



Civil Resolution Tribunal

Date Issued: July 13, 2021

File: ST-2020-009489

Type: Strata

Civil Resolution Tribunal

Indexed as: *Frass v. The Owners, Strata Plan BCS 1764*, 2021 BCCRT 764

B E T W E E N :

CHARLES FRASS

APPLICANT

A N D :

The Owners, Strata Plan BCS 1764

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about an allegation of a strata bylaw breach. The applicant, Charles Frass, together with his spouse, owns strata lot 7 in the respondent strata corporation, The Owners, Strata Plan BCS 1764 (strata). The strata sent the owners and the strata

lot 7 tenant a letter alleging that the tenant had breached strata bylaws. The strata did not impose any fines for the alleged breach and undertook no other bylaw enforcement activities.

2. Mr. Frass seeks an order that the strata “withdraw” the false allegations he says it made against his strata lot and himself. In the alternative, Mr. Frass seeks an order that the strata provide evidence about the alleged bylaw violation together with a hearing. He also requests a written apology for the strata council’s “error.”
3. The strata says it decided not to pursue any enforcement for the alleged bylaw breach and removed the letter from Mr. Frass’ file, so there is nothing to “withdraw”. The strata says it was required to document decisions about the bylaw breach allegations in the strata council’s meeting minutes, and that it did so without