



Civil Resolution Tribunal

Date Issued: October 30, 2019

File: ST-2019-003460

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wang v. The Owners, Strata Plan LMS 851*, 2019 BCCRT 1234

BETWEEN:

JACKIE YA-LING WANG

APPLICANT

AND:

The Owners, Strata Plan LMS 851

RESPONDENT

AND:

JACKIE YA-LING WANG

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicant and respondent by counterclaim, Jackie Ya-Ling Wang (owner) is a registered owners of a strata lot in the respondent and applicant by counterclaim strata corporation, The Owners, Strata Plan LMS 851 (strata). The strata fined the owner for breaching strata bylaw 149, which restricts how strata lot units may be rented out.
2. The owner says the strata's fines should be reversed because she did not have the opportunity to respond to the complaint or receive particulars of the complaint. She also says she is not renting out her unit.
3. The strata disagrees with these points and counterclaims for orders that the owner pay outstanding fines of \$15,000 (for the period of October 9, 2018 to May 2, 2019) and stop breaching bylaw 149. The strata says it provided the owner notice of the complaint against her as required under law and the owner chose not to respond. The strata also says that the evidence supports the conclusion that the owner's strata lot is currently being rented out in breach of bylaw 149.
4. The owner is self-represented. The strata is represented by a council member.

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 by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, she said" scenario as to what

occurred and did not occur during the respondent's employment. Credibility of interested witnesses, particularly where there is a conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be 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. 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

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 questions of the parties and witnesses and inform itself in any other 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.
9. Section 189.1(2) of the *Strata Property Act* (SPA) says an owner or tenant may not request the tribunal to resolve a dispute unless they have requested a council hearing under SPA section 34.1, or the tribunal, on request by a party, directs that this requirement does not apply. The owner's evidence and submissions show that she did not request a council hearing. The parties did not address the hearing requirement in their submissions.
10. I find it appropriate in this dispute to waive the hearing requirement. The parties are aware of each other's issues and have not reached any agreement through the tribunal facilitation process. I see no utility in refusing to resolve this dispute and find that waiving the hearing requirement is consistent with the tribunal's mandate to provide dispute resolutions services in an accessible, speedy, economical, informal,

and flexible manner. In summary, I direct that the hearing requirement set out in SPA section 189.1(2) is waived.

ISSUES

11. There are two issues in this dispute:

- a. Did the strata act in accordance with SPA section 135 when assessing fines against the owner's strata lot?
- b. Did the owner breach strata bylaw 149, and if so, what is the appropriate remedy?
- c. Should any of the strata's fines be reversed?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant owner bears the burden of proving her claims on a balance of probabilities. The strata bears the burden of proving its counterclaim. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

13. The strata says that in September 2018 it received a complaint that the owner's unit was being rented in breach of strata bylaw 149. The parties do not dispute that bylaw 149 applies. However, the owner says she did not breach bylaw 149 as she is not renting her strata lot.

14. I will summarize bylaw 149 as it is at the center of this dispute. As noted in the strata's registered bylaws, bylaw 149 was amended on March 14, 2006. It limits the number of leased strata lots to 22. The bylaw notes that this is only 10% of the strata lots in the strata. It goes on to state that an owner must apply in writing to strata council for permission to rent before an owner may enter into a tenancy agreement. If the number of strata lots being leased has reached the limit of 22, the owner is denied permission but placed on a waiting list. If permission is granted, any

tenants must sign a SPA Form K. By signing it, a tenant agrees to comply with the strata's bylaws and rules.

15. Bylaw 149 also provides that if an owner breaches its provisions, the owner shall be fined \$500, which may be applied weekly for continuing contraventions.
16. The owner says the strata breached SPA section 135 before imposing bylaw 149 violation fines. I will first consider if the strata complied with SPA section 135 before determining whether the owner breached bylaw 149.

Issue #1. Did the strata act in accordance with SPA section 135 when assessing fines against the owner's strata lot?

17. SPA sections 135(1) and (2) say 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 (including a hearing if requested by the owner), and given the owner notice in writing of its decision to impose the fine.
18. SPA section 135(3) says that once the strata has provided the above information, the strata may impose fines or penalties for a continuing contravention without further compliance of the procedural steps outlined above.
19. The strata must strictly follow the requirements of section 135 before the fines can be imposed: *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449. However, if the strata initially fails to comply with section 135 of the SPA, it is possible for the strata to rectify or cure its noncompliance prior to imposing such fines: *Cheung v. Strata Plan VR 1902*, 2004 BCSC 1750.
20. I find that the strata met the requirements of SPA section 135. The strata's compliance is documented in two letters dated September 12 and October 9, 2018.
21. In the September 12, 2018 letter, the strata's property manager wrote to the registered owners of the strata lot, which at the time included both the owner and

CK, another individual. CK no longer owns any interest in the owner's strata lot and is not a party to this dispute.

