



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 1756 v. Xu*, 2021 BCCRT 49

B E T W E E N :

The Owners, Strata Plan NW 1756

APPLICANT

A N D :

YING DONG XU

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about fines for bylaw infractions. The respondent, Ying Dong Xu, co-owns a strata lot in the applicant strata corporation, The Owners, Strata Plan NW 1756 (strata). The strata says that Ms. Xu's tenant created unsanitary conditions inside the strata lot that resulted in odors in common areas. The strata says that Ms.

Xu failed to address the conditions inside the strata lot and failed to pay the fines it assessed against the strata lot for bylaw infractions. The strata asks for an order that Ms. Xu pay it the \$3,000 in fines. Ms. Xu denies that she violated any bylaws and says the fines should be removed from her strata lot account.

2. The strata is represented by a member of the strata council. Ms. Xu is self-represented.

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.
7. The strata made references in its submissions to the possibility of placing a lien on the strata lot. This claim is not before me and, even if it were, a strata corporation

cannot file a lien for unpaid bylaw fines under section 116 of the *Strata Property Act* (SPA). I will not address this matter further.

ISSUE

8. The issue in this dispute is whether Ms. Xu is responsible for the \$3,000 in bylaw violation fines assessed by the strata.

EVIDENCE AND ANALYSIS

9. The strata is comprised of 45 residential strata lots. Ms. Xu co-owns strata lot 7 (which is also known as suite 107) as a joint tenant with another individual. For reasons that are not clear, the other co-owner is not a party to this dispute. The documents in evidence are authored by or addressed to both co-owners, and the strata lot account is in both of their names. I will refer to the co-owners as the “owners” in my analysis and to the respondent as Ms. Xu.
10. The strata filed new bylaws at the Land Title Office in 2017. In some correspondence in evidence, the strata referred to a different version of the bylaws with similar contents but different section numbers. Under section 120 of the SPA, the bylaws that are in force are the ones that were filed at the Land Title Office, and I will refer to this version in my decision.
11. Bylaw 2 states that an owner must repair and maintain their strata lot, except for repair and maintenance that is the strata’s responsibility.
12. Bylaw 3 addresses the use of property and imposes a number of limitations on the way a strata lot may be used. The relevant sections are:
 - a. 3.1 – an owner, tenant or visitor must not use a strata lot in a way that (a) causes a nuisance or hazard to another person or (c) unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot, and

- b. 3.4 – an owner or tenant must not (b) produce undue smell in any strata lot that will interfere unreasonably with any other owner, tenant or occupant, (h) do anything that will increase the risk of a fire or the strata's rate of insurance, or (j) allow a strata lot to become unsanitary or a source of odor.
13. Bylaw 23.1 states that the strata may fine an owner or tenant a maximum of \$200 for a bylaw contravention and \$50 for a rule violation. Bylaw 24.1 allows the strata to impose fines every 7 days for the continuing contravention of a bylaw or rule.
14. Bylaw 45 contains additional information about how allegations of bylaw and rule violations will be addressed, fines, and payment. Bylaw 45.7.2. states that the strata may set different maximum amounts of fines for different bylaws and rules. The bylaws also contain a chart that sets out the fines for specific violations.
15. The owners leased the strata lot to a tenant in 2013. The tenant signed a Form K Notice of Tenant's Responsibilities in which she acknowledged the need to comply with the strata's bylaws and rules. In addition to the strata lot, the tenant also had access to a garage space which she used for storage.
16. In late 2018, the strata's building manager, Mr. O (who is also the strata council president), received reports from residents and a custodian about an overpowering and unpleasant smell in the common hallway near suite 107. Mr. O attempted to contact the tenant about the matter but she did not respond.
17. On December 20, 2018, Mr. O wrote to the owners about the smell and the nuisance it was causing in the hallway. He advised that the strata would be inspecting the strata lot on January 12, 2019. The letter stated that "[r]estricted access may result in a bylaw infraction" about nuisance and allowing the strata lot to become unsanitary or a source of odor.
18. When Mr. O and another member of the strata council inspected the strata lot on January 12, 2019, they determined that it was the source of the odor. Photos and video footage taken during the inspection show mold on the walls and ceilings, generally unsanitary conditions, and a very large amount of personal belongings. Mr.

O reported the results of the inspection to the strata council, and expressed concern about the tenant's health, as well as pest and safety issues associated with what he thought was a "hoarding" situation.

