



# Civil Resolution Tribunal

Date Issued: October 6, 2020

File: ST-2020-002493

Type: Strata

Civil Resolution Tribunal

Indexed as: *Couzens v. The Owners, Strata Plan BCS 3167*, 2020 BCCRT 1129

**B E T W E E N :**

ANDREW COUZENS

**APPLICANT**

**A N D :**

The Owners, Strata Plan BCS 3167

**RESPONDENT**

**A N D :**

ANDREW COUZENS

**RESPONDENT BY COUNTERCLAIM**

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## **REASONS FOR DECISION**

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. This is a strata property dispute about a pet bylaw and related fines.
2. The applicant and respondent by counterclaim, Andrew Couzens, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS 3167 (strata). The strata is the applicant in the counterclaim. Mr. Couzens is self-represented, and the strata is represented by a strata council member.
3. Mr. Couzens says the strata has improperly fined him for alleged contraventions of the strata's pet bylaw since about October 2019 that amount to \$4,200. He says the strata provided exemptions to the pet restriction bylaw for the number of pets and the height of his dogs. Mr. Couzens says he is otherwise compliant with the bylaws and that the strata has treated him significantly unfairly. He seeks an order that the pet bylaw fines be rescinded.
4. The strata did not set out any details of its claims in the Dispute Notice issued for its counterclaim, but it did respond to Mr. Couzens' claims as well as provide submissions and evidence. The strata says it rescinded exemptions it provided to Mr. Couzens about his pets.
5. The strata seeks orders that Mr. Couzens comply with all strata bylaws and rules, including the pet bylaw restricting the height and number of permitted pets and that he "re-home" his over-height dog. The strata also seeks an order that Mr. Couzens pay all unpaid fines dating back to October 2019, which it says total \$2,600 as of May 2020.
6. It is clear that the parties each ask for relief from the other party's claims.
7. For the reasons that follow, I find that the strata must remove all fines relating to Mr. Couzens' pets from his strata lot account. I also find that Mr. Couzens does not have re-home any of his pets.

## **JURISDICTION AND PROCEDURE**

8. 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.
9. 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.
10. 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.
11. 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.

## **ISSUES**

12. The issues in this dispute are;
  - a. Did the strata permit Mr. Couzens to keep 3 animals in his strata lot, including 2 over-height dogs, contrary to the strata's bylaws?
  - b. Is the strata entitled to an order that Mr. Couzens pay outstanding fines and, if so, in what amount?
  - c. What other remedies are appropriate?

## BACKGROUND, EVIDENCE AND ANALYSIS

13. In a civil proceeding such as this, the applicant, Mr. Couzens, must prove his claims, and the strata must prove its counterclaims, on a balance of probabilities. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
14. The strata is a residential strata corporation created in October 2008 under the *Strata Property Act*. (SPA). It consists of 34 strata lots in a single 4-storey building located in Chilliwack, BC.
15. The strata filed bylaw amendments in part entitled “CONSOLIDATED BYLAWS 2013” with the Land Title Office (LTO) on May 10, 2013. Given the bylaws are consolidated bylaws, I find they replace all previously filed bylaws. The registered bylaw document contains preamble to the filed bylaws that includes the following statement: “All amendments and additions to the schedule of standard bylaws are compliant to the *Strata Property Act* [SPA], as we understand them to be.” Based on the preamble, find the strata has not expressly replaced the Schedule of Standard Bylaws under the SPA. Therefore, I find the Standard Bylaws still apply, except to the extent other, conflicting bylaws are included in May 10, 2013 filed bylaws.
16. The strata’s filed pet bylaw 40 conflicts with Standard Bylaw 3(4) so Standard Bylaw 3(4) does not apply. I reproduce the relevant parts of bylaw 40 here.
  - 40.1 An owner, tenant or occupant must not keep any pets on a strata lot other than one or more of the following:
    - a) up to fifty (50) fish or other small aquarium animals;
    - b) up to two (2) caged birds;
    - c) up to 2 pets- either 2 dogs or 2 cats; measuring a maximum of 12 inches to the shoulder in height.
  - ...
  - 40.3 all pets shall be leashed or otherwise secured at all times when on the Common Property or land that is a Common Asset.