22. The September 2018 letter documents that the strata received a complaint that the owner and CK were breaching bylaw 149. The strata wrote it was alleged the owner was renting out her strata lot unit without prior approval from the strata council. The strata quoted bylaw 149 (including the section about initial and recurring weekly fines of \$500) for reference. The strata therefore provided written particulars of the complaint. In the letter, the strata provided the owner an opportunity to respond in writing or through a hearing, though it warned that the owner had to reply in writing by September 26, 2018. The strata wrote it would make its decision without the owner's participation if no reply was received by then.
23. It is undisputed that the owner did not respond by the September 26, 2018 deadline. In the October 9, 2018 letter, the property manager wrote to the owner and CK that strata council had voted to fine the owner's strata lot account \$500 for breaching bylaw 149. The property manager also wrote that \$500 fines would continue to be assessed weekly until the breach was stopped. The strata therefore gave the owner written notice of its decision to impose a fine and further fines for continuing contraventions.
24. The owner says she was not provided a reasonable opportunity to respond to the complaint. She says she was away for the entire summer of 2018 and returned on October 12, 2018. She says she first became aware of the strata's September and October 2018 letters after she returned.
25. While I acknowledge this submission, I find the owner was provided a reasonable opportunity to respond to the complaint. The owner did not advise the strata that she was out of the country for a significant period of time. She did not say she took any steps to have her mail forwarded or checked by another person during her absence. I note that SPA section 61 allows the strata to provide notice by various methods, including putting written notice under the door of the person's strata lot, mailing it to the person, or putting it through the mailbox used by that person. Under

SPA section 61(3), such notice is conclusively deemed given after 4 days. The SPA therefore allows for an owner to be notified of records or documents without actually receiving or reading them.

26. I place significance upon the fact that the owner did not request a hearing after her return. The strata advised in the October 2018 letter that the owner was being continually fined each week. The owner had the opportunity to request a hearing to address the continuing fines or respond in writing. She could have also requested a hearing under CRTA section 189.1(2), discussed above. The owner also sought legal advice and in a March 18, 2019 letter, her lawyer asked for the strata's fines to be reversed. However, the owner still did not request a hearing at that time. I conclude that the owner had ample opportunity to respond but did not until 5 months had passed.
27. I also acknowledge that the owner says part of the reason she did not act earlier is that HD, the strata council's president, texted on October 29, 2019 that the strata would ignore or forgive breaches of bylaw 149. However, I disagree with this interpretation of the text message.
28. HD texted the owner, "don't worry at all" as "[these] kind of things happen from time to time". It is not clear what he is referring to and the language is vague. I also find it unlikely that HD would, on his own, waive the owner's fines through a text message, as opposed to writing the owner through strata correspondence. Further, HD submits in this dispute that he never told the owner she could ignore any fines and that the text message is taken out of context.
29. The owner disagrees and says HD's text is referring to an October 29, 2018 email mentioning the fines on the owner's account. However, there is no clear link between the email and HD's text message. I find the text messages in evidence are insufficiently detailed to provide proper context for what HD is saying.
30. In summary, I find that the strata acted in accordance with SPA section 135 in assessing its fines against the owner's strata lot.

Issue #2. Did the owner breach strata bylaw 149, and if so, what is the appropriate remedy?

31. As noted above, the strata says the owner rented out her strata lot without first seeking permission from the strata, as required under bylaw 149. For the reasons that follow, I find there is insufficient evidence to conclude that the owner breached bylaw 149 from September 2019 onwards until January 26, 2019. I also find that from January 26, 2019 onwards, the owner breached strata bylaw 149 by having a tenant move in without seeking permission from the strata council.
32. The strata says the owner initially rented out her unit to a tenant, VC, until at least October 2018. As proof, the strata provided a July 2, 2019 email showing that in October 2018, a Telus worker conducted a door-to-door survey. VC indicated on the survey that she was the resident at the owner's unit. However, VC provided no other details.
33. I find the strata has not met the burden of proving the owner rented her strata lot during the period of September 2018 to January 25, 2019. Other than the Telus survey, there is little evidence to show that VC was a tenant.
34. However, I find the strata has met the burden of proof for the period of January 26 to May 2, 2019 (being the date of the strata's Dispute Notice, and the date the strata claimed up to in its application for dispute resolution). The strata says, and I find, that from that date onwards the owner rented her unit to HS and HS's husband K. HS was pregnant when she moved in and at some point in the tenancy her newborn infant stayed there as well.
35. In a January 26, 2019 move-in form, HS indicates that she is a "renter" at the owner's unit. Consistent with that, in a July 2, 2019 email, the strata's property manager says he spoke to HS on April 10, 2019. HS said she was a tenant and had moved in since January 26, 2019. Further, in an August 6, 2019 letter, the strata's live-in caretaker says the owner is rarely at home and someone else opens the door when he visits. He also says he believes the owner is renting out her unit.

