



# Civil Resolution Tribunal

Date Issued: December 21, 2020

File: ST-2020-003433

Type: Strata

Civil Resolution Tribunal

Indexed as: *Zhang v. The Owners, Strata Plan LMS 2195*, 2020 BCCRT 1443

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

XINGMO ZHANG and FEI LIU

**APPLICANTS**

**A N D :**

The Owners, Strata Plan LMS 2195

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Lynn Scrivener

## **INTRODUCTION**

1. This is a dispute about alleged bylaw contraventions and associated fines. The applicants, Xingmo Zhang and Fei Liu (owners), are the owners of strata lot 141 in the respondent strata corporation, The Owners, Strata Plan LMS 2195 (strata). The owners say that, when the strata assessed fines against their strata lot for allegedly breaching the pet bylaw, for an unauthorized rental, and for inappropriate waste

disposal, it did not comply with the requirements of section 135 of the *Strata Property Act* (SPA). The owners ask for an order that the fines be reversed and for \$14,400 in unspecified damages. The strata says that it properly met its obligations and responsibilities when dealing with the owners.

2. The owners are self-represented. The strata is represented by a member of the strata council.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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.
5. 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.
6. 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**

7. The issues in this dispute are:
  - a. Whether the strata complied with the requirements of section 135 of the SPA before fining the owners for breaches of the rental, pet, and waste disposal bylaws,
  - b. Whether the owners must pay the fines assessed against their strata lot account for breaches of the rental, pet and waste disposal bylaws, and
  - c. Whether the strata must pay the owners \$14,400 in unspecified damages.

## **EVIDENCE AND ANALYSIS**

8. In a civil dispute like this, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
9. The strata is comprised of 160 residential strata lots. The owners purchased strata lot 141 as joint tenants in 2015.
10. The strata repealed its previous bylaws and filed new bylaw at the Land Title Office in February of 2014. It has filed several amendments since 2014, most of which are not relevant to the issues in this dispute. A relevant amendment is listed below.
11. Bylaw 3.6 requires that owners ensure that their invitees or guests comply with the bylaws. The strata's bylaws 3.14 through 3.17 require that owners, tenants, and occupants dispose of household garbage, cardboard, recyclable materials, and food scraps in the appropriate bins. Bylaw 3.18 says that an owner must arrange for the disposal of waste material other than household garbage at their own expense.
12. Bylaw 4.1(a) states that pets shall not be kept on the premises without the written consent of the strata council.

13. Bylaw 5 addresses occupancy limits in strata lots. According to bylaw 5.1, owners may permit a guest to stay in a strata lot for a period of less than 30 days.
14. Bylaw 9 governs rentals. Bylaw 9.1 states that no more than 15 strata lots may be rented at any time. Bylaw 9.2 requires that an owner apply in writing to the strata council for permission to rent before entering into a tenancy agreement. The evidence before me suggests that there was a wait list for rental permission as more than 15 owners wished to rent out their strata lots. Where an owner rents a strata lot in contravention of the bylaws, bylaw 9.7 says that they are subject to a fine of \$500 and responsible for any legal costs incurred by the strata in enforcing bylaw 9. Bylaw 9.7 was amended in 2015 to fix a typographical error.
15. Lower fines apply to the contravention of other bylaws. Bylaw 26.1 allows the strata to impose a fine up to \$200 for each bylaw contravention. According to bylaw 26.2, fines may be levied every 7 days for a continuing contravention.
16. Bylaw 27 imposes requirements for the timing and conduct of moves, and sets out how notice of a move must be provided to the strata council.
17. Through its property manager, the strata sent the owners a letter on November 20, 2018 about the need to comply with bylaw 3 when disposing waste. This letter contained a warning, and did not result in a fine.
18. At some point in early 2019, the strata became aware that the owners' strata lot was advertised for rent on a website. The strata believed that tenants moved into the strata lot on March 19, 2019.
19. On May 7, 2019, the strata's property manager wrote to the owners to advise of an allegation that they had rented out their strata lot without permission, starting on March 19, 2019. The letter asked the owners to advise the strata council of the end date of the rental arrangement and stated that there might be a \$500 fine for each contravention. The owners were given the opportunity to answer the complaint or request a hearing within 14 days.