19. Mr. O wrote to the owners on January 18, 2019 to advise them of the results of the inspection and the strata's position that the condition of the strata lot was a fire hazard and a health and safety risk. The strata imposed a "remediation order" and asked the owners to remediate the mold, remove "bio hazardous waste" and any items that created odors, remove unreasonable clutter, and clean anything that might be unsanitary or pose a health risk within 30 days. The letter stated that, if there was not "total compliance" with the order, the strata would take steps to remove the tenant. The strata cited the bylaws about nuisance, increasing the risk of fire or insurance rates, and allowing a strata lot to become unsanitary or a source of odor, and warned the owners that they could be fined if the remedial work was not completed. The evidence contains a second copy of this letter which is dated January 28, 2019.
20. The owners issued a January 30, 2019 notice to end the tenancy on the basis that their tenant was putting the property at significant risk due to the unsanitary conditions and increased risk of fire. A social services organization became involved with assisting the tenant. A worker at this organization coordinated with the owners about remediation efforts, and the owners agreed to rescind the notice to end the tenancy.
21. The owners arranged for an electrician to install new bathroom and kitchen fans and had a plumber perform repairs in the bathroom. After removing the mold, they took moisture readings which, according to photos in evidence, showed "0.00" moisture in the walls and ceiling in various areas of the strata lot.
22. The strata council inspected the strata lot on March 2, 2019 when Ms. Xu was present. Photos and video footage taken during the second inspection show a large amount of furniture and personal belongings. The strata council members did comment that there had been efforts to clean since the first inspection.
23. Mr. O wrote to the owners about the results of the March 2 inspection. This letter was not dated, but Ms. Xu says she received it on March 8, 2019. Mr. O stated that,

although the mold had been remediated, there was still a “significant” smell that permeated into the common hallway area. The letter detailed the strata’s decision to issue fines to the owners for causing a nuisance, for increasing the risk of fire or insurance rates, and for allowing the strata lot to become unsanitary or a source of odor. The fines were applied to the owner’s strata lot account on March 1, 2019.

24. At some point, an unknown party contacted BC Hydro about possible unsafe conditions and a potential fire hazard inside the strata lot. BC Hydro subsequently disconnected the power to the strata lot.
25. On April 1, 2019, the strata wrote to the owners to impose further fines on the owners for continuing contraventions about the condition of the strata lot.
26. In a second April 1, 2019 letter, the strata wrote to the owners about a complaint it received about the large volume of items stored in the tenant’s garage area. The strata stated that the tenant was in violation of the bylaws about nuisance, fire risk and insurance rates, and unsanitary conditions, and asked the owners to clean up the space.
27. The tenant and her cat died inside the strata lot in mid-April of 2019. The owners removed the contents of the refrigerator and freezer and did some cleaning while waiting for the estate to be dealt with. The representatives of the tenant’s estate asked to continue the tenancy for several months to allow them to empty out and clean the strata lot. Text messages in evidence show that the intention was to end the tenancy at the end of July, but this was changed to the end of October.
28. On October 25, 2019, the strata imposed a fine of \$250 against the owners for the condition of the garage.
29. Despite continuing the tenancy, the representatives of the tenant’s estate did not clean or remove property from the strata lot. The owners worked to comply with the requirements in the *Residential Tenancy Act* about abandoned property. When the tenancy ended at the end of October 2019, the owners started to remove items from

the strata lot and garage, and later arranged for the power in the strata lot to be reconnected.

30. The strata received new complaints about odor from the strata lot. The strata notified the owners of its intention to inspect the strata lot again. The owners declined to provide access for the inspection as they believed that there was no smell. Although the owners stated that the custodian had a key to the strata lot, the strata arranged for a locksmith to remove the lock for the November 12, 2019 inspection. According to Mr. O's report to the strata council, the strata lot had an odor inside it, and was "in the same condition as it was when the hoarder was occupying it".
31. On November 16, 2019, the strata's property manager wrote to the owners to advise of the strata's decision to impose a fine for the continuing contraventions associated with the strata lot. However, a review of the strata lot account does not show that any additional fines were charged for the condition of the strata lot. Additional fines were applied for the condition of the garage as continuing contraventions.
32. The owners continued their efforts to dispose of the tenant's property. Due to the large amount of property in the garage and strata lot, it took several months for the owners to remove it all. Mr. O's annual report states that the garage cleaning was completed at some point in November 2019. Ms. Xu's evidence suggests that the strata lot cleaning and repairs were completed at some point in the spring of 2020.
33. A May 11, 2020 strata lot account statement shows that the strata imposed \$4,000 in fines on the owners between January of 2019 and January of 2020. According to Mr. O's June 2020 report to the strata council, some of these fines were "a mistake" and the outstanding balance was adjusted to \$3,000. The owners did not pay the fines imposed by the strata as they felt the fines were unfair and unreasonable due to the tenant's condition and the steps they took to address the condition of the strata lot. The owners emailed the strata about the possibility of removing the fines, but the parties did not come to an agreement. The strata commenced this dispute in June of 2020.

