



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Burton v. The Owners, Strata Plan BCS2093*, 2019 BCCRT 1311

BETWEEN:

JANICE BURTON

APPLICANT

AND:

The Owners, Strata Plan BCS2093

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about 2 fines of \$200 each (totaling \$400). The fines were levied in July 2018 and April 2019 for strata bylaw violations. The applicant, Janice Burton

(owner), is one of 2 registered owners of strata lot 24 in the respondent strata corporation, The Owners, Strata Plan BCS2093 (strata).

2. The owner says the fines should be reversed because strata failed to provide proper notice to both her and her tenant, KH, before adding the fines to her strata lot account. The owner also says the fines were removed from her account and she never had the opportunity to respond to the fines prior to them being imposed.
3. The strata disagrees and says the tenant and owner were properly notified of the bylaw breaches prior to the fines being imposed and that the fines were paid separately by the owner.
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 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 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.

ISSUES

9. There are three issues in this dispute:
 - a. Did the strata act in accordance with *Strata Property Act* (SPA) section 135 when assessing the July 2018 fine against the owner's strata lot?
 - b. Did the strata act in accordance with SPA section 135 when assessing the April 2019 fine against the owner's strata lot?
 - c. If the strata breached SPA section 135, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant owner bears the burden of proving her claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. I shall first outline the background facts which are largely undisputed.
12. The owner and another person, TGB, are the registered owners of the strata lot 24. TGB is not a party to this dispute, though some of his correspondence is in evidence. The owners do not live at strata lot 24. It is rented and occupied by their tenant, KH.
13. As documented in a June 6, 2018 letter, the strata received a written complaint that KH had breached two bylaws. The complaint said that KH was seen with four off-leash dogs and was likely operating a dog daycare business, in breach of bylaws 3(3) and 3(5). The wording of the relevant bylaws, filed in the Land Title Office, is as follows:

3 Use of Property

...

(3) An Owner, tenant, occupant or visitor must ensure that all animals are leashed or otherwise secured when on the common property or on land that is a common asset.

...

(5) An Owner, tenant or occupant shall not use or permit the use of his strata lot for a professional, commercial or business purpose that:

(a) May or will increase the amount of foot traffic or motor vehicle traffic in the common property or the strata lot;

(b) In any way increases or may increase the liability risk of the Strata Corporation;

(c) Involves customers, clients, employees, contractors, other workers or any individuals attending the strata lot other than those individuals ordinarily resident in the strata lot; or

(d) Involves individuals using a strata lot as a place of temporary lodging.

14. The parties do not dispute that bylaws 3(3) and 3(5) apply. However, the owner says the strata did not fulfill all procedural requirements before imposing a fine in July 2018 on her strata lot account.
15. In a submitted synopsis of events, the strata says it received “no response” to the June 6, 2018 letter and, to its knowledge, KH continued to operate her dog daycare business. As I shall explain below, I find the strata actually did receive a response. In any event, on July 7, 2018, the strata decided to levy a \$200 fine. The decision is documented in a July 12, 2018 letter. The fine appeared on the strata lot’s account that same day and was paid entirely by July 27, 2018.
16. I will first discuss whether the strata levied the July 2018 fine in accordance with the SPA.

Issue #1. Did the strata act in accordance with SPA section 135 when assessing the July 2018 fine against the owner's strata lot?

17. SPA section 135(1) says a strata cannot impose a fine against a person for a bylaw contravention unless it has received a complaint about the contravention, given the owner or tenant the particulars of the complaint in writing, given the owner or tenant a reasonable opportunity to respond to the complaint (including a hearing if requested), and if the person is a tenant, given notice of the complaint to the person's landlord and to the owner. SPA section 135(2) says the strata must also give notice in writing of its decision to impose the fine to the tenant, landlord, and owner as applicable, as soon as feasible.
18. SPA section 135(3) says that once the strata has complied with the procedural steps outlined above, the strata may impose fines or penalties for a continuing contravention without further compliance of those steps.
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. For the reasons that follow, I find that the strata did not meet all the requirements of SPA section 135 and did not cure its noncompliance regarding the July 2018 fine.
21. The strata first notified the owner about the alleged contravention in a June 6, 2018 letter. The strata's property manager wrote to the owner and TGB (and I find) that it received a written complaint about KH on May 31, 2018. The strata described the particulars of the complaint and cited bylaws 3(3) and 3(5). The strata also wrote that the owner and TGB had the opportunity to answer the complain in writing and/or request a hearing. The letter copied the owner's tenant, KH.
22. It is undisputed that the strata sent the June 6, 2018 letter to TGB. The letter is addressed to TGB's mailing address as it appears on a title search of strata lot 24.