20. On July 5, 2019, the property manager wrote to the owners about a complaint that a resident associated with their strata lot dumped non-household garbage in the garbage room on June 29, 2019 in contravention of bylaw 3. The letter attached an image of the items that were the subject of the complaint. The letter advised the owners that they could respond to the complaint in writing within 14 days, and stated that they might be fined \$200.
21. On July 8, 2019, the strata's property manager wrote to the owners to advise that the strata was aware that there was an unauthorized dog in their strata lot. The property manager asked the owners to remove the dog before July 12, 2019, and gave them the opportunity to answer the complaint or request a hearing.
22. On February 18, 2020, the property manager wrote to the owners to advise that, given the lack of response to the May 7, 2019 letter about the unauthorized rental, the strata council had decided to levy a fine of \$500 against their strata lot account starting on March 19, 2019 and recurring every 7 days.
23. On that same day, having had no response to the July 5, 2019 letter about waste disposal in breach of bylaw 3.18, the property manager wrote to the owners to advise of the strata's decision to fine them \$200.
24. The strata also wrote letters to the owners on February 14, 2020 about improper waste disposal and on February 26, 2020 about a breach of bylaw 27. It is not clear whether any response was received or whether any fines resulted from these complaints. They are not the subject of specific claims in this dispute, and I will not address them further.
25. At some point in February 2020, the owners became aware of the fines on their strata lot account. On February 27, 2020, they sent an email to the property manager to advise that they had been out of the country for several months. They did not say whether anyone had been living in the strata lot during their absence, but stated that they had "never raised a pet". The owners asked for the fines to be removed. In response, the strata council arranged for a hearing on March 19, 2020.

26. The owners attended a hearing on March 19, 2020 about a parking matter that is not an issue in this dispute, the unauthorized rental and the unauthorized pet. The hearing did not deal with the waste disposal infractions. The owners advised the strata council that, although they had advertised their strata lot for rent, they did not get a tenant. Instead, the owners stated that they allowed family members to stay in their strata lot while they were out of the country. The owners stated that they did not have a dog.
27. The property manager wrote to the owners on March 23, 2020 to advise them of the strata council's decision. Despite the evidence that the strata lot may have been rented, the strata council considered the owners' evidence that family members were occupying the strata lot. They considered that this amounted to a violation of bylaw 5.1, which limits guests' stays to 30 days or less. After allowing 29 days of permitted stay, the strata determined that the guests had been in contravention of bylaw 5.1 for approximately 41 weeks. Instead of applying the \$23,000 fine for breach of bylaw 9, the strata decided to impose a fine of \$8,400 for the breach of bylaw 5.1. The strata stated that it would rescind this reduced fine and apply the \$23,000 fine if the owners contested the fine. As for the pet bylaw, the strata determined that the dog had been present for approximately 29 weeks without authorization, resulting in a \$6,000 fine for the continuing contravention. The strata requested that the owners pay the total fine amount of \$14,400 within 14 days.
28. The owners did not pay the fines, and commenced this dispute. They ask that the strata reverse \$7,900 in fines for the unauthorized rental, \$8,000 in fines for the unauthorized pet, and \$200 in fines for improper waste disposal. They also ask for orders that the strata pay them \$6,000 and \$8,400 in unspecified damages (for the pet and rental bylaw matters, respectively), and that the strata stop fining them retroactively. It is not clear why the amounts the owners identified for the rental and pet bylaw fines differ from those identified in the March 23, 2020 letter, but I note their submission that the strata applied fines in a "misleading and confusing" manner. The owners did not explain the basis for their claims for damages.

### ***Did the Strata Comply with Section 135 of the SPA?***

29. The owners did not make submissions or provide evidence about the occupants of their strata lot while they were out of the country, or whether these individuals had a dog. Further, they did not specifically argue that they (or their guests) did not violate the bylaws and did not present evidence in support of that position. The focus of the owners' submissions is the strata's application of section 135 of the SPA. They submit that, as the strata did not comply with the procedural requirements of this section, the fines assessed against their strata lot account should be reversed. The strata's position is that it complied with section 135 and properly assessed fines against the owners.
30. Section 135(1) of the SPA provides that a strata corporation must not impose a fine, require a person to pay the costs of remedying a contravention, or deny a person the use of a recreational facility for the contravention of a bylaw or rule unless the strata corporation has received a complaint about the contravention, given the owner or tenant the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing if requested. Section 135(2) states that a strata corporation must, as soon as feasible, give notice in writing of a decision made on a matter referred to in section 135(1). According to section 135(3), once a strata corporation has complied with section 135 in respect of a bylaw contravention, it may impose a fine or other penalty for a continuing contravention of that bylaw without further compliance with section 135.
31. The owners say that the strata did not provide them with decisions as soon as was feasible, as required by section 135(2). They also say that the strata fined them for the pet violation before sending a written decision, and inappropriately imposed retroactive fines. The owners suggest that, under section 121 of the SPA, the strata's bylaws are unenforceable as they contravene the SPA. I find that a possible lack of compliance with section 135 of the SPA would not mean that the bylaws themselves contravene the SPA. The issue is whether the fines assessed by the strata are valid.

