the costs of remedying a bylaw contravention unless it has received a complaint, given the owner or tenant written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if requested. Section 135(2) requires a strata corporation to give the person written notice of its decision “as soon as feasible” following its decision.

30. The requirements of section 135 must be strictly followed before a fine can be imposed. See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.

31. At the council meeting held February 26, 2018, the council instructed its property manager to write to the owners warning them that the dog exceeded the height set out in the bylaws. In a letter dated March 6, 2018, the strata advised the owners the resident dog exceeded the height restriction of bylaw 39(2) requesting proof of the dog's height by March 21, failing which the strata may levy fines against the owners' strata lot based on the information it had.
32. The strata allegedly held a council meeting on April 30, 2018 where it imposed a \$50 fine against the owners, but the minutes of that meeting are not before me.
33. The strata informed the owners of its decision to impose a fine on May 8, 2018 when it again wrote to the owners about the height of their dog referencing "previous letters". The strata stated a \$50.00 fine had been imposed retroactive to April 1, 2018. I find the retroactive nature of the bylaw fine contained in the May 8 letter to be contrary to section 135(1) of the SPA as the owners were not informed of the strata's intent nor given an opportunity to address the retroactive fines. I find the strata was entitled to assess a \$50.00 fine on April 30, 2018 and that it advised the owners of its decision to do so on May 8, 2018.
34. The May 8 letter referenced, for the first time, continuing \$50.00 fines for the over height dog would be imposed and gave the owners until May 23, 2018 to respond and consider the response, if any, at the next council meeting. The resident owner provided a response on May 11, 2018, which was not received by the strata until after the deadline (likely because the strata advised it would only accept written and signed responses being sent to the property manager by fax or email). However, the next meeting of the strata council was not until May 28, 2018, which is the earliest I find that the strata council could decide to impose continuous fines. Therefore, I find the continuous \$50.00 fines for contravention of the dog height bylaw could not commence until May 28, 2018. I find all continuous bylaw fines imposed before May 28 to be invalid.
35. Based on the ledger account for the owners' strata lot submitted in evidence, I calculate the invalid bylaw fines for the owners' oversized dog to be \$400.00.



36. The resident owner stated the strata did not immediately fine another resident for their dog being over height, to which the strata agreed. Had it not been for the strata's admission that it had provided a grace period to another resident for an over height dog, I would have found the strata entitled to \$1,100.00 in bylaw fines for the owners' contravention of bylaw 39(2). However, the strata admits it gave another resident additional time to remove their over height dog without imposing fines because the other dog "had caused no other offence than being oversize". At the May 28, 2018 council meeting the strata stated the other residents would be fined starting December 1, 2018, a grace period of 7 months, apparently because they also knew the residents were moving out of the strata.
37. I find the resident owner's concern about inconsistent enforcement of the strata bylaws amounts to a claim of significant unfairness.
38. The B.C. Supreme Court has determined that the tribunal has jurisdiction to make findings of significant unfairness on the part of a strata corporation. (See *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164, at paragraph 119.)
39. The courts have determined that "significantly unfair" actions are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable (see *Reid v. Strata Plan LMS 2503*, 2003 BCCA 128). The B.C. Court of Appeal considered section 164 of the SPA in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44. The test established in *Dollan* was restated in *Watson* as follows:
- a. What is or was the expectation of the affected owner or tenant?
  - b. Was that expectation on the part of the owner or tenant objectively reasonable?
  - c. If so, was that expectation violated by an action that was significantly unfair?

40. I am satisfied that the respondent has an objectively reasonable expectation that the strata's bylaws will apply equally to all residents.
41. I find the bylaw contravention of the dog's size is separate from the contravention for waste cleanup and that each bylaw infraction must be addressed on their own merits. Based on the leniency given by the strata to the other resident, I find it has attempted to enforce its dog height bylaw in an inconsistent and therefore significantly unfair manner. Under the tribunal's mandate to apply the principles of fairness, I find it would be reasonable for me to reduce the fine a further amount equal to \$50.00 per week over 7 months, the same period given to the other residents, or a total of \$1,400.00.
42. Given this reduction is more than the remaining amount claimed by the strata, I find the strata is not entitled to any bylaw fines from the owners for the dog's size. I dismiss the strata's claim for bylaw fines.

***Is the strata entitled to payment of \$2,256.42 for the cost of cleaning the owners' dog waste from common property?***

43. In January 2018, the strata retained Servicemaster Restore (Servicemaster) to investigate a strong urine smell in the common hallway near the east stairway exit. Servicemaster identified "a large crack in the drain grille" located immediately outside the exit door and deficiencies in the vinyl decking near the drain. In the report, it suspected water was escaping at the drain point and causing the vinyl membrane to lift away from the subfloor. The report stated that water was believed to be getting under the vinyl decking and into the building. Servicemaster recommended the strata have the drain and vinyl decking repaired "to ensure a good seal at the drain location and [exit] door threshold" in addition to cleaning the carpet. There is no evidence before me to suggest the drain and vinyl decking repairs were completed.
44. The strata says on March 12, 2018, its caretaker received an anonymous complaint that the resident owner was seen flushing "yellow liquid" out her deck drain and rinsing it with clear water.

