



# Civil Resolution Tribunal

Date Issued: August 2, 2019

File: ST-2019-001383

Type: Strata

Civil Resolution Tribunal

Indexed as: *Smolensky v. The Owners, Strata Plan BCS 2563*, 2019 BCCRT 935

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

JON SMOLENSKY

**APPLICANT**

**A N D :**

The Owners, Strata Plan BCS 2563

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Lynn Scrivener

## **INTRODUCTION**

1. The applicant, JON SMOLENSKY, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS 2563. He says that the strata has improperly imposed fines and debited \$1,150 from his bank account for alleged bylaw breaches. The applicant denies that he breached the bylaws, and seeks an

order that the strata reimburse this amount. The strata disagrees with the applicant's position.

2. The applicant is self-represented. 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 should refund the applicant the \$1,150.00 it debited from his bank account for bylaw fines.

## **BACKGROUND AND EVIDENCE**

8. The strata repealed its previous bylaws and filed amended bylaws with the Land Title Office in May of 2010. Bylaw 3(11) states that owners, tenants and occupants must maintain a consistent high standard of cleanliness, appearance and repair in and surrounding their strata lot. Bylaw 39 addresses balconies and patios. Bylaw 39(1) states that all owners and residents are responsible for the cleaning, good appearance, plant maintenance and proper drainage on their balconies. Further, bylaw 39(3) provides that balconies and patios shall not be used for unsightly storage (e.g. bicycles, garbage, boxes).
9. The strata filed further bylaw amendments in May of 2015. According to bylaw 38(8), the owner of the strata lot to which a parking stall is assigned and in whose parking stall is found fluid or stains shall, at the corporation's notification, clean up all fluids and stains within a parking stall. According to bylaw 38(11), no owner, tenant, occupant, or resident shall enter or exit the parkade without ensuring that the security gate closes fully behind them.
10. The applicant is the sole owner of strata lot 125, which is also known as suite 1506. A balcony area is adjacent to the strata lot which is designated as limited common property (LCP) on the strata plan.
11. The applicant says that, when reviewing his banking records in December of 2018, he discovered that the strata had debited various amounts from his bank account without his permission. He contacted the strata's property manager, who sent him a copy of the statement of account for his strata lot. This statement confirmed that the strata had debited the applicant's bank account for a number of bylaw infractions and a chargeback for repair of a common property fire alarm, which the strata said was damaged by a guest of the applicant. At some point, the applicant also received copies of correspondence about these alleged bylaw breaches and fines, as well as the charged back amount.
12. The applicant requested that the strata reimburse these bylaw fines and the chargeback amount. There was a hearing on the matter at the strata council

meeting on January 9, 2019. The strata council decided not to reimburse any of these amounts. This decision was communicated to the applicant in a January 21, 2019 letter from the property manager.

## **POSITION OF THE PARTIES**

13. The applicant does not dispute some bylaw infractions or associated fines levied by the strata, or the chargeback for damage to the fire alarm. He does dispute fines in the amount of \$1,150.00, as follows:

- a. July 17, 2017 - \$100 for oil stain in a parking stall;
- b. August 14, 2017 - \$200 for improper patio storage;
- c. August 14, 2017 - \$200 for oil stain in a parking stall;
- d. September 21, 2017 - \$200 for improper patio storage;
- e. November 20, 2017 - \$200 for improper patio storage;
- f. December 8, 2017 - \$200 for improper patio storage; and
- g. May 4, 2018 - \$50 for failing to wait for a gate to close.

14. The applicant says there was a lack of communication about the alleged infractions and fines. He says that he had difficulty obtaining information from the strata's property manager about the infractions and fines and, when he did, the letters did not bear reference numbers or original signatures. The applicant says that he never received some of the letters that were attached to the itemised list of infractions, and was not provided with pictures or other evidence to support the infractions. He suggested that the letters were "randomly issued and dated incorrectly" to allow the strata to make its case. The applicant wonders why the property manager did not use email to communicate about the infractions, as it uses email for other matters. He also says that he was not provided with an opportunity to respond to the allegations before the strata imposed fines, and notes that the matters were not described in the strata council's meeting minutes.

