



# Civil Resolution Tribunal

Date Issued: October 1, 2019

File: ST-2019-000828

Type: Strata

Civil Resolution Tribunal

Indexed as: *Section 1 of The Owners, Strata Plan KAS3112 v. Lentz,*

2019 BCCRT 1152

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

Section 1 of The Owners, Strata Plan KAS3112

**APPLICANT**

**A N D :**

MAX LENTZ

**RESPONDENT**

**A N D :**

Section 1 of The Owners, Strata Plan KAS3112

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Kathleen Mell

## **INTRODUCTION**

1. The respondent, Max Lentz (owner) owns a commercial strata lot in the strata corporation, Section 1 of The Owners, Strata Plan KAS3112 (strata). The applicant in this dispute is the commercial section of the strata, Section 1 of the Owners, Strata Plan KAS3112. This dispute is about the owner leasing his strata lot to a marijuana dispensary.
2. The owner was fined \$4,400.00 for leasing his strata lot to what the commercial section calls an illegal dispensary in violation of the strata's by-laws. The commercial section is represented by JC, a strata council member.
3. The owner submits there is no by-law against the dispensary operating and therefore he should not have been fined. The owner also says that he was not properly notified of the complaint against him. The owner also argues that the council did not have a quorum when it decided to initiate the fines.
4. The owner further says that the co-owners of the strata lot were not given notice of the action and were not named. He also states that the commercial section did not follow proper procedure in bringing the dispute to this tribunal.
5. The owner counterclaims for \$5,548.04 for revenue he lost after his tenant was forced to move out and compensation for the 75 hours he spent defending himself and his tenant in the ongoing disagreement with the commercial section. The owner is self-represented.
6. The commercial section says that the owner has not proved his counterclaim on the facts or the evidence.

## **JURISDICTION AND PROCEDURE**

7. 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.

8. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. In some respects, this dispute amounts to a "it said, he said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Further, 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 decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.
9. 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.
10. 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.
11. Tribunal documents incorrectly show the name of the commercial section as Strata Corporation Section 1 of Strata Plan KAS3112, whereas, based on sections 193(4) of the SPA and the strata's bylaws, the correct legal name of the commercial section is Section 1 of the Owners, Strata Plan KAS3112. Given the parties operated on the basis that the correct name of the commercial section was used in their documents and submissions, I have exercised my discretion under section 61

to direct the use of the commercial section's correct legal name in these proceedings. Accordingly, I have amended the style of cause above.

12. The owner says that for the commercial section to start a CRT action the majority of council must vote for the action in a council meeting. He says that there is no vote reflected in the minutes of the strata council meetings. There is nothing to suggest that the commercial section did not have the approval of council in bringing this dispute. Therefore, I find that the commercial section did have the authorization to bring the dispute to this tribunal.
13. The owner also argues that the co-owners of the strata lot should have been notified of this dispute. Section 130 of the *Strata Property Act* (SPA) states fines can be imposed against owners or tenants and not against strata lots. Therefore, I find the fact the co-owners were not named or made aware of this dispute is irrelevant.

## **ISSUES**

14. The issues in this dispute are:
  - a. Does the strata or the commercial section have a by-law prohibiting the marijuana dispensary from operating?
  - b. Did the owner's tenant breach the by-laws?
  - c. Was the proper procedure followed in initiating the fines?
  - d. Did the commercial section force the tenants out resulting in revenue losses and, if so, should the owner be reimbursed for those losses?
  - e. Should the owner be reimbursed for the time he spent defending himself and his tenants?

## **EVIDENCE, FINDINGS AND ANALYSIS**

15. In a civil dispute such as this, the applicant must prove its claim. It bears the burden of proof on a balance of probabilities. Therefore, the commercial section must prove

its claim against the owner, just as the owner must prove its counterclaim against the commercial section.

16. While I have reviewed all of the material provided, I have only commented below on the evidence and submissions necessary for this decision.
17. The owner's tenants run a marijuana dispensary. They moved into the strata lot in October 2016. The owner submits that the strata's property manager told him there would be no problem with this. The commercial section denies this.
18. On October 17, 2016, the strata council sent a petition to the city's mayor saying that they did not want the dispensary in their building. They noted that the dispensary was illegal and unable to obtain a business license to operate in their city. They asked the city's by-law department and the RCMP to assist in closing down the dispensary.
19. The dispensary was ultimately raided on May 7, 2018 and two employees were arrested after the police executed a search warrant. The commercial section provided a press release which indicated that the RCMP said that they were acting on complaints received, but specifically said that what the dispensary was doing was illegal and this is why they acted. The city said that the dispensary was not in compliance with the city's regulations as it did not have a valid business license. The city's planning and development manager also said that the RCMP had notified them that the dispensary's activity was prohibited by the *Criminal Code* and the *Controlled Drug and Substance Act*.
20. The RCMP spokesman said that although the federal government intended to introduce legislation later in the year, recreational marijuana remained an illegal substance and those with prescriptions for medical marijuana had to obtain it via mail through Health Canada.
21. The owner indicates that the tenants left on May 6, 2018. The strata initially charged the owner by-law contravention fines until after this date but later reversed them and

only charged until May 7, 2018, the day the tenants ceased operation of the dispensary.

