Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Shen v. The Owners, Strata Plan LMS 970*, 2020 BCCRT 953

B E T W E E N :

CHUHUI SHEN

APPLICANT

A N D :

The Owners, Strata Plan LMS 970

RESPONDENT

REASONS FOR DECISION

Tribunal Member: J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about rental bylaw fines and property repairs.

2. The applicant, Chuhui Shen, owners a strata lot (SL21) in the respondent strata corporation, The Owners, Strata Plan LMS 970 (strata). Ms. Shen is represented by her fiancé, Shane Lehal, who is not a lawyer. The strata is represented by a strata

council member.

3. Ms. Shen claims the strata imposed the maximum fine for her alleged breach of the strata's rental bylaw. She claims the strata's bylaws are not clear on partial rental of a strata lot, such as to "roommates", which she says applied to her at the time the fines were imposed. She also claims the strata did not comply with her request for a hearing until after it retained a lawyer to demand payment of bylaw fines.

4. Ms. Shen also claims the strata acted in a discriminatory and unfair manner, when it knew that she did not speak English well and did not allow her representative to speak to the strata on her behalf.

5. In a separate claim, Ms. Shen claims the strata has not repaired "her yard" as a result of a watermain rupture that occurred in December 2018. She claims a lawn area affected by access to the watermain has not been properly repaired and that the fences require painting. The broken watermain also caused damage to SL21 that was covered by the strata's insurance. Ms. Shen also claims the strata has not fulfilled its promise to repay her $63.46 in electricity costs relating to the strata's insurance claim.

6. Ms. Shen seeks orders that the strata's imposed rental bylaw fines of $19,500.00 be cancelled or reduced, that the strata repair "her yard" to the condition it was in prior to the watermain break, and reimburse her $63.46 for electricity costs.

7. The strata says it acted reasonably and fairly by imposing the rental bylaw fines and denies it has discriminated against Ms. Shen. In its Dispute Response, the strata says the "yard" was restored in "the Fall of 2019". Later, in its submissions, the strata says the yard was "fully remediated by June 2020". The strata says it acted reasonably to ensure that its insurer reimbursed Ms. Shen for her electricity costs. It asks that Ms. Shen's claims be dismissed.

8. For the reasons that follow, I refuse to resolve Ms. Shen's discrimination claim and dismiss her claims for yard repairs and reimbursement of electricity costs. I also find the amount of the rental fines payable by Shen to the strata is $6,000.

JURISDICTION AND PROCEDURE

9. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.

10. The CRT 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.

11. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.

12. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

Preliminary Matter – Discrimination

13. Based on the parties' submissions, it appears that Ms. Shen has filed a claim with the B.C. Human Rights Tribunal (HRT). The details and status of the HRT claim were not provided. However, under section 11(1)(d) of the CRTA, the CRT has discretion to refuse to resolve a claim or dispute that may involve the application of the *Human Rights Code*. Given the parties' submissions, I exercise the CRT's discretion and refuse to resolve Ms. Shen's claim that the strata has discriminated against her, because I find her discrimination claim is best addressed by the HRT.

ISSUES

14. The issues in this dispute are:

    a. Did the strata properly repair the SL21 “yard”?

    b. Is Ms. Shen entitled to reimbursement of $63.46 for electricity costs?

    c. Does the strata’s rental restriction bylaw apply to roommates?

    d. What amount of bylaw fines, if any, must Ms. Shen pay?

BACKGROUND, EVIDENCE AND ANALYSIS

15. In a civil proceeding such as this, the applicant, Ms. Shen, must prove her claims on a balance of probabilities.

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

17. The strata is a residential strata corporation created in August 1993 under the *Condominium Act* that continues to exist under the *Strata Property Act* (SPA). It consists of 105 strata lots in 37 low-rise buildings located in Burnaby, BC. SL21 is a 3-story strata lot located in building 22.

