



Civil Resolution Tribunal

Date Issued: November 16, 2020

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Dos Santos v. The Owners, Strata Plan BCS 2489*, 2020 BCCRT 1281

B E T W E E N :

ARNALDO DOS SANTOS and DANIELA DEL BOCCIO

APPLICANTS

A N D :

The Owners, Strata Plan BCS 2489

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about a bylaw fine imposed by a strata corporation.

2. The applicants, Arnaldo Dos Santos and Daniela Del Boccio, co-own a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS 2498 (strata). The applicants say the strata wrongly fined them for an alleged bylaw violation. They deny breaching the bylaw, and say the strata does not have evidence to prove the alleged breach. They request an order that the strata remove the \$200 fine from their strata lot account.
3. The strata says the applicants breached its bylaws, by allowing their dog to bark excessively while on common property. It says the fine was legitimately imposed, and that the applicant's claim should be dismissed.
4. The applicants are self-represented in this dispute. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

5. 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.
6. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconference, 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.
7. 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.

8. 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.

ISSUE

9. The issues in this dispute are:
 - a. Did the applicants breach any bylaws, and if so, must they pay the \$200 fine?
 - b. Was the strata entitled to fine the applicants \$200?

BACKGROUND

10. I have read all the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding like this one, the applicant must prove their claims on a balance of probabilities.
11. The strata filed a set of bylaws at the Land Title Office in November 2009, and later filed several bylaw amendments. I find the bylaws applicable to this dispute are those filed in November 2009, plus an amendment about pet leashes filed in June 2017.
12. The strata says it has received numerous complaints about the applicants' dog barking. It says it is obligated to enforce its bylaws under *Strata Property Act* (SPA) section 26, and it reasonably did so by corresponding with the applicants, holding a hearing with them, and then imposing the \$200 fine.
13. The applicants deny there were multiple complaints about the dog, and instead say there was only one complaint. They say the strata failed to investigate properly, but instead imposed the fine based on hearsay, without considering the applicants' statements from the hearing or the other witness statements they provided. They say the strata council president is biased against them. They also say the bylaws are ambiguous.

EVIDENCE AND ANALYSIS

14. On April 23, 2020, the strata wrote to the applicants, stating that it had received multiple complaints about their dog “constantly barking and often left tethered on a leash unattended.” The letter cited the following bylaws:

40(1) – a resident shall not permit a pet to travel on Common Property, unless it is leashed within 6 feet and under control.

40(3) – a resident shall not permit their pet to bark excessively anytime.

40(7) – a pet shall not cause a nuisance to any resident.

15. The letter offered the applicants an opportunity to respond to the complaint, including by requesting a hearing. It said the applicants could be fined \$200 for each bylaw contravention.

16. The strata held a hearing with the applicants on May 13, 2020. Following the hearing, the strata council decided to impose a \$200 fine. This decision was confirmed in a May 19, 2020 letter.

17. Based on this correspondence, I find the strata met the requirements of SPA section 135, which says that before imposing a bylaw contravention fine a strata corporation must have provided the owner with written particulars of the complaint and a reasonable opportunity to respond. I find the May 13, 2020 letter meets this requirement. I also note that the complaint emails to the strata council from other owners establish specific dates and times for the alleged conduct, as follows:

- March 16, 2020 email from neighbours FB & LB – dog outside on common area on long lead, continually barks, happens every day and all that morning.
- April 14, 2020 email from FB & LB – dog left unattended on long lead outdoors every day, sometimes 2 to 3 times per day. On Good Friday 2020, dog constantly barked from 11:30 am to 12:00 pm.

- April 14, 2020 email from neighbour FL – dog barking on April 13 at 11:00 am, plus 25 to 30 minutes starting at 3:20 pm.
 - April 16, 2020 email from FL – dog barking on April 16 at 2:30 pm, 3:30 pm, and 4:20 pm. Barking on April 16, 10:55 am.
18. I note that none of these neighbours is the strata council president. For that reason, I am not persuaded by the applicants' argument that they were only fined due to the president's bias against them.
19. I have considered the 3 statements from other neighbours provided by the applicants, which say these neighbours have not heard the dog barking "constantly, excessively", and do not consider the barking a nuisance. I place limited weight on these 3 statements, as they all have identical wording, and therefore appear to have been drafted by a single individual. For that reason, I do not consider them a neutral statement of these witness's observations. Also, even accepting that these 3 neighbours do not consider the barking a nuisance, I find that is not determinative of whether any neighbour is disturbed by the barking. I find the emails from FB, LB and FL establish that they were disturbed, and that they consider the barking a nuisance.
20. The applicants also provided a copy of a text exchange with another neighbour, who said they heard barking outside but did not investigate it. Again, I find the fact that some neighbours were not disturbed by the barking does not mean the barking was not a nuisance to others, as prohibited by bylaw 40(7).
21. As noted, the applicants argue that the bylaws are ambiguous. In particular, they say that while bylaw 40(3) prohibits "excessive" barking, excessive is not defined. I agree that the interpretation of "excessive" requires the strata council to exercise discretion. However, that is true of many strata bylaws. For example, both SPA Standard Bylaw 3(1)(c) and this strata's bylaw 3(1)(c) say an owner may not use a strata lot, common property, or common assets in a way that "unreasonably interferes" with the rights of other persons to use and enjoy a strata lot or common property. As with excessive barking, determining when an interference is unreasonable requires applying discretion.

22. For this reason, I am not persuaded by the applicants' argument that bylaw 40(3)'s prohibition on excessive barking is unenforceable due to ambiguity.
23. Based on the written complaints of FB, LB, and FL, I accept that they experienced the applicants' dog's barking as a nuisance, contrary to bylaw 40(7). For that reason, and because I find the strata met the notice requirements of SPA section 135, I conclude that the applicants are responsible to pay the \$200 fine. I therefore dismiss their claim.
24. The parties agree that the applicants have not yet paid the fine. However, as the strata did not file a counterclaim, I make no formal order for payment.

CRT FEES AND EXPENSES

25. 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 see no reason in this case not to follow that general rule.
26. The strata is the successful party. It paid no CRT fees and claims no dispute-related expenses. I therefore do not award them to any party.
27. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDER

28. I dismiss the applicants' claim and this dispute.

Kate Campbell, Vice Chair