



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW9 v. Berezan*, 2020 BCCRT 284

B E T W E E N :

The Owners, Strata Plan NW9

APPLICANT

A N D :

GRANT BEREZAN and ADELE ACRECH

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicant, The Owners, Strata Plan NW9 (strata), is a strata corporation. The respondents, Grant Berezan and Adele Acrech (owners), own strata lot 15 in the strata.
2. Mr. Berezan and the strata were parties in a previous dispute, *Berezan v. The Owners, Strata Plan NW 9*, 2019 BCCRT 438. Mr. Berezan sought an order that he be allowed to keep his storage shed that stood on strata common property. In its April 10, 2019 decision, the Civil Resolution Tribunal (tribunal) found the shed was an unauthorized significant change in the use or appearance of common property and in breach of a bylaw. The tribunal declined to make Mr. Berezan's requested order. Mr. Berezan subsequently dismantled the shed.
3. This dispute is about fines for bylaw and rule contraventions in connection with the storage shed. The strata now claims \$1,450 in fines for breaches of strata bylaw 5(1)(f) and rule 9, plus interest of 2% per month. I will discuss these alleged contraventions in further detail below.
4. The owners disagree that they should pay. They say the strata did not comply with its bylaws or the *Strata Property Act* (SPA) in levying the fines. The owner also says they should not be responsible for fines incurred while waiting for the tribunal to issue its April 10, 2019 decision.
5. A strata council member represents the strata. The owners are self-represented.

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 questions of the parties and witnesses and inform itself in any other 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.

ISSUES

10. There are two issues before me:
 - a. Did the owners breach bylaw 5(1)(f) or rule 9?
 - b. Must the owners pay \$1,450 in fines and any interest?

BACKGROUND

11. In a civil claim such as this, the applicant strata 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.
12. I begin by summarizing the relevant portions of the tribunal's April 10, 2019 decision.

13. The owners purchased their strata lot in December 2016. In March 2017 Mr. Berezan decided to build a storage shed on common property for his personal use. He completed the shed in May 2017.
14. On May 4, 2017, a former strata council president advised Mr. Berezan that 2 owners had complained about the shed. Then, on May 16, 2017, the strata sent a letter to Berezan stating that it had received complaints from other owners about the shed.
15. Mr. Berezan applied for dispute resolution with the tribunal to keep the shed. The strata did not file a counterclaim at the time. Mr. Berezan did not remove the shed while he waited for the tribunal's decision.
16. In its April 10, 2019 decision, the tribunal determined the shed was a significant change in the use and appearance of common property. Under SPA section 71, this type of change must be approved by a resolution passed by a 3/4 vote at an annual or special general meeting. The tribunal found that no such vote took place. As such, the tribunal concluded that the shed contravened SPA section 71.
17. The tribunal also found the shed contravened bylaw 6(1) as the owner failed to obtain the strata's written approval for the shed. I will discuss the strata bylaws and rules in greater detail below.
18. Finally, the tribunal decided that the strata was entitled to require Mr. Berezan to remove the shed. The tribunal also found that the strata's actions did not result in significant unfairness to Mr. Berezan.
19. In the current dispute, the parties agree that Mr. Berezan dismantled the shed on April 13, 2019.

POSITIONS OF THE PARTIES

20. The strata claims \$1,450 in fines for breaches of strata bylaw 5(1)(f) and strata rule 9. The strata also claims contractual interest. The fines are broken down as follows:

- a. \$200, comprised of \$100 for August and September 2019,
 - b. \$150, comprised of 2 fines of \$50 and \$100 for October 2019,
 - c. \$1,000, comprised of \$200 for November, December, January, February, and March 2019, and
 - d. \$100 for April 2019.
21. The owners say the strata did not comply with the SPA in imposing the fines as they are too high. The owners also say they should not be responsible for fines incurred while waiting for the tribunal to issue its April 10, 2019 decision and disagree that they owe interest.

EVIDENCE AND ANALYSIS

Issue #1. Did the owners breach bylaw 5(1)(f) or rule 9?

22. The evidence and submissions refer to the strata's bylaws and rules. There is no dispute that the applicable strata bylaws are the Standard Bylaws in the SPA.
23. In the April 10, 2019 decision, the tribunal found the shed contravened bylaw 6(1) at paragraphs 19 and 41. Standard bylaw 6(1) says an owner must obtain written approval from the strata before making an alteration to common property.
24. The fines at issues are for contraventions of standard bylaw 5(1)(f) (which the strata sometimes referred to at "Strata Bylaw #5" in arguments) and rule 9.
25. Standard bylaw 5(1) says an owner must obtain written approval from the strata before making alterations to a strata lot in certain circumstances. Standard bylaw 5(1)(f) specifies the owner must obtain such approval before altering a strata lot that involves common property located within the boundaries of a strata lot.
26. Under SPA section 125, the strata may make rules to govern the use of common property. It is undisputed that strata rule 9 says that common property may not be used for personal storage.

27. I find that the owners breached rule 9 by using common property for personal storage. In the April 10, 2019 decision, the tribunal found the shed was on common property at paragraph 16. The tribunal also noted that Mr. Berezan acknowledged he used the shed for personal storage at paragraph 20. In any event, the owners do not dispute they breached rule 9.
28. I am not satisfied, however, that the owners breached strata bylaw 5(1)(f). The strata relies on the tribunal's April 10, 2019 decision to support its claim. In my view this decision supports the opposite conclusion that neither bylaw 5(1) or bylaw 5(1)(f) were breached.
29. The tribunal decided that the owners breached bylaw 6(1) and not 5(1) or 5(1)(f). As noted above, bylaw 6(1) is about obtaining permission from the strata before altering common property. Bylaw 5(1) is about obtaining permission from the strata before altering a strata lot. The tribunal also found that the shed was on common property and not a strata lot, as noted above. The evidence before me does not contradict this finding. I conclude that the owners did not breach bylaw 5(1) or 5(1)(f).
30. With those findings, I now turn to the fines at issue.