18. The strata filed bylaw amendments that repealed and replaced all previous bylaws, including the Standard Bylaws under the SPA, with the Land Title Office (LTO) on December 20, 2001. LTO records show subsequent bylaw amendments were filed in 2013 and 2015 that I find are not relevant to this dispute. LTO records also show that the strata’s rental restriction bylaw 30 was repealed and replaced on April 4, 2017 and again on April 28, 2019. The applicable bylaws in this dispute are the December 20, 2001 bylaws and bylaw 30 filed with the LTO on April 28, 2019, which I address below.

Did the strata properly repair the "yard"?

19. On about December 28, 2018, water damage occurred to the lower level or basement of SL21. It is undisputed that the damage was repaired under the strata's insurance policy. As part of the insurance claim, the strata's insurer agreed to reimburse Ms. Shen $63.46 for electricity costs.

20. The source of the water that damaged SL21 was a broken watermain in the lawn area next to SL21. It was necessary to excavate the lawn area in order to repair the watermain. There is no dispute the affected lawn area and fences are common property of the strata.

21. The parties provided submissions on gate and fence repairs

22. I find the parties reference to "yard" is the lawn area in front of SL21, including fences. The strata plan clearly shows this area is common property. Under section 72 of the SPA, the strata is obligated to repair and maintain common property.

23. Ms. Shen submits the yard repairs are not complete as the lawn repairs are not to the same standard as the area was just prior to the watermain break and the fences need to be painted. She provided photographs in support of her claim. Ms. Shen also says the area is below the standard of other lawn areas in the strata. She says that sod, rather than lawn seed, should be used to repair the lawn area.

24. In its submissions, the strata admits that there was delay in repairing the affected lawn area and that the grass seed used did not initially grow. As earlier noted, it provides conflicting information about the date the area was fully remediated, with the last date being June 2020. There were no photographs of the affected area taken prior to watermain break, but the latest photographs provided by Ms. Shen were dated June 7, 2020. These photographs show grass has been planted. I find the fences appear weathered, but the grass is green and appears to be growing.

25. The standard of care that applies to a strata corporation with respect to the maintenance of common property is reasonableness (see *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784). In *Weir*, the Court also found that when deciding

whether to fix or replace common property, the strata has discretion to approve "good, better or best" solutions to any given problem. The court (or tribunal) will not interfere with a strata's decision to choose a "good," less expensive, and less permanent solution, although "better" and "best" solutions may have been available.

26. Based on the photographs provided in evidence, I cannot conclude the repairs made to the affected lawn area in front of SL21 are unreasonable despite Ms. Shen's argument that sod would be better. I also find the condition of the fence in front of SL21 to be similar to the condition fences in other locations. The strata says it has quotations to repaint fences in the complex and I accept that work will be completed and will include the fences next to SL21.

27. Finally, in *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74, at paragraph 61 the BC Supreme Court found that short of deliberate "foot-dragging", slowness in repairs by a strata is reasonable. I find no evidence to support the strata has intentionally delayed the fence repairs next to SL21.

28. For these reasons, I find the strata need not complete further repairs to the lawn area or repaint the fences as a result of the 2018 watermain break in front of SL21. I dismiss Ms. Shen's claim in this regard.

Is Ms. Shen entitled to reimbursement of $63.46 for electricity costs?

29. The evidence shows that the amount of $63.46 was included in the strata's insurance claim involving repairs to the lower floor of SL21 as a result of the December 2018 watermain leak. The evidence shows an initial cheque mailed to Ms. Shen by the strata's insurance adjuster was not received by her. In an email dated April 3, 2020, from the strata's insurance adjuster to the strata property manager, and forwarded to Ms. Shen on the same date, it is clear a replacement cheque was issued and was in the process of being forwarded form the insurance adjuster to Ms. Shen.

