



Civil Resolution Tribunal

Date Issued: January 23, 2020

File: ST-2019-000462

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 1455 v. Koncewicz, 2020 BCCRT 82*

B E T W E E N :

The Owners, Strata Plan LMS 1455

APPLICANT

A N D :

JAN KONCEWICZ

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. The respondent, Jan Koncewicz owns a strata lot in the applicant strata corporation, The Owners, Strata Plan LMS 1455 (strata).

2. The strata says Mr. Koncewicz has been using his strata lot for short-term accommodation (STA) through Airbnb, contrary to strata bylaws. The strata seeks payment of \$3,400 in bylaw infraction fines, plus an order that Mr. Koncewicz stop using his strata lot for STA.
3. Mr. Koncewicz says the strata's claims should be dismissed because the bylaws do not prohibit STA or rentals. He also says the strata fined him multiple times for the same incidents, and that some of the bylaw fines are not for STA, so its claim for \$3,400 is inaccurate.
4. Mr. Koncewicz is self-represented in this dispute. The strata is represented by a strata council member.
5. This decision is one of two related disputes about STA in this strata. The second dispute is ST-2019-002099. Both disputes are about the interpretation of strata bylaw 6.3, and whether it prohibits STA. I have written two separate decisions for these two disputes, since the parties are not identical.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
9. 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.
10. Under its bylaws 1.1 and 1.2, the strata has two separate sections, as permitted in Part 11 of the *Strata Property Act* (SPA). Section 1 of The Owners, Strata Plan LMS 1455 (Residential Section) is made up of all residential strata lots. Section 2 of The Owners, Strata Plan LMS 1455 (Commercial Section) is made up of all non-residential strata lots. After reviewing the evidence and submissions in this dispute, it was apparent to me that the Residential Section was likely a proper party to this dispute, since it, rather than the strata, imposed the disputed fines on the owner. Through tribunal staff, I asked whether the parties consented to adding the Residential Section as a party. The owner did not agree, so I have not added the Residential Section as a party. Based on my findings below about the enforceability of the relevant bylaw, I find this is not determinative in this dispute.

ISSUES

11. The issues in this dispute are:
 - a. Is the strata entitled to an order that Mr. Koncewicz stop using his strata lot for STAs?
 - b. Must Mr. Koncewicz pay \$3,400 in bylaw infraction fines?

EVIDENCE AND ANALYSIS

12. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding like this one, the applicant owner must prove his claims on a balance of probabilities.
13. The strata was created in 1994, and is located in Vancouver. It consists of over 200 residential and non-residential strata lots in a 32-storey air-space parcel building. There are both residential and non-residential strata lots.
14. The strata has filed various bylaw amendments with the Land Title Office (LTO) since it was created in 1994. The strata filed consolidated bylaws with the Land Title Office (LTO) in March 2002, which repealed and replaced all previous bylaws.
15. The March 2002 bylaws included bylaw 6.5, which stated as follows:

A resident must not use, or permit to be used, a strata lot in the Residential Section except as a private dwelling home.

16. In the years after 2002, the strata filed 8 subsequent bylaw amendments with the LTO. In amendments filed in May 2016, former bylaw 6.5 was renumbered as bylaw 6.3. The wording of the bylaw did not change. In this dispute, I will refer to the contested bylaw as “bylaw 6.3”, although it was bylaw 6.5 until May 2016.

Was bylaw 6.3 approved in accordance with SPA section 128(1)?

17. In my decision in related dispute ST-2019-002099, I concluded that all of the strata’s bylaws filed with the LTO from 2002 onwards, including bylaw 6.3, were unenforceable because they were not passed in accordance with the requirements set out in SPA section 128(1)(c).
18. In that decision, I ordered the strata to immediately refrain from enforcing its bylaw amendments filed from 2002 onwards. I also ordered it to immediately reverse any bylaw fines charge to the strata lot accounts of the applicants in that dispute.

19. Mr. Koncewicz, the respondent in this dispute, was one of the named applicants in dispute ST-2019-002099. The applicant strata was also a named respondent in ST-2019-002099. For that reason, I find that all of the issues in this dispute are addressed and resolved by my decision in ST-2019-002099. There are no remaining issues in this dispute. Mr. Koncewicz and the strata, as parties to dispute ST-2019-002099, and had the opportunity to review all the evidence in that dispute and make submissions.
20. Accordingly, I adopt my reasons in ST-2019-002099 as my reasons in this dispute, and do not repeat them here.
21. For the reasons set out in ST-2019-002099, I dismiss the strata's claim for an order that Mr. Koncewicz stop using his strata lot for STAs. I also dismiss the strata's claim for an order that Mr. Koncewicz pay bylaw fines.
22. In ST-2019-002099, I already ordered the strata to reverse the bylaw fines imposed against Mr. Koncewicz. I therefore do not repeat that order here.

TRIBUNAL FEES AND EXPENSES

23. As the strata was successful in this dispute, in accordance with the CRTA and the tribunal's rules I find it is not entitled to reimbursement of tribunal fees.
24. I addressed the parties' claims for reimbursement of legal fees in ST-2019-002099, so do not repeat those reasons here.
25. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Mr. Koncewicz.

ORDERS

26. This dispute, and the strata's claims, are dismissed.

Kate Campbell, Vice Chair