34. The strata says that the strata lot and garage were health and safety concerns and that Ms. Xu ought to have known about the problems. As noted, it asks for an order that she pay the \$3,000 in outstanding fines.
35. Ms. Xu denies that she violated any bylaws or rules. She says that the strata's conduct was abusive and motivated by the fact that someone associated with the strata wants to buy the strata lot at a discounted price.

Is Ms. Xu responsible for the fines assessed by the strata?

36. Although bylaw 2 requires owners to maintain their strata lots and the strata had ordered the owners to clean up the strata lot and garage area, the fines were issued for contravening sections of bylaws 3.1 and 3.4. Whether or not Ms. Xu should have known about the problems with her tenant, there is no suggestion in the evidence or submissions that Ms. Xu rather than the tenant created the conditions inside the strata lot or garage area. In the circumstances, I find that the tenant violated bylaws 3.1 and 3.4.
37. At the time the strata imposed the first fines for the conditions in the strata lot (March 1, 2019) and garage (October 25, 2019), the strata lot was still subject to the tenancy which, as discussed above, did not end until October 31, 2019. I find that the strata's actions were not permitted by the SPA.
38. Section 130(1) of the SPA says that a strata corporation may fine an owner if a bylaw or rule is contravened by the owner, a person visiting the owner, or an occupant, if the strata lot is not rented by the owner to a tenant. According to section 130(2), the strata corporation may fine a tenant if a bylaw or rule is contravened by the tenant, a person visiting the tenant or an occupant.
39. According to section 131(1), if a strata corporation fines a tenant for bylaw violations, it may collect the fine from the tenant, that tenant's landlord, or the owner. Under section 131(2), if a landlord or owner pays the fines, the tenant then owes the landlord or owner the amount paid.

40. The effect of sections 130 and 131 of the SPA is that the strata could not fine Ms. Xu directly for the tenant's bylaw violations. Further, it could not collect any fines from Ms. Xu for the tenant's bylaw violations until it followed the procedural requirements of section 135 of the SPA and imposed the fines on the tenant (or, after her death, the estate). The SPA does not give the strata the authority to proceed in a different manner.
41. The fines for the condition of the strata lot were imposed on Ms. Xu during the period of the tenancy and are therefore invalid. The October 25, 2019 fine of \$250 for the garage was also not valid.
42. After the tenancy ended, the owners were responsible for any nuisance associated with the strata lot and garage area. As noted above, there were no fines assessed for the strata lot after the end of the tenancy. The strata lot account shows that, between November 1, 2019 and January 31, 2020, the strata imposed 14 fines of \$250 for "Bylaw infraction and rule contravention in Parking Space".
43. It appears that the strata imposed a fine every 7 days for continuing contraventions, as permitted by bylaw 24.1. However, I find that these fines did not comply with the requirements of the SPA. Section 135(3) of the SPA says that, once a strata corporation has complied with section 135 in respect of a bylaw contravention, it may impose a fine for a continuing contravention without further compliance with that section. The requirements of SPA section 135 must be followed strictly before a fine can be imposed (see *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449).
44. In this case, because the initial October 25, 2019 fine was not imposed on the tenant or her estate, the requirements of section 135 were not met. As that fine is not valid, the subsequent fines for continuing contraventions are also not valid.
45. I acknowledge the disruption that the bylaw violations created for the strata and its residents. However, because the strata did not follow the SPA's requirements, the fines it assessed against the owners are not valid. I dismiss the strata's claim for payment of the \$3,000 in fines, and order that the strata must remove these charges from Ms. Xu's strata lot account.

CRT FEES AND EXPENSES

46. 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 strata was not successful, I dismiss its claim for reimbursement of CRT fees.
47. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Xu.

ORDERS

48. The strata's claim for \$3,000 in bylaw violation fines is dismissed.
49. The strata must immediately remove the bylaw violation fines from Ms. Xu's strata lot account.
50. The strata's claim for reimbursement of tribunal fees is dismissed.
51. 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