***Did the strata permit Mr. Couzens to keep 3 animals, including 2 over-height dogs?***

17. Mr. Couzens purchased his strata lot in May 2017. At that time, Mr. Couzens had a pet dog (Tango) and a pet cat. The parties agree that Tango was about 15 years old and exceeded 12 inches at shoulder height. The parties also agree the strata council permitted Mr. Couzens to keep Tango contrary to bylaw 40.1(c) due to the dog's age and alleged health issues, some time in 2017.
18. I note that Mr. Couzens was elected to the strata council in December 2017 and served on the council for 1 year.
19. At some point in early 2018, Mr. Couzens obtained a puppy (Cypress). He kept Cypress in his strata lot along with Tango and his cat. In early 2018, Cypress was not over-height within the meaning of bylaw 40.1(c). However, the addition of Cypress meant Mr. Couzens now had 2 dogs and 1 cat, whereas bylaw 40.1(c) restricted him to a maximum of 2 pets.
20. On June 12, 2018, the strata wrote to Mr. Couzens about "a number of pet violations". The letter expressly alleged that Cypress was now over-height. It also alleged that Cypress had defecated in the mailroom and parking garage and the feces was not "regularly picked up immediately". The letter also stated "it was reported" that Mr. Couzens had a cat and 2 dogs, which exceeded the pet restriction limit.
21. The strata cited its pet bylaw 40 plus:
  - a. bylaw 3(1) restricting owner from causing a nuisance or hazard, or unreasonably interfering with the rights of other people to use and enjoy common property, common assets or a strata lot,
  - b. bylaw 4.5 that prohibits littering on common property, and
  - c. bylaw 23 that sets out maximum fines for bylaw contraventions are \$200 and, for continuing contraventions, fines can be imposed every 7 days.

22. The strata asked Mr. Couzens to immediately abide by the strata's bylaws, to ensure pet feces is picked up immediately, and to "advise the council of [his] plans to remove the oversized dog from the property". Lastly, the letter stated that if further violations occurred, the strata might enforce the bylaws and rules without warning and impose fines. Although the letter was only a warning, the strata gave Mr. Couzens 14 days to contest the allegations.
23. The parties agree that Mr. Couzens requested a hearing with the council as a result of the strata's June 12, 2018 letter and that the hearing was held on July 11, 2018. The minutes of the July 11, 2018 council meeting were not provided in evidence but a July 12, 2018 letter to Mr. Couzens from the council president was and the letter makes note of the July 11 meeting. I find the July 12, 2018 letter clearly confirms the strata, at its July 11, 2018 meeting, decided to permit Cypress to remain despite its size, and to allow Mr. Couzens to keep his 2 dogs and cat, but to abide by bylaw 40.1(c) upon any of his pets' demise.
24. Based on the parties' agreement that Tango was permitted to reside with Mr. Couzens and the July 12, 2019 letter, I find there is no question the strata permitted Mr. Couzens to keep 1 cat and 2 over-height dogs (Tango and Cypress) contrary to bylaw 40.1(c) but said he may not replace any pets in contravention of the bylaw. I dismiss the strata's claim that one of Mr. Couzens' dogs be "re-homed".

***Is the strata entitled to an order that Mr. Couzens pay outstanding fines and, if so, in what amount?***

25. Having found the strata clearly granted permission for Mr. Couzens' 2 over-height dogs, Tango and Cypress, and his cat to reside in his strata lot, I find the strata cannot subsequently take bylaw enforcement against Mr. Couzens' for contravening the portions of the pet bylaw for which it exempted Mr. Couzens or his pets. Specifically, I find the strata cannot take action against Mr. Couzens for having over-height dogs or 3 pets. I find to do so would be significantly unfair.
26. Section 164 of the SPA permits the CRT to remedy any past or future acts of the strata corporation that are significantly unfair to an owner. The courts have determined that a significantly unfair act is oppressive or unfairly prejudicial, unduly

burdensome, harsh, wrongful, lacking in probity or fair dealing, or has been done in bad faith. See *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126 at paragraphs 27 to 29, *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44 at paragraph 31, and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2020 BCSC 576 at paragraph 74.

