



Civil Resolution Tribunal

Date Issued: March 5, 2021

File: ST-2020-007168

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 2822 v. Shultz*, 2020 BCCRT 250

B E T W E E N :

The Owners, Strata Plan NW 2822

APPLICANT

A N D :

GLORIA SHULTZ

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about use of an exterior hose bib (also described as a spigot) and associated bylaw fines.

2. The applicant, The Owners, Strata Plan NW 2822 (strata) is a strata corporation existing under the *Strata Property Act* (SPA). The strata is represented by a strata council member.
3. The respondent, Gloria Shultz, owns strata lot 7 (SL7) in the strata, and is self-represented.
4. The strata says that Ms. Shultz has refused to comply with strata bylaw 3(20) by failing to keep one of the exterior hose bibs on the exterior of SL7 turned on during the period covered by the bylaw. The strata seeks orders that Ms. Shultz comply with bylaw 3(20) and pay the \$100 fine it assessed against SL7 for breaching the bylaw.
5. Ms. Shultz says the hose bib at issue creates undue noise in SL7 when it is turned on and that there are hose bibs located at other areas that can be used for the same purposes. I infer Ms. Shultz asks that this dispute be dismissed.
6. For the reasons that follow, I dismiss the strata's claims and this dispute.

JURISDICTION AND PROCEDURE

7. 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.
8. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, email, 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.
9. 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.

10. 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.

Preliminary Issue – Additional Bylaw Fines

11. The strata's requested remedy set out in the CRT Dispute Notice (dated September 16, 2020) addresses a single \$100 fine imposed against SL7 April 19, 2020 for Ms. Shultz's breach of bylaw 3(20). In its submissions, the strata addresses additional bylaw fines imposed between September 27 and October 25, 2020 that total \$500. I find that only the matter of the \$100 April 19, 2020 bylaw fine is before me because the additional bylaw fines were imposed after the Dispute Notice was issued.

ISSUES

12. The issues in this dispute are:
 - a. Is bylaw 3(20) valid and enforceable and, if so, should I order Ms. Shultz to comply with it?
 - b. Is the strata entitled to the \$100 bylaw fine?

BACKGROUND, EVIDENCE AND ANALYSIS

13. In a civil proceeding such as this, the applicant strata must prove its claims on a balance of probabilities.
14. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
15. The strata is located in Delta B.C. and was created in August 1988 under the *Condominium Act*. The strata continues to exist under the SPA and consists of 8 residential strata lots in 2 buildings (plus 4 additional buildings that are separate garages).

16. The hose bib in question is located on the north exterior wall of SL7. It is undisputed that the shut off valve for the hose bib is within SL7.
17. Based on the definition of common property under section 1(1) of the SPA, I find the exterior of the building comprising SL7 is common property. That definition also states that a pipe located within a wall that forms a boundary between a strata lot and common property, such as the exterior building wall of SL7, is also common property. Therefore, and given the water pipe must travel within the exterior wall of SL7 to service the hose bib, I find the exterior hose bib is common property.
18. The strata repealed its bylaws and filed a complete new set of bylaws at the Land Title Office (LTO) on August 1, 2019. I infer the Standard Bylaws do not apply except if they have been incorporated into the August 1, 2019 bylaws. No subsequent bylaw amendments have been filed so I find the August 2019 bylaws govern this dispute.
19. The relevant bylaw here is bylaw 3(20). It reads:

The supply to the outdoor spigots must be turned off on November 1st of the year and turned on on April 1st of the year to allow for exterior cleaning of the buildings and maintenance of the common area landscaping. An owner who is incapable of turning the water supply on or off will, on 48 hours notice, allow entry to the strata lot for this purpose.
20. Based on the overall evidence and submissions, I find the bylaw relates to turning on and off interior shut off valves for the exterior hose bibs, and not to the hose bibs themselves.
21. I find much of Ms. Shultz's evidence and submissions are not relevant to the issues in this dispute. For example, other ways the strata could lay out hoses to avoid using the hose bib and who pays for the water associated with the hose bib being used. These arguments do not address the strata's claims, which I have found relate to the validity and enforceability of bylaw 3(20) and the \$100 bylaw fine. Therefore, I have not addressed these submissions in my reasons.

22. I have also considered Ms. Shultz’s argument about alleged noise generated within SL7 when the hose bib is in use. Although her argument may very well be true, Ms. Shultz did not file a counterclaim. I find that her noise argument is also not relevant to the strata’s claims. Specifically, bylaw 3(20) clearly identifies when the hose bib shut off valve must be turned on and off from inside SL7. Ms. Shultz does not argue that the alleged noise is apparent within SL7 when the shut off valve is turned on, rather her noise argument is about when the hose bib is being used with water flowing through it.
23. For these reasons, I find I need not address Ms. Shultz’s allegations about noise.

Is bylaw 3(20) valid and enforceable?

