



Civil Resolution Tribunal

Date Issued: November 30, 2020

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan EPS1416 v. Yang*, 2020 BCCRT 1352

B E T W E E N :

The Owners, Strata Plan EPS1416

APPLICANT

A N D :

FEI YANG

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about bylaw fines. The respondent, Fei Yang, owns a strata lot in the applicant strata corporation, The Owners, Strata Plan EPS1416 (strata). Mr. Yang does not live in his strata lot.

2. The strata seeks payment of \$7,647 in bylaw fines. The strata alleges that Mr. Yang's tenant breached a smoking bylaw in 35 separate incidents. Mr. Yang disagrees and says the strata has not provided proof of each incident.
3. A strata council member represents the strata. A property manager represents Mr. Yang.
4. As discussed below, I find that the strata impermissibly fined Mr. Yang for his tenant's bylaw contraventions. As such, I must dismiss the strata's claims. My reasons follow.

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, videoconferencing, 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.

Additional Evidence and Submissions

9. Initially the strata referred to evidence that was not before me. It provided a small selection of notices and incident reports about the fines at issue. The strata also did not provide a breakdown of the claim amount. I asked the strata to provide additional evidence and submissions, and it did so. Mr. Yang reviewed the additional material and provided further submissions.

ISSUES

10. The issues in this dispute are as follows:
 - a. Did the strata impermissibly impose fines against Mr. Yang for his tenant's bylaw contraventions?
 - b. If so, must Mr. Yang pay the strata \$7,647 in fines?

BACKGROUND, EVIDENCE AND ANALYSIS

11. The strata consists of several high-rise buildings that provide apartment-style housing. Mr. Yang owns strata lot 155, which is on the 6th floor of one of these buildings. The strata consists of over 400 strata lots in total.
12. As noted above, Mr. Yang does not live in his strata lot. I find from the evidence that he rented it out to a tenant before the strata began applying the fines at issue.
13. In March 2019 other residents of the strata complex began to complain to the strata about smoke coming from Mr. Yang's strata lot. These complaints are documented in numerous incident reports completed and kept by the strata.

14. The strata's bylaws are registered in the Land Title Office. Bylaw 36 is relevant, as amended by the owners on March 7, 2018. It says that smoking and vaping are prohibited anywhere on property located within the boundaries of the strata. The bylaw says this includes all strata lots, common property, and limited common property. The bylaw also prohibits smoking within 6 meters of doors, windows, or air intakes.
15. From March to November 2019 the strata sent multiple written notices to Mr. Yang. The notices were largely the same. They each said that that the strata received a complaint that a resident, occupant, tenant, or visitor was smoking inside Mr. Yang's strata lot. They said this breached bylaw 36 and cited that bylaw. They each provided Mr. Yang an opportunity to respond.
16. The written notices dated March to November 2019 cover a total of 29 fines for \$200 each. They were not addressed to Mr. Yang's tenant. However, starting in January 2020, the strata began to send carbon copies of notices about new incidents to the tenant. The notices were still addressed to Mr. Yang. These letters cover a total of 5 fines at \$200 each for incidents occurring in January 2020. The strata also claims for another incident occurring on January 1, 2020 but provided no written notice for it.
17. I asked the strata to clarify if it had fined Mr. Yang or Mr. Yang's tenant. The strata did not directly reply but provided its written decisions about the fines. These letters are largely addressed to Mr. Yang, save for 6 letters dated February 25, 2020, which are addressed to Mr. Yang's tenant.
18. I find the letters show that the strata decided that Mr. Yang's tenant had breached bylaw 36 for each of its fines. This is particularly clear from the strata's May 17, 2019 letter that held Mr. Yang's tenant responsible for several smoking incidents. However, instead of fining Mr. Yang's tenant, the strata fined Mr. Yang by applying fines directly to his strata lot account.

19. At my request, the strata provided a breakdown of the amount sought. It relies on a September 30, 2020 statement of account. The statement shows the strata is seeking \$7,000 in smoking fines from Mr. Yang. This amount is comprised of 35 fines of \$200 each. Consistent with the other evidence, the account states the incidents occurred from March 8, 2019 to January 12, 2020. An additional \$247 is for other amounts owing that are unrelated to smoking fines.

Did the strata impermissibly impose fines against Mr. Yang for his tenant's bylaw contraventions?

20. The *Strata Property Act* (SPA) allows strata corporations to enforce bylaws by imposing fines. SPA section 130(1) says a strata corporation may fine an owner if a bylaw is contravened by the owner, an owner's visitor, or an occupant if the strata lot is rented by the owner. Section 130(1) says that a strata corporation may fine a tenant if a bylaw or rule is contravened by the tenant, a visitor of the tenant, or an occupant if the strata lot is sublet by the tenant. Section 131 says that if a strata corporation fines a tenant, the strata may require the owner or landlord to pay the fine.

21. Several CRT decisions have interpreted these provisions to mean that the SPA does not permit an owner to be directly fined for a tenant's bylaw contraventions. See, for example, *Clark v. The Owners, Strata Plan BCS 2785*, 2017 BCCRT 49 and *Wong et al v. The Owners, Strata Plan LMS 1178*, 2019 BCCRT 1088.

22. In *Clark*, the CRT Chair found that where an owner or tenant is alleged to have contravened a bylaw or rule, the person who is the subject of the allegation is entitled to the notice and hearing rights provided under SPA section 135. She wrote that these rights would be frustrated if the strata could fine an owner directly.

23. Although not binding, I find the reasoning in *Clark* persuasive and apply it here. As noted above, from March to November 2019 the strata sent written notices to Mr. Yang about 29 alleged smoking incidents. The strata says that Mr. Yang's tenant breached the smoking bylaws, but it sent no notices to the tenant. The tenant was therefore denied any notice or hearing rights under SPA section 135. I find that for

the resulting fines totaling \$5,800, the strata impermissibly fined Mr. Yang for his tenant's bylaw contraventions.

24. This leaves 6 fines to consider. Starting from January 8, 2020, the strata sent written notices addressed to Mr. Yang while carbon copying his tenants. These notices are about 5 smoking incidents from January 5 to 12, 2020. As noted above, I do not have a notice about the 6th incident before me.
25. Ultimately, I find that the strata's decision to carbon copy Mr. Yang's tenant changes nothing. The notices from January 2020 are clearly addressed to Mr. Yang. I find that they do not show with reasonable clarity that Mr. Yang's tenant is being fined, if that is what the strata intended. As before, the tenant was denied any notice or hearing rights under SPA section 135.
26. Consistent with my conclusion, the strata sent 6 decision letters dated February 25, 2020 about the January 2020 incidents. The letters were addressed to Mr. Yang's tenant and not Mr. Yang. However, these letters show that the strata directly fined Mr. Yang for each incident instead of his tenant. As stated earlier, I find this to be impermissible under the SPA for the reasons outlined in *Clark*.
27. In summary, the strata impermissibly fined Mr. Yang \$7,000 for his tenant's alleged bylaw breaches. An additional \$247 claimed is unrelated to the fines. I dismiss the strata's claims. As there is no counterclaim, I make no order reversing any charges to Mr. Yang's strata lot account. In any event, Mr. Yang is not obligated to pay the fines discussed in this dispute.

CRT FEES AND EXPENSES

28. 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.
29. Mr. Yang is the successful party. As he did not pay any CRT fees or claim any dispute-related expenses, I do not order any.

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

ORDER

31. I dismiss the strata's claims and this dispute.

David Jiang, Tribunal Member