



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan EPS3454 v. Prior*, 2021 BCCRT 704

B E T W E E N :

The Owners, Strata Plan EPS3454

APPLICANT

A N D :

RAYMOND WALTER PRIOR and KARI ANN LAKOMSKI

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about strata corporation bylaw fines. The respondents, Raymond Walter Prior and Kari Ann Lakomski (owners), jointly own strata lot 52, known as unit 33, in the applicant strata corporation, The Owners, Strata Plan EPS3454 (strata). The strata says the owners breached a strata bylaw prohibiting short-term

accommodation (STA) and were fined \$6,029.15. The strata says the owners have not paid the fines, so it claims \$6,029.15 and an order that the owners stop allowing STA in their strata lot.

2. The owners deny providing STA in their strata lot. They say they have not offered the strata lot for use as STA, although they have allowed out-of-town friends to stay at the strata lot at times, for free. The owners say the strata should not have fined them and that it should withdraw the fines. However, the owners did not file a counterclaim for cancellation of the fines.
3. The strata is represented by a strata council member in this dispute. Mr. Prior represents both himself and Ms. Lakomski.

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. Did the owners breach the strata's STA bylaw, and if so, do they owe \$6,029.15 in fines?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the strata must prove its claims on a balance of probabilities. I have read and weighed the parties' evidence and submissions, but I refer only to that which I find necessary to explain my decision.
10. This dispute is about STA. Although not binding on me, I find the explanation of STA in *Rutherford v. The Owners, Strata Plan 170*, 2019 BCCRT 531 persuasive. Following the reasoning in *Rutherford* and *HighStreet Accommodations Ltd. v. The Owners, Strata Plan BCS2478*, 2017 BCSC 1039, I find that the alleged STA at issue in this dispute consisted of alleged "occupancy licences" that did not give the occupants exclusive possession and control of the strata lot. I find that the alleged STAs were not residential tenancies or rentals as those terms are used in the SPA.
11. The strata was formed in 2016 under the *Strata Property Act* (SPA). Its original bylaws were the standard bylaws set out in the SPA's Schedule of Standard Bylaws, with some modifications. One of these modifications changed bylaw 23(1) to provide maximum bylaw fines of \$500 for contravening a "rental bylaw" and \$200 for contravening any other type of bylaw. The strata later amended its bylaws more than once.
12. The owners purchased strata lot 52 on December 21, 2018. I find that the strata's bylaws did not restrict STA at that time.

13. A bylaw amendment registered with the LTO on May 15, 2019 added several strata bylaws. New bylaw 3(8) restricted STA in strata lots, as follows.
14. Bylaw 3(8) said that an owner must not use or permit the use of all or part of a strata lot as short-term accommodation for a period of less than 30 consecutive days, by anyone who pays or gives the owner any fee, compensation, or other remuneration, either directly or indirectly. The bylaw also said that an owner must not enter into a license for the use of all or part of a strata lot. Further, the bylaw said an owner must not permit any part of a strata lot to be used or occupied as vacation, travel, or temporary accommodation for any period of time, “such as Airbnb or Vacation Rental By Owner”. The bylaw also prohibited an owner from directly or indirectly advertising, marketing, promoting, or licensing the use of any part of a strata lot as such vacation, travel, or temporary accommodation for any period of time.
15. Finally, bylaw 3(8) said that, notwithstanding bylaw 23, an owner who “uses a strata lot in contravention of” bylaw 3(8) may be subject to a fine of \$1,000 for each day the strata lot is “used as short-term accommodation in contravention of this bylaw”. As explained below, I find some of the alleged bylaw contraventions at issue in this dispute were for advertising the strata lot as STA. It is unclear whether advertising the strata lot as STA is “using” the strata lot as STA, and such use is required in order to issue fines of \$1,000 per day. But I find nothing turns on this, given the outcome of my decision below.
16. The strata says it determined that the owners had offered their strata lot as STA through the online Airbnb service in August 2019 and afterward. The strata also says it received a complaint that a vehicle with out-of-province licence plates parked at strata lot 52 in March 2020, and that the vehicle occupants were seen leaving after an alleged STA stay in the owners’ strata lot. The owners deny that they have ever offered their strata lot as STA or that anyone has stayed there on an STA basis. The owners say that a friend occasionally stays at the at the strata lot for free when in town for work, and often brings a rental car. The owners also say that they allowed out-of-town friends with to stay for free for more than 30 days beginning in March

2020. The owners say that one of these friends was undergoing local medical treatment and the owners were prevented from returning to BC from Ontario due to COVID-19 pandemic-related travel restrictions at the time.

