



# Civil Resolution Tribunal

Date Issued: December 30, 2020

File: ST-2020-002743

Type: Strata

Civil Resolution Tribunal

Indexed as: *Kirchner v. The Owners, Strata Plan KAS 1096*, 2020 BCCRT 1468

B E T W E E N :

LOUISE KIRCHNER

**APPLICANT**

A N D :

The Owners, Strata Plan KAS 1096

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Rama Sood

## INTRODUCTION

1. The applicant, Louise Kirchner, owns strata lot 6 in the respondent strata corporation, The Owners, Strata Plan KAS 1096 (strata). Ms. Kirchner says the strata has permitted the strata manager to perform tasks that are the strata council's responsibility, including chairing strata council meetings, issuing letters for bylaw

violations, and issuing fines. She also says the strata council is not complying with the *Strata Property Act* (SPA) or the strata's bylaws.

2. Ms. Kirchner seeks orders requiring the strata to comply with the SPA and the bylaws about electing the strata council's executive members, identifying council executives, and limiting the strata manager's actions. She also seeks an order invalidating bylaw violation fines the strata issued against her. She also seeks an order requiring the strata to be more tolerant of a tenant with a disability when assessing bylaw violations and issuing fines.
3. Ms. Kirchner is self-represented. The strata is represented by a strata council member.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.
6. 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.

7. 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

8. The issues in this dispute are:
  - a. Did the strata identify the council's executives?
  - b. Did strata council members hold multiple executive positions?
  - c. Did strata council members fail to perform their duties?
  - d. Did the strata manager chair meetings?
  - e. Did the strata manager issue notices and fines for bylaw violations without the strata's approval?
  - f. Are the fines issued against Ms. Kirchner enforceable? And,
  - g. Does the strata consider tenant disabilities when assessing bylaw violations and assessing fines?

## EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Ms. Kirchner bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. The strata is a residential strata corporation created in 1992 under the *Condominium Act*. It continues to exist under the *Strata Property Act* (SPA) and consists of 8 strata lots. The strata's bylaws were updated in May 2002. Two bylaw amendments that were filed subsequently are not relevant to this dispute.
11. Ms. Kirchner purchased her strata lot on October 9, 2018. According to the May 26, 2020 strata council meeting (SCM) minutes, she is currently a strata council member.

Ms. Kirchner raises issues about the strata council's governance and alleges it improperly delegated its duties to the strata manager, including issuing bylaw violation fines.

12. Further, Ms. Kirchner rented her strata lot to her son for approximately 1 year, although the exact dates were not provided by either party. The strata says the son was involved in illegal activities and prompted visits from the RCMP. It also says that the son's visitors created noise at all hours and left garbage on the walkways. It says the situation improved after the son moved out.
13. From October 2019 to May 2020, the strata manager sent Ms. Kirchner numerous notices of bylaw violations, mostly for noise and creating a nuisance. The strata manager also sent Ms. Kirchner 9 letters, each imposing \$100 fines. Details about the notices and fines are discussed below.
14. Ms. Kirchner also says the fines should be cancelled because the notices of bylaw violations and fine letters were sent by the strata manager, not the strata. She also says that the complaints were biased and based on opinion, not fact, about her son's activities. She also says she was not given sufficient time to respond to the notices before the fines were issued.

### ***Identifying strata council members***

15. Ms. Kirchner says the strata did not identify the roles of the strata council members in the strata council meeting (SCM) minutes and annual general meeting (AGM) minutes. Bylaw 15.1 states that the strata council must elect a president and vice president, and may elect a secretary and treasurer, at the first strata council meeting after the AGM.
16. Ms. Kirchner submitted the second page of AGM minutes from 2014 to 2020 which each listed the newly elected strata council members at the AGMs but not their executive positions. She also submitted the May 26, 2020 SCM minutes, which I infer took place after the 2020 AGM. The SCM minutes listed the names of the council members who were elected as president, vice president, secretary, and treasurer.

Since the council executives do not have to be elected until after the AGM, I find there is no evidence that the strata breached bylaw 15.1.