30. Given the strata's insurer agreed Ms. Shen's electricity costs would be paid as part of the insurance claim, I find the strata is not liable to Ms. Shen for the $63.46. On

this basis, I dismiss Ms. Shen's claim that the strata reimburse her $63.46 for electricity costs.

31. Ms. Shen, as an additional named insured on the strata's insurance policy under section 156 of the SPA. She is also the intended recipient of the reimbursement cheque. On this basis, I find Ms. Shen is free to contact the strata's insurance adjuster to ensure she receives the insurance cheque, if she has not already received it.

The Rental Issue

32. On November 29, 2019, the strata wrote to Ms. Shen through its property manager advising it was informed that she was renting her strata lot contrary to the strata bylaws. In the body of the letter were excepts from bylaw 30 highlighting certain sub-sections of bylaw 30 as follows:

    (1) - that permission to rent was required from the strata,

    (3) – that a copy of a signed Form K – Notice of Tenant Responsibilities (Form K) was required from Ms. Shen's tenants, and

    (7) and (13) - that fines can be imposed for not seeking council's permission to rent under bylaw 30(1) at a rate of $500 every 7 days.

33. The letter advised Ms. Shen had 14 days to reply or request a hearing, citing section 135 of the SPA, and that council could impose a $500 fine every 7 days "should these violations not be addressed". The letter ended with a request that Ms. Shen provide a completed Form K within 14 days.

34. On December 4, 2019, Ms. Shen emailed the strata a copy of a Form K signed by her tenants on that date. The Form K was dated December 2, 2019 and stated the tenancy commenced June 1, 2019 for a period of 1 year.

35. On December 11, 2019, the strata provided a detailed response stating Ms. Shen did not comply with Bylaws 30(1) and (3), and again advised of section 135 of the SPA giving her until December 30, 2019 to respond or request a hearing. The letter

stated that the council would decide if a bylaw breach occurred and may impose fines retroactive to June 1, 2019 at its "first council meeting in 2020". Based on the overall evidence, I find this letter was emailed to Ms. Shen on December 20, 2019.

36. In a December 23, 2019 email to the strata, Ms. Shen responded stating she was misled by letters she received from "the govt" and news articles that if her home was empty, she would be fined. I infer Ms. Shen was referring to what is commonly known as the "Empty Home Tax", in this case, initiated by the City of Vancouver. Ms. Shen also confirmed that her tenants had rented SL21 for 1-year period and that she would immediately give notice to her tenants to vacate SL21. She apologized for her misunderstanding, suggested the strata council could see it was an "honest mistake", and hoped her actions would "solve the issue and cease any action moving forward".

37. On about January 10, 2020, Ms. Shen gave her tenants 2-months notice to end their tenancy stating the reason as "Strata request Breach of rental bylaws".

38. On January 21, 2020, Ms. Shen emailed the strata property manager requesting a hearing. Further details of Ms. Shen's hearing request were not provided, but based on the February 21, 2020 emails exchanged between the parties, I find her request was for a cancellation or reduction in fines.

39. Also on January 21, 2020, the strata's legal council wrote to Ms. Shen stating the strata had concluded she was in breach of bylaw 30(1) since June 1, 2019 and that the council "decided that a fine of $500 per week, commencing June 1, 2019, and continuing to date, is to be levied against your strata lot." The letter continued by stating the $500 could continue until the tenant vacated SL21.

40. Further emails between the parties were exchanged and it was agreed Ms. Shen's requested hearing would be held following the strata's annual general meeting (AGM) on February 10, 2020. The hearing was held as agreed.

41. The strata emailed Ms Shen on February 21, 2020 and agreed to reduce the fines if certain conditions were met. The strata provided Ms. Shen with 2 options:

a. the fines would be reduced to $5,000 if Ms Shen paid by e-transfer within 7 days and provided a copy of her eviction notice signed by her tenants confirming they would vacate SL21 by March 10, 2020, or

b. the fines would be reduced to $10,000 if Ms. Shen paid by March 15, 2020 and provided a signed eviction notice signed by her tenants confirming they would vacate SL21 by March 31, 2020.

