



# Civil Resolution Tribunal

Date Issued: August 26, 2019

File: ST-2019-004405

Type: Strata

Civil Resolution Tribunal

Indexed as: *Manner v. The Owners, Strata Plan EPS 800*, 2019 BCCRT 1016

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

**JEFFREY MANNER**

**APPLICANT**

**A N D :**

**The Owners, Strata Plan EPS 800**

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell

## **INTRODUCTION**

1. This is a summary decision dismissing this dispute, on the basis that the applicant has been non-compliant with the tribunal's directions, and both parties have declined to pay the tribunal decision fee.

2. The applicant, Jeffrey Manner, occupies a strata lot in the respondent strata corporation, The Owners, Strata Plan EPS 800 (strata).
3. The applicant's dispute resolution application says that the strata harassed him and his girlfriend, and imposed unjustified bylaw violation fines without following proper procedures. He claims compensation of \$250, plus reimbursement of tribunal fees and dispute-related expenses.
4. The strata denies the applicant's claims. It says the fines levied against the applicant were reasonable and fair because he violated bylaws, and it denies any harassment.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The tribunal must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the tribunal's process has ended.
6. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
7. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The tribunal may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.

8. Under section 123 of the CRTA 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 before me is whether I should decide the dispute without the applicant's further participation, or dismiss or refuse to resolve it, due to the applicant's non-compliance and the fact that neither party has paid the tribunal decision fee.

## **REASONS AND ANALYSIS**

10. Section 36 of the CRTA applies if a party to a dispute fails to comply with the CRTA 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 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.
11. The applicant is the non-compliant party in this dispute and has failed to participate in the case management phase, as required by sections 25 and 32 of the CRTA and tribunal rule 1.4.
12. The case manager has referred the applicant's non-compliance with the tribunal's rules to me for a decision about whether to hear this dispute without the applicant's further participation, or refuse to resolve or dismiss it.

13. This dispute was not resolved by agreement of the parties during the tribunal facilitation stage. The next step in this dispute is a binding decision by a tribunal member. Tribunal rule 1.6 states that if a tribunal form or rule indicates a fee is required in order to take a step, the fee shown in the Civil Resolution Tribunal Fees must be paid before the step will be completed.
14. The fee for resolution of a strata property claim by tribunal decision is \$100. The applicant has not paid the fee, and did not respond to the case manager's emails of July 30, August 6, August 8, and August 20, 2019 setting out deadlines to pay the decision fee (or withdraw the dispute).
15. The case manager's August 20 email set out a final warning. It said that if the applicant did not pay the decision fee or contact the case manager by August 22, 2019, the dispute could be referred to a tribunal member for a decision about whether to dismiss or refuse to resolve the claim, or whether the dispute should be decided without the applicant's further participation.
16. The applicant did not respond to any of the case manager's warning emails. The case manager also spoke to the applicant by telephone on August 1, 2019. The applicant said he would either pay the decision fee or withdraw, but he did neither.
17. The tribunal rule 1.4(3) explains the factors the tribunal must consider in assessing how to proceed when a party is non-compliant:
  - 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.



18. I find that in the circumstances of this case, it is appropriate to dismiss the applicant's dispute. Although it is not a binding precedent, I agree with and apply the tribunal chair's reasoning in *Grand-Clement v. The Owners, Strata Plan, KAS 2467*, 2017 BCCRT 45 that it is problematic to force an unwilling applicant to pursue a dispute with the tribunal. I agree that to do so would go against the tribunal's mandate and impair the fairness of the process by creating an imbalance of the tribunal's fact finding and decision-making functions.
19. 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 want to participate. I find that it would be wasteful for the tribunal to continue applying its resources on a dispute where the applicant does not appear to want the tribunal's assistance in resolving their claim.
20. Further, this claim only affects the parties involved in the dispute.
21. Finally, the case manager offered the strata an opportunity to pay the decision fee and have the claims adjudicated, but the strata declined. It submits that the dispute should be dismissed.
22. In deciding to dismiss the claim rather than refuse to resolve it, thereby issuing a final order to resolve the dispute, I have put significant weight on the following factors:
  - a. the extent of the non-compliance is significant;
  - b. the respondent is not prejudiced if such an order is made; and
  - c. the need to conserve the tribunal's resources.
  - d. there is no counterclaim

## **DECISION AND ORDER**

23. I order that the applicant's claim and this dispute are dismissed.

24. Under its rules, the tribunal can make orders regarding payment of fees or reasonable dispute-related expenses in the case of a withdrawal or dismissal. Given the applicant's non-compliance, I find no fee refund is justified, and none is ordered.

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Kate Campbell, Tribunal Member