***Does the strata or the commercial section have a by-law prohibiting the marijuana dispensary from operating?***

22. The owner argues that all the fines are based on his tenants not having a valid business license, but he says the need for a valid business license does not exist in the by-laws.
23. Section 1.1 of the strata's by-laws say that an owner, tenant, occupant, employee or visitor must not use a strata lot, the common property, or common assets in an illegal way. Further, the bylaws that pertain to commercial property state that the owners of the strata lots shall be permitted to use their strata lots for any use allowed within the city's zoning bylaw. I find that these bylaws read together mean that the owner was not entitled to lease his strata lot to a tenant who was engaged in illegal activity or for a purpose not allowed within the city's zoning bylaw.
24. Both of these by-laws apply to the tenant's marijuana dispensary business. The question then becomes whether the tenants breached these by-laws.

***Did the owner's tenants breach the by-laws?***

25. The commercial section argues that since the dispensary did not have a license to operate they were using the strata lot in an illegal way. They also argue that selling marijuana in this manner was illegal at the time the dispensary engaged in this activity. They point out that there was no zoning by-law at this time that allowed the dispensary to operate.
26. The owner says that because the city did not shut down the dispensary it was not illegal. The owner states the city indicated in 2017 that because the laws were changing the city was unwilling to close dispensaries in the city until it learned of the federal government's approach. The owner's interpretation of the city's unwillingness to act was that this was an exemption and therefore the dispensary was not operating illegally.

27. I find that the city's failure to act is not determinative of the legality of the tenant's operation.
28. The owner also says that the strata demanded he get a letter to show the dispensary was exempted from the requirement for a business license. He states that the onus to get this letter is on the strata. On December 11, 2017, a community liaison of the dispensary wrote to the strata and said that it was not possible for medical cannabis dispensaries to get a business license. They indicated if they could get one they would be happy to do so, but that they did not have one.
29. Therefore, the representative from the dispensary admitted that it did not have a license and under the circumstances could not get one. Accordingly, I find the evidence establishes that the dispensary did not have a license to engage in this activity. There is also no suggestion that the dispensary had an exemption. This establishes that the dispensary was not in compliance with the city's regulations as it did not have a valid business licence. There was also no zoning by-law allowing the dispensary to operate.
30. Further, the evidence from the RCMP and the city indicates that the dispensary was acting unlawfully. As noted, the dispensary was shut down because it was not in compliance with the city's regulations because it did not have a valid business license. Also, the RCMP said that the dispensary's activity was prohibited by the *Criminal Code* and the *Controlled Drug and Substance Act*.
31. Based on all of the above, I find that the owner's tenants breached the strata's bylaws against illegal activity including using the property in a way that violated the city's zoning bylaws.

***Was the proper procedure followed in initiating the fines?***

32. Although I have found that the tenants breached the by-laws, the owner also argues that the strata did not follow correct procedure and therefore he should not have to pay the fines.



33. The owner says that he received a by-law violation letter dated October 19, 2017 but that it only said that it had been brought to council's attention that the dispensary was operating without a business license. The owner says that this is against protocol and that he did not first receive a by-law violation form that was sent to the strata and then to him.
34. Section 135 of the SPA states that the strata must not impose a fine against a person for contravention of a bylaw or rule unless the strata corporation has received a complaint about the contravention, given the owner the particulars of the complaint in writing and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant. Once the strata has complied with this section in respect of a contravention of a bylaw it may impose a fine for a continuing contravention of that bylaw without further compliance with the section.
35. I find that the protocol is in place so that the owner receives proper notice of the allegations made against him and has the opportunity to respond. As discussed below, the evidence establishes that the owner was well aware of complaints from other owners that the tenant's business was illegal and there was no business license allowing it.
36. The tenant of a neighbouring store sent the strata numerous complaints that the owner's tenants were operating the commercial strata lot in an illegal manner in that they were selling marijuana and she could smell it. On October 19, 2017, the strata sent the owner a letter notifying him that his tenant was using the strata lot in an illegal way because it was operating a business without a business license. They cited the bylaw against using a strata lot in an illegal manner. The owner was told of his right to respond or request a hearing.
37. The owner responded by letter pointing out that he was aware of the issue and had knowledge of 10 owners going to the recent city's council meeting in an attempt to stop the tenants from operating the dispensary. I find that this shows that the owner had proper notification and understanding of the complaint against him.