42. The email also stated that if Ms. Shen failed to comply with either of the 2 options, the fines "will increase to the full amount owing to date" and requested she advise the strata on what alternative she chose.

43. On February 20, 2020, the CRT issued the Dispute Notice for this dispute.

44. In her February 21, 2020 email response, Ms Shen thanked the strata for reducing the fines, but stated she could not end the tenancy before May 31, 2020 because it was a fixed-term tenancy and her tenants did not agree to end it early. A copy of the tenancy agreement was provided in evidence and confirms a 1-year fixed term from June 1, 2019. Email evidence from Ms. Shen's tenants confirms they did not agree to end the tenancy early. Based on this evidence and section 44 of the *Residential Tenancy Act* (RTA), I accept Ms. Shen could not end the tenancy before about May 31, 2020 without her tenants' consent.

45. I note that section 44(1)(e) of the RTA allows the tenancy to end if the tenancy agreement is frustrated. I could not locate any case law that directly addresses this specific section of the RTA. However, a contract is frustrated when an unforeseeable event occurs, for which the parties made no provision, where the contract becomes a thing radically different from that which was originally agreed (see: *Naylor Group Inc. v. Ellis-Don Construction Ltd.*, 2001 SCC 58 at paragraph 53). Although neither party argued the tenancy could have ended based on a frustrated tenancy agreement, I find the circumstances here would not likely amount to frustrating the tenancy agreement.

46. On April 21, 2020, the strata wrote to Ms. Shen advising that a fine of $19,500 had been imposed against her citing bylaw 30 in full, and demanding payment "as soon

as possible". The letter explains that that the fine is for 39 weeks from June 1, 2019, the day the rental started until March 1, 2020, because the tenants remained in SL21 at the date of the letter. It further explains that March 1, 2020 was determined as "an end date" due to RTA changes and COVID-19.

Does the strata's rental restriction bylaw apply to roommates?

47. The parties' provided contrary submissions on whether Ms. Shen was resident in SL21 during the time she rented it out. I find I need not determine if Ms. Shen was resident in SL21 as the strata's rental bylaw 30 applies equally in either circumstance. My reasons follow.

48. I find that the strata's bylaw 30 prohibits all rentals, including rentals to roommates over the maximum of 6 permitted strata lots set out on bylaw 30(1). In *Wong v. Section 1 of The Owners, Strata Plan N.W. 2320 et al*, 2017 BCCRT 25, a tribunal vice chair found that because section 1 of the SPA clearly defines "tenant" as a person who "rents all or part of a strata lot", that strata's rental restriction bylaw prohibited roommates sharing a strata lot with an owner, and did not just apply to rentals of an entire strata lot (paragraph 55). Similarly, in *K.M. v. The Owners, Strata Plan ABC XXXX, 2018 BCCRT 29,* I found in paragraphs 39 to 46 that the strata's rental restriction bylaws applied equally to roommates as to those renting an entire strata lot.

49. Although *Wong* and *K.M.* are not binding on me, I find their reasoning persuasive, and apply that reasoning to the facts in this dispute. Based on the language used in strata's rental restriction bylaw 30, I conclude it prohibits Ms. Shen from renting SL21 in its entirety, or any portion of it. As in *Wong* and *K.M*., I make this finding particularly because "tenant" is defined in section 1 of the SPA as a person who rents all or part of a strata lot.

What amount of bylaw fines, if any, must Ms. Shen pay?

50. Ms. Shen admits that she rented out SL21 contrary to the bylaws. However, she seeks cancellation of the $19,500 fines charged SL21 under bylaw 30(1), or alternatively, a reduction in the fines. In essence, she argues she was not aware of

the rental restriction bylaw, and was "misled" by municipal bylaws taxing empty homes. Having admitted to the bylaw contravention, she then agued the strata should provide some leniency because of her unfamiliarity with the law. However, Ms. Shen's unfamiliarity or poor understanding of the strata and municipal bylaws is not a legal defence, even if her English is poor. She is expected to know what the law requires her to do.

