



Civil Resolution Tribunal

Date Issued: February 16, 2021

File: ST-2020-004396

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 1678 v. Kristiansen*, 2021 BCCRT 181

B E T W E E N :

The Owners, Strata Plan NW 1678

APPLICANT

A N D :

TORBEN KRISTIANSEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about rental bylaw contravention fines.
2. The respondent, Torben Kristiansen, owns 3 residential strata lots in the applicant strata corporation, The Owners, Strata Plan NW 1678 (strata). The strata says Mr.

Kristiansen rented out those 3 strata lots, contrary to the strata's rental bylaw. The strata claims \$9,261.98 in unpaid fines.

3. Mr. Kristiansen acknowledges that he rented his strata lots but denies breaching any bylaws. Mr. Kristiansen says his rentals were authorized through an exemption rule. He also says he should not have to pay any fines because the strata unreasonably delayed repairing water damage in one of Mr. Kristiansen's units for 18 months.
4. Mr. Kirstiansen is represented by his personal assistant. The strata is represented by a strata council member.

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. Did Mr. Kristiansen contravene the strata's rental bylaw?
 - b. If so, must Mr. Kristiansen pay any fines?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this one the applicant, the strata, must prove its claim on a balance of probabilities. I have reviewed all the evidence and submissions provided by both parties, but only refer to that necessary to explain my decision. I note that Mr. Kristiansen did not provide any evidence or any arguments in response to the strata's submissions, despite having been given the opportunity to do so. I will consider Mr. Kristiansen's Dispute Response as his submissions.
11. The strata was created in 1981 under the *Condominium Act*, which preceded the current *Strata Property Act*. (SPA). It has 45 residential strata lots in a 3-storey building. Mr. Kristiansen owns the following strata lots:
 - Strata lot 9, known as suite 109, since 1997,
 - Strata lot 39, known as suite 309, since 1993, and
 - Strata lot 41, known as suite 311, since 2000.
12. The strata filed a package of amended bylaws with the Land Title Office on August 8, 2002. I find the following bylaws apply to this dispute:
 - Bylaw 43.1 says no strata lots may be rented.
 - Bylaw 43.4 authorizes the strata to fine an owner \$500 for contravening bylaw 43.1.
 - Bylaws 43.2 and 43.3 set out requirements for owners who are exempt from the strata's rental restriction bylaw under the SPA.

- Bylaw 29.1 says that if an activity that is a bylaw contravention continues, without interruption, for longer than 7 days, a fine may be imposed every 7 days.
13. On October 22, 2015 the strata filed an amendment to bylaw 43.7 saying that all rentals approved for any reason would be re-assessed for eligibility on an annual basis. Although the strata has filed other bylaw amendments since 2002, I find none of those other amendments apply to this dispute.

Did Mr. Kristiansen contravene the strata's rental bylaw?

14. It is undisputed that Mr. Kristiansen rented out suites 109, 309, and 311. In his Dispute Response, he says that he rented the suites in 2013, 2014, and 2016 respectively. I disagree with Mr. Kristiansen that he rented the units before the strata's rental bylaws were imposed. This is because bylaw 43.1 came into effect on August 8, 2002, well before Mr. Kristiansen entered into tenancy agreements for these units.
15. Section 143(1) of the SPA suspends the application of rental restriction bylaws against strata lots that are rented when the rental bylaw is filed. However, the suspension lasts only until the later of the date the existing tenant moves out, or 1 year after the bylaw is filed. As bylaw 43.1 was filed in 2002, and Mr. Kristiansen entered into new tenancy agreements more than 10 years after that date, I find SPA section 143(1) does not apply here.
16. Section 143(2) of the SPA says rental restriction bylaws do not apply to strata lots designated as rental strata lots on a Rental Disclosure Statement until certain events occur, such as the date the rental period expires or the date the strata lot is conveyed by the first owner of that strata lot, other than the owner developer. Neither party provided any Rental Disclosure Statements in evidence or provided any submissions on this section of the SPA.
17. Mr. Kristiansen refers to his rental rights being exempt from the strata's bylaws but provides no explanation what that means, or any supporting documents. Even if Mr. Kristiansen means that his rental rights are exempt under section 143(2) of the SPA,

there is no supporting evidence. The strata denies that Mr. Kristiansen is entitled to rent any of his 3 strata lots. It says it ended rentals and any continuing rental rights.