32. The strata says it complied with the SPA, and points out that the standard of care for a strata council is not perfection, but "reasonable action and fair regard for the interests of all concerned" (see *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74 at paragraph 61). The strata also refers to the decision in *Mitchell v. The Owners, Strata Plan KAS 1202*, 2015 BCSC 2153, where the British Columbia Supreme Court held that lay person volunteer members of a strata council will make mistakes and "within reason, some latitude is justified when scrutinizing its conduct" (see paragraph 50). I note that neither of these decisions concerned bylaw fines, as *Lerclerc* was about repairs and *Mitchell* was about finances and strata governance. In any event, the British Columbia Court of Appeal has found that strict compliance with section 135 of the SPA is required before a strata corporation can impose fines (see *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449). I find that *Terry* removes any latitude that may be present in other circumstances.
33. I will address each set of fines in turn.

### ***Bylaw 9 – Unauthorized Rental***

34. With respect to the bylaw 9 rental violation, the owners point out that the violation notice is dated May 7, 2019 but the decision letter is dated February 18, 2020. The owners say the fines appeared on their strata lot account on February 18, 2020. The owners' position is that an interval of approximately 9 months does not comply with the requirement in section 135(2) that they receive a decision "as soon as feasible".
35. In support of their position, the owners cite *Terry*, in addition to CRT decisions (which are not binding upon me but may be considered to be persuasive):
- a. *Hamaguchi v. The Owners, Strata Plan LMS 3146*, 2018 BCCRT 307, in which a tribunal member determined that a period of approximately 2 months between a decision about a bylaw complaint and the provision of a written decision did not comply with section 135(2), and
  - b. *The Owners, Strata Plan KAS 933 v. Jacobsen*, 2019 BCCRT 915, in which a tribunal member found that a period of a little over a month was found not to be



“as soon as feasible”, particularly as the evidence showed that the strata met quickly to address other matters.

36. The strata says these cases are distinguishable as they involved communication between the strata corporation and owners when the owners were notified of the infractions, and there was the possibility for confusion about when a fine would begin to be applied or where the strata was in its decision making process. While the actual circumstances may differ, I find that these decisions are helpful in determining the meaning of “as soon as feasible” as set out in section 135(2) of the SPA.
37. According to the strata, it decided to fine the owners at the October 24, 2019 strata council meeting, but decided not to begin applying the fine at that time in order to provide the owners with an opportunity to make late submissions or hearing requests. The strata’s position is that these decisions were conveyed to all owners in the minutes.
38. I find that the strata’s submission that it was allowing the owners additional time to respond to the complaints is not consistent with the requirement in the May 7, 2019 letter that the owners reply within 14 days. More importantly, I find that the distribution of minutes did not amount to communication of the decision.
39. According to *The Owners, Strata Plan NW3075 v. Stevens*, 2018 BCPC 2 at paragraph 48, after the particulars of a complaint have been provided and the recipient has responded to the complaint, not responded after a reasonable period of time, or a hearing has been held, “the strata corporation must give written notice to the person, informing him or her of the outcome and whether or not it has decided to impose a fine, and if so, what the amount of that fine is”.
40. I find that the minutes of the October 24, 2019 strata council meeting do not contain the information required by *Stevens*. They discuss “bylaw violations against 4 units and a direction to the property manager to “gather more information before rendering a decision”, and do not contain specific information about the owners’ unauthorized rental or their other alleged bylaw infractions. Even if I am incorrect about the adequacy of the detail in the minutes, I find that the distribution of minutes does not

comply with the notice requirements set out in section 61(1) of the SPA. This section says that, when a person has not provided an address for notice outside of the strata, a notice or other record or document that the strata corporation is required or permitted to give under the SPA must be given to the person by leaving it with the person or an adult occupant of the strata lot, by putting it under the door of the strata lot, by mailing it to the address of the strata lot, by putting through a mail slot or in a mail box, by fax, or by email.

41. The owners say that they did not have electronic access to correspondence from the strata and I infer from their submissions that they did not provide the strata with an address other than that of the strata lot. According to the strata council's meeting minutes, hard copies of minutes or other strata documents were not provided to owners after March 1, 2018. Instead, the minutes were available through the strata's electronic portal, to which the owners apparently had not subscribed. I find that, even if the minutes did provide clear notice of a decision about a fine and its amount, this would not amount to proper notice under section 61(1).
42. In the circumstances, I find that the owners did not have notice of the strata council's decision until the February 18, 2020 letter. This is approximately 9 months after the initial violation notice and approximately 4 months after the strata says it decided to fine the owners. I find that this is not "as soon as feasible" as contemplated by section 135(2).
43. The strata's decision to begin fining the owners effective March 19, 2019 also does not comply with the requirements of section 135. In *Shen v. The Owners, Strata Plan LMS 970*, 2020 BCCRT 953 at paragraph 53, a tribunal Vice Chair found that retroactive fines are akin to charging fines before notifying an owner of the particulars of a complaint. Although not binding on me, I agree with the Vice Chair's reasoning. Although the initial letter notified the owners that fines could be applied effective March 19, 2019, it was not sent until May 7, 2019. Therefore, the owners were fined before they were advised of the particulars of the complaint, which does not comply with section 135(1)(e).

