



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR 939 v. Longine Properties Ltd.*, 2020 BCCRT
552

B E T W E E N :

The Owners, Strata Plan VR 939

APPLICANT

A N D :

LONGINE PROPERTIES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. The respondent, Longine Properties Ltd. (owner), owns 2 residential strata lots, numbers SL1 and SL8, in the applicant strata corporation, The Owners, Strata Plan VR 939 (strata). This is the second dispute between the parties. In the first dispute, the tribunal member found that the owner was renting out the strata lots in contravention of the bylaws. The strata says that the owner continues to rent out the strata lots in violation of the strata's bylaws.
2. In relation to SL1, the strata says that the tribunal member stated in the first decision that it could file a separate dispute for any fines accruing after August 10, 2018, which was the date of the previous Dispute Notice. The strata requests \$8,500 in fines subsequently imposed relating to SL1 because the strata says it continued to be occupied until March 2019.
3. The strata says that SL8 has also been occupied by renters and requests \$11,000 in bylaw violation fines. In total the strata requests \$19,500 in fines for the bylaw violations. The strata is represented by a strata council member.
4. The owner says that it is allowed to use its strata lots for short term periods and that it is allowed to rent its strata lots temporarily when on holiday. It says that SL1 was under renovation and nobody was staying there between September and November 2018. The owner also says that the strata did not follow proper procedure in deciding to fine it. It further says that employees or relatives of the owner occupied the strata lots and this is allowed under the strata bylaws. The owner is represented by a business contact.

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 in writing, by telephone, videoconferencing, or a combination of these. In some respects, this dispute amounts to a "it said, it said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore 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.
9. It is important to note that the tribunal member made several determinations in *The Owners, Strata Plan VR 939 v. Longine Properties Ltd.*, 2019 BCCRT 740 (the previous decision). Any issue determined in that decision is *res judicata* (already decided) and therefore not something I have jurisdiction to consider. The tribunal member determined that:
 - a. The owner did rent out the strata lots contrary to the bylaws. However, for SL1 she limited the fines imposed to the date of the Dispute Notice, which was August 10, 2018. She found that the strata followed the *Strata Property Act* (SPA) section 135 requirements and that continuing fines could be imposed without further notice. She specifically stated that she had not made

- a decision for rental fines after August 10, 2018 and noted that the parties could file a separate dispute about fines after that date.
- b. For SL8, the vice-chair decided that the strata was not entitled to impose fines before October 26, 2018, which was after the date of the Dispute Notice. She ordered that the strata remove fines from before October 26, 2018 from the SL8 strata lot account. The tribunal member did not specifically make a finding on whether the strata followed proper procedure in deciding to impose fines under the *Strata Property Act* (SPA) as of October 26, 2018.
 - c. Therefore, the issues before me are whether the strata could impose fines after the August 10, 2018 Dispute Notice for SL1 and after October 26, 2018 for SL8.

ISSUES

10. The issues in this dispute are:
 - a. Was the owner entitled to impose fines against SL1 after August 10, 2018?
 - b. Did the strata follow proper procedure under the SPA in imposing fines on the owner for renting out SL8 as of October 26, 2018?
 - c. Was the strata entitled to impose fines against SL8 after October 26, 2018?

EVIDENCE, FINDINGS AND ANALYSIS

11. In a civil dispute such as this, the applicant must prove its claims. It bears the burden of proof on a balance of probabilities.
12. While I have reviewed all of the material provided, I have only commented below on the evidence and submissions necessary for this decision.

Rental Bylaws

13. As pointed out in the previous decision, on September 29, 2000 the strata replaced its previous rental restriction bylaw by filing an amendment with the Land Title Office

(LTO). The amended bylaw says the number of strata lots that may be leased is limited to 1. The bylaw also says owners may rent their strata lots temporarily while on holiday, subject to the strata council's right to rule that a holiday rental has exceeded the "temporary" exception.

14. The strata filed a subsequent amendment with the LTO on October 15, 2003 (registration number #BV422316). That amendment changed the number of strata lots to be leased from 1 to none.
15. The strata filed another bylaw amendment with the LTO on May 20, 2011. That amendment says the fine for a contravention of bylaw #BV422316 prohibiting rental of a residential strata lot is \$500.00 for each contravention, and the frequency of this fine shall be every 14 days.
16. At a Special General Meeting on June 6, 2016, a 3/4 vote resolution to remove all rental restrictions from the bylaws did not pass. Emails in evidence show that the resolution was put on the agenda at the request of the owner.
17. Under section 141(2) of the SPA, a strata corporation may pass a bylaw restricting or prohibiting the rental of residential strata lots, as the strata has done in this case. While in some instances a Rental Disclosure Statement may override a rental prohibition bylaw, there is no suggestion before me that such an exemption applies to the owner's strata lots.

Was the owner entitled to impose fines against SL1 after August 10, 2018?

