



# Civil Resolution Tribunal

Date Issued: August 16, 2019

File: ST-2018-009020

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan KAS 3521 v. Polglase*, 2019 BCCRT 979

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

The Owners, Strata Plan KAS 3521

**APPLICANT**

**A N D :**

Yvonne Polglase

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sarah Orr

## **INTRODUCTION**

1. The applicant is a strata corporation, The Owners, Strata Plan KAS 3521 (strata). The respondent Yvonne Polglase (owner) owns strata lot 19 in the strata.

2. The strata says the owner owes the strata \$650 in unpaid bylaw contravention fines. The owner says she never received notice that she contravened a bylaw or owes the strata bylaw contravention fines.
3. The owner is self-represented and the strata is represented by M.Y., whom I presume is 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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

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.

## **ISSUE**

9. The issue in this dispute is whether the owner owes the strata \$650 in bylaw contravention fines.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim like this one, the strata must prove its claim on a balance of probabilities. This means the tribunal must find it is more likely than not that the strata's position is correct.
11. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
12. The strata was created in 2008 and the standard bylaws under the *Strata Property Act* (SPA) apply. Since 2000 the strata has made 10 different amendments to the standard bylaws.
13. 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.

14. Bylaw 23, as amended in August 2009, says the maximum fine for a bylaw contravention is \$200. Standard bylaw 24 says that if an activity or lack of activity constitutes a continuing bylaw contravention without interruption for longer than 7 days, a fine may be imposed every 7 days.

### ***Pet Bylaw***

15. Bylaw 3 (4) (d), as amended by the strata in November 2013, says an owner, tenant, occupant, or visitor must not keep any pets on a strata lot other than 1 dog or 1 cat.
16. On April 17, 2014 the strata notified the owner by letter that it was fining her \$100 for having 2 dogs in contravention of bylaw 3 (4) (d). The letter states that the contravention had been ongoing since January 22, 2014. I find that this fine contravenes section 135 of the SPA as there is no evidence the strata notified the owner of the fine before imposing it. Therefore, I find the owner is not required to pay the strata the \$100 fine imposed on April 17, 2014.
17. In a letter dated January 13, 2016 the strata notified the owner that it learned on January 13, 2017 that she had 2 dogs in contravention of bylaw 3 (4) (d). The letter notified the owner that it may levy a \$200 fine against her strata lot if she did not remedy the contravention and gave her 14 days to respond to the letter. On the balance of the evidence before me I find the date of this letter to be a typographical error, and I find the strata actually sent the letter to the owner on January 13, 2017, not 2016.
18. On May 27, 2017 the strata notified the owner by letter that it was fining her \$50 for contravening bylaw 3 (4) (d). The letter states that the contravention had been ongoing since January 13, 2017.

19. On July 12, 2017 the strata notified the owner by letter that it was fining her \$100 for contravening bylaw 3 (4) (d) as of that date by continuing to keep 2 dogs in her strata lot.
20. On September 12, 2017 the strata notified the owner by letter that it was fining her \$200 for a continuing contravention of bylaw 3 (4) (d) for continuing to keep 2 dogs in her strata lot.
21. The owner says she only owns 1 dog. The strata submitted an undated photo showing 2 dogs on the owner's balcony. The owner says the other dog in the photo is her babysitter's dog, but she does not deny that there were 2 dogs in her strata lot at the time the photo was taken. The owner submitted a photograph of 1 dog walking on concrete, but I find this photo is unhelpful in determining the issues before me.
22. The strata says the owner did not respond to any of its letters, and the owner does not dispute this. The owner says she did not receive notice of the bylaw contravention or fines, but all of the above correspondence was sent to the owner at the same address she uses in this dispute. On the evidence before me I do not find the owner's claim that she did not receive any of this correspondence to be credible.
23. I find the \$50 fine the strata issued against the owner on May 27, 2017 was issued in accordance with section 135 of the SPA. The strata gave the owner advance notice of the fine on January 13, 2017. While the owner says she only has 1 dog, she failed to respond to the strata's letter within the 14-day period specified, and therefore she lost her opportunity to dispute the fine. The evidence also indicates that on at least 1 occasion there were 2 dogs in her strata lot. Therefore, I find the owner is required to pay the \$50 fine for contravening bylaw 3 (4) (d).
24. I find the fines the strata issued against the owner on July 12, 2017 for \$100 and September 12, 2017 for \$200 were not issued in accordance with section 135 of the SPA. The January 13, 2017 letter gave the owner notice of only 1 fine up to \$200, and it did not notify the owner of additional fines for ongoing bylaw contraventions. Therefore, I find the owner is not required to pay these fines.