45. On March 18, 2018, the strata again had Servicemaster investigate the exterior deck area outside the first floor exit door and the interior hallway carpet. In a March 19, 2018 letter report, Servicemaster wrote that the exterior deck area requires “extraction, antimicrobial and washing of deck, walls and railings. Carpet cleaning, deodorizer and antimicrobial required in common hall.” The strata signed a work order with Servicemaster to complete the recommended work on March 20, 2108, and in its submissions states the work was completed on the same day.
46. Section 135 of the SPA also applies to procedures the strata is required to follow before requiring a person to pay the reasonable costs of remedying a bylaw contravention. Therefore, I find the conclusions in *Terry* apply equally to the strata when attempting to collect the cost of cleaning up the owners’ dog’s urine.
47. The strata first wrote to the owners about their dog’s urine on March 20, 2018, alleging contravention of several parts of bylaw 4 set out above. The March 20, 2018 letter demanded the owners “cease and desist” allowing their dog to defecate and urinate on their balcony deck stating the dog waste “is being tracked in and throughout the building on common property.
48. The March 20, 2018 letter also notes the council holds the owners responsible for “all cleaning costs, including [their] balcony, the balcony of Unit 108 [below], stairways, as well as carpets” and the cost will be charged back to the owners for contravention the parts of bylaw 4 set out above (not bylaw 39(4) as submitted by the strata). The strata also requested a response by April 4, 2018 which it would review at the next council meeting, failing which it would decide the issue based on the information presented
49. The cleaning costs totalled \$1,580.33 as shown in an April 5, 2018 invoice the strata received from Servicemaster.
50. The resident owner admitted training her dog with a “fake grass pee pad” used on her balcony and that she emptied it on the balcony and then flushed the pad and the balcony with clean hot water. However, she says she did not know her

balcony drain emptied on the balconies below, including another strata lot and deck at the hall exit door of the first floor.

51. I find the strata's March 20, 2018 letter complied with section 135 of the SPA.
52. In the March 20, 2018 letter, the strata advised the owners they were responsible for cost of the cleanup and that the cost would be charged to their strata lot. However, the letter also gave the owners until April 4, 2018 to provide a response, but no response was provided in evidence. Despite the strata's submission that it voted to chargeback the amount of the April 5, 2018 invoice to the owners, no proof was provided that such action was taken. For example, the minutes provided in evidence do not show this decision was made and there is no email of the strata's agreement to do so. More importantly, there is no evidence the strata communicated its decision to charge back the cleaning cost to the owners as required under section 135(2) of the SPA. Therefore, I find the strata did not follow the procedural requirements of section 135(2) before charging the owners with the costs to remedy the alleged bylaw contravention.
53. I also find the strata's second chargeback of \$521.41 relating to the June 13, 2018 Servicemaster invoice to be contrary to section 135 of the SPA. The strata's June 5, 2018 letter includes a statement that the strata finds the owners responsible for a second instance of "hazmat cleaning" of common property. In a June 14, 2018 letter to the owners, the strata requested payment of \$521.41 for the June 13, 2018 invoice without providing the owners with written particulars of a complaint or a reasonable opportunity to respond contrary to section 135(1) of the SPA. Given the letter related to a separate incident, it cannot be found to be a continuing violation and the procedural requirements of section 135 must be followed.
54. The final chargeback for cleaning relates to an August 2018 Servicemaster invoice that was attached to a September 6, 2018 letter from the strata to the owners. The letter states the amount was charged back to the owners and for the same reasons as the charge back of the June 13, 2018 invoice, I find the

strata failed to follow section 135 of the SPA before charging the owners with the cost of the August 2018 cleanup.

55. For all of these reasons, I find the strata is not entitled to charge the cost of cleaning common property back to the owners. Accordingly, I dismiss the strata's claim in this regard.

***Should I order the owners to abide by the strata's bylaws and remove the dog from the building?***

56. I accept the resident owner's submission that she was unaware that her washing of the "pee pad" on her balcony was causing any issues at other areas of common property including the deck outside the first floor exit door and the patio or deck of the owner's strata lot below. However, the evidence before me shows the owner continued the same actions after the issue had been brought to her attention in March 2018.

57. For this reason, I order the owners to abide by the strata's bylaws and in particular, bylaws 3 and 4 that address the use of property.

58. As earlier noted, the resident owner has admitted the dog exceeds the height restriction set out in the strata's bylaw 39(2) and goes further to state she has evidence from her vet and photographs to prove this. As a result, I find the owners must remove the dog from the strata lot, and therefore the building. I find it reasonable to allow the owners 45 days to make alternate accommodation arrangements for their dog and I so order.

**TRIBUNAL FEES, EXPENSES AND INTEREST**

59. 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. Here the strata was only partially successful, so I do not order reimbursement of tribunal fees. The strata did not claim dispute-related expenses.

60. 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**

61. I order that the owners:

- a. Abide by the strata's bylaws, and
- b. Remove their dog from their strata lot and the strata building within 45 days of the date of this decision.

62. The strata's remaining claims are dismissed.

63. 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.

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J. Garth Cambrey, Vice Chair