



Civil Resolution Tribunal

Date Issued: July 17, 2019

File: ST-2018-009090

Type: Strata

Civil Resolution Tribunal

Indexed as: *Joinson v. The Owners, Strata Plan 1290*, 2019 BCCRT 859

B E T W E E N :

Wendy Joinson

APPLICANT

A N D :

The Owners, Strata Plan 1290

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicant, Wendy Joinson (owner), co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan 1290 (strata).
2. The owner claims the strata's pet bylaw is ambiguous. She asks for orders that she is entitled to keep her cat in compliance with the strata's pet bylaw, that the bylaw be reworded and that she be reimbursed \$200.00 for a pet bylaw fine she paid.

3. The strata requests that I dismiss the owner's claims.
4. The owner is self-represented, and the strata is represented by a strata council member.
5. For the reasons that follow, I find the owner is entitled to keep her pet cat and that the strata must reimburse her \$200.00 for the pet bylaw fine.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.
9. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager.

10. Tribunal documents incorrectly show the name of the respondent as The Owners, Strata Plan, VIS 1290, whereas, based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan 1290. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the style of cause above.
11. 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, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

12. The issues in this dispute are;
 - a. Has the owner complied with the strata's pet bylaw such that she can keep her pet cat?
 - b. Should I order the strata's pet bylaw be revised?
 - c. Is the owner entitled to reimbursement of \$200.00 she paid in bylaw fines?

BACKGROUND, EVIDENCE AND ANALYSIS

13. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
14. In a civil proceeding such as this, the applicant must prove each of her claims on a balance of probabilities.
15. The strata is a residential strata corporation located in Parksville, B.C. It was created in 1983 and consists of 80 strata lots.

16. The strata repealed all of its bylaws at a general meeting held June 18, 2001 and adopted the Standard Bylaws of the *Strata Property Act* (SPA) with a number of amendments. The strata registered a Form I at the Land Title Office on August 2, 2001 that shows the resolution to amend the bylaws passed in June read as follows:

BE IT RESOLVED: that all Strata 1290 bylaws passed prior to the 18th day of June, 2001 be repealed;

BE IT RESOLVED: that the Schedule of Standard Bylaws attached to the *Strata Property Act* 1998 SBC c.43 shall be hereby adopted as the bylaws of the Strata Corporation in the place and stead of the Part V Bylaws attached to the *Condominium Act*, and the first bylaws, except as added to, modified or amended as provided for in Schedule A annexed hereto.

17. The Schedule A document referenced in resolution includes only the additions, modifications and amendments to the Standard Bylaws. The filed pet bylaw that forms part of Schedule A attached to the August 2, 2001 Form I reads in its entirety:

Division 1 – Pet requirements

1-3 (2) An owner, tenant or occupant must NOT KEEP ANY PETS on a strata lot other than one or more of the following;

(a) a reasonable number of fish and other small aquarium animals

(b) up to 2 caged birds.

(3) A WORKING ANIMAL required by an owner, tenant or occupant for physical and medical reasons based on the opinion of a medical Doctor, or as provided in any legislation shall be permitted in the development.

- (4) The Strata Corporation shall keep a registry of all WORKING ANIMALS in the Strata Corporation.
- (5) An owner, tenant, visitor or occupant must pick up and remove his or her pet's feces from the common property.
- (6) Subject to compliance with section 135 of the Strata Property Act, the Strata Council may require a pet who is causing a nuisance or a hazard or unreasonable noise shall (sic) be removed from the strata lot within thirty (30) days.
- (7) Owners in violation of this pet bylaw may be subject to fine of not more than \$200.00 for each 7 day period that the violation occurs.

18. I note that sub-section (1) is missing from bylaw 1-3 as filed at the Land Title Office. I infer that this is a numbering error.
19. The owner purchased her strata lot in January 2018. Based on the advice of her real estate agent, she believed all she required to comply with the pet bylaw was a letter from her doctor. This is supported by a letter from the owner's real estate agent that advises she will need a doctor's letter about her cat to avoid any "issue". The owner also argues the strata interpreted the bylaw on that basis until a change in strata council members occurred, which I infer was at the 2017 annual general meeting (AGM). The strata does not dispute the owner's assertion and says only that previous council actions are not at issue here.
20. According to the owner, the strata wrote to her in February 2018 stating she was in violation of the strata's pet bylaw. She says she was fined \$200.00 and told she could keep her cat until the October 2018 AGM in order to have an opportunity to propose an amendment to the pet bylaw to allow 1 indoor cat. A proposed resolution failed to pass by 2 votes. The owner says the strata wrote to her following the AGM requesting the cat be removed by December 13, 2018.

21. The letters referenced by the owner are not in evidence, but the strata does not dispute the owner's recount of events.