18. In the previous decision, the tribunal member acknowledged that the strata had to prove that the owner was violating the bylaws by renting out the strata lots. She found that the owner admitted occupancy of the strata lots and failed to produce any support for its continued assertions that the occupants were employees or affiliates of the owner. She noted that it was open to the owner to provide payroll records or other documents to prove its defence, but it had not done so. She pointed out that the owner could also have provided records to show when these alleged employees were there, and when they were not, to establish that the occupancies were not

continuous. She indicated that this would also support the owner's assertion that these occupancies were not rentals. She said that the owner had not done so.

19. The tribunal member found that given the owner would have access to documents proving employment by the occupants, she made an adverse inference based on the fact that no such records were provided. She also noted that it would be almost impossible for the strata to obtain conclusive proof of rentals, such as tenancy agreements. She then found that the strata was entitled to impose fines up until the August 10, 2018 Dispute Notice but left it open to the parties to bring forward another dispute and evidence for the period after that.
20. On this dispute the strata provided an affidavit from T, who owns the strata lot above SL1. She said she observed the same individual living in strata lot 1 from August 2016 until March 2019. She knew him to say hello to and saw him on many occasions through the 3 years he lived in SL1. She also saw him park in the SL1 spot from 2017 and provided photos of him and his car. She says that the occupant of SL1 moved out at the end of March 2019 because she no longer saw the car or him again.
21. The owner says that an employee lived in SL1 for a short period of time and no rent was collected. The owner did not name the employee or provide a statement from him. The owner also did not specify when the employee stayed in the unit. I find the owner's evidence on this dispute has the same lack of information which was noted by the tribunal member in the previous dispute. Once again, the owner did not provide payroll records or other documents. It also did not provide records to show when this alleged employee was there, and when he was not, to establish that the occupancies were not rentals.
22. However, the owner did argue that the SL1's occupancy was not continuous, which would suggest a long-term rental, because renovations were done on the unit.
23. The owner provided notarized witness statements from two parties. Mr. H says that he worked as a contractor and was involved in the SL1 upgrades between September 2018 until November 2018. The second witness statement was from a

representative of a home renovation company who said he managed upgrades on SL1 from September 2018 until November 2018.

24. The owner says the upgrades included flooring, painting and cabinet work. It says that it was not possible for somebody to live in SL1 during these renovations. Neither witness said what upgrades were actually done, or whether anybody lived in the strata lot during the renovations. I do not accept the witness statements as proof SL1 was not occupied during the renovations
25. The owner has provided photos of SL1 showing that it has been renovated and is empty. The photos do not indicate when they were taken. The strata is not disputing that SL1 has been empty since March 2019. Therefore, pictures of the empty strata lot do not persuade me that SL1 was empty during the time period in question. I prefer T's evidence that SL1 was continuously occupied from 2016 until March 2019, because she saw the occupant during this time period. Her affidavit provides specific information and dates compared to the evidence provided by the owner.
26. The owner also suggests that it was entitled to rent out its strata lot while it was on holiday. I note that the owner, which is a company, has not explained how it occupied the strata lot or went on holiday. If the owner is suggesting that a director or owner of the company lived in SL1 and therefore was entitled to rent it out while on holiday, it has provided no evidence of this. In fact, this submission is contrary to the owner's other submission that SL1 was occupied by an employee and not rented out at all. I do not accept the owner's argument on this point.
27. Base on the evidence, I find that SL1 was rented out from August 2018 until March 2019 and therefore the strata is entitled to the \$8,500 in fines for the contravention of the bylaws.

Did the strata follow proper procedure in imposing fines on the owner for renting out SL8?

28. The tribunal member decided that the strata could not impose fines before October 26, 2018. She did not make a determination on whether the strata followed the correct procedure under section 135 of the SPA after that date. She did note though

that the September 10, 2018 letter said the owner had 21 days to provide a written answer to the bylaw violation complaint, or to request a hearing. The owner requested a hearing, which was held on October 23, 2018. The hearing minutes indicated that the strata council heard submissions from the owner's representative, and subsequently agreed to begin imposing fines for the SL8 rentals. The strata wrote an October 26, 2018 letter to the owner setting out this decision, including the decision to "commence fining."

29. I have reviewed the evidence and find that the strata did fulfill the requirements of SPA section 135. It issued the September 10, 2018 warning letter indicating that the owner was in violation of the rental restriction bylaw. It held the hearing and followed proper procedure before it started imposing fines. Therefore, if the owner was in violation of the rental bylaws, the strata was entitled to begin fining as of October 26, 2018.

Was the strata entitled to impose fines against SL8 after October 26, 2018?