15. The applicant asks for a reimbursement of \$1,150 in fines that he says were applied and debited inappropriately. Although he admits to some bylaw infractions in the past, the applicant denies that he breached the strata's bylaws as listed above. He says that photographic evidence shows that he did stop and wait for the gate to close. He also denies that oil in his parking spot originated from his vehicle. The applicant states that the strata allows contractors to park in his spot without permission, and suggests that these vehicles are the source of the problem. The applicant says that the fines about his patio may flow from his use of wooden pallets as furniture. He says there is nothing in the bylaws that talks about what kind of furniture can be used on patios.
16. The applicant also says that the strata debited the fine amounts from his account without permission. He characterises this as a breach of his privacy and an unfair use of the account listed on his "PAD" (which I infer stands for pre-authorized debit), which he says was for strata fees only. The applicant suggests that the strata and property manager were hoping that he would not notice the fine amounts leaving his account.
17. The strata's position is that the fines were appropriately assessed against the applicant for the described bylaw infractions. It says that it has provided the applicant with proof of the infractions, and that the property manager has not changed the way it deals with complaints. The strata says that, although the applicant may prefer to communicate via email, it does not use email for fines.
18. The strata says that all owners have the right to meet with the strata council to discuss any issue or concern. According to the strata, it does not include details of bylaw infractions in its minutes due to privacy considerations. The strata says amounts were debited in accordance with the applicant's PAD agreement. Although not explicitly stated, I infer that the strata's position is that the applicant's claim should be dismissed.

## ANALYSIS

19. As discussed above, there are some bylaw infractions that the applicant does not dispute and for which he has paid the associated fines. He disputes the infractions listed above. He seeks reimbursement of those fines on the basis that he was not provided notice of the complaints or an opportunity to respond before the fines were imposed. In order for the fines to be valid, the strata must have complied with the procedural requirements of section 135 of the *Strata Property Act* (SPA).
20. Section 135 of the SPA, which is entitled “Complaint, Right to Answer, and Notice of Decision”, provides that a strata corporation must not impose a fine, require a person to pay the costs of remedying a contravention, or deny a person the use of a recreational facility for the contravention of a bylaw or rule unless the strata corporation has received a complaint about the contravention, given the owner or tenant the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing if requested.
21. The applicant’s evidence is that he did not receive all of the property manager’s letters about the complaints and fines. I infer from this that he did receive an unknown amount of correspondence from the strata and/or property manager about these issues. The evidence before me does not establish which letters the applicant did and did not receive. Also, the applicant does not explain what response, if any, he made to the correspondence he did receive.
22. Although the applicant confirms that he later received copies of all of the relevant letters from the property manager, these were not put into evidence by either party. The strata submits that its property manager has not changed the way it deals with fines, but the strata does not explain what that process is. The only information about how the fines were assessed appears in the strata council meeting minutes of May 29, 2018 and January 9, 2019 refer to instructions to the property manager to “assess warnings and fines” for unspecified issues. This phrase appears to be standard language used in each set of minutes.

23. I find that the wording “assess warnings and fines” is not sufficient to establish that the property manager’s process in dealing with bylaw matters complies with the notice requirements in section 135 of the SPA. Further, while I acknowledge the strata’s submission that it does not record details of bylaw infractions in the minutes due to privacy considerations, it does not confirm that sufficient particulars are communicated to a strata lot owner to permit them to respond to complaints.
24. Based on the evidence before me, I find that it is more likely than not that the strata did not inform the applicant of complaints about bylaw infractions, and did not provide him with an opportunity to respond to the allegations before imposing fines. As the requirements of section 135 of the SPA were not met, these fines are invalid and must be reversed. Given this determination, it is not necessary for me to consider the applicant’s arguments that he did not commit the described infractions.
25. The parties disagree as to whether the PAD agreement signed by the applicant allowed the strata to debit fine amounts from his bank account. This agreement was not put into evidence, by either party. Without the benefit of a copy of the agreement, I cannot come to a conclusion about whether the strata’s withdrawal of the described fine amounts to a contravention of its terms. However, given my conclusion above, I find that nothing turns on this.
26. I have determined that the strata failed to comply with the requirements of section 135 of the SPA before imposing fines on the applicant for the described bylaw infractions. Accordingly, the \$1,150 in associated fines must be reversed. Nothing in my decision would impact the strata’s ability to impose fines for future bylaw infractions once the requirements of section 135 of the SPA have been satisfied.

## **TRIBUNAL FEES AND EXPENSES**

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. As the applicant was largely successful, I

order the strata to reimburse him the \$225.00 in tribunal fees paid. The applicant did not make a claim for reimbursement of dispute-related expenses.

28. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* in the amount of \$14.34.
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 applicant.

## **DECISION AND ORDERS**

30. I order that, within 30 days of the date of this order, the strata pay to the applicant the amount of \$1,389.34, broken down as follows:
  - a. \$1,150.00 in reimbursement of fines,
  - b. \$225.00 in reimbursement of tribunal fees, and
  - c. \$14.34 in pre-judgment interest under the *Court Order Interest Act*.
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. 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. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.



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Lynn Scrivener, Tribunal Member