The strata also sent a copy of the letter by email to TGB on June 6, 2018, though its property manager. TGB replied on June 10, 2018.

23. The parties dispute whether the strata delivered the June 6, 2018 letter to the owner and KH. Overall, the evidence on the matter is lacking.
24. The owner says the strata did not send her a copy of the letter. She says the strata should have sent a copy to her address as it appears on the title search of strata lot 24. This differs from TGB's mailing address. The June 6, 2018 letter is only addressed to TGB and KH's mailing addresses.
25. SPA section 61 provides that notice may be provided to a person through several means. If the person specifies an address outside the strata plan, notice may be provided by mailing it to the address provided or leaving it with that person. If no such address is provided, the strata has other options under SPA section 61(b), including leaving it with an adult occupant at the strata lot or mailing it to the person at the strata lot.
26. The strata says the owner did not provide her current mailing address. Although the owner claims the strata should have sent it to an alternative address, there is no indication she previously told the strata it should send correspondence to such an address. I therefore conclude that the strata could notify the owner by using the various means listed under SPA section 61(b). This includes mailing the notice to strata lot 24, which the strata did.
27. The strata says it mailed a copy of the June 6, 2018 letter to strata lot 24. However, the owner says KH never received a copy of the letter. The strata did not say who mailed the letter or provide any particulars about delivery. Likewise, there is little evidence from KH on the issue. In a June 10, 2018 email, TGB asked KH about the alleged bylaw breach without forwarding the June 6, 2018 letter. KH replied that same day that she never received any email about the alleged bylaw breaches. She did not mention receiving any mail on the matter.

28. In summary, I find it clear that TGB was provided a copy of the June 6, 2018 letter. It is unclear if the owner and KH ever received a copy prior to the fine being levied on July 12, 2018.
29. In any event, I find it unnecessary to decide on the delivery of the July 12, 2018 letter. This is because I find that the strata did not give KH a reasonable opportunity to respond to the complaint, as required under SPA section 135(1).
30. In a June 10, 2018 email KH provided a detailed reply to the complaint. She sent the email to TGB and copied the property manager. She acknowledged that she had dogs unleashed on 2 occasions and provided explanations. She disagreed that any fine should be levied. In a June 12, 2018 email, the property manager wrote, "We deal with home owners and not tenants. Owners are responsible for the actions of their tenants." KH was copied on the email but the email is addressed to TGB.
31. On June 25, 2018, TGB sent an email to the property manager and wrote that he had attached a letter from KH to provide further information regarding the complaint. The property manager responded that the letter was not attached. KH's letter is not in evidence. However, instead of asking for it to be resent, the property manager wrote, "I think the issue has improved". As noted above, the strata subsequently decided on July 7, 2018 to fine the owner and sent notice of the fine in a July 12, 2018 letter.
32. Section 135(1)(e) says the strata must not fine a person unless it has given the owner or tenant a reasonable opportunity to answer the complaint. It is clear from the correspondence that the tenant KH was the appropriate person to answer the complaint. Although KH attempted to provide a response on 2 separate occasions (both with the participation of one of the owners, TGB) the strata made no effort to consider KH's response and provided comments suggesting it was not interested in what she had to say.
33. In particular, the property manager's comments in the June 12, 2018 email did not acknowledge the substance of KH's email at all. Instead, she expressly said she

would not “deal” with KH, even though KH is entitled to “answer the complaint” under SPA section 135.

34. Understandably, KH did not directly email the property manager after this and instead TGB attempted to forward KH’s letter on June 25, 2018. TGB failed to attach the letter and the property manager acknowledged she did not receive it. However, she did not ask TGB to send it again. Given the context, her comments that things had “improved” could be reasonably interpreted to mean the strata had no interest in reading KH’s letter or levying a fine. The above leads me to conclude that that KH was not provided a reasonable opportunity to answer the complaint against her.
35. Finally, the parties provided few submissions on whether the strata provided appropriate written notice of its decision to levy a fine under SPA section 135(2). I find it unnecessary to make a finding on this given my conclusion that the strata breached SPA section 135(1).
36. In summary, I find that the strata breached the requirements of section 135(1) in levying the July 2018 fine against the owner’s strata lot. I note that in reaching this decision I make no finding on whether KH actually breached bylaws 3(3) and (5).

Issue #2. Did the strata act in accordance with SPA section 135 when assessing the April 2019 fine against the owner’s strata lot?

