



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Campbell et al v. The Owners, Strata Plan NW 2594*, 2019 BCCRT 1289

B E T W E E N :

FREDRIC CAMPBELL and MARLAYNE CAMPBELL

APPLICANTS

A N D :

The Owners, Strata Plan NW 2594

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute about bylaw violation fines.
2. The applicants, Fredric Campbell and Marlayne Campbell (owners), own a strata lot in the respondent strata, The Owners, Strata Plan NW 2594 (strata).

3. The owners say the strata improperly fined them for alleged bylaws violations. They deny breaching any bylaws and ask for an order that the strata stop the ongoing fines and cancel \$5,000 in past fines.
4. The strata says the fines are justified because the owners breached the bylaws when they performed unapproved alterations to their strata lot and failed to sign the strata's indemnity form.
5. The owners are self-represented. The strata is represented by a strata council member.
6. For the reasons set out below, I find that the fines cannot stand and that the strata must cancel them.

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 by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I decided I can fairly 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.

ISSUES

11. The issues in this dispute are:
 - a. Did the owners breach the bylaw?
 - b. Did the strata follow the process required under section 135 before imposing the bylaw fines?

BACKGROUND FACTS

12. In a civil claim such as this, the owners bear the burden of proving their claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision on the bylaw issue before me.
13. The strata was created in 1987 under the *Condominium Act*, and exists under the *Strata Property Act* (SPA).
14. The strata bylaw at issue in this dispute is bylaw 7 filed in the Land Title Office as BR284353 on October 29, 2001. The relevant portions of bylaw 7 say:
 7. Approval before Alteration to a Strata Lot
 - (1) An owner must obtain the written approval of the strata corporation before making an alteration to a strata lot that involves any or the following:
 - (f) common property located within the boundaries of a strata lot; and

(g) those parts of the strata lot which the strata corporation must insure under section 149 of the Strata Property Act.

7(2) The strata corporation must not unreasonably withhold its approval under subsection (1), but may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the work. On February 14, 2017, the owners replaced a damaged bathroom countertop. In performing this work, the owners say they shut off the water and disconnected and reconnected the bathroom sink water supply and drain.

15. The strata says the owners were required to obtain strata approval under bylaw 7 before performing this work and did not. The strata says it gave permission for the work retroactively and asked the owners to sign an indemnity agreement. The strata says the owners did not sign the indemnity agreement and therefore, council voted to enforce the bylaw and fine the owners every \$50 days until the “papers” were signed.
16. The strata started fining the owners in March 2017 and stopped the fines after the owners signed the indemnity agreement at some point in 2019. Over those 2 years, the strata fined the owners a total of \$5,000 for the alleged violation of bylaw 7.

POSITION OF THE PARTIES

17. The owners say the February 14, 2017 strata lot alteration was completely within the boundaries of their strata lot and did not involve common property or property required to be insured under section 149 of the SPA. Therefore, the owners say the alterations did not require approval or the indemnity and that therefore, they did not breach bylaw 7.
18. The owners allege that the strata never investigated the complaint, inspected their strata lot, or had any evidence of a bylaw breach before imposing the fines. They say the strata never provided them proper notice with the specific reason for the alleged breach. The owners allege that the strata’s reasons shifted over time from

not shutting off the water, to replacing the countertop, to “touching” the plumbing, to failing to sign an indemnity agreement.

19. The strata’s position is that the fines are justified. It says the owners “remodelled” their strata lot without permission from strata council as required under bylaw 7. The strata says that after it retroactively granted permission, it gave the owners reasonable time to sign and return the indemnity form, which the strata argues was required under bylaw 7. The strata says it notified the owners that a failure to sign the indemnity agreement would result in fines, but the owners still did not sign.

ANALYSIS

Did the owners breach the bylaw?

20. It is undisputed that on February 14, 2017 the owners connected and disconnected a water line to a bathroom sink when they replaced a damaged countertop. However, bylaw 7(1) only requires the owners to obtain approval if the alterations involve common property, fixtures the strata must insure or other strata lot parts and items unrelated to this dispute.
21. Section 1 of the SPA defines ‘common property’ as including pipes and other facilities for the passage or provision of water, sewage, drainage...if they are located within a floor, wall or ceiling that forms a boundary between strata lots or common property or “wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property.”
22. Section 149(1) of the SPA says the strata corporation must obtain and maintain property insurance on (a) common property... and (d) fixtures built or installed on a strata lot by the owner developer as part of the original strata lot construction. ‘Fixtures’ are defined in section 9.1 of the Strata Property Regulation as items attached to a building, including plumbing fixtures, but does not include dishwashers, washers, or “other items”, if they can be removed without damage to the building.

