



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Ferreira v. The Owners, Strata Plan EPS867*, 2020 BCCRT 239

B E T W E E N :

BERNICE FERREIRA

APPLICANT

A N D :

The Owners, Strata Plan EPS867

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a dispute about bylaw fines.

2. The applicant, Bernice Ferreira (owner), owns a strata lot (SL66) in the respondent strata corporation, The Owners, Strata Plan EPS867 (strata). The owner is self-represented, and the strata is represented by a council member.
3. The owner disputes several bylaw fines applied against SL66 for reasons that the strata failed to “manage bylaw complaints in a fair and respectful fashion”. She says she was not aware of most of the bylaw complaints, and therefore was not given an opportunity to respond to them because she did not receive the strata’s correspondence. She also states the bylaw complaints were “unfounded” and that the strata failed to properly investigate the complaints before imposing fines.
4. The owner requests an order that the strata reverse bylaw fines totalling \$350 from the account of SL66.
5. The strata says it properly advised the owner of the bylaw complaints and fines in accordance with the *Strata Property Act* (SPA) and its bylaws. The strata also says it properly investigated the complaints. The strata asks that the owners claims be dismissed.
6. For the reasons that follow, I find the strata must remove \$150 in bylaw fines from the owner’s SL66 account as set out below.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought 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. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
8. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this

dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

9. The tribunal may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other 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, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

PRELIMINARY ISSUES

11. There are 4 preliminary issues that I address at the outset.
12. The first relates to the owner's submission that the *Canadian Charter of Rights and Freedoms* (Charter) protects her against wrongful conviction, which is her position about her bylaw fines.
13. The Charter applies to government and does not apply to a strata corporation. When interpreting a statute, if a provision is ambiguous, as a decision-maker I may consider Charter values after all other statutory interpretation methods have been exhausted. I see no reason to consider Charter values in this dispute given the circumstances and evidence before me.
14. The second preliminary issue relates to the owner's request for documents about an insurance claim. This issue was identified in the Dispute Notice, but there is no corresponding request for resolution. Nor did the owner amend the Dispute Notice. Rather, in reply submissions, the owner stated she would refer the matter to another tribunal.
15. I therefore find the owner's document request is not before me.

16. The third preliminary issue is about outstanding strata fees of \$60.45 that show on the owner's statement of account for SL66 in March 2018. Although the parties provided submissions about this amount as it relates to a late fine for strata fees, it is not clear if the amount is in dispute. Given the owner did not request a specific remedy about the strata fee amount, I find this issue is not before me.
17. Accordingly, I make no findings of fact on the second and third preliminary issues described above.
18. The fourth and final preliminary issue relates to claims that include the strata council:
 - a. was biased,
 - b. applies fines "according to its own set of rules",
 - c. acted in bad faith,
 - d. bullied and harassed the owner and her daughter, and
 - e. did not act in the best interests of the strata.
19. Section 10(1) of the CRTA says the tribunal must refuse to resolve a claim that it is outside its jurisdiction. Section 10(2) says claims that involves issues not within the tribunal's jurisdiction may be amended to remove the issues that are outside the tribunal's jurisdiction.
20. For the following reasons, I find that owner's claims about the strata council's actions are outside the tribunal's jurisdiction, and I refuse to resolve them.
21. While the owner did not refer to section 31 of the SPA in her submissions, I find her allegations about the strata council's bias, using its own set of rules to apply fines and not acting in the best interest of the owners arise under section 31. Section 31 sets out the standard that strata council members must meet in performing their duties. It says that each council member must act honestly and in good faith, with a view to the best interests of the strata, and exercise the care, diligence, and skill of a

reasonably prudent person in comparable circumstances. I find this would exclude bullying and harassment.

