



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Rishiraj v. The Owners, Strata Plan LMS 1647*, 2020 BCCRT 593

B E T W E E N :

NEETU RISHIRAJ

APPLICANT

A N D :

The Owners, Strata Plan LMS 1647

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicant, Neetu Rishiraj (owner), is a leasehold tenant of a residential strata lot in the respondent leasehold strata corporation, The Owners, Strata Plan LMS 1647 (strata).
2. For clarity, I note the definition of “owner” under section 1(1) of the *Strata Property Act* (SPA), includes a leasehold tenant. Therefore, there is no issue of whether the

owner has standing to bring this dispute before the Civil Resolution Tribunal (tribunal). The owner is self-represented, and the strata is represented by a strata council member who is also a lawyer.

3. The owner says the strata improperly imposed a \$100 bylaw fine for alleged contravention of its "Moving In/Out" bylaw. The owner seeks an order that the fine be reversed.
4. The owner also claims he was harassed and bullied by one of the strata council members. As I discuss below, I refuse to resolve the owner's allegation of harassment and bullying.
5. The strata says it has "waived" the \$100 fine and removed it from the strata's financial records. The strata says this despite its argument that the owner failed to provide any factual basis that he was improperly fined and never expressly denied he contravened the bylaw. The strata also suggests the owner is out of time to bring his claim that the bylaw fine was improperly imposed. The strata asks that the owner's claim be dismissed.
6. For the reasons that follow, I dismiss the owner's claim about the bylaw fine and, as noted, I refuse to resolve his claim of harassment and bullying. However, I order the strata to reimburse the owner ½ of his tribunal fees or \$112.50.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the 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 in writing, by telephone, videoconferencing, email, 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.

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. 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 involve issues not within the tribunal's jurisdiction may be amended to remove the issues that are outside the tribunal's jurisdiction.
11. 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

Preliminary Issues

Limitation Act

12. In its dispute response, the strata says the owner has waited more than 2 years to bring his bylaw fine dispute before the tribunal. The owner did not address the issue, but I am advised by the tribunal case manager that the limitation period issue was raised with both parties during facilitation. For the reasons that follow, I find the owner is not out time to bring his bylaw fine claim to the tribunal.
13. Section 13 of the CRTA says the *Limitation Act* (LA) applies to the tribunal. The LA defines a claim to mean a claim to remedy an injury, loss or damage that occurred as a result of an act or omission. The LA applies separately to each claim.
14. Section 6 of the LA says the basic limitation period is 2 years, and that a claim may not be started more than 2 years after it is discovered.

15. Section 8 of the LA says that, except for special situations referred to in sections 9 to 11 which do not apply here, a claim is discovered by a person on the first day on which the person knew or reasonably ought to have known all of the following:
- a. that injury, loss or damage had occurred;
 - b. that the injury, loss or damage was caused by or contributed to by an act or omission;
 - c. that the act or omission was that of the person against whom the claim is or may be made;
 - d. that, having regard to the nature of the injury, loss or damage, a court (or tribunal) proceeding would be an appropriate means to seek remedy for the injury, loss or damage.
16. The evidence shows the subject bylaw fine was first imposed by the strata against the owner in July 2017 when the strata wrote to the owner about the alleged infraction. Based on the overall evidence and submissions I find the \$100 bylaw fine was incorrectly imposed on July 4, 2017, the same date the strata wrote to the owner about the alleged infraction. The strata's property manager later acknowledged the fine was imposed in violation of section 135 of the SPA. See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.
17. The evidence also shows the strata corrected its error by reversing the fine and issuing a new letter to the owner on August 15, 2017, giving the owner 14 days to respond, in compliance with section 135. See *Cheung v. The Owners, Strata Plan VR1902*, 2004 BCSC 1750.
18. The owner replied on August 27, 2017 but did not request a hearing. A September 1, 2017 letter from the strata, which the owner says he did not receive until February 2018, says the strata advised the owner it had considered the owner's response but declined to reverse the \$100 fine.

19. Based on these facts, I find the owner could not have reasonably discovered his bylaw fine claim until September 1, 2017 at the earliest, when the strata notified the owner the fine had been re-imposed.
20. Given the Dispute Notice for this dispute was issued on August 13, 2019, within 2 years of the owner's earliest date of discovery, I find the owners bylaw claim is not out of time under the LA.