24. The strata says that Ms. Shultz believes bylaw 3(20) is unenforceable. I infer this allegation comes from an October 7, 2020 letter Ms Shultz wrote to all strata owners that starts by addressing an “ongoing disagreement with the Strata Council members over the 3(20) rule, a rule [the 3 council members] enacted among themselves”.
25. Ms. Shultz does not directly address the validity or enforceability of bylaw 3(20), but in her submissions, says she was told by a council member that she could not “attend meetings”. The date and context of the discussion between Ms. Shultz and the council member is unknown. The strata says Ms. Shultz misunderstood a comment made by the strata council member that she could not attend strata council meetings, except as an observer. The strata says Ms. Shultz was never advised she could not attend general meetings.
26. Absent any evidence to support Ms. Shultz’s assertion, I agree with the strata. I find it is reasonable to expect Ms. Shultz is familiar with the strata’s bylaws. Bylaw 17(3) states “Owners may attend council meetings as observers”, which aligns with the strata’s position.
27. It is undisputed Ms. Shultz did not attend the July 18, 2019 annual general meeting (AGM) at which bylaw 3(20) was approved. The reason she did not attend was not provided in evidence. Except for the comment in her October 7, 2020 letter noted above, Ms. Shultz did not contest the approval of bylaw 3(20). I find Ms. Shultz

reference to bylaw 3(20) being a rule enacted by 3 council members is incorrect. Based on the AGM minutes and the August 1, 2019 filed bylaws, I find bylaw 3(20) was properly approved.

28. I also find bylaw 3(20) meets the criteria of a bylaw set out under section 119 of the SPA in that it provides for the control, management, maintenance and use of common property.
29. For these reasons, I find bylaw 3(20) is valid.
30. Section 121(1) of the SPA sets out when a bylaw is unenforceable. I do not find any of the criteria set out in section 121(1) apply in these circumstances, so I find bylaw 3(20) is also enforceable.
31. Under the SPA, Ms. Shultz is required to comply with the strata's bylaws. Therefore, I decline to order her to specifically comply with bylaw 3(20) as requested by the strata.

Is the strata entitled to the \$100 bylaw fine?

32. Under section 26 of the SPA, the strata council, acting on the strata's behalf, must enforce the strata's bylaws. Enforcement options available to the strata are set out under section 129 of the SPA and include 1 or more of the following actions:
 - a. Impose a fine,
 - b. Remedy a contravention, or
 - c. Deny access to a recreation facility, but only if the contravention relates to the recreation facility.
33. The only available option to the strata in this case was to impose fines.
34. Under section 135(1) of the SPA, before imposing bylaw fines, the strata must have received a complaint, given the owner written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if one is

requested. Under section 135(2), the strata must give the owner written notice of its decision to impose fines “as soon as feasible”.

35. The BC Court of Appeal has found that strict compliance with section 135 of the SPA is required before a strata corporation can impose bylaw fines. The court also determined that bylaw fines may be found to be invalid if the procedural requirements set out in section 135 are not followed. See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.
36. On April 11, 2020, the strata wrote to Ms. Shultz notifying she was in contravention of the bylaw (reciting bylaw 3(20) in the letter), and requesting she turn the water to the hose bib on by April 18, 2020, failing which a \$100 fine would be imposed. I find the strata’s April 11, 2020 letter did not meet all of the procedural requirements of section 135(1) for the reasons that follow.

Making a complaint

37. Although the letter does not expressly state the strata received a complaint, I am satisfied it did. There is nothing in the SPA that restricts a council member from making a complaint. I also note that verbal complaints have been found to be valid by the BC Provincial Court in *The Owners, Strata Plan NW3075 v. Stevens*, 2018 BCPC 2 (at paragraph 52).

Providing Written Particulars of the Complaint

38. In *Terry*, the court said the particulars of a complaint must be “sufficient to call to the attention of the owner... the contravention at issue.” In *Stevens*, the court said the “particulars must simply be sufficient to make the alleged bylaw violator aware of what his or her alleged breach is.” While not perfect, I find the strata’s April 11, 2020 letter is clear that the particulars of the complaint are that the water to the hose bib was turned off after April 1, 2020, contrary to bylaw 3(20).

Reasonable Opportunity to Respond

39. I find the letter does not contain a statement that Ms. Shultz can respond to the complaint, or give a deadline for her to do so. It simply instructs that the water be

turned on within 7 days, failing which a \$100 fine would be imposed. I find the strata made the decision to impose the \$100 fine when it wrote the letter.

40. Therefore, I find the strata did not properly follow the procedural requirements of SPA section 135(1). Following *Terry*, I find the \$100 fine the strata imposed April 19, 2020 against SL7 is invalid. As a result, the strata is not entitled to the fine.

41. Accordingly, I dismiss the strata's claim for payment of the fine.

CRT FEES AND EXPENSES

42. 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. Here, the strata paid \$225 in CRT fees but had limited success. In the circumstances of this dispute, I find the strata must bear its own expense for CRT fees.

43. Neither party claimed dispute-related expenses, so I order none.

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

ORDER

45. I dismiss the strata's claims and this dispute.

J. Garth Cambrey, Vice Chair