38. The owner further argues that there was not a quorum of the council when the decision was made to initiate fines. By-law 3.9 states a quorum of the council is 2 if there are 2, 3, or 4 members.
39. The owner refers to a meeting of October 19, 2017 saying that all fines began at this meeting and there was not a quorum. However, the fines regarding the lack of a business license were not initiated at that meeting.
40. On November 20, 2017, 4 council members were at the strata council meeting, including the owner. The minutes indicate that the council discussed that it had sent a by-law violation letter to the dispensary for marijuana smoke but that they accepted that the tenant was not smoking marijuana but a different brand of cigarettes. However, the strata noted that it was going to request that the owner provide a letter from the city indicating that his tenants were exempt from the requirement to have a business license to operate the dispensary.
41. The owner, who was on the strata council, was exempt from voting on this matter because he was in a conflict of interest. The other three members carried the motion that the tenant had to provide a letter within 14 days saying that they were exempt from the requirement to have a business license otherwise the owner would be fined every seven days until the by-law contravention was remedied.
42. Based on this, I find that the strata did have a quorum when this was decided as 3 members voted in favour of the action proposed.
43. Based on all of the above, I find that the owner's tenants did violate that strata's bylaws and that the owner was properly fined every week until the contravention ended on May 6, 2018 for a total of \$4,400.00.
44. As noted above, this dispute was brought forward by the commercial section and not the strata. The evidence shows that much of what was done seems to have been decided in common council meetings where both residential and commercial matters were dealt with. The applicant did not explain in the submissions why it was

the commercial section named as applicant. I presume it is because they want the fine to be paid by the owner of a commercial strata lot.

45. Because it is the commercial section who is named as the applicant, the order will be enforceable by the commercial section.

### ***The Counterclaim***

***Did the commercial section force the tenants out resulting in revenue losses and, if so, should the owner be reimbursed for those losses?***

46. The owner has submitted descriptions of multiple incidents involving the strata and questions if they acted professionally and fairly. He submits that member of both councils forced his tenants out, which I infer means his counterclaim is against the strata and the commercial section. However, the owner has also not named the strata as a party. Therefore, I would be unable to make an order against them since only the commercial section was named. Given the fact that I find the counterclaim is unsuccessful, nothing turns on this.
47. The owner has structured his claim to be about whether the strata and the commercial section forced the tenants out causing him a loss of income, I will limit my analysis to this issue.
48. Regardless of the fact that the strata made it clear that the dispensary was unwelcome, at the end of the day the ultimate thing that got the dispensary to shut down was the RCMP. The owner argues that the RCMP only acted due to the numerous complaints coming from the strata. I acknowledge that the evidence shows that the strata was persistent in its attempts to shut down the dispensary. However, I find that the police would not have done so unless they had made a finding that the dispensary was operating illegally. The RCMP were clear that this was the case in the press release.

49. Accordingly, the revenue losses the owner incurred was because the RCMP shut down the dispensary, which was operating illegally, and not because of the strata. Therefore, he is not entitled to reimbursement for these losses.

***Should the owner be reimbursed for the time he spent defending himself and his tenants?***

50. Similarly, the owner is not entitled to compensation for the hours he spent defending himself and the dispensary to the strata. I have found that the strata and the commercial section had a legitimate reason for challenging the owner on the use of his strata lot and therefore the time he spent trying to defend himself and his tenants is not compensable, particularly since it was ultimately decided that the dispensary was, in fact, illegal.

51. Further, I note that the tribunal does not usually award reimbursement for time spent on the dispute. Additionally, the owner has not specifically detailed what he worked on during these hours or provided a breakdown as to why he would be entitled to this amount of money. Therefore, even if I had found the owner proved his counterclaim, I still would not have awarded compensation for the time spent on the dispute.

**TRIBUNAL FEES AND INTEREST**

52. Under section 49 of the Act, and the tribunal's rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As the commercial section was successful in this dispute it is entitled to have its \$225.00 tribunal fees reimbursed. Because the owner was unsuccessful in his counterclaim he is not entitled to have his tribunal fees reimbursed.

53. The *Court Order Interest Act* (COIA) applies to the tribunal. The strata is entitled to pre-judgement interest on the \$4,400.00 calculated based on the date of each of the fines until the date of this decision for a total of \$11.45.

## ORDERS

54. I order that within 30 days the owner pay the commercial section a total of \$4,636.45, broken down as follows:
- a. \$4,400.00 in fines,
  - b. \$11.45 in pre-judgement interest under the COIA, and
  - c. \$225.00 in tribunal fees.
  - d. The applicant is entitled to post-judgement interest under the *COIA* from the date of this order, as applicable.
55. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia (BCSC), 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 a BCSC order.
56. 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 owner can enforce this final decision by filing a validated copy of the attached order in the BCPC. The order can only be filed if, among other things, the time for an appeal under section 123.1 of the CRTA 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 a BCPC order.

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Kathleen Mell, Tribunal Member