51. The strata is obligated to enforce its bylaws under section 26 of the SPA. However it must do so in accordance with the SPA. Key to this dispute, is section 135 of the SPA that addresses how and when the strata can impose fines. Section 135(1) of the SPA states that a strata corporation may not impose a bylaw fine unless it has received a complaint, given the owner or tenant written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if requested. SPA section 135(2) says the strata must also give notice in writing of its decision to impose the fine to the owner as soon as feasible. SPA section 135(3) says that once the strata has complied with these procedural steps, the strata may impose fines or penalties for a continuing contravention without further compliance with those steps.

52. The requirements of section 135 must be strictly followed before a fine can be imposed, as set out in *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, the leading case on this issue.

53. The *SPA* and *Terry* do not address retroactive bylaw fines. However, in *Terry*, the BC Court of Appeal found that if section 135 is not strictly followed, that is sufficient reason to set aside all fines that were imposed before the owner was given the particulars of the complaint and a reasonable opportunity to be heard including a hearing. Here, Ms Shen was not given the particulars of the complaint until the strata wrote to her on November 29, 2019. The November 29, 2019 letter did not advise Ms. Shen that retroactive fines would be imposed. It was not until later correspondence in December 2019 that the strata stated retroactive fines to June 1, 2019 would be considered. I find that section 135 of the SPA does not permit retroactive fines. I find the strata's retroactive fine charges are akin to it charging fines before the strata had notified Ms. Shen of the particulars of the complaint. This

is especially true given the November 29, 2019 letter did not address that bylaw fines might be charged retroactively.

54. I am satisfied the strata received a complaint about Ms. Shen renting SL21. Based on *Terry*, I find the earliest date the strata could impose fines was November 29, 2019 as I find the strata's letter of that date complied with section 135 of the SPA. Subsequent letters were exchanged and a hearing was held on February 10, 2020, also in accordance with section 135. I find the strata advised Ms. Shen of its decision to impose fines, albeit for an incorrect amount as discussed below, on April 21, 2020, which I find was reasonable under section 135(2) of the SPA.

55. While Ms. Shen may have admitted to breaching bylaw 30 since June 1, 2019, I find at no time did she agree to pay bylaw fines from that date.

56. Strata bylaws 30(7) and (13) respectively allow for a fine of $500 if an owner does not obtain permission of the strata council before renting their strata lot, and a continuing fine of $500 every 7 days for as long as the breach continues. Given this, I find Ms. Shen is responsible for an initial fine of $500 on November 29, 2019 and a continuing fine of $500 every week for 11 weeks until February 20, 2020, the date the Dispute Notice was issued in this dispute. This amounts to $6,000 and I find Ms. Shen is liable to the strata for this amount. I order the fines for Ms. Shen's breach of bylaw 30 are reduced to $6,000.

57. As the strata did not make a counterclaim, I make no order for Ms. Shen's payment of rental bylaw fines.

CRT FEES AND EXPENSES

58. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I find the parties' success in this dispute is divided and find it appropriate to order the strata to reimburse Ms. Shen ½ of the CRT fees she paid, or $112.50.

59. Neither party claimed dispute-related expenses, so I order none.

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

ORDERS

61. I refuse to resolve Ms. Shen's discrimination claim.

62. I order Ms. Shen's fines for breach of the strata's rental restriction bylaw be reduced to $6,000.00.

63. Within 30 days of the date of this decision, I order the strata to reimburse Ms. Shen $112.50 for CRT fees.

64. I order Ms. Shen's remaining claims are dismissed.

65. Ms. Shen is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.

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

J. Garth Cambrey, Vice Chair