22. In *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 267, the BC Supreme Court said that the duties of strata council members under section 31 of the SPA are owed to the strata corporation, and not to individual strata lot owners. This means that a strata lot owner cannot be successful in a claim against a strata corporation for duties owed by its strata council members and that an owner cannot be successful in a claim against council members under section 31.
23. Further, in *Wong v. AA Property Management Ltd*, 2013 BCSC 1551, the BC Supreme Court considered a claim brought by an owner against the property management company, individual council members, and the strata corporation. The owner alleged that the defendants had acted improperly in the management of the strata's affairs. The court concluded that the only time a strata lot owner can sue an individual strata council member is for a breach of the conflict of interest disclosure requirement under section 32 of the SPA (at paragraph 36). Remedies for breaches of SPA section 32 are specifically excluded from the tribunal's jurisdiction, as set out in CRTA section 122(1)(a). Thus, the tribunal does not have jurisdiction over claims brought by an owner against an individual strata council member.
24. The court decisions in *Wong* and *Sze Hang* are binding precedents, and the tribunal must apply them. Following, *Wong* and *Sze Hang* I find the tribunal has no jurisdiction to decide the owner's section 31 claims set out above.
25. I therefore refuse to resolve these parts of the owner's claims under section 10(1) of the CRTA.

ISSUES

26. The remaining issues in this dispute are:
 - a. Did the strata follow the requirements of the SPA and its bylaws before imposing fines against the owner?

- b. If yes, did the strata act significantly unfairly when it refused to reverse the imposed fines?

BACKGROUND, EVIDENCE AND ANALYSIS

27. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
28. In a civil proceeding such as this, the owner must prove each of her claims on a balance of probabilities.
29. The strata was created in March 2013 under the SPA. It consists of 201 residential strata lots in 5 buildings located in Surrey, B.C.
30. On July 24, 2017, the strata amended its bylaws and filed a consolidated version at the Land Title Office (LTO). The strata further amended its bylaws on November 23, 2017 and again on November 23, 2018, when it filed another consolidated version at the LTO. The alleged bylaw contraventions span between June 2018 and May 2019 and bylaws passed at different times apply, which I address below as necessary.
31. The owner purchased SL66 on January 29, 2018.
32. All strata correspondence about bylaw contraventions and fines was directed to the owner at the address of SL66 until March 2019. It was about this time the owner says she first became aware of the status of her account, including some of the bylaw fines imposed against her, and contacted the strata. Since March 2019, the strata has mailed correspondence to the owner's address outside the strata plan and to SL66.
33. In an April 8, 2019 email to the strata, the owner says she bought SL66 as a second home for her to reside in when she rents her house through VRBO, a short-term accommodation company. In the same email she says her daughter also uses SL66 but that her daughter is not a tenant. The owner describes SL66 as a "secondary family home" that is also sometimes used by her mother.

34. As noted, the owner requests that bylaw fines totalling \$350 be reversed. I find there are 5 separate complaints that resulted in the strata imposing \$350 bylaw fines. Based on the evidence, I summarize the bylaw complaint and fine details in the following table.

<u>Complaint Description</u>	<u>Alleged Complaint Date</u>	<u>Notification of Complaint</u>	<u>Date Fine Imposed</u>	<u>Notification of Fine</u>	<u>Fine Amount</u>	<u>Alleged Bylaw(s) Breached</u>
Nuisance/ noise	Jun 13, 2018	Jun 18, 2018	Jul 12, 2018	Jul 18, 2018	\$50	3(1)(a), (b)
Smoking	Jul 8, 2018	Jul 20, 2018	Sept 13, 2018	Oct. 4, 2018	\$100	3(1)(a), 42
Bike storage	Aug 17, 2018	Sept 20, 2018	Oct 11, 2018	Oct 18, 2018	\$50	3(3.9)(g)
Late payment of strata fees	2018 & 2019	none	Mar 5, 2019	none	\$50	N/A
Failure to Provide a Form K	Not stated	Mar 25, 2019	May 7, 2019	May 21, 2019	\$100	N/A
TOTAL					\$350	

35. The parties also provided submissions on an additional \$50 fine about hooks installed on the balcony of SL66 charged in July 2018 and reversed in April 2019. Given the fine was reversed, I find the issue about the hooks is moot and I have not included it here.