17. The strata says it issued 5 \$1,000 fines for the owners' alleged contraventions of bylaw 3(8). According to a July 21, 2020 demand letter and attached strata lot 52 account statement in evidence, the strata said the owners owed \$5,000 in "fines/interest", \$976.65 in "strata fees and other amounts", and \$52.50 in "other charges" consisting of a July 16, 2020 delinquency processing fee. This equals \$6,029.15, the amount the strata claims in this dispute. I find the \$5,000 charge was for the bylaw fines at issue in this dispute. I find the remaining \$1,029.15 claimed is not for bylaw fines, but is for other unexplained and unproven charges and fees on the owners' strata lot account. Other than claiming \$6,029.15 in total, the strata's claims and submissions do not directly seek an additional \$1,029.15 for strata fees and other charges. I find the additional \$1,029.15 is not for the bylaw fines at issue here, and I dismiss the strata's claim for that amount.
18. Turning to the remaining \$5,000 in bylaw fines, the strata sent the owners an October 8, 2019 "bylaw infraction notification" letter through its management company. The letter said that the owners "may be renting your unit as an AirBnb" (quote reproduced as written), and provided a link to an Airbnb web page that it said was "linked to your unit." It is unclear what that linked website contained at the time of the letter, although the strata submitted screenshots of Airbnb listings as evidence, which I discuss below. The letter cited bylaw 3(8) and asked the owners to "have the matter remedied by October 22, 2019 in order to prevent any further action." The letter did not further explain what the matter was or what remedy was requested. The letter gave the owners an opportunity to answer the complaint in writing and to request a hearing, and said that the strata council "will make a decision on this matter as it considers appropriate" if the owners failed to respond within 14 days. The evidence shows the owners did not respond within 14 days.

19. On the evidence before me, I find that the October 8, 2019 letter was a warning to stop advertising the owners' strata lot as STA, which was prohibited by bylaw 3(8). I find the evidence does not support a finding that the strata's letter accused the owners of actually providing STA for specific occupants at that time.
20. On January 8, 2020, the strata sent the owners a bylaw "fine letter" further to its previous warning letter. The fine letter said that the owners were "renting out your unit on AirBnb" (reproduced as written) and "the matter has not been yet rectified". So, the strata levied a \$1,000 fine against the owners' strata lot account for a bylaw 3(8) contravention. The letter did not explain what rectification the owners had allegedly failed to perform. The strata then sent the owners a January 22, 2020 fine letter that was nearly identical to the January 8, 2020 letter. It said that the owners were "still renting out" the strata lot on a short-term basis, and applied another \$1,000 fine for the same reason.
21. To collect these bylaw violation fines, the strata must show that the owners breached bylaw 3(8), and that it satisfied the requirements of SPA section 135.
22. The strata must strictly comply with section 135 in order to collect fines (see *Terry v. The Owners, Strata Plan NW 309, 2016 BCCA 449*). Section 135(1) says that the strata must not impose a fine against an owner for a bylaw contravention unless the strata has given the owner the particulars of the contravention complaint in writing and a reasonable opportunity to answer the complaint, including a hearing if requested. As explained in paragraph 28 of *Terry*, owners who may be subject to a fine must be given notice that the strata corporation is contemplating the imposition of a fine, and particulars sufficient to call to the attention of the owners to the contravention at issue. According to *Terry*, these section 135(1) requirements must be followed **before** a fine may be imposed.
23. Section 135(3) says that once a strata corporation has complied with the section 135 requirements in respect of a bylaw contravention, it may impose a fine or other penalty for a continuing contravention of that bylaw without further compliance with the section. However, I find that the section 135 notice requirements must still be

followed for new contraventions of the same bylaw, because these are not “continuing” contraventions.

24. I find that although the strata’s October 8, 2019 warning letter quoted bylaw 3(8) and indicated that the strata might consider “further action” or an appropriate future decision on the “matter”, the letter did not notify the owners that the strata was considering imposing a fine. Following *Terry*, I find this means that the October 8, 2019 letter did not satisfy the SPA section 135 notice requirements with respect to the January 8, 2020 and January 22, 2020 fines. On this basis alone, I find that the January 8, 2020 and January 22, 2020 fines were not validly issued, and I decline to order the owners to pay them.
25. Further, the strata also issued \$1,000 fines on March 19, 24, and 25, 2020, that it said were for a continuing contravention of bylaw 3(8). Given that the January 2020 fines were not validly issued, and that I find no additional notice or hearing opportunity was given before the March 2020 fines were imposed, I find that any “continuing contravention” fines in March 2020 were also invalid.
26. However, I find that the March 2020 fines were not issued for the same, continuing contravention of bylaw 3(8), for the following reasons. The March 19, 2020 fine letter included photographs of a vehicle with out-of-province licence plates parked at the owners’ strata lot, and none of the March 2020 fine letters included a link to the Airbnb listing as in the earlier letters. On the evidence before me, including correspondence between the strata and the complaining strata resident, I find the March 19, 24, and 25, 2020 fines were issued for an alleged STA stay provided to the vehicle’s occupants in late March 2020. I find this is a different alleged violation of bylaw 3(8) than the earlier alleged violation of advertising the strata lot as STA on Airbnb.
27. I find the strata failed to provide the written particulars of the alleged March 19, 24, and 25, 2020 bylaw 3(8) contraventions to the owners, or to provide an opportunity to answer those complaints, before issuing those fines. So, I find the strata did not meet the mandatory notice requirements of section 135 when issuing the March 2020