Harassment and Bullying

21. For the following reasons, I refuse to resolve the owner's claims for harassment and bullying.
22. First, although the owner alleges that he was harassed and bullied by a strata council member, he did not request a remedy for that. His only request for resolution was that the \$100 bylaw fine be removed from his account.
23. Second, the owner did not name the strata council member he alleges harassed and bullied him as a respondent in this dispute. Therefore, the council member has not had the opportunity to respond to the owner's allegations. I find it would not be in the interests of justice and fairness for me to make an order against a non-party. I would reach the same conclusion, for the same reasoning, if the strata council member was acting strictly in their capacity as an owner, as the strata suggests.
24. However, even if the council member was a named respondent, I would refuse to resolve the owner's claim. I say this because I find allegations involving a strata council member's harassment and bullying arise under section 31 of the SPA, which in a strata property dispute such as this, are outside the tribunal jurisdiction.
25. 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 a strata council member's standard of care would capture allegations of harassment and bullying.

26. In *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 267, the BC Supreme Court found 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 under section 31.
27. Further, in *Wong v. AA Property Management Ltd*, 2013 BCSC 1551, the BCSC 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 section 122(1)(a) of the CRTA. Thus, the tribunal does not have jurisdiction over claims brought by an owner against an individual strata council member.
28. The court decisions in *Wong* and *Sze Hang* are binding precedents, and the tribunal must apply them. Following, *Wong* and *Sze Hang* I would find the tribunal has no jurisdiction to decide the owner's section 31 and 32 claims set out above.
29. For all of these reasons, I refuse to resolve the owner's claims of harassment and bullying under section 10(1) of the CRTA.
30. The remaining issues in this dispute are:
 - a. Is the owner's bylaw fine claim moot?
 - b. What remedy is appropriate, if any?

BACKGROUND, EVIDENCE AND ANALYSIS

31. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.

32. In a civil proceeding such as this, the applicant owner must prove his claims on a balance of probabilities.
33. As noted above, the strata is a mixed-use leasehold strata corporation. It was created in October 1994 under the *Condominium Act* and now exists under the SPA. The strata consists of residential and commercial strata lots in a single building located in Vancouver.

Is the owner's bylaw fine claim moot?

34. The strata states in its Dispute Response that “the fine has been waived and removed from the Strata’s books”. In submissions, the strata states;

As a gesture of good faith, council has waived the \$100 fine levied. The matter is at an end....

35. The owner did not dispute the strata’s actions. In fact, the owner did not address this matter in his submissions. Therefore, I accept the strata’s assertions that it has waived the \$100 bylaw fine and removed it from the owner’s account. Given this conclusion, I find the owner’s claim is moot, and I dismiss it. My reasons follow.

36. The British Columbia Court of Appeal discussed the principles of mootness in *Binnersley v. BCSPCA*, 2016 BCCA 259, in which the court restated the principles of mootness outlined by the Supreme Court of Canada in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R 342 finding (at paragraph 22):

... if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot...

37. The court found mootness involves a 2-step analysis (at paragraph 23, again citing *Borowski*). First, whether the live issue has disappeared, and any issues are theoretical or academic. Second, if there is no live issue, should the court exercise its discretion to hear the case anyway.

38. I find that I am bound by the decision reached in *Binnersley* relating to mootness. Based on the assertions of the strata that it has waived the \$100 bylaw fine and removed it from the owner's account, I find there are no live issues and therefore, the owner's bylaw fine claim is moot. I decline to exercise my discretion to consider the moot issue, for the following reasons:
- a. The parties had the opportunity to fully argue their positions and I find there is no prejudice to either party if I do not consider the issue further.
 - b. To address the bylaw fine dispute would not be an appropriate use of the tribunal's resources as the issue will not reoccur.
 - c. This dispute is not one of public interest as it involves a common situation of bylaw fines affecting only the parties to this dispute.
 - d. There is no compelling reason for the tribunal to resolve a dispute that no longer exists.
39. For these reasons, I dismiss the owner's claim relating to the \$100 bylaw fine.
40. Given my findings above, I find it is not necessary to address the owner's requested remedy.

TRIBUNAL FEES AND EXPENSES

41. 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.
42. The owner was partially successful in that the \$100 bylaw fine has been removed from his account. He was not successful in his claims for harassment and bullying. Given the date the bylaw fine was removed from the owner's account is unclear, and quite likely occurred after the Dispute Notice was issued, I order the strata to reimburse the owner ½ of his tribunal fees, or \$112.50.
43. Neither party claimed disputed-related expenses, so I make no order for expenses.

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

ORDERS

45. I refuse to resolve the owner's claims about harassment and bullying under section 10 of the CRTA.

46. Within 14 days of this decision, I order the strata to pay the owner \$112.50 for tribunal fees.

47. The remaining owner's claims are dismissed.

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

49. Under sections 57 and 58 of the CRTA, a validated copy of the tribunal's order can be enforced through the Supreme Court of British Columbia, or the Provincial Court of British Columbia if it is an order for financial compensation or the return of personal property valued under \$35,000. Once filed, a tribunal order has the same force and effect as an order of the court that it is filed in.

J. Garth Cambrey, Vice Chair