Did the strata follow the requirements of the SPA and its bylaws before imposing fines against the owner?

36. Under section 135(1) of the SPA, before imposing bylaw fines, the strata must have received a complaint, given the owner written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if one is requested. Under section 135(2), the strata must also give the owner written notice of its decision “as soon as feasible”.

37. In *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, the BC Court of Appeal found that strict compliance with section 135 of the SPA is required before a strata corporation can impose fines. The court also determined that bylaw fines may be found to be invalid if the procedural requirements set out in section 135 are not followed.
38. I find it reasonable to group the bylaw fines into the 2 categories as I find the fines should be treated differently. I will refer to the \$50 nuisance/noise fine, the \$100 smoking fine, and the \$50 bike storage fine, as the 2018 fines, and the \$50 late payment fine and \$100 Form K fine as the 2019 fines.
39. The owner does not dispute, and I accept, that complaints were received by the strata for all fines imposed. I infer the complaints about the late payment of strata fees and failure to provide a Form K were made verbally by a strata council member, consistent with the SPA.
40. I will first address the 2018 fines that total \$200.
41. The 2018 fines totalling \$200
42. For each of the 3 fines, the strata properly notified the owner of the particulars of the complaint in writing, and gave her a reasonable opportunity to answer the complaint, including advising her should could request a hearing. This information was included in each of the notices of complaint, as well as information on the specific bylaws that were allegedly breached, and notification that a fine may be imposed.
43. The evidence also shows the fines were not imposed until a reasonable period after the owner was notified and only when the strata council agreed to do so as shown in relevant strata council meeting minutes.
44. A key issue about the 2018 bylaw fines is the owner's assertion that she did not receive the related correspondence. In all other aspects, I find the strata properly followed the requirements of section 135 when it imposed the bylaw fines.

The owner's mailing address

45. The strata says at the time the owner purchased SL66, it was notified the owner would be residing in SL66. The owner does not expressly dispute this.
46. Section 61(1) of the SPA sets out ways the strata may provide notice and other records or documents required or permitted to be given to a person under the SPA. It distinguishes between persons who have "provided the strata corporation with an address outside the strata plan for receiving notices and other records and documents", and persons who have not (my emphasis). If an owner has not provided an address outside the strata plan, one approved method of notifying an owner is by mail to their strata lot.
47. I find the language of section 61(1) to be clear and unambiguous. Based on section 61(1), I find a person who wishes to receive notices, records or documents at an address outside the strata plan must expressly indicate to the strata what specific address they wish the strata to use.
48. There is no evidence before me to suggest the owner would not be residing in SL66 when she purchased it. Indeed, the owner's own submission is that she purchased SL66 for she and her family to use as a "secondary family home".
49. The owner says she did not receive any correspondence from the strata until February 2019, 1 year after she purchased SL66. She says the previous owner of SL66 had filed a "Change of Address Notification" with Canada Post. She says the most likely reason she did not receive correspondence from the strata was that all of her mail was redirected to the previous owner for that period. I do not agree for the reasons that follow.
50. While the owner provided a November 2019 letter from Canada Post confirming a Change of Address Notification was in place for the civic address of SL66 from February 2018 to February 2019, the letter does not confirm the owner's mail was redirected. Further, printouts of Canada Post's website provided by the strata state that where a person or business files a Change of Address Notification, that person's or business' mail is forwarded to the new address. This implies it is only the mail addressed to the individual or business that is forwarded, not all mail addressed to

the civic address. The correspondence in this dispute prior to March 2019 was addressed to the owner personally at the civic address of SL66. I cannot agree Canada Post redirected the owner's correspondence to the new address of the previous owner of SL66.

