



Civil Resolution Tribunal

Date Issued: April 16, 2020

File: ST-2019-007634

Type: Strata

Civil Resolution Tribunal

Indexed as: *Africh v. The Owners, Strata Plan EPS3495*, 2020 BCCRT 415

B E T W E E N :

MICHAEL AFRICH

APPLICANT

A N D :

The Owners, Strata Plan EPS3495

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This is a dispute about a bylaw fine.
2. The applicant, Michael Africh, is a former tenant in a strata lot in the respondent strata corporation, The Owners, Strata Plan EPS3495 (strata). The owner of the strata unit (owner) was the applicant's landlord. The owner is not a party in this dispute.

3. The applicant disputes a bylaw fine imposed for having more than one visitor parking pass. The applicant argues that he did not breach the bylaw and the strata failed to conduct a hearing before imposing the fine.
4. The strata says that the applicant breached the bylaw and it properly investigated the complaint in accordance with the *Strata Property Act* (SPA). The strata asks that the applicant's claim be dismissed.
5. The applicant is self-represented and the strata is represented by a council member.
6. For the reasons that follow, I find that the applicant does not have standing to contest this bylaw fine and this dispute is dismissed.

JURISDICTION AND PROCEDURE

7. 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.
8. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.

9. 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.
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, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

11. The issues in this dispute are:
 - a. Does the applicant have standing to dispute the bylaw fine?
 - b. If so, did the applicant breach a bylaw by possessing two visitor parking passes?
 - c. If the applicant breached the bylaw, did the strata impose the fine in accordance with section 135 of the SPA?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant 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.

Bylaws

13. The applicable strata bylaws were registered at Land Title Office on December 14, 2017, subject to amendments that do not relate to this dispute.
14. Bylaw 42.3 says that one visitor parking permit will be issued to each strata lot, and the permits remain the property of the strata.

Background

15. The strata says that the applicant possessed and used two visitor parking passes in violation of bylaw 42.3. The applicant says that he only had one visitor parking pass.
16. The strata issued a notice of bylaw infraction on to the owner on May 28, 2019 which stated that the parking pass had “#2” written on it. The notice stated the applicant was in possession of a second parking pass in violation of bylaw 42.3.
17. The applicant says that his girlfriend borrowed a blank pass from a resident in a different apartment on one occasion because the applicant was not home. The applicant says that his girlfriend parked in the visitor parking and she displayed the blank pass.
18. The applicant states a strata concierge employee wrote “#2” on the blank pass. The applicant states that he initially thought the strata employee wrote “#2” on the blank pass to indicate that this pass referred to indicate that it related to tower 2.
19. The applicant states that the blank pass was returned shortly after the concierge wrote “#2” on it.
20. The strata issued a \$200 fine on July 4, 2019.
21. The strata held a hearing on September 12, 2019 and the strata upheld the \$200 bylaw fine.

Does the applicant have standing to dispute the strata fine?

22. The legal term “standing” in the context of the tribunal, means the right of an applicant to bring a dispute for resolution by the tribunal.
23. The issue of standing was not raised by either party in their pleadings. However, both parties were given the opportunity to provide additional submissions and evidence to address this issue. Both parties provided additional submissions which I have considered.

24. For the reasons set forth below, I find that the applicant does not have standing in this dispute.
25. Section 130 of the SPA states that a strata corporation can issue a fine for a bylaw violation by a tenant, or a tenant's guest, against the tenant. Section 131 of the SPA states that a strata corporation can collect a fine assessed against the owner from the tenant or the owner. If the fine is collected from the owner, then the tenant owes the owner reimbursement.
26. In this matter, the applicant says the bylaw fine was issued against him directly. The strata says the fine was issued against the owner of the strata unit. However, all of the documents provided by the parties indicate that the bylaw fine was issued against the owner and not the applicant.
27. The notice of infraction issued by the strata on May 28, 2019, the decision imposing the bylaw fine dated July 4, 2019 and the decision after the hearing dated September 12, 2019 were all addressed to the owner, with copies sent to the applicant. The strata provided the owner's strata account records which showed the \$200 bylaw fine assessed against the owner's strata lot account on July 4, 2019.
28. Based on the evidence provided, I find that the bylaw fine was issued against the owner and not the applicant.
29. This tribunal has previously decided that a party does not have standing to make a claim relating to the interests of a non-party (*See, Action Rooter Ltd. v. Alice Chen (dba Beaconsfield Inn)*, 2020 BCCRT 135 at para. 15). In that matter, there was a dispute between a plumbing contractor and a hotel manager about plumbing services provided to the hotel. The tribunal determined that the claim related to a dispute between the plumbing contractor and the non-party hotel, not to the hotel manager. Accordingly, the tribunal held that the hotel manager did not have standing because she did not have a personal interest in the matter. Although this decision is not binding in this matter, I agree with the reasoning and apply it.

30. In this matter, since the bylaw fine was issued to the owner and not the applicant, I find that the applicant does not have a sufficient interest in the alleged bylaw infraction to challenge the fine.
31. There is an issue about whether the strata complied with SPA by fining the owner the tenant's conduct. As stated above, section 130 of the SPA states that a bylaw fine based upon a tenant's conduct must be imposed against the tenant rather than the owner. However, I do not find it necessary to make a determination whether the fine was properly assessed against the owner pursuant to section 130 of the SPA since the owner is not a party to this dispute.
32. I have also considered whether the applicant has standing to challenge this bylaw fine because the applicant claims that he in fact paid the fine. For the reasons stated below, I find that the applicant does not.
33. Both parties state that the applicant did not pay the bylaw fine directly to the strata. The strata provided a copy of a \$200 cheque from the owner dated September 30, 2019. The strata's account records show that the \$200 payment was credited to the owner's strata lot account on October 3, 2019 for payment of the bylaw fine.
34. The applicant says that he paid the fine to the owner of the strata unit on July 22, 2019 and the applicant says that the owner said that she would pay that amount to the strata right away. The applicant says that he could not pay the strata fine directly to the strata because they would not communicate with him.
35. The applicant says that he needed to pay the fine to the owner in July 2019 because he wanted to have his strata hearing in a timely manner. The applicant also says that he wanted to avoid late fees. The applicant also said that he needed to pay the strata fine or it would have been deducted from his deposit when he ended his tenancy.
36. Although I am satisfied that the applicant paid the owner \$200 for the bylaw fine, I am not satisfied that the applicant has proved that he had an obligation to pay the bylaw fine to the strata. Section 131 of the SPA states that a tenant must reimburse

an owner if the owner pays a bylaw fine to the strata corporation for a bylaw fine assessed against the tenant. However, the SPA does not require a tenant to reimburse an owner for a bylaw fine assessed against the owner, as in this matter.

37. If the applicant had a contractual or residential tenancy obligation to reimburse the owner for the bylaw fine outside of the SPA, then such a claim must be resolved against the owner. However, I will not make any findings against the owner in this matter as she is not a party to this dispute.

38. For the above reasons, I find that the applicant does not have standing to dispute the bylaw fine and I dismiss this dispute.

39. Because of my finding, I will not analyze whether the applicant breached the bylaw.

TRIBUNAL FEES AND EXPENSES

40. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful, I find he is not entitled to any reimbursement of tribunal fee or expenses.

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

ORDERS

42. I dismiss the applicant's claims, and this dispute.

Richard McAndrew, Tribunal Member