22. The Dispute Notice was issued on December 11, 2018.

Has the owner complied with the strata's pet bylaw such that she can keep her pet cat?

23. The parties agree the applicant requires a support animal but disagree on the interpretation of the bylaw.

24. The owner interprets subsection 3 of bylaw 1-3 to say that any animal required by an owner for physical or medical reasons in the opinion of a medical doctor may be permitted in the strata. She says the phrase "A WORKING ANIMAL" is ambiguous and is not defined but should include an emotional support animal, which she says her cat is.

25. The strata simply says its pet bylaw is "valid as written" and provides no alternate interpretation, argument, or evidence.

26. I do not agree with the owner that the use of the words "working animal" in the bylaw is ambiguous. While the owner notes in her letters to the strata that a working animal includes an animal trained for and used for heavy labour, I find service animals, emotional support animals and therapy animals are also different types of "working animals".

27. The owner provided a signed doctor's note recommending the owner be able to keep her cat because she requires the cat's companionship to promote her emotional well-being. The strata did not dispute the validity of the doctor's note. I find the doctor's note meets the requirement of the strata bylaw to allow the strata to permit her cat as a working animal.

28. Given the strata agrees the applicant requires a support animal, and the owner provided a doctor's note that complies with the bylaw, it is unclear why the strata advised the owner that her cat was not permitted.

29. Based on the evidence before me, I find the owner has complied with the strata's pet bylaw to demonstrate her per cat is a working animal within the meaning of the bylaw supported by a doctor's note. Therefore, I find the owner is permitted to keep her cat.

Should I order the strata's pet bylaw be revised?

30. The owner requests an order that the strata's pet bylaw be revised. I decline to make that order as I have not found it to be ambiguous. Further, I find there is no other reason to support the tribunal's interference with the democratic rights of the strata and its owners to determine if the bylaw should be revised. However, in an effort to assist the parties, I make the following comments.

31. In their submissions, the parties rely only on bylaw 1-3 as I have re-stated above. There were no arguments that Standard Bylaw 3(4), that addresses pets, might also apply given it was not expressly repealed in 2001.

32. The resolution passed by the strata adopting its new bylaws as shown on the August 2, 2001 Form I noted above is awkwardly worded and states the Standard Bylaws with amendments and modifications have been adopted. I encourage the strata to consider incorporating its filed amendments and modifications into a unique set of bylaws for the strata that includes the Standard Bylaw wording where applicable to replace its current bylaws. I suggest that a complete new unique set of bylaws, without reference to the Standard Bylaws, would be cleaner and more easily understood than the current bylaws where one is expected to compare amendments and modifications to the Standard Bylaws.

33. Further, the numbering of the bylaw amendments and modifications do not match the Standard Bylaw numbering and, as noted, there is currently no subsection 1 to the strata's pet bylaw. This could be confusing or misleading.

Is the owner entitled to reimbursement of \$200.00 she paid in bylaw fines?

34. The correspondence from the strata is not before me so I am unable to determine if the \$200.00 fine was assessed in accordance with section 135 of the SPA.

35. However, in its submissions, the strata agreed to reimburse the \$200.00 pet bylaw fine if the tribunal found in the owner's favour. Given my conclusion above, I order the strata to reimburse the owner \$200.00 she paid in bylaw fines for her cat.

TRIBUNAL FEES, EXPENSES AND INTEREST

36. 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, I find the owner was the successful party. I order the strata to pay the owner \$225.00 for reimbursement of tribunal fees. The owner did not claim dispute-related expenses.

37. The *Court Order Interest Act* (COIA) applies to the tribunal. Under the COIA, the owner is entitled to pre-judgement interest on the \$200.00 she paid in bylaw fines from the date she paid the fine until the date of this decision. Based on the evidence provided, it appears the \$200.00 bylaw fine was imposed in May 2018 but the exact date the owner paid the fine is not in evidence. I have used the date of October 1, 2018 to calculate pre-judgement interest as I find it is more likely than not the owner paid the fine before the October 2018 AGM. I calculate pre-judgement interest to be \$4.63.

38. 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

39. I order the strata to permit the owner's cat as a working animal under its bylaw 1-3(3).

40. I also order the strata to pay the owner, within 14 days of the date of this order, \$429.63 broken down as follows:

- a. \$200.00 for reimbursement of the pet bylaw fine,

- b. \$225.00 for tribunal fees, and
- c. \$4.63 in pre-judgement interest under the COIA.

- 41. The owner is also entitled to post-judgement interest under the COIA, as applicable.
- 42. The owner's remaining claims are dismissed.
- 43. 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.
- 44. 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.

J. Garth Cambrey, Vice Chair