### ***Multiple executive positions***

17. Ms. Kirchner says the vice president is also the treasurer and that the strata council must follow bylaw 15.2, which states that except for the president and vice president, a person can hold more than 1 office at a time. I find Ms. Kirchner has not proved her allegation. Again, referring to the May 26, 2020 SCM, the minutes show different people were elected as president, vice president, secretary, and treasurer and that the person named as the treasurer was not the same person named as the vice president. So, I find the strata has not breached bylaw 15.2.

18. Ms. Kirchner also says many council members have “changed position”, which I infer means executive positions. She says this breached bylaw 14.1 which states that if a council member resigns or is unwilling or unable to act for at least 2 months, the remaining council members may appoint a replacement council member for the remainder of the term. The strata denies the allegation and says that the same core group of people have consistently served in their respective executive positions. Again, Ms. Kirchner did not submit any evidence that council members changed the executive positions they were elected to during the course of their term, and so I find there is no evidence to support her claim.

### ***Executive duties***

19. Ms. Kirchner says that council members are not performing their “executive duties”. Since Ms. Kirchner did not provide further details about which duties are not performed, I find there is no evidence to support her claim.

### ***The strata manager***

20. Ms. Kirchner says the strata council has permitted the strata manager to perform tasks that are the strata council’s responsibilities, including chairing SCMs and AGMs, communicating with the owners, conducting hearings, issuing bylaw violation letters, and issuing fines.

## **1. *Chairing meetings***

21. Ms. Kirchner says the strata manager was chairing all council meetings, most AGMs, and also hearings. She says this violates bylaws 27.1, 27.2, and 27.3.
22. Bylaw 27.1 states that the AGM and special general meeting (SGM) must be chaired by the president. If the president is unwilling or unable to act, it must be chaired by the vice president (bylaw 27.2). Otherwise, it must be chaired by the strata manager (bylaw 27.3).
23. The strata denies that the strata manager chaired meetings or hearings.
24. Ms. Kirchner did not provide the dates or minutes of any meetings or hearings that were chaired by the strata manager and so I find Ms. Kirchner has failed to prove her allegation. In any event, I find that bylaw 27.3 allows the strata manager to chair the AGM or SGM if neither the strata council president or vice president are available.

## **2. *Notices and fines for bylaw violations***

25. From October 2019 to May 2020, the strata manager sent Ms. Kirchner the following notices of bylaw violations. Each notice stated that Ms. Kirchner had 10 days to respond before a fine would be issued:
  - a. October 18, 2019 for an October 18, 2019 incident,
  - b. November 19, 2019 for a November 17, 2019 incident,
  - c. November 25, 2019 for a November 11, 2019 incident,
  - d. January 15, 2020 for a January 10, 2020 incident,
  - e. March 23, 2020 for a March 20, 2020 incident,
  - f. March 27, 2020 for a March 25, 2020 incident,
  - g. April 27, 2020 for an April 21, 2020 incident, and

- h. May 11, 2020 for an April 24, 2020 incident,
26. The strata manager also sent Ms. Kirchner letters imposing \$100 fines on the following dates:
- a. November 19, 2019 for a November 18, 2019 alleged violation,
  - b. December 3, 2019 for a December 2, 2019 alleged violation,
  - c. December 19, 2010 for a December 15, 2019 alleged violation,
  - d. December 24, 2019 for a December 17, 2019 alleged violation,
  - e. December 30, 2019 for a December 27, 2019 alleged violation,
  - f. January 7, 2020 for a January 6, 2020 alleged violation,
  - g. January 30, 2020 for a January 30, 2020 alleged violation,
  - h. March 23, 2020 for a March 21, 2020 alleged violation, and
  - i. May 11, 2020 for a May 9, 2020 alleged violation.
27. Neither party submitted copies of the notices of bylaw violation that corresponded with the fine letters.
28. Ms. Kirchner says the strata inappropriately delegated its responsibility to assess and issue fines against her for alleged bylaw violations to the strata manager. She says this because the notices for bylaw violations and fine letters she received were signed by the strata manager. She also says the decision to issue the notices and fines was not recorded in the SCM minutes. She says this violates bylaws 24.1 and 25.1. Ms. Kirchner says that the bylaw violation notices and fines are not enforceable since they were issued by the strata manager, not the strata.
29. Bylaw 24.1 states that the strata can fine an owner or tenant \$100 for each bylaw contravention and \$20 for each rule contravention. Bylaw 25.1 states the fine can be

imposed every 7 days if the bylaw or rule contravention continues for longer than 7 days.