51. Here, I find the owner did not provide the strata with a mailing address outside the strata plan until March 2019. As such, I find it was reasonable and consistent with the SPA and bylaws, for the strata to mail correspondence to the owner at the SL66 address at least until March 2019, when the owner provided the strata with an address outside the strata plan.
52. I find nothing turns on the fact that, after being notified of the owner's outside mailing address in March 2019, 2 letters may have been addressed incorrectly. The letters related to the fines about late payment and failure to provide a Form K – Tenant's Undertaking (Form K), which I order reversed below.
53. For these reasons, I find that based on the circumstances and information available at the time the 2018 bylaw fines were imposed, the strata properly followed the requirements of the SPA when imposing fines totaling \$200, because the owner did not respond to the complaints.

The \$50 late payment fine imposed March 5, 2019

54. I find the \$50 late payment fine imposed March 5, 2019 was applied to the owner's account for SL66 without proper notification. The strata says the owner was notified by way of "AR letters" issued in 2018 and 2019 that a fine could be imposed for not paying strata fees, but I find this was not the case. I infer by "AR letters", the strata means letters sent from its property manager requesting payment of outstanding amounts.
55. Not all accounting letters were provided in evidence. However, there are no letters in evidence that show the strata complied with section 135 of the SPA before it imposed the March 5, 2019 \$50 fine. There are some "AR letters" in evidence but they state very different things. For example, a letter from the property manager

dated March 15, 2019 stated the account is “seriously in arrears” and that fines and interest “may have been applied” in accordance with section 135. This implies that fines may have been imposed without first granting the owner the opportunity to dispute the fine. There is also no mention of what bylaw had been breached.

56. Another example is a May 14, 2019 letter from the property manager stating an outstanding balance is due. The letter referred to an enclosed “ledger” for SL66 that shows charges incurred or imposed, payments received and the method of payment, and the outstanding balance, among other things. The letter set out options for payment and requested payment be made promptly. Specifically, the letter does not identify a bylaw was breached, nor does it provide advice that fines could be imposed.
57. A final example is a letter from the property manager dated September 12, 2019. The letter attached a copy of the “ledger” and requested the owner contact the property manager’s accounting department. The letter also explained what the owner can do to pay outstanding balances or apply credit balances shown on the “ledger”. Again, the letter does not identify a bylaw was breached nor advise the owner that fines could be imposed.
58. By issuing the letters I have described above, the strata has not complied with section 135(1) of the SPA for the reasons I have identified.
59. Even if the strata did properly notify the owner a fine could be imposed for late payment of strata fees and offer the owner a reasonable opportunity to respond, which I find it did not, there is no correspondence showing the strata notified the owner the fine had been imposed as required under section 135(2).
60. For these reasons, I find the \$50 fine imposed against the owner March 5, 2019 for late payment of strata fees must be removed from the owner’s account and I so order.

The \$100 Form K fine imposed May 7, 2019

61. The strata's correspondence dated March 25 and May 21, 2019 notified the owner of the complaint and imposed a fine, but did not indicate a bylaw contravention had occurred. Rather, the correspondence purported to impose a \$100 fine because the owner failed to comply with section 146(1)(b) of the SPA. I find the fine is invalid and must be removed from the owner's account for the following 3 reasons.
62. First, the strata did not notify the owner of any bylaw contravention as required under section 135.
63. Second, there is no mechanism in the SPA to impose fines for an owner's contravention of the SPA, such as not providing a Form K. (Which I note is a requirement of section 146(2) of the SPA and not section 146(1)(b) as stated in the letter).
64. Third, the strata's bylaw 4(1) in place at the time the owner purchased SL66 that is relevant to the Form K issue read:
- Within 2 weeks of becoming an owner, an owner must inform the strata corporation of the owner's name, strata lot number and mailing address outside the strata plan, if any.
65. Bylaw 4(1) did not require the owner to provide a copy of the Form K. It was not until November 23, 2018 that the strata's bylaws were amended to require an owner to provide a copy of a Form K for a strata lot that is rented out. While the requirement to provide a Form K under section 146(2) of the SPA still applied, since there was no related bylaw breach, there was no basis for a bylaw fine.
66. For these reasons, I find the \$100 Form K fine imposed May 7, 2019 is invalid and I order it removed from the owner's account.
67. In summary, I find the 2018 fines were properly imposed and the 2019 fines were not. The 2019 fines totaling \$150 are to be removed from the owner account and, subject to my finding of significant unfairness that follows, the 2018 fines totalling \$200 should stand.

