



# Civil Resolution Tribunal

Date Issued: July 9, 2019

File: ST-2018-004979

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 2549 v. Russell et al*, 2019 BCCRT 827

**B E T W E E N :**

The Owners, Strata Plan LMS 2549

**APPLICANT**

**A N D :**

Mark Russell and Anita Russell

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sarah Orr

## **INTRODUCTION**

1. The respondents Mark Russell and Anita Russell (owners) own strata lot 38 (SL38) in the applicant strata corporation, The Owners, Strata Plan LMS 2549 (strata). The strata says the owners contravened the bylaws by renting out a portion of their strata lot to a non-family member tenant, Mr. M. The strata wants the owners to pay \$140 in fines in addition to an unspecified amount of ongoing fines.

2. The owners say they should not be required to pay the fines because the strata did not receive a written complaint about their bylaw contravention, and because the strata is no longer enforcing compliance with the bylaw.
3. The owners are self-represented and the strata is represented by a council member.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.
6. 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.
7. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
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. This dispute was initially referred to me by the case manager as a non-compliance matter under section 36 of the Act. The strata failed to make submissions by the specified deadline in December 2018. In early January 2019 the strata contacted the case manager to notify them that a new strata council had been elected, none of the new council members were familiar with the dispute, and the strata was unwilling to withdraw its claims or make submissions. The case manager attempted to clarify whether the strata wished to proceed with its dispute, or withdraw all or part of its claims, but the strata did not provide a clear answer.
10. Upon reviewing the correspondence between the strata and the case manager, I determined the strata had not been adequately warned that its failure to confirm how it wished to proceed could result in the tribunal deciding the dispute without its further participation. Therefore, at my request, in April 2019 the case manager emailed the strata asking for confirmation of how it wished to proceed expressly noting that failure to respond would result in the tribunal deciding the dispute without the strata's further participation. On April 26, 2019 the strata confirmed that it wished to withdraw its claims for the owners to comply with its single-family dwelling bylaw and to evict Mr. M., and it wished to proceed with its remaining claims. It is those remaining claims that I address in this decision.

## **ISSUE**

11. The issue in this dispute is whether the owners are required to pay the strata fines for breaching its single-family dwelling bylaw, and if so, in what amount.

## **EVIDENCE AND ANALYSIS**

12. In a civil claim like this one, the strata must prove its claim on a balance of probabilities. This means I must find it is more likely than not that the strata's position is correct.
13. The strata submitted evidence but chose not to make submissions despite having the opportunity to do so. I have only addressed the parties' evidence and

submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the strata's claims.

14. The strata was created in 1996. On October 4, 2012 the strata filed consolidated bylaws with the Land Title Office (LTO). The strata has filed several subsequent bylaw amendments, none of which are relevant to this dispute.

15. The following bylaws are relevant to this dispute:

Bylaw 3.1 (e): An owner or tenant may not use a strata lot in any way that is contrary to a purpose for which the strata lot is intended as shown expressly or by necessary implication on or by the strata plan.

Bylaw 3.2: An owner or tenant must not cause damage, other than reasonable wear and tear, to the common property, common assets or those parts of the strata lot which the strata is required to repair and maintain or insure.

Bylaw 3.3: Owners must comply with all municipal, regional, provincial, and federal laws.

Bylaw 19.1: Any significant communication or complaint must be registered in writing, signed, dated and indicate the strata lot of the owner and be directed to the property manager or the strata council if there is no property manager. Complaints should include all pertinent information to the complaint.

Bylaw 22.2: The strata may fine an owner a maximum of \$50 for each contravention of a bylaw.

Bylaw 23.1: If an activity or lack of activity constituting a bylaw contravention continues without interruption for more than 7 days, the strata may impose a penalty of \$10 every 7 days.

Bylaw 30.7: A strata lot may only be used as a private dwelling for a single family.