27. There is no evidence the strata placed any conditions on the exemptions it provided to Mr. Couzens, nor is there any evidence the parties mutually agreed to any changes to the bylaw exemptions.
28. I find it would be within the meaning of the courts' description of significantly unfair for the strata to subsequently change its decision not to allow Mr. Couzens or his pets to be exempt from the strata's pet restriction bylaw.
29. In order to find the strata is entitled to collect fines from Mr. Couzens, it must prove that the imposed fines do not relate to exempted parts of the pet bylaw I have mentioned, and also that it properly followed the SPA requirements for imposing fines. For the following reasons, I find the strata is not entitled to collect any fines from Mr. Couzens.
30. Section 135(1) of the SPA states that a strata corporation may not impose a fine unless it has received a complaint about the contravention, given the owner or tenant written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if requested. Section 135(2) states the strata must provide written notice to the owner of its decision "as soon as feasible". 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.
31. In May 2019, about 1 year after granting its pet bylaw exceptions to Mr. Couzens, the strata received a complaint from an owner that Mr. Couzen's dog had "lunged" at the owner and her dog when entering the building lobby. The allegation was supported by a witness statement from another owner. It is unclear if both dogs were leashed at the time of the incident. The strata wrote to Mr. Couzens on May 9, 2019 citing bylaw 3.1 summarized above, and asked Mr. Couzens to comply with

the bylaw to avoid future fines. As a result of the May 9, 2019 letter, Mr. Couzens again requested a hearing, apparently to contest the allegation made against his dog. A hearing was held on June 19, 2019 and on June 20, 2019, the strata council wrote to Mr. Couzens stating the May 9, 2019 warning letter would remain on his “file” and that further complaints regarding his dog would result in the strata requesting his dog be ‘re-homed’. It is unclear if the dog in question was Tango or Cypress.

32. Another incident involving Mr. Couzens’ dog lunging at an owner in the building lobby, this time also baring its teeth, was reported to the strata council on September 6, 2020. Again, it is unclear if the dog in question was Tango or Cypress. Minutes of the October 9, 2019 strata council meeting show complaints received about Mr. Couzens’ dogs were discussed. At the meeting, the strata council passed a motion to send a “fine letter” to Mr. Couzens because “his dog” was over-height and to demand he re-home the dog within 30 days.
33. A copy of the letter issued to Mr. Couzens following the October 9, 2020 council meeting is not before me. Neither are any letters from the strata advising Mr. Couzens that it intended to impose fines or that it had decided to impose fines consistent with section 135 of the SPA. I accept the strata received a complaint about Mr. Couzens’ dogs and the number of pets he kept in his strata lot as the SPA does not require the complaint to be in writing (See *The Owners, Strata Plan NW3075 v. Stevens*, 2018 BCPC 2), Nor does the SPA restrict a strata council member from making a complaint, if that was the case.
34. However, I find the strata has failed to prove it met the strict requirements of section 135 as set out in *Terry*. Specifically, the strata did not prove it give Mr. Couzens clear particulars of the complaints or a reasonable opportunity to answer the complaints. The strata also did not prove that its decisions to fine Mr. Couzens were made by the strata council or that those decisions were conveyed to Mr. Couzens in writing.
35. I also note that copies of Mr. Couzens’ statement of account with the strata for the period December 31, 2019 through April 14, 2020 shows the first \$200 fine was



imposed on February 1, 2020 and was levied weekly until March 7, 2020. The statement notes show the fines relate to an October 2019 fine for bylaw 40.1(c) and bylaw 23.2, indicating that it was a continuing fine. As I have mentioned, the strata exempted Mr. Couzens' pets from bylaw 40.1(c) and cannot now fine Mr. Couzens for infractions about having 3 pets or that either of his dogs are over-height.

36. While the statements also show that continuing \$50 bylaw fines were imposed against Mr. Couzens between March 14 and April 11 totaling \$250 for contravention of bylaw 3.1(a) about nuisance, I find there is no correspondence showing the strata met section 135 requirements before imposing these bylaw fines.
37. Based on the correspondence provided in evidence and the strata's account information for Mr. Couzens, I find the strata is not entitled to an order that Mr. Couzens pay any fines.

### ***Remedy***

38. As a result of my findings above, I order the strata to remove all fines relating to Mr. Couzens' pets from his account.

### **CRT FEES AND EXPENSES**

39. 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. The strata was unsuccessful in its counterclaim and did not claim dispute-related expenses. Given Mr. Couzens was successful in his claims, I find he is entitled to reimbursement of CRT fees of \$225. He did not claim dispute-related expenses, so I order none.
40. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Couzens.

### **ORDERS**

41. Within 15 days of the date of this decision, I order the strata to:

- a. Remove all fines relating to Mr. Couzens' pets from his strata lot account, and
  - b. Pay Mr. Couzens \$225 for CRT fees.
42. The strata's counterclaim is dismissed.
43. 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, the 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.

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J. Garth Cambrey, Vice Chair