36. The strata council took steps to verify the above. In three August 6, 2019 letters, three strata council members say, and I find, that they visited the owner's unit on May 30, 2019. A young man answered the door and identified himself as a tenant. The man then called the owner and spoke to her on speakerphone. The council members say they overheard the owner telling the man to stop speaking to the strata council members and to say that he was her cousin. The strata submits, and I find, that the young man was K.
37. I acknowledge that the owner says HS is her cousin, and she allowed HS to move in, rent free, to help HS with her pregnancy and childcare. However, the owner did not provide any evidence from HS or K in this dispute. The only direct evidence from HS is the move-in form in which she clearly indicates she is renting.
38. I note that SPA section 142 prevents a bylaw from restricting rental of a strata lot to an owner's family member. Under the *Strata Property Regulation*, family and family members include an owner's spouse, parent, or child, or a parent or child of the spouse of the owner. HS, K, and their newborn are therefore not the owner's family or family members under the SPA and its regulation, even if HS is the owner's cousin. SPA section 142 does not assist the owner in this dispute.
39. The strata also points out that the owner's unit is less than 1,000 square feet. The owner did not disagree. Having reviewed the submissions before me, I find it implausible that the owner, her daughter, HS, K and a newborn would live together given the size of the unit.
40. I acknowledge the owner's evidence but find it to be unconvincing. For example, the owner submitted photos of herself with HS, K, and the newborn. She photographed herself accessing the building and using its facilities. None of these photos are inconsistent with the owner renting her unit to HS.
41. The owner also provided letters dated August 5, 2019 from her son and daughter. They discuss a confrontation between the strata council members and HS on April 23, 2019, overheard on the phone. I did not find these letters helpful as they were vague about the relationship between the owner and HS.

42. The owner also says bylaw 149 is invalid as no maximum fine is set out. I disagree as bylaw 149 provides a fixed fine amount of \$500. Further, it is permissible for this amount to recur. As discussed above, SPA section 135(3) allows for repeated fines for repeated bylaw or rule breaches.
43. Although not argued by the parties, I also find it was not necessary for the strata to provide a new section 135 notice in January 2019. The owner was already notified of ongoing fines from October 2018 onwards.
44. In summary, I find the owner was renting out her strata lot contrary to strata bylaw 149 from January 26, 2019 onwards. That leaves the question of the appropriate remedy. The strata claims \$15,000 in fines from October 9 to May 2, 2019, being the date of the strata submitted its application for dispute resolution. The strata did not provide a ledger of the owner's account, but says fines were assessed at \$500 per week. I calculate from January 26 to May 2, 2019 a total of 13 weeks and 5 days, for a total of $(13 \times \$500 =)$ \$6,500 owing in fines. I therefore order the owner to pay \$6,500 in fines for bylaw 149 violations.
45. The strata is entitled to pre-judgment interest on this amount under the *Court Order Interest Act* (COIA). I find this interest is payable from May 2, 2019. This equals \$63.20.
46. The strata submits that the owner continues to breach bylaw 149 beyond May 2, 2019. There is some evidence to support this submission. However, it is unclear if the owner is still breaching bylaw 149 as of the date of this decision. I have therefore limited my decision on bylaw 149 fines to May 2, 2019, being the date of the strata's application for dispute resolution. As I have not made a decision on bylaw 149 fines after May 2, 2019, the parties are not barred from filing a separate dispute on that issue.
47. The strata also asked that I order the owner to stop breaching strata bylaw 149. I find in the circumstances it is appropriate to order the owner to immediately stop renting out her strata lot.

Issue #3. Should any of the strata's fines be reversed?

48. The owner seeks to reverse the claimed fines and wrote \$12,000 as the claim amount. There is no submission or evidence that the owner has paid this amount.
49. I have found the strata is not entitled to payment of any fines for breaches of strata bylaw 149 prior to January 26, 2019. I order the strata to remove any fines for such breaches from the period of October 9, 2018 to January 25, 2019 from the owner's strata lot account. I dismiss the owner's remaining claims.

TRIBUNAL FEES AND EXPENSES

50. Under section 49 of the CRTA, 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 not to follow that general rule.
51. I find the strata to be the more successful party as it showed the owner breached strata bylaw 149. I order the owner to reimburse the strata \$125 for tribunal fees. I do not award dispute-related expenses as none were claimed.
52. Under section 189.4 of the SPA, an owner who brings a tribunal claim against a strata corporation is not required to contribute to any expenses the strata corporation incurs in defending the claim. I order the strata to ensure that no part of the strata's expenses with respect to this claim be allocated to the owner.

ORDERS

53. I order that within 60 days of this decision, the owner pay the strata a total of \$6,688.20, broken down as follows:
- a. \$6,500 for strata bylaw 149 violation fines regarding the owner's strata lot from January 26 to May 2, 2019,
 - b. \$63.20 in prejudgment interest under the COIA, and

c. \$125 for tribunal fees.

54. I order the owner to immediately stop renting out her strata lot.
55. I order the strata to remove strata bylaw 149 violation fines for the period of October 9, 2018 to January 25, 2019, from the owner's strata lot account.
56. The strata is entitled to post-judgment interest under the COIA.
57. I dismiss the parties' remaining claims.
58. 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). 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 BCSC order.
59. 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. 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.

David Jiang, Tribunal Member