18. On balance, I find Mr. Kristiansen has failed to show that he was exempt from bylaw 43.1 under the SPA or that he otherwise had permission from the strata to rent his suites. As Mr. Kristiansen acknowledged that he rented all 3 of his suites, I find he has contravened bylaw 43.1 in all 3 of his strata lots.

Must Mr. Kristiansen pay any fines?

19. In its June 14, 2018 letters, the strata notified Mr. Kristiansen that it had received a complaint that he had contravened bylaw 43.1 by renting each of his 3 suites. The letter warned Mr. Kristiansen that the strata could impose fines and informed him that he could respond to the complaint, including requesting a hearing. There is no indication that the strata did not comply with the procedural requirements of section 135 of the SPA, prior to levying fines against Mr. Kristiansen.
20. The strata provided copies of several fine notices sent to Mr. Kristiansen as well as April 1, 2019 statements of account for all 3 strata lots. Based on those documents, I find the strata imposed \$500 fines against Mr. Kristiansen for each of his 3 suites on January 16, January 28, February 21, March 25, April 1 and April 8, 2019. Overall, I find the strata fined Mr. Kristiansen a total of \$9,000, \$3,000 for each suite.
21. I find bylaws 43.4 and 29.1 allow the strata to impose fines in that amount and to impose fines as frequently as every 7 days for continuing contraventions. I find these amounts are within the maximum fine amounts and frequency imposed in section 7.1 of the *Strata Property Act Regulation*.
22. The strata says Mr. Kristiansen continued to rent his strata lots, even after the strata sent several notices to him. Given that Mr. Kristiansen did not respond to this allegation, I accept that Mr. Kristiansen continued to rent his suites until at least April 8, 2019. Overall, I find the strata's \$9,000 worth of bylaw fines are valid.
23. Mr. Kristiansen says he should not have to pay the fines because the strata took too long in repairing water damage in his suite 109. I find Mr. Kristiansen essentially

argues that he is entitled to a set off against any fine money he owes the strata, because the strata caused him loss or damages. However, he has not submitted any argument or evidence to explain any losses he had due to the strata's delayed repairs, or why the strata would be responsible for paying those losses. Further, I find any claim Mr. Kristiansen may have against the strata for delayed water repair damage is not sufficiently related to his bylaw fines such that it would entitle him to any set off. I see no reason to reduce the fines owed by Mr. Kristiansen.

24. The strata claims a total of \$9,261.98 in this dispute without any explanation how it calculated this amount. I find it is approximately the amount Mr. Kristiansen owed in the strata's February 28, 2020 statements of account and accompanying demand letters for each suite. However, those statements include fees and levy amounts. Further, although an opening balance is noted as of September 1, 2019, the statements do not detail any fines or fees levied before that date. I find the strata's actual fine notices and April 1, 2019 statements of account provide more detailed and accurate information. On balance, I find Mr. Kristiansen must pay the strata \$9,000 in bylaw fines.

CRT FEES, EXPENSES AND INTEREST

25. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to pre-judgement interest on the \$9,000 of bylaw fines from the date of each \$500 fine notice letter to the date of this decision. This equals \$259.54.

26. 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 find the strata is entitled to reimbursement of \$225 in CRT fees. It did not claim any dispute-related expenses.

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

ORDERS

28. Within 30 days of the date of this order, I order Mr. Kristiansen to pay the strata \$9,484.54, broken down as follows:
- a. \$9,000 in outstanding bylaw fines,
 - b. \$259.54 in pre-judgment interest under the COIA, and
 - c. \$225 in CRT fees
29. The strata is also entitled to post-judgment interest under the COIA.
30. 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.

Sherelle Goodwin, Tribunal Member