30. The evidence shows that the owner's representative confirmed at an Annual General Meeting on August 29, 2018 that SL8 was occupied. During the October 23, 2018 hearing the owner stated that the occupants of SL8 were employees.
31. In its evidence, the owner says that the previous employee occupant moved out and a relative moved in during the month of December 2018. The owner did not provide any evidence of anybody moving in or out of SL8. Further, the owner did not explain how it qualifies for a family exemption under SPA section 142 and Regulation section 8.1 which say that a bylaw restricting rentals does not apply to prevent the rental of a strata lot to a member of the owner's family. The owner is a company. Regulation section 8.1(1)(b) says a spouse, parent or child of the "owner" is exempt from rental restrictions but a company does not have a spouse, parent or a child. There is no exception in the legislation for corporate owners.
32. The strata provided a notarized statement from S, who lived in SL8. I first note that the notarized statement is dated January 2019 which does not make sense given the statement's contents which specifically state that the residency went on until

October 2019. I infer that the date of the statement is an error and it should read January 2020.

33. S said that the residency of SL8 was only supposed to be for a short period of time but that he and his wife resided in the strata lot from December 2018 until the middle of October 2019. S stated that he and his wife are relatives of the owner but does not say who exactly they are related to or how. I also again note that the owner is a company so it is unclear how S can be related to the company and, as noted above, under the legislation there is no exemption for company relatives.
34. The owner also does not specify who S and his wife are related to, which again should be information the owner could easily provide.
35. Another owner in the building, G, says that people moved into SL8 in the latter half of 2018 and she got to know the woman who she refers to by her first name. She said that during 2018 she saw the woman and her husband carrying out regular activities such as getting the mail, bringing groceries in, and coming and going from their cars. She says she further got to know the occupants in May 2019 because there was a water leak coming into her strata lot from SL8's strata lot. G stated that she thought these occupants moved out in November 2019.
36. T's affidavit, referred to above, states that SL8 was occupied by the same people from July 2018 onward. T also refers to the woman occupant by the same first name as G. Although the owner says S and his wife only moved in December 2018 and are relatives of the owner, T's affidavit says that in June 2018 she saw the previous SL8 occupants move out. On July 3, 2018 T saw several people enter SL8. She says that S and his wife moved into SL8 around July 2018 and she saw them frequently around the strata.
37. T says that S's wife told her on December 6, 2019 that they were moving out and she saw them move their furniture out on December 8, 2019. She says that she said good-bye to them.

38. The owner previously said that the person occupying SL8 was an employee. The owner did not provide proof the occupant was an employee. It now states that there was a new occupant of SL8 as of December 2018 who is a family member, even though the evidence shows that the same people occupied SL8 from July 2018 onward.
39. Just as the owner did not provide evidence that would have been available to it that the occupant of SL8 was an employee, it also has not provided evidence supporting S's claim that they are family members.
40. Based on the evidence, I conclude that S and his wife occupied SL8 from July 2018 until December 2019 and the owner has not shown that either was an employee or family member of the owner. Further, the owner has not addressed the definition of family member under the legislation and whether it can even apply to a corporate owner. Therefore, the owner is not entitled to an exception under the bylaws.
41. I find that SL8 was rented out and the strata is entitled to the fines it imposed from November 1, 2018 until December 8, 2019. Therefore, the strata is entitled to the \$11,000 fines claimed. I note that in its submissions the strata requested fines above the amount claimed in the September 5, 2019 Dispute Notice. As indicated in the previous decision, the tribunal member declined to order more than was requested in the Dispute Notice. She stated that, as reasoned in paragraph 60 of *The Owners, Strata Plan VR 484 v. Lawetz*, 2017 BCCRT 59 (*Lawetz*), once the tribunal proceeding was commenced, the issue of whether there had been a bylaw violation was a matter for the tribunal to decide. Relying on this decision, the tribunal member therefore declined to order fines beyond the date of the Dispute Notice.
42. I also note that the reasoning in *Lawetz* is not binding on me, but I find it persuasive and rely on it. I therefore conclude that the strata's claim for outstanding fines is capped at the \$11,000 amount set out in the Dispute Notice.

TRIBUNAL FEES, EXPENSES, AND INTEREST

43. Under section 49 of the Act, and the tribunal's rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The strata was successful in this dispute and therefore is entitled to have its tribunal fees or \$225 reimbursed. There was no claim for expenses.
44. The strata requests pre-judgement interest based on the *Court Order Interest Act* (COIA). The interest on the \$8,500 for SL1, which accumulated from the date of the previous Dispute Notice, or August 10, 2018, until the date of this decision, equals \$278.40. The interest on the \$11,000 for SL8 from November 1, 2018 until the date of this decision equals \$324.02. This totals \$602.42.
45. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

DECISION

46. I order that within 30 days of this decision, the owner pay the strata a total of \$20,327.42:
 - a. \$8,500.00 for bylaw violations regarding SL1
 - b. \$11,000.00 for bylaw violation fines regarding SL8.
 - c. \$602.42 in pre-judgement interest under the COIA.
 - d. \$225.00 for tribunal fees.
47. The strata is also entitled to post-judgement interest under the COIA.
48. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia (BCSC), a validated copy of the order which is attached to this decision. Once filed, a tribunal order has the same force and effect as a BCSC order.

49. 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.

Kathleen Mell, Tribunal Member