



# Civil Resolution Tribunal

Date Issued: December 3, 2019

File: ST-2019-005275

Type: Strata

Civil Resolution Tribunal

Indexed as: *Morgan v. The Owners, Strata Plan BCS2995*, 2019 BCCRT 1360

BETWEEN:

PAMELA MORGAN

**APPLICANT**

AND:

The Owners, Strata Plan BCS2995

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about a pet bylaw fine. The respondent, The Owners, Strata Plan BCS2995, is a strata corporation. The applicant, Pamela Morgan (owner), owns strata lot 8 in the strata.

2. The owner says the strata did not follow the required procedures in the *Strata Property Act* (SPA) and strata bylaws when fining her. She wants the fine reversed, and an order that the strata follow the SPA when assigning fines in future. The strata disagrees that it did anything wrong.
3. The owner is self-represented. A strata council member represents the strata.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.
6. 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.
7. 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**

8. The issues in this dispute are as follows:

9. Did the strata act in accordance with the SPA and its bylaws when it assessed a fine against the owner's strata lot?
  - a. If not, what is the appropriate remedy?

## **BACKGROUND AND EVIDENCE**

10. In a civil claim such as this, the applicant owner bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. The parties do not dispute the background facts. The strata consists of 37 residential strata lots. The owner lives at the strata with her dog.
12. On May 11, 2019, TG reported that she observed the owner's dog off leash in front of TG's strata lot. TG is a strata council member. She emailed the rest of strata council on May 13, 2019 to complain that this was a bylaw breach.
13. In a May 15, 2019 letter, the strata's property manager wrote to the owner. She advised that the owner had breached bylaws 3(3) and 3(4)(e) and was being fined \$50. The property manager wrote that the owner had 14 days from the date of the letter to respond in writing or request a hearing.
14. The strata uses the Schedule of Standard Bylaws under the SPA. There are several bylaw amendments filed in the Land Title Office. Bylaw 3(3) states that an owner must ensure that all animals are leashed or otherwise secured when on common property. Bylaw 3(4)(e), amended on January 25, 2010, says in part that
  - a. the owner of a pet is fully responsible for the behaviour of the pet within strata lots and the common property,
  - b. the pet must always be restrained, and
  - c. the pet cannot run loose or be tied up outside a residence.

- d. Bylaw 23, also amended, allows the strata to fine an owner up to \$200 for a bylaw contravention.
- e. The owner provided a written response to the strata. In her May 20, 2019 letter, she explained that her dog escaped her unit as she opened the patio door. She wrote that the strata should not fine her because the bylaw breach was unintentional.
- f. In a May 30, 2019 letter, the strata council wrote that the \$50 fine would stand.
- g. The owner replied in a June 11, 2019 letter that she was improperly fined under SPA section 135. I will discuss this section in further detail below. The owner also wrote that that the strata breached SPA section 26 and bylaws 18 and 20. SPA section 26 says the strata council must perform the duties of the strata, including enforcement of bylaws. Bylaw 18 states in part that decisions by the strata council at council meetings must be decided by a majority vote. Bylaw 20 states that the strata may not delegate its powers to decide whether a person has contravened a bylaw or should be fined. The owner requested a hearing to discuss these matters.
- h. On June 13, 2019, the strata's property manager emailed the owner to schedule the hearing for June 27, 2019. On June 14, 2019, the strata reversed the \$50 fine.
- i. In a June 18, 2019 letter, the owner asked the strata to provide documents showing it complied with SPA sections 135 and 26. The owner asked for written particulars of the complaint against her. She also asked for the strata to deliver these documents before the June 27, 2019 hearing. The strata did not provide the requested documents.
- j. On June 27, 2019, the strata held the requested hearing.
- k. In a July 3, 2019 letter to the owner, the strata clarified that it received a written complaint about the owner's dog. The complaint said her dog was off

leash on the evening of May 11, 2019. The strata agreed it needed to change some of its procedures. It wrote that it would put more information in the minutes regarding its decisions. The letter then said the owner was being fined \$50 for the pet bylaw violation. I infer from the context that the council was referring to bylaws 3(3) and 3(4)(e).

***Issue #1. Did the strata act in accordance with the SPA when it assessed a fine against the owner's strata lot?***

15. SPA section 135(1) says a strata cannot impose a fine against a person for a bylaw contravention unless it has
  - a. received a complaint about the contravention,
  - b. given the owner the particulars of the complaint in writing, and
  - c. given the owner a reasonable opportunity to respond to the complaint (including a hearing if requested).
16. SPA section 135(2) says the strata must give notice in writing of its decision to impose a fine to the owner as soon as feasible.
17. The strata must strictly follow the requirements of section 135 before fines can be imposed: *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449. However, if the strata fails to comply with SPA section 135, the strata can rectify or cure its noncompliance prior to imposing such fines: *Cheung v. Strata Plan VR 1902*, 2004 BCSC 1750.
18. The owner says the strata breached SPA section 135. She says it failed to provide her written particulars of the complaint or an opportunity to respond. The strata acknowledges it did not entirely comply with SPA section 135. However, it submits that it cured its noncompliance.
19. For the reason that follow, I find that the strata failed to comply with SPA section 135 when it first levied a fine in May 2019. The strata did not cure its noncompliance before imposing the \$50 fine again in July 2019.

