



Civil Resolution Tribunal

Date Issued: February 28, 2020

File: ST-2019-003098

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan KAS 3310 v. Thind*, 2020 BCCRT 237

B E T W E E N :

The Owners, Strata Plan KAS 3310

APPLICANT

A N D :

BALBIR THIND

RESPONDENT

A N D :

The Owners, Strata Plan KAS 3310

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This is a dispute about bylaw contravention fines.
2. The applicant (and respondent by counterclaim) strata corporation, The Owners, Strata Plan KAS 3310 (strata), seeks \$1,300 for bylaw contravention fines from the respondent, Balbir Thind (owner).
3. The owner says the strata has applied the fines to the wrong strata lot and does not have conclusive evidence to support the bylaw contraventions. In the counterclaim, the owner seeks \$600 for damages to his strata lot and \$3,900 for lost rent, both as a result of his tenant being upset by the strata's accusations.
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. In some respects, both parties in this dispute question the other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Bearing in mind the tribunal's mandate that includes

proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions.

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 the parties and witnesses questions and inform itself in any 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. The issues in this dispute are:
 - a. Is the owner required to pay fines for bylaw contraventions, and if so, how much?
 - b. Is the owner entitled to reimbursement for lost rent and damage to his strata lot?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the strata must prove its claims, and the owner his counterclaims, on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.
11. The strata includes 104 strata lots in 2 buildings. The owner owns strata lot 49. There is no dispute that the owner rented his strata lot to one or more tenants and did not live in his strata lot when the contraventions are alleged to have occurred.

Bylaw Contraventions

12. The strata filed a complete set of bylaws that repealed and replaced all previously filed bylaws with the Land Title Office on September 2, 2015. Since then, the strata has filed a number of bylaw amendments, none of which are relevant to this dispute.
13. The *Strata Property Act* (SPA) allows strata corporations to enforce bylaws by imposing fines. SPA section 130(1) says the strata may fine an owner if a bylaw or rule is contravened by the owner, a visitor, or an occupant if the strata lot is not rented by the owner to a tenant. Section 130(2) says the strata may fine a tenant if a bylaw is contravened by the tenant, a person visiting the tenant, or an occupant if the strata lot is not sublet to a subtenant. Section 131 says if a tenant is fined, the strata may collect the fine from the landlord or owner, and the tenant then owes the landlord or owner that amount. The tribunal has interpreted these provisions to require the strata to fine tenants for the tenants' contraventions (e.g., *Wong et al v. The Owners, Strata Plan LMS 1178*, 2019 BCCRT 1088). Although tribunal decisions are not binding precedents, I agree with the reasoning in *Clark v. The Owners, Strata Plan BCS 2785*, 2017 BCCRT 49. In that decision, the Tribunal Chair found that to allow strata corporations to fine owners directly for their tenant's bylaw contraventions would frustrate the SPA's notice and hearing requirements under section 135. The tenant's rights to respond and to request a hearing require that the strata give the tenant notice of the alleged contravention.
14. The bylaw contravention fines from 2016 and 2017 stem from complaints about the tenant's conduct: noise, nuisance, dropping a TV off the balcony, and partying in the hot tub. In submissions responding to the owner's counterclaim, the strata says, "when there are complaints of breached bylaws, owners are notified in writing, not tenants. At no time did any member of council approach, speak or write to the tenant(s)" (emphasis in original). Based on that, I find that the strata did not follow the requirements of section 130 and 135 with respect to the 2016 and 2017 contraventions, because each of those fines pertained to the tenant's conduct, rather than the owner's. Because the strata did not follow the SPA requirements, I

dismiss the strata's claim for payment of those fines. I order the strata to remove those fines from the owner's strata lot account.

15. There remains one fine where the owner was alleged to have contravened a bylaw. On December 12, 2018, the strata, by email to the owner, advised of a complaint that the owner did not pay a special levy, contravening bylaw 1(3). The letter noted that bylaw 1(4) allows the strata to assess a fine of up to \$200 for every 7 days the special levy remains unpaid. The notice advised the owner that he could respond in writing or request a hearing before the strata council. The owner apparently did neither, but he does not deny receiving the email and does not argue that the strata did not meet the notice requirements under the SPA. For these reasons, I find that the owner contravened Bylaw 1(3) and that the strata complied with the SPA's requirements and validly charged the owner \$200. I order the owner to pay the \$200 fine for the contravention of bylaw 1(3).

Counterclaim for lost rent and damage

16. The owner seeks compensation for 3 months of lost rent, and damage his tenant caused to his strata lot. For the reasons that follow, I dismiss the counterclaim.
17. The owner provided no evidence and his submissions are brief. He argues that the strata wrongfully accused his tenant of the above-noted bylaw breaches, which upset his tenant and caused the tenant to refuse to pay rent and to fail to take care of the strata lot.
18. The strata has a statutory obligation under the SPA to inform tenants of alleged bylaw contraventions. As noted above, the strata failed to inform the owner's tenant of any alleged bylaw contraventions. The owner says he showed the "fines" to his tenant, who denied responsibility and said it must have been a neighbour.
19. I am not aware of any legal authority indicating that a strata can be liable to an owner for a tenant's unlawful refusal to pay rent. I find it is not reasonably foreseeable that providing notice of bylaw contraventions could lead to the loss of 3 months' rent and damage to the strata lot.

20. Even if such losses were foreseeable and the strata was somehow liable, I would still dismiss the counterclaim. The owner provided no photos of the damage to his strata lot, and no details about the lost rent. He says it took 3 months to evict the tenant, but he does not say when he evicted the tenant, or which 3 months of rent were lost. I also note that in an April 26, 2017 email, the owner's son advised the strata that the owner's tenant was moving out at the end of April. This was approximately one month after 5 of the 6 bylaw contraventions occurred, in March 2017.

21. For all of these reasons, I dismiss the counterclaim.

TRIBUNAL FEES AND EXPENSES AND INTEREST

22. 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. As the strata was only partially successful in its claim, I order the owner to reimburse the strata for half of its \$225 tribunal fees, or \$112.50. As the owner was unsuccessful, I dismiss his claim for reimbursement of tribunal fees and expenses.

23. The *Court Order Interest Act* (COIA) applies to the tribunal. The strata is entitled to pre-judgement interest on the \$200 fine from January 4, 2019, the date of the decision to apply the fine, to the date of this decision. This equals \$4.50.

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

ORDERS

25. I order that within 14 days of the date of this decision, the owner must pay the strata a total of \$317.00, broken down as follows:

- a. \$200 for the bylaw contravention fine
- b. \$4.50 in pre-judgment interest under the COIA, and

c. \$112.50 in tribunal fees.

26. The strata is also entitled to post-judgement interest under the COIA.
27. I order that within 14 days of the date of this decision, the strata remove the remaining 6 fines, totalling \$1,100, from the owner's strata lot account.
28. 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.
29. 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.

Micah Carmody, Tribunal Member