44. According to *Stevens* at paragraph 48, a strata corporation is “not allowed to fine anyone unless it has followed due process” in section 135. I find that the strata did not comply with the requirements of section 135 of the SPA before imposing a fine on the owners for violating bylaw 9. As the initial fine did not comply with section 135, subsequent fines for continuing contraventions also did not comply. I find that the fines associated with the breach of bylaw 9 (calculated by the strata at \$23,000) are not valid and must be removed from the owners’ strata lot account.

### ***Bylaw 5.1 - Guests***

45. The evidence before me does not establish that the strata provided notice to the owners that it was considering imposing a fine for a possible violation of bylaw 5.1 due to the length of their family members’ stay in their strata lot. Although the strata purported to substitute the infraction for unauthorized rentals with one for allowing guests to stay more than 29 days in the March 23, 2020 letter, I find that this did not comply with the requirements of section 135. Accordingly, the \$8,400 fine associated with this decision is also invalid and must be removed from the owners’ strata lot account.

### ***Bylaw 4 - Pets***

46. The violation notice for the dog in the strata lot is dated July 8, 2019 but the first written decision about the associated fine was in the March 23, 2020 letter following the hearing. The owners say that the charges for the pet violation were applied to their strata lot account on November 5, 2019. The strata says it decided to fine the owners for the pet violation at the October 24, 2019 strata council meeting, and this decision was conveyed to all owners in the minutes. Unlike the unauthorized rental, the property manager did not send a separate letter to advise the owners of the strata’s decision about the violation of bylaw 4.

47. As discussed above, I have found that the minutes of the October 24, 2019 meeting do not contain sufficient information to amount to communication of the strata’s decision and the minutes did not constitute notice under section 61(1) of the SPA. I

find that the owners did not receive notice of the strata's decision until March 23, 2020, which is not "as soon as feasible" as contemplated by section 135(2) of the SPA. As the initial fine did not comply with section 135, neither did the subsequent fines for the continuing contravention. In addition, given that the strata fined the owners for the estimated duration of the dog's presence in the strata lot, portions of the fines were imposed retroactively and before the owners received the particulars of the complaint. I find that, as the strata did not comply with section 135 of the SPA, the \$6,000 in fines for the unauthorized dog are invalid and must be removed from the owners' strata lot account.

### ***Bylaw 3 – Waste Disposal***

48. The waste disposal violation notice is dated July 5, 2019, but the decision letter is dated February 18, 2020. The owners say that the fine was charged to their strata lot account on February 18, 2020.
49. Once again, the strata says it decided to fine the owners at the October 24, 2019 strata council meeting, but also decided not to begin applying the fine at that time in order to allow the owners an opportunity to make late submissions or hearing requests. The strata says these decisions were conveyed to all owners in the minutes.
50. I have already determined that the minutes do not contain sufficient detail to comply with section 135(2) and that they were not delivered to the owners as required by section 61(1). Further, I find that the interval between the October 24, 2019 decision and the February 18, 2020 letter is too long to be considered "as soon as feasible".
51. Based on the evidence before me, I find that the strata did not comply with section 135 of the SPA before fining the owners for waste disposal violations. Accordingly, the \$200 fine associated with the July 5, 2019 violation notice is invalid and must be removed from the owners' strata lot account.

### ***Damages***

52. As noted, the owners (who did not pay the fines assessed by the strata) ask for orders that the strata pay them \$6,000 for the pet bylaw matter and \$8,400 for the

rental bylaw matter. The owners did not explain what these amounts represent or why they feel the strata should pay them damages.

53. I find that the owners have not proven any entitlement to damages from the strata, and dismiss these claims.

## **CRT FEES AND EXPENSES**

54. Under section 49 of the CRTA, and the CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As the owners were largely successful, I order the strata to reimburse them for the \$225 they paid in CRT fees.
55. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners.

## **ORDERS**

56. I order that:

- a. the fines associated with the unauthorized rental and violation of bylaw 9 must be removed from the owners' strata lot account,
- b. the fines associated with the long-term presence of guests and violation of bylaw 5.1 must be removed from the owners' strata lot account,
- c. the fines associated with the unauthorized dog and violation of bylaw 4 must be removed from the owners' strata lot account,
- d. the fine associated with the waste disposal violation of bylaw 3 must be removed from the owners' strata lot account, and
- e. within 30 days, the strata must reimburse the owners for the \$225 they paid in CRT fees.

57. The owners' claim for damages is dismissed.

58. The owners are entitled to post-judgment interest under the *Court Order Interest Act*.
59. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court 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.

---

Lynn Scrivener, Tribunal Member