30. The strata says that owners send complaints to the strata manager, who then sends them to the strata council for approval. After receiving strata council approval, it says the strata manager sends a letter to the owner. It says the letters are ratified and recorded at the SCM.
31. The parties only submitted minutes for the May 26, 2020 SCM. These minutes stated that a hearing was held about Ms. Kirchner's alleged bylaw violations and a motion to have all fines stand was carried. The minutes also stated that the strata ratified all "bylaw letters" sent until May 26, 2020.
32. Based on the evidence before me, I find the strata approved the bylaw violation notices and fines that were imposed on Ms. Kirchner. I find Ms. Kirchner has not provided evidence to prove her allegation.
33. However, the issue of whether the strata followed the requirements for imposing fines must still be considered.

### ***Are the fines enforceable?***

34. Section 129(2) of the SPA states that the strata may give a person a warning before enforcing a bylaw or rule. Section 135(1) states that the strata cannot impose a fine against a person for a bylaw contravention unless the strata has received a complaint, given the owner or tenant the particulars of the complaint, in writing, and given the owner or tenant a reasonable opportunity to answer the complaint.
35. I find the strata did not comply with section 129(2). The incident dates in the bylaw violation notices did not correspond with the incident dates that the fines were imposed for and so there is no evidence that the strata gave Ms. Kirchner a warning before imposing the fines.
36. In addition, I find that the strata did not comply with section 135(1). According to the fine letters, the fines were issued at the most 5 days after the alleged incident

occurred. I find this was not a reasonable amount of time for Ms. Kirchner to respond given that in other notices of bylaw violations, the strata gave Ms. Kirchner 10 days to respond. And so I find the fines listed above are not enforceable.

37. Also, even if the strata had given Ms. Kirchner a warning and a reasonable opportunity to respond, I still find the fines are not enforceable. According to section 130 of the SPA, a strata cannot fine an owner if a bylaw or rule is contravened by their tenant, although it can collect the fine imposed on a tenant from the owner (see section 131). I infer from the parties' submissions that the fines were imposed by the strata while Ms. Kirchner's son was a tenant. I find that the strata failed to comply with section 130 of the SPA since it imposed fines on Ms. Kirchner instead of her son.

### ***Other issues***

38. Ms. Kirchner requested an order that the strata council members read or become familiar with the SPA and the bylaws, I find there would be no useful purpose in making such an order since the strata is already obligated to comply with both.
39. Ms. Kirchner also says the strata must stop "tattling" on the activities of other strata lot residents that do not violate a bylaw, rule, or "law". Again, Ms. Kirchner did not submit any evidence to support her allegation and so I give it no weight.
40. Ms. Kirchner says her son has a disability. She says the strata must be "tolerant" of a tenant with a disability and "give them some slack" before issuing notices of bylaw violations or fines. Ms. Kirchner did not state what her son's alleged disability was or how the strata was not being "tolerant". While the *Human Rights Code* applies to strata corporations, I find Ms. Kirchner did not provide sufficient details to assess her allegation and so I refuse to address it.

### **CRT FEES**

41. 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. As Ms. Kirchner was partially successful, I order the strata

to reimburse her for 50% of the \$225 CRT fees she paid, which is \$112.50. Ms. Kirchner did not make a claim for dispute-related expenses.

42. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Kirchner.

## **ORDERS**

43. I order that within 30 days of the date of this decision, the strata must:

- a. reverse the fines associated with the bylaw infraction notices issued between November 19, 2019 and May 11, 2020, and
- b. reimburse Ms. Kirchner \$112.50 in CRT fees.

44. I dismiss Ms. Kirchner's remaining claims.

45. Ms. Kirchner is also entitled to post-judgement interest under the *Court Order Interest Act*.

46. 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.

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Rama Sood, Tribunal Member