fines. I find those 3 \$1,000 fines were not properly issued, and so I decline the strata's request to order their payment.

28. Further, even if the strata had not failed to meet the SPA s.135 notice requirements with respect to the 5 fines at issue here, I would still decline to order the owners to pay them, because I find the evidence does not prove that the owners violated bylaw 3(8) at all. My reasons follow.
29. As noted, I find the strata issued the March 2020 fines because people with an out-of-town vehicle were parked at the owners' strata lot, and a strata resident reported that they stayed for 6 days. The owners explained that these people were their friends who stayed at the strata lot for free. I find the evidence does not show that anyone compensated the owners for these people's stay at the strata lot, or that the people were not friends staying for free as reported by the owners. Further, I find the strata has not proved that the owners licensed the home to any guests as STA. In the circumstances, I find the evidence does not show that anyone used the strata lot as vacation, travel, or temporary accommodation of the type provided by services such as Airbnb or Vacation Rental By Owner, in March 2020. So, on the evidence before me, I find there was no reasonable basis for issuing the March 19, 24, and 25, 2020 bylaw 3(8) contravention fines, because there was insufficient evidence of a bylaw violation.
30. Turning to the January 8 and 22, 2020 fines, I found above that they were for advertising the strata lot as STA contrary to bylaw 3(8), which the owners deny. The strata provided August 27, 2019 screenshots of Airbnb listings that the strata says show the owners' strata lot offered as STA. The screenshots did not identify the exact location or address of the unit, and the person identified as the host in the Airbnb listing was "Kay". However, the owners do not directly deny that the Airbnb photographs showed their strata lot, although they deny offering it as STA.
31. The Airbnb screenshot evidence contains "reviews" of guests' stays at a home, and reviews of the unit's owners. Some reviews named the unit's owners as Kay, Kari, and Ray, which I find are similar to the owners' names. However, with the exception

of 1 review, all of the many submitted reviews are dated before the owners purchased the strata lot in December 2018. I find many of the reviews describe staying at a home in a different location than the strata lot. The only review after the owners' strata lot purchase is dated April 2019, which is before bylaw 3(8) came into effect on May 15, 2019. I find none of the evidence before me shows that the strata lot was provided as STA in August 2019 or afterward.

32. Having weighed the evidence before me, I find it likely that the owners previously used the Airbnb service to provide STA at a different property, before purchasing the strata lot. However, even if the submitted Airbnb photos show the strata lot, I find the evidence does not show that it was promoted as available STA, or was actually provided as STA, in August 2019 or later, through Airbnb or any other service. The strata does not directly dispute the owners' statement that the Airbnb unit was not listed as being available for stays. In the circumstances, and without evidence showing that the unit was available for STA or actually provided as STA, I do not find that the Airbnb listing was an owner contravention of bylaw 3(8). So, I find that there was no valid basis for issuing the January 8, 2020 and January 22, 2020 bylaw 3(8) contravention fines, because there was no bylaw contravention.
33. I dismiss the strata's claim for \$6,029.15 in fines for violating strata bylaw 3(8). I also dismiss its request for an order that the owners stop providing their strata lot as STA. Such an order would serve no useful purpose because bylaw 3(8) already prohibits STA, and I have not found that the owners violated bylaw 3(8).
34. In their submissions, the owners requested that the strata "withdraw" the disputed bylaw fines. However, the owners did not file a CRT counterclaim requesting this remedy, so the strata has not had an opportunity to make submissions about it. So, I find it would be procedurally unfair to the strata to make such an order against it in the absence of a counterclaim, and I decline to do so. I note that subject to applicable limitation periods, the owners may file a CRT dispute if the strata takes any action to collect or otherwise act on the bylaw fines which I have found to be invalid.

CRT FEES, EXPENSES, AND INTEREST

35. 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. The strata was unsuccessful in its claims, but the owners paid no CRT fees and claimed no CRT-dispute related expenses. So, I order no reimbursements.
36. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners.

ORDER

37. I dismiss the strata's claims, and this dispute.

Chad McCarthy, Tribunal Member