20. The strata decided to levy a \$50 fine in May 2019. The decision is documented in the strata's May 15, 2019 letter. It did so before providing the owner an opportunity to respond. I find this to be improper. Under SPA section 135, an owner must be advised that the strata is contemplating a fine before that fine is imposed: *Terry* at paragraph 28.
21. I also find the strata failed to provide written particulars of the bylaw breach to the owner. In its May 15, 2019 letter, the strata advised that the owner breached bylaws 3(3) and 3(4)(e). In her June 11, 2019 letter, the owner wrote that she was not provided particulars of the complaint. In her June 18, 2019 letter, the owner requested a copy of the particulars of the complaint. The owner explicitly referred to the requirements of SPA section 135 in her request. The strata provided written notice of the complaint in its July 3, 2019 letter. However, by then, the strata had decided to levy the \$50 fine again.
22. I find this dispute shares similarities with the dispute in *Lenahan v. The Owners, Strata Plan NW 976*, 2019 BCCRT 462. Although not binding, I find its reasoning applies. In *Lenahan* the strata sent the owner correspondence about potential fines for causing a nuisance under the strata bylaws. The owner asked for clarification of the bylaw contraventions. However, the strata did not provide the requested clarification.
23. The tribunal concluded that the strata provided insufficient written particulars to the owner. It noted the owner had reasonably requested further information. The tribunal cited *Terry* at paragraph 28, which states that the written particulars must be sufficient to notify the owner of the contravention at issue. The tribunal decided the strata breached SPA section 135.
24. In this dispute, the strata did not identify the date, time, or place of the contravention in its May 15, 2019 letter. One of the strata council members, WA, also felt the May 15, 2019 letter was problematic. In his June 13, 2019 email to other council members, WA wrote that the May 15, 2019 letter lacked necessary details.

25. In her May 20, 2019 letter, the owner correctly concluded that the strata was referring to the May 11, 2019 incident with TG. However, I find it was reasonable for the owner to ask for clarification about the bylaw contravention in June 2019. The strata did not confirm or deny in writing whether this was the correct incident until its July 3, 2019 letter. In that letter, the strata acknowledged that it normally includes the date and time of the infraction in its letters. The strata apologized for this error. The strata also levied the \$50 fine for a second time.
26. The strata also says that the owner's dog being off leash was an ongoing issue. For example, the strata wrote the owner about the issue on July 28, 2015 and July 10, 2018. Given these circumstances, I find it was reasonable for the owner to clarify what contravention was at issue.
27. In summary, the strata did not provide the owner sufficient written particulars. The owner reasonably requested further details, which were not provided. The strata therefore breached SPA section 135(1).
28. The strata attempted to cure its noncompliance. It reversed the May 2019 fine on June 14, 2019 and provided a hearing. However, it did not provide the owner with written particulars of the complaint until its July 3, 2019 letter. That same letter also notified the owner that the strata had decide to fine the owner \$50. I find this letter did not rectify the strata's non-compliance with section 135(1). It did not provide the owner with written particulars before the fine was levied. I therefore find this fine to be invalid.
29. Given my conclusion, I find it unnecessary to consider whether the strata breached SPA section 26 or bylaws 18 and 20 in imposing the fine, as alleged by the owner.

***Issue #2. What is the appropriate remedy?***

30. Within 15 days of the date of this decision, I order the strata to reverse the \$50 fine assessed against the owner's strata lot for contravening bylaws 3(3) and 3(4)(e).

31. The owner also asked for an order that the strata comply with the SPA when assessing fines in the future. I decline to make this order. The strata must already follow the SPA, regardless of any order. The tribunal also does not generally make orders about things that have not yet occurred.

## **TRIBUNAL FEES AND EXPENSES**

32. 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.

33. The owner is the successful party in this dispute. Within 15 days of the date of this decision, I order the strata to reimburse the owner \$225 in tribunal fees. The owner does not claim dispute-related expenses. I therefore decline to order any.

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

## **ORDERS**

35. I order the strata, within 15 days of the date of this order, to:

- a. remove the \$50.00 fine assessed against the owner's strata lot for contravening bylaws 3(3) and 3(4)(e), and
- b. pay the owner \$225.00 in tribunal fees.

36. The owner is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.

37. 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.



38. 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. Once filed, a tribunal order has the same force and effect as a BCPC order.

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David Jiang, Tribunal Member