



Civil Resolution Tribunal

Date Issued: December 22, 2020

File: ST-2020-005228

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wenn v. The Owners, Strata Plan LMS 4263*, 2020 BCCRT 1452

B E T W E E N :

SHIRLEY WENN and BRIAN WENN

APPLICANTS

A N D :

The Owners, Strata Plan LMS 4263

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. The applicants, Shirley Wenn and Brian Wenn, co-own a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 4263 (strata).
2. The Wenns are self-represented. The strata council president represents the strata.

3. The Wenns ask for an order reversing a \$200 bylaw fine the strata entered against the Wenns' strata lot account on May 25, 2020 for Mr. Wenn allegedly harassing and threatening a landscaping worker. The Wenns say the bylaw fine is not valid because it was improperly imposed. The Wenns also deny that Mr. Wenn threatened or harassed the landscaping worker.
4. The strata says the bylaw fine was appropriate because Mr. Wenn's conduct was violent and an immediate fine was necessary to protect owners and the landscaping workers.

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.

ISSUES

9. The issues in this dispute are:
 - a. Should the May 25, 2020 bylaw fine against the Wenns' strata lot account be reversed?
 - b. Should the strata be ordered to remove the May 25, 2020 letter about the bylaw fine from its records?

EVIDENCE AND ANALYSIS

10. The strata was created in 2000 and consists of 42 residential strata lots with detached homes. The strata is subject to the *Strata Property Act* (SPA).
11. The strata filed a complete set of amended bylaws at the Land Title Office on July 25, 2016. Subsequent bylaw amendments are not relevant to this dispute. The relevant bylaws are as follows:
 - a. Bylaw 3(1) says an owner must not use a strata lot or common property in a way that causes a nuisance or hazard to another person, or unreasonably interferes with another person's right to use and enjoy the property.
 - b. Bylaw 23 says the maximum fine for each bylaw violation is \$200.
 - c. Bylaw 30(1) says a complaint must be written, contain a clear description of the issue, say which section of the SPA or the bylaws have been breached, identify the persons involved, be signed by the author and be delivered to the strata and the property manager.
 - d. Bylaw 30(2) says that when a complaint is made, the strata will provide a verbal warning, then a reminder, then a written warning and then issue a fine if the conduct does not stop within 14 days.
12. The strata says Mr. Wenn repeatedly interfered with landscaping workers. At a strata council meeting held on May 6, 2020, the strata noted that owners should not

communicate directly with landscaping workers. The strata sent a letter to all residents on May 11, 2020 telling them not to speak to landscaping workers. The strata says it also sent the owners an email saying the same thing. However, the strata did not provide a copy of this email as evidence in this dispute.

13. GD, a strata council member, sent the strata an email saying that Mr. Wenn had multiple arguments with a landscaping worker on May 22, 2020. The landscaping worker recorded a video showing an incident with Mr. Wenn in a parking area. The video generally shows that Mr. Wenn had parked his car in front of the landscaping worker's vehicle. Mr. Wenn and the landscaping worker argued about grass clippings in the parking space. At one point, the landscaping worker appeared to approach Mr. Wenn and Mr. Wenn raised his arm in a threatening manner. During the conversation, Mr. Wenn said he was going to call the police, although it is unclear why.
14. The strata provided notes from an emergency strata council meeting held on May 23, 2020 to discuss Mr. Wenn's conduct. The notes say that the strata decided to fine Mr. Wenn \$200 for threatening the landscaping worker. The property manager sent Mr. Wenn a letter dated May 25, 2020 saying the strata had imposed a fine of \$200 for breaching bylaw 3(1) by harassing and threatening the landscaping worker on May 22, 2020.
15. SPA section 135 says that before fining an owner for a bylaw contravention, the strata must give the owner written particulars of the complaint and a reasonable opportunity to respond. 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.
16. In this dispute, the strata issued the fine on May 25, 2020, only 3 days after the alleged bylaw breach on May 22, 2020. There is no evidence before me that the strata provided any notification of the alleged bylaw breach before imposing the fine against the Wenns' strata lot account.
17. The strata argues that the letter and email sent before the alleged incident provided the Wenns with sufficient notice of the strata's intention to impose the bylaw fine. I

disagree. As discussed above, section 135 says the strata must give the owner particulars of the complaint. I find that a general letter sent before the alleged incident does not satisfy these requirements. Rather, I find that it was not possible to notify the Wenns of the particulars of an alleged breach of the bylaws before it happened.

18. Further, section 135 says the owners must have an opportunity to respond to a complaint before issuing a bylaw fine. It is undisputed that the fine was imposed without notifying the Wenns of the strata's intention to do so. As such, I find that the Wenns were not aware of the strata's allegations of a bylaw breach and that they did not have an opportunity to respond as required under section 135 of the SPA.
19. The strata argues that Mr. Wenn's behaviour was so serious that the strata needed to fine him immediately to protect the other owners, who are primarily elderly, and to protect the landscaping workers. However, I find that there is no authority in the SPA to impose a fine for a bylaw violation without complying with section 135.
20. For the above reasons, I find that the strata did not comply with section 135 of the SPA. So, I find that the \$200 bylaw fine is not valid and must be reversed. The Wenns must be reimbursed if they have already paid all or a portion of this fine.
21. The Wenns also argue that the strata did not comply with the bylaws by issuing a fine without first giving Mr. Wenn a verbal warning, reminder and written warning as required by bylaw 30(2). However, since I have determined that the fine is not valid under section 135 of the SPA, I find it unnecessary to also determine whether fine is invalid under the bylaws as well.
22. The Wenns also ask for an order requiring the strata to remove the letter imposing the fine from the strata records. Under section 35(2)(k) of the SPA, the strata is required to maintain copies of all letters sent to owners, which I find includes the May 25, 2020 letter sent by the property manager on the strata's behalf. Since the strata is required to retain this letter under the SPA, I deny the Wenns' request to remove this letter from strata records.

CRT FEES AND EXPENSES

23. 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. I therefore order the strata to reimburse the Wenns for CRT fees of \$225.
24. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the Wenns.

ORDERS

25. Within 30 days of the date of this decision, the strata must:
- a. reverse the \$200 fine it charged the Wenns' strata lot account. If the Wenns have paid all or a portion of this fine, I order the strata to reimburse the Wenns the amount paid and reverse the unpaid amount, if any.
 - b. reimburse the Wenns \$225 for CRT fees.
26. The Wenns are entitled to post-judgement interest under the *Court Order Interest Act*.
27. I dismiss the Wenns' claim for the removal of the May 25, 2020 letter.
28. 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.

Richard McAndrew, Tribunal Member