Did the strata act significantly unfairly when it refused to reverse the imposed fines?

68. The owner requested a hearing with the strata council to discuss the imposed fines. The hearing was held in July 2019. No details of the hearing were provided, but I infer from the parties' submissions that the owner requested the fines be reversed and the strata declined to do so.
69. I find the owner's claim about the strata's lack of investigation into alleged unfounded bylaw complaints amounts to a claim that she was treated significantly unfairly.
70. The tribunal has jurisdiction to determine claims of significant unfairness because the language in section 164 of the SPA is similar to the language of section 123(2) of the CRTA (formerly section 48.1(2)), which gives the tribunal authority to issue such orders. (See *The Owners, Strata Plan LMS 1721 v. Watson*, 2018 BCSC 164 at paragraph 119.)
71. The courts and the tribunal have considered the meaning of "significantly unfair" in a number of contexts, equating it to oppressive or unfairly prejudicial conduct. *In Reid v. Strata Plan LMS 2503*, 2003 BCCA 128, the British Columbia Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith and/or unjust or inequitable.
72. The British Columbia Court of Appeal has also considered the language of section 164 of the SPA in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44. The test established in *Dollan* was restated in *The Owners, Strata Plan BCS 1721 v. Watson*, 2017 BCSC 763 at paragraph 28:

[28] The test under s. 164 of the Strata Property Act also involves objective assessment. [*Dollan*] requires several questions to be answered in that regard:

- a. What is or was the expectation of the affected owner or tenant?

b. Was that expectation on the part of the owner or tenant objectively reasonable?

c. If so, was that expectation violated by an action that was significantly unfair?

73. Applying the test to the facts before me, I find the owner's expectation was that the strata should accept she did not receive the bylaw fine correspondence and waive her bylaw fines based on her arguments opposing the bylaw complaints.

74. I find the owner's expectation was objectively unreasonable, given my finding the strata followed the requirements of the SPA and its bylaws when imposing the 2018 fines. For this reason, I find the strata's actions were not significantly unfair. I therefore dismiss the owner's claim of significant unfairness and find the 2018 fines of \$200 should stand.

75. I note section 135 of the SPA is in place to ensure an owner or tenant is treated fairly by a strata corporation. The strata's admission that it does not investigate bylaw violation complaints is concerning and likely incorrect, but it does not mean the strata would not have investigated the complaints if the owner had responded when she was first notified. It was up to the owner to regularly check her mail at SL66 or establish another method of receiving communication from the strata as set out in section 61, such as an outside mailing address or email address, in order to ensure her timely receipt of notices, records and documents from the strata.

TRIBUNAL FEES AND EXPENSES

76. 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 find the owner was partially successful and is entitled to reimbursement of one-half of the tribunal fees she paid, or \$112.50. I order the strata to pay the owner this amount. Neither party claimed dispute-related expenses, so I order none.

77. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the applicant owner.

ORDER

78. I order that within 14 days of the date of this decision, the strata must;

- a. Remove the 2019 fines totalling \$150 from the owner's account for SL66, and
- b. Pay to the owner \$112.50 for tribunal fees.

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

80. 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.

81. 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, a party 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.

J. Garth Cambrey, Vice Chair