



Civil Resolution Tribunal

Date Issued: September 16, 2019

File: ST-2019-002678

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wong et al v. The Owners, Strata Plan LMS 1178*, 2019 BCCRT 1088

B E T W E E N :

SEETNA WONG and RICHARD WONG

APPLICANTS

A N D :

The Owners, Strata Plan LMS 1178

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicants, Seetna Wong and Richard Wong (owners) are part owners of a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 1178 (strata). The other registered owner of the strata lot is not a party to this dispute.

2. The owners say they were improperly fined \$250 for alleged violations of the strata's noise bylaw. They say they were not given proper notice of the fines, and that no one ever warned their tenants, who occupy the strata lot, to be quieter. They also say their tenants did not violate the noise bylaw, and were out of town at the time of one of the alleged infractions.
3. The owners seek an order that the strata remove the \$250 in fines from their strata lot account.
4. The strata says the fines were justified under the strata's bylaw, and that proper warnings were issued as required in section 135 of the *Strata Property Act* (SPA). The strata says the tenants made extremely loud noises on several nighttime occasions from September to December 2018, before vacating the strata lot on December 6, 2018. The strata says it issued several warning letters and letters imposing fines. It says the initial letters were sent to both the owners and the tenants, and the later letters were sent to the owners only because the tenants did not provide a forwarding address.
5. The owners are self-represented in this dispute. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
9. 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

10. Must the strata reverse the \$250 in fines applied to the owners' strata lot account for alleged noise violations by their tenants?

EVIDENCE AND ANALYSIS

11. In a civil proceeding such as this, the applicant owners must prove their claims on a balance of probabilities. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision.
12. Both parties provided submissions and evidence about whether the tenants left garbage on common property when they moved out. However, since no one was fined for garbage placement, I make no findings about that.
13. The strata repealed and replaced all of its former bylaws by filing a new set of bylaws with the Land Title Office on February 1, 2019. These new bylaws do not apply to this dispute, since the alleged noise violations occurred in 2018. However, the previous noise bylaw had exactly the same wording, so this makes no difference.

14. Bylaw 3(1), under both the old and new bylaws, says in part that an owner, tenant, occupant, or visitor must not use a strata lot or common property in a way that causes unreasonable noise.
15. The strata says the tenants breached the noise bylaw by creating unreasonable levels of noise on 5 separate occasions in 2018: September 16-17, September 29-30, October 30-31, November 23, and December 2. The strata imposed a \$50 fine for each of these incidents, for a total of \$250.
16. The owners say their tenants did not breach the noise bylaw. They also say no one warned the tenants to be quiet before the first fine was imposed.
17. The owners also say the strata has never provided evidence that the alleged noises came from their tenants. They provided a letter from DA, the occupant of the strata lot next door, who wrote that she never heard any loud noises or disturbances from the tenants' apartment.
18. The strata provided copies of written complaints from other strata residents about unreasonable noise on September 16-17, September 29-30, November 23, and December 2.
19. There is no complaint letter or similar documentation in evidence about the October 30-31 incident. For that reason, I find the evidence before me does not establish that the tenants caused unreasonable noise on October 30 or 31, 2018. The strata's December 14, 2018 letter imposing the fine for that incident says the tenants caused unreasonable noise which woke up other residents from 11:30 pm on October 30, 2018 to 2:30 am on October 31, 2018. However, there is no complaint letter, incident report, recording, or other evidence to establish that this event actually occurred, the particulars, or that the alleged noise was caused by the tenants.
20. As noted above, the owners bear the burden of proving their case. However, since the strata imposed the fine, but has provided no evidence confirming that the

tenants breached the noise bylaw on October 30-31, I find the \$50 fine for that incident cannot stand. I therefore order the strata to reverse it.

21. I also find that the strata must reverse 3 of the 4 other fines, because they were not properly imposed. I will address these in turn.

September 16-17

22. The strata wrote separate warning letters about the September 16-17 incident to the tenants and to the owners on September 26, 2018. The letters set out the strata's noise bylaw and a related municipal bylaw, and included particulars about the alleged incident. The letters asked the owners and tenants to take steps to keep noise levels down. Both letters then said that "further violations may lead to fines".

23. The letter did not say that a fine would or had been imposed for the September 16-17 incident. Rather, it specifically said that no fine would be imposed until a further violation occurred.

24. I find it was not open to the strata to retroactively change that decision and impose a fine for the September 16-17 incident. I also note that there was no correspondence about this fine until after the owners informed the strata that the tenants had moved out. I find that this delay and reversal was unfair to the owners. I therefore conclude that the \$50 fine for this incident must be removed from the owners' strata lot account.