37. There is an evidentiary gap regarding what happened next from July 2018 to May 2019. On April 2, 2019, the strata levied another fine of \$200. As documented in an April 28, 2019 email from TGB and the owner to the strata, the strata did not notify the owners that it had decided to levy another fine. Instead, they became aware of the fine because it appeared on the owner’s strata lot account as an April 2, 2019 entry titled, “Contravention of 3(4) & 3(5)...Bylaw fine”.
38. The strata acknowledges it did not provide a letter or other notice of the fine due to an “internal miscommunication”. However, it says that in any event, no such letter

was required under SPA section 135(3) as the April 2019 fine was for a continuing contravention of bylaws from June 2018.

39. I find that the strata is unable to rely upon SPA section 135(3) to levy the April 2019 fine for 3 reasons. First, SPA section 135(3) states that once a strata has complied with the requirements SPA section 135 for breaching of a strata bylaw or rule, the strata may impose a fine or other penalty for a continuing contravention of that bylaw or rule without further compliance with section 135 [emphasis added].
40. I have already found that the strata did not comply with the requirements of SPA section 135(1). As a result, the strata cannot rely on SPA section 135(3) to levy the April 2019 fine. The strata therefore breached SPA section 135 by levying the April 2019 fine as a continuing contravention.
41. Second, section 132 of the SPA and *Strata Property Regulation* 7.1(3) permits the strata to establish a bylaw for maximum fines relating to continuing contraventions of a bylaw. Strata bylaw 24, titled “Continuing Contravention”, states that if an activity or lack of activity that constitutes a bylaw or rule contravention continues, without interruption, for longer than 7 days, a fine may be imposed every 7 days [emphasis added].
42. As I have noted above, there is an evidentiary gap from June 2018 to April 2019. This is a period of nearly a year. Given the amount of time between the 2 fines, the wording of bylaw 24, and the lack of evidence, I find it difficult to characterize the April 2019 fine as a fine for a “continuing contravention” under SPA section 135(3).
43. I note that the strata provided evidence of the continuing breach in the form of screenshots from a website showing that KH offered dog boarding, dog walking, and drop-in visits for dogs in September 2019. However, September 2019 is several months after the fines at issue.
44. Third, the April 2, 2019 entry on the strata lot’s account identifies breaches of bylaws 3(4) and 3(5) as the reason for the April 2019 fine. Bylaw 3(4) relates to the number of animals that can be kept in a strata lot. As bylaw 3(4) was not mentioned in the June 6, 2018 letter, this is another reason why the April 2019 fine is difficult to characterize as a continuing contravention.

45. In summary, I find that the strata breached the requirements of SPA section 135 in levying the April 2019 fine against the owner's strata lot. In reaching this decision I make no finding on whether KH actually breached bylaws 3(3) and (4) after the June 2018 complaint.

Issue #3. If the strata breached SPA section 135, what is the appropriate remedy?

46. The owner seeks to repayment of the 2 fines totaling \$400. Based on the financial documents before me, I find that the owner paid the fines on July 27, 2018 and May 1, 2019 (for \$200 on each occasion). The parties dispute whether the payments were made automatically or manually but I place no significance on this.

47. I have found the strata is not entitled to payment for either fine. I would usually order the strata to reverse the fines. However, given that the fines are already paid, I order that within 30 days of the date of this decision, the strata pay the owner 2 sums of \$200 each for the July 2018 and April 2019 fines.

48. The owner is entitled to prejudgment interest on the fine amounts paid under the *Court Order Interest Act* (COIA), as applicable, from July 27, 2018 for the first fine and from May 1, 2019 for the second fine. I find these amounts to be \$4.72 and \$2.18, respectively.

49. In her submissions the owner also requested further declaratory relief regarding future fines, if any. I decline to make such an order. The tribunal generally does not make orders about things that may occur in the future. The owner also essentially wishes the tribunal to order the strata to follow the provisions of the SPA, its regulation, and the applicable strata rules and bylaws. The strata must do this, regardless of any order.

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. The owner is the successful party. I order the strata to reimburse the owner \$225 for tribunal fees within 30 days of the date of this decision. I do not award dispute-related expenses as none were claimed.
52. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

ORDERS

53. I order that within 30 days of the date of this decision, the strata pay the owner a total of \$631.90, broken down as follows:
- a. \$200.00 for reimbursement of the bylaw fine paid on July 27, 2018,
 - b. \$200.00 for reimbursement of the bylaw fine paid on May 1, 2019,
 - c. \$4.72 in prejudgment interest under the COIA from July 27, 2018,
 - d. \$2.18 in prejudgment interest under the COIA from May 1, 2019, and
 - e. \$225.00 for tribunal fees.
54. I dismiss the owner's remaining claims.
55. 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.

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 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.

David Jiang, Tribunal Member