23. The question here is whether the parts or items involved in the owners' strata lot alteration included a water pipe or line as defined in section 1 of the SPA, or a "fixture" as defined in section 9.1 of the Regulation. The owners argue that they did not.
24. The owners say they did "not touch" the common piping attached to the building. They say that the sink is attached to flexible hoses, that they both own and insure. Further, they say that the flexible hose can be detached from the sink faucet without being detached from the building or causing any damage to the building. They say that when they disconnected and reconnected the flexible extension line for the sink they did not touch the common water pipes in the wall. As for the countertop, the owners provided a statement from their contractor, who removed the damaged countertop. The contractor states that he knows the damaged countertop had been replaced previously by someone else. The contractor further states that the countertop can be bought at Home Depot and was not made 30 years ago at the time the building was developed. The strata neither responds to nor specifically refutes the owners' description of the alteration or the statement from the contractor that the countertop was an improvement.
25. The strata's submissions focus almost entirely on the owners' failure to sign an indemnity agreement, rather than on the specifics of the strata lot alteration itself. The strata does not explain the evidence on which it found that the owners' alteration was captured by bylaw 7(1) in the first place. There is also no documented evidence that the strata looked into the complaint or inspected the alterations in the owners' strata lot before concluding they required strata approval.
26. Although I find it had the opportunity when responding to this dispute, the strata provided no evidence that the owners' alteration involved common property water pipes or lines, or original fixtures attached to the building that were required to be insured under section 149(1) SPA. Therefore, I make an adverse inference against the strata. I find that the owners' alterations were not captured by bylaw 7(1) and therefore, the owners did not require approval before performing the alterations to

their strata lot. I find the owners did not breach bylaw 7 by altering their strata lot without strata approval.

27. Again, the strata submits that it imposed the fines because the owners refused to sign the indemnity agreement. However, I find bylaw 7(2) is a corollary to bylaw 7(1). It is not a stand-alone requirement. Bylaw 7(2) only requires owners to take responsibility for expenses as a condition of the strata's approval. Since I found approval was not required, I find the owners were not required to enter into an agreement under bylaw 7(2) to pay expenses or indemnify the strata. Therefore, I find the owners did not breach bylaw 7 by failing to sign the indemnity agreement.
28. Before it can enforce a bylaw or impose a fine under sections 129 and 130 of the SPA, the strata must have a reasonable basis for concluding that the owners contravened the bylaw. I find the strata imposed the bylaw violation fines in the absence of a bylaw breach. Since the strata may only fine an owner if a bylaw or rule is contravened, I find that the fines cannot stand. I order the strata to reverse the \$5,000 in bylaw violation fines charged against the owners' strata lot account.
29. The owners ask for an order that the strata stop fining them. However, I find no need for this order since the strata has already stopped fining the owners.

Did the strata follow the process required under section 135 before imposing the bylaw fines?

30. Although my above findings dispose entirely of the claim to cancel the fines, I decided it would be useful to the parties to comment on the second issue.
31. The owners submit that the strata fined them without first providing the particulars of the complaint and a reasonable chance to respond. Section 135 of the SPA requires that the strata receive a complaint, give an owner written particulars of the complaint, and a reasonable opportunity to answer the complaint, including a hearing if one is requested. The Court of Appeal has found that strict compliance with section 135 is required before a strata corporation can impose fines (*Terry v. The Owners Strata Plan NW 309*, 2016 BCCA 449). If a strata does not strictly comply with section 135, the fines cannot stand.

32. The tribunal rule 8.1(1) requires parties in a dispute to provide all evidence in their possession that may prove or disprove an issue in the dispute, even if the evidence does not support the party's submission. Section 35(2) of the SPA requires the strata to retain all copies of its correspondence. However, despite the owners' allegations of non-compliance with SPA section 135, the strata did not provide full copies of the bylaw contravention letters or other related documents that it should have had in its possession under section 35(2). I find there is insufficient documentary evidence here that the strata had complied strictly with section 135 of the SPA. Therefore, I make an adverse inference that the strata failed to comply with section 135. Even had I found the owners breached bylaw 7, I would have ordered the strata to cancel the fines on this procedural basis.

TRIBUNAL FEES and DISPUTE-RELATED EXPENSES

33. 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. I therefore order the strata to reimburse the owners the \$125.00 they paid in tribunal fees. As the unsuccessful party, I find the strata is not entitled to reimbursement of its tribunal fees. The parties claimed no dispute-related expenses.

34. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners.

ORDERS

35. I order the following:

- a. The strata must immediately reverse all bylaw violation fines charged against the owners' strata lot account relating to the February 2017 bathroom repairs.
- b. Within 30 days of this decision, the strata must reimburse the owners \$125.00 for tribunal fees.

36. The owners are entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
37. I dismiss the strata's claim for tribunal fees.
38. 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.
39. 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.

Trisha Apland, Tribunal Member