## ***Oil Spill***

25. Standard bylaw 3 (2) says an owner, tenant, occupant, or visitor must not cause damage to common property or common assets other than reasonable wear and tear.
26. On May 12, 2017 the strata notified the owner by letter that it received a complaint on that date that she had contravened bylaw 3 (2) by leaving a large amount of leaked fluid on the parking stall allocated for her strata lot. The letter notified the owner that it might issue a \$200 fine against her strata lot if she did not remedy the contravention and gave her 14 days to respond to the letter.
27. On May 23, 2017 the strata sent the owner a revised version of its May 12, 2017 letter indicating that the leaked fluid from her vehicle was on the outside common parking lot. The letter notified the owner that it might issue a \$200 fine against her strata lot if she did not remedy the contravention and gave her 14 days to respond to the letter.
28. On August 3, 2017 the strata notified the owner by letter that it was fining her \$100 for contravening bylaw 3 (2) on May 12, 2017.
29. The strata submitted 3 undated photos of the alleged fluid spills. One of the photos shows many small dark stains on concrete underneath a vehicle. Another photo shows a piece of cardboard on concrete underneath a vehicle with small stains on the cardboard. Another photo shows a patch of what appears to be oil on concrete next to a piece of cardboard.
30. The owner does not deny that she caused oil stains on common property, but she says there are other stains on other parts of the strata's parking lot that she did not cause. She submitted 3 photos taken on January 20, 2019 which show dark patches on concrete which she says are on the visitor parking stalls and parking stalls designated for the use of other strata lot owners. The strata says other owners have been fined for oil spills on their designated parking stalls.

31. The owner also says she did not receive notice of this bylaw contravention or the associated fine, but the strata sent all correspondence relating to the oil spills to the owner at the same address she uses in this dispute. As explained above, I do not find the owner's claim that she did not receive this correspondence to be credible.
32. On balance, I find the \$100 fine the strata issued against the owner on August 3, 2017 complied with section 135 of the SPA. The owner does not deny the activity alleged, and there is no evidence she responded to the strata's notice letters on May 12 or 23, 2017. The fact that other owners may have also caused stains to the parking area is not relevant to my determination of whether the owner is required to pay fines for contravening the bylaw. Therefore, I find the owner must pay the strata the \$100 fine for contravening bylaw 3 (2).
33. In total, I find the owner must pay the strata \$150 in fines for contravening bylaws.

## **TRIBUNAL FEES, EXPENSES AND INTEREST**

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. Since the strata was partially successful, I find it is entitled to reimbursement of half its tribunal fees in the amount of \$112.50. The strata claims \$10 in dispute-related expenses for registered mail which I find to be reasonable in the circumstances. Therefore, I find the strata is also entitled to half of this amount, which is \$5 in dispute-related expenses.
35. The strata is also entitled to pre-judgment interest on the amount owing under the *Court Order Interest Act* calculated from August 3, 2017, which is the latest date the strata fined the owner.
36. 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

37. Within 14 days of the date of this order, the owner must pay the strata a total of \$271.75, broken down as follows:
- a. \$150 in fines for bylaw contraventions;
  - b. \$4.25 in pre-judgment interest under the *Court Order Interest Act*; and
  - c. \$117.50 for \$112.50 in tribunal fees and \$5 in dispute-related expenses.
38. The strata is also entitled to post judgement interest under the *Court Order Interest Act*, as applicable.
39. 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.
40. 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.
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