16. It is undisputed that Mr. M., who is not a member of the owners' family, has resided in the basement of SL38 since October 1, 2015.
17. On June 15, 2017 the strata notified the owners it had received a complaint that they were using SL38 other than as a single-family dwelling in contravention of bylaws 30.7, 3.1 (e), 3.2, and 3.3. The letter gave the owners an opportunity to respond to the complaint in writing or to request a hearing before the strata council within 20 days of the date of the letter, which was July 5, 2017. There is no evidence before me to indicate that the owners communicated with the strata about this complaint on or before July 5, 2017.
18. It is undisputed that the complaint was generated by the strata council in an effort to enforce its bylaws equally across the ownership, and the complaint was not in writing.
19. On August 1, 2017, Ms. Russell emailed the strata and referred to a July 23, 2017 email, which is not in evidence, in which she says she asked the strata to waive the deadline to remedy the bylaw contravention, because she was in the process of gathering information and taking steps to maintain her basement rental. In the August 1, 2017 email she said the strata had not responded to her July 23, 2017 request. However, I note that even if Ms. Russell did make such a request on July 23, 2017, that was more than a month after the June 15, 2017 letter and more than 2 weeks after the July 5, 2017 deadline by which the owners were required to respond.
20. On August 7, 2017 the owners emailed the strata a letter from Mr. M. dated July 24, 2017 and a letter from Mr. M.'s doctor dated July 25, 2017. The August 7, 2017 email is not in evidence, but the 2 letters are before me. Mr. M.'s letter states that he had been renting the owners' basement suite since October 2015, and that he would suffer financial and physical hardship if evicted. He asked the strata for an exemption from the bylaw preventing him from renting the basement in SL38. The doctor's letter supports Mr. M.'s claim that he had medical issues that would make it

difficult for him to find alternative housing. If the strata responded to Mr. M.'s request, it is not in evidence.

21. On October 2, 2017 the strata notified the owners by letter that it was imposing a \$50 fine against them for using SL38 other than as a single-family dwelling in breach of bylaws 3.1 (e), 3.3 and 30.7. The strata indicated that, in accordance with bylaw 23.1, after the initial \$50 fine it would continue to fine the owners \$10 every 7 days until they complied with the bylaws.
22. Section 135 of the SPA says a strata cannot impose a fine on an owner for a bylaw contravention unless it has received a complaint about the contravention, given the owner the particulars of the complaint in writing, given the owner a reasonable opportunity to respond to the complaint, and given the owner notice in writing of its decision to impose the fine. The tribunal and the courts have interpreted these procedural requirements strictly.
23. The strata's June 15, 2017 letter does not notify the owners that the strata would impose a fine against them for their bylaw contravention. While the October 2, 2017 letter does notify the owners of the \$50 fine, the evidence before me shows that the strata fined the owners \$50 on the same date as the letter. I find this is insufficient notice of the fine to the owners and therefore the strata failed to comply with section 135 of the SPA. I also note that while section 135 of the SPA does not specifically require a bylaw contravention complaint to be in writing, bylaw 19.1 requires all "significant" complaints to be in writing. While it is unclear what constitutes a "significant" complaint, I interpret the wording of bylaw 19.1 to include complaints about bylaw contraventions. Since it is undisputed that the strata's complaint against the owners was not in writing, I find the strata has failed to follow its own procedure for bylaw contravention complaints.
24. I also find that the June 15, 2017 and October 2, 2017 letters accused the owners of several bylaw contraventions, in particular bylaws 3.1 (e), 3.2 and 3.3, for which there is insufficient supporting evidence. Bylaw 3.1 (e) is about the purpose of a strata lot as indicated on the strata plan. I find there is nothing on the strata plan to

indicate that a strata lot can only be rented out to a single family. Bylaw 3.2 relates to damage to common property or a strata lot, and there is no suggestion or evidence to indicate that the owners damaged any property. Bylaw 3.3 requires owners to comply with all municipal, regional, provincial, and federal laws. While there is some indication in the evidence that the City of Chilliwack zoning bylaws did not allow secondary suites in any of the strata's lots at the relevant time, the evidence before me indicates that the owners did not have a secondary suite in SL38.

25. I also note the minutes from the strata council's June 7, 2018 and July 10, 2018 meeting indicate that the single-family dwelling bylaw is a "grey area" and that council would "not proceed at this time unless we receive further legal opinion." It is unclear what the strata meant by "not proceed."
26. I also note that the strata wants the owners to pay \$140 in fines, but it is unclear how it calculated this amount. The evidence before me indicates that between October 2, 2017 and September 24, 2018 the strata charged the owners \$470 in fines. At its October 10, 2018 strata council meeting, the strata voted to suspend the ongoing fines against the owners until it received further legal advice. The strata also wants the owners to pay an unspecified amount of ongoing fines, however I find this claim is too vague, as I am unable to determine the period of time for which the strata is claiming ongoing fines.
27. For all of these reasons, I find the strata has failed to establish its claims and I dismiss them.

## **TRIBUNAL FEES AND EXPENSES**

28. 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. Since the strata was unsuccessful I find it is responsible for its own tribunal fees and dispute-related expenses.

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, unless the tribunal orders otherwise.

## **DECISION AND ORDERS**

30. I dismiss the strata's claims and this dispute.

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Sarah Orr, Tribunal Member