Issue #2. Must the owners pay \$1,450 in fines and any interest?

31. In a June 30, 2018 letter, the strata advised the owners that the strata council had decided to enforce rule 9, which it quoted for reference. The strata wrote that the owners had to remove the shed by July 31, 2018, otherwise it would fine the owners' strata lot account \$100 monthly.
32. The strata says this letter also warned the owners that they had breached bylaw 5(1)(f), but I disagree as the letter does not mention any bylaws or bylaw infractions.
33. In early August 2018 Mr. Berezan filed his application for dispute resolution in the previous tribunal proceeding. The strata held a meeting on August 8, 2018 and the owners attended. The strata decided that it would not seek payment of the fines if

the tribunal found in the owners' favour. However, if the owners were unsuccessful, the strata would seek fines from the date of July 31, 2018 onwards.

34. The strata next sent a letter on September 15, 2018, addressed only to Mr. Berezan. The strata referred to the June 30, 2018 letter and demanded payment of \$100 fines for August and September 2018, for a total of \$200. The strata advised this fine was for the owners' contraventions of rule 9 and "bylaw 5(1)". The strata also wrote that the owner should pay the fines now to avoid interest at 2% per month. However, if the owner succeeded at the tribunal, the strata would refund the fines.
35. The owners did not pay the fines and the strata subsequently levied further fines as detailed above, totaling \$1,450.
36. The owners' chief argument is that they should not be fined for the time they waited for the tribunal to make its April 10, 2019 decision. I disagree, as the owners had the option of dismantling the shed earlier if they were concerned about the possibility of the fines. Instead, the owners chose to assume the benefits and burdens of keeping the shed.
37. The owners say the fines are impermissible because they each exceed the maximum fines allowed for rule contraventions under the strata bylaws. For the following reasons, I agree.
38. SPA section 132(1) says the strata must set out the maximum amount for a fine in its bylaws. Standard bylaw 23(b) says the strata may fine an owner a maximum of \$10 for each contravention of a rule. Standard bylaw 24 says the strata may impose a fine every 7 days for a continuing contravention of a rule or bylaw.
39. I find that all the imposed fines exceed the maximum permitted by the bylaws. The strata could only fine the owner \$10 at most for each rule contravention, and another \$10 every 7 days. Instead the strata fined varying amounts over this limit for each month, ranging from \$100 in August 2018 to \$200 from November 2018 to March 2019.

40. The strata takes somewhat inconsistent positions on what the fines are for. In its application for dispute resolution, the strata says the fines are for the owners' breaches of both strata bylaw 5(1)(f) and rule 9. However, the strata also says the fines are entirely for the owners' breaches of bylaw 5(1)(f). Standard bylaw 23(a) provides a \$50 fine limit for each bylaw infraction. The strata says it fined the owner under bylaw 23(a) rather than bylaw 23(b), "and not both". It argues only the \$50 limit for infractions applies.
41. As noted above, I have found that owners did not breach bylaw 5(1) or 5(1)(f). To the extent the fines are for bylaw breaches I would dismiss the strata's claim.
42. Even if I am wrong and such breaches were proven, the strata cannot fine a person for a bylaw contravention unless it first complies with the requirements of SPA section 135(1). Those requirements include giving the owners the particulars of the contravention complaint in writing and a reasonable opportunity to respond, including a hearing if requested. The strata must strictly follow the SPA section 135 requirements before fines can be imposed: *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.
43. I find the June 30, 2018 letter failed to provide sufficient particulars or an opportunity to respond. The letter did not mention any breach of any bylaw and specifically stated the strata was writing to enforce strata rule 9. The letter also gave the owners no opportunity to respond to the complaint, as required under SPA section 135(1)(e). Their only option was to remove the shed.
44. If the strata fails to comply with SPA section 135, it is possible for it to rectify or cure its noncompliance: *Cheung v. Strata Plan VR 1902*, 2004 BCSC 1750. In *Cheung* the strata reversed the fines that were prematurely imposed and subsequently fulfilled the requirements of SPA section 135(1).
45. I find that the strata did not cure its noncompliance. The strata's September 15, 2018 letter did not reverse the fines and instead demanded payment for Mr. Berezan to avoid further consequences. It is also unclear if Ms. Acrech received this letter as it is not addressed to her.

46. What is the appropriate order? The strata says the fines were imposed under bylaw 23(a) for bylaw infractions. I have found the owners did not breach bylaw 5(1) or 5(1)(f), and there is no indication that the fines are for breaches of bylaw 6(1). Given these circumstances, I dismiss the strata's claims for \$1,450 in fines and any interest on this amount. I also note that the SPA does not permit interest to be charged on fines, although interest under the *Court Order Interest Act* applies. See, for example, *The Owners, Strata Plan BCS 2103 v. Zeng*, 2019 BCCRT 1236 at para. 71, which is not binding but applicable.

TRIBUNAL FEES AND EXPENSES

47. 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. I find the owners are the successful party. They did not pay any tribunal fees or claim dispute-related expenses, so I order none.

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

ORDER

49. I dismiss the strata's claims and this dispute.

David Jiang, Tribunal Member