September 29-30

25. A second letter from the strata to the owners and tenants, dated October 17, 2018, summarized the previous letter, and said it appeared that the tenants "do not consider the seriousness of the nature of the complaints against them as they have created disturbance again". The letter then said the strata council decided to assess a fine of \$50 for violating the noise bylaw, and set out the particulars of the September 29, 2018 incident.

26. I find that the fine for this incident can stand. The owners rely on an October 1, 2018 email from 1 tenant, which says he had not paid his rent because he was out of town. The owners argue that the 2 tenants were on the same football team and both out of town on September 29-30, so the incident could not have occurred.
27. I do not agree. While I accept that 1 tenant was away, there is no evidence establishing that the 2nd tenant was also out of town. The fact that they play on the same football team and had a game in Edmonton on September 28, as argued by the owners, does not prove the 2nd tenant's location on September 29 and 30. Also, the tenants may have allowed someone else to use the apartment. There are no statements from either tenant discussing the alleged noise violation, including denying it occurred.
28. I acknowledge that the 2 neighbours complained about different types of noises, but I find it is likely they each heard different things at different times, based on their locations in the building. I also find the fact that DA did not hear any disturbance is not determinative, as she shared a different wall than the complaining neighbours. In the absence of any evidence from the tenants denying the noise violations, I rely on the written complaints and find that the tenants or their guests broke the noise bylaw on September 29-30.
29. The owners say the tenants did not get the strata's letters about the violations, as required under the SPA. However, since there is no evidence from either tenant to confirm that, I do not accept the owners' hearsay evidence on this point.
30. The owners also say they did not receive the strata's initial letters, because they were out of town, and because they did not want to give the strata their home address for privacy reasons. They say the strata should have emailed the letters. SPA section 61(1)(b) says that if a person has not provided the strata with an address outside the strata plan for receiving notices, the strata may deliver notices in 1 of 7 ways, including mailing it to the strata lot. Email is 1 option on this list, but is not mandatory. I find the strata met the SPA requirements for notice.

31. For all of these reasons, I find the \$50 fine for the September 29-30 incident should stand, and I dismiss this part of the owners' claim.

November 23 and December 2

32. The strata says the tenants violated the noise bylaw again on November 23 and December 2. The strata did not send out a violation letter or otherwise inform the owners or tenants about these alleged violations until December 14, 2018. The strata says this was because the property manager was away.

33. The owners informed the property manager by email on December 11 that their tenants had moved out on December 6. The property manager clearly saw this message, as the correspondence shows she forwarded it to her assistant, who forwarded it to the strata council president.

34. SPA section 131 says that if a strata fines a tenant, the strata may require the owner or landlord to pay the fine. However, the strata never fined the tenants for the November 23 or December 2 incidents. Rather, the strata fined the owners directly, after the tenants were gone. This is not consistent with SPA requirements.

35. SPA section 130(1) says the strata may fine an owner in the following 3 circumstances: if a bylaw is contravened by the owner, if a person visiting the owner or admitted to the premises by the owner violates a bylaw, or if an occupant violates a bylaw and the strata lot is not rented by the owner to a tenant (emphasis added).

36. SPA section 130(2) says the strata may fine a tenant if a bylaw is contravened by the tenant, a person visiting the tenant or admitted to the premises by the tenant, or an occupant, if the strata lot is not sublet to a subtenant.

37. The strata does not allege that the owners contravened the noise bylaw. Therefore, since the strata lot was rented, they cannot fine the owners directly, as specified in SPA section 130(1).

38. For these reasons, I find the November 23 and December 2 fines cannot stand, and I order the strata to reverse them.

TRIBUNAL FEES AND EXPENSES

39. The owners were partially successful in this dispute. In accordance with the CRTA and the tribunal's rules I exercise my discretion and find they are entitled to reimbursement of half of their tribunal fees, which equals \$112.50. Neither party claimed dispute-related expenses, so none are ordered.
40. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the owners.

ORDERS

41. I order the following:
- a. The strata must immediately reverse \$200 of the \$250 in bylaw violation fines charged against the owners' strata lot account.
 - b. Within 30 days of this decision, the strata must reimburse the owners \$112.50 for tribunal fees.
42. The owners are entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.
43. I dismiss the owners' claim about the September 29-30 fine.
44. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing a validated copy of the attached order in the Supreme Court of British Columbia (BCSC). Once filed, a tribunal order has the same force and effect as a BCSC order.
45. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia (BCPC). However, the principal amount or the value of the personal property must be within the BCPC's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the CRTA, the owners can enforce this final decision by filing a

validated copy of the attached order in the BCPC. Once filed, a tribunal order has the same force and effect as a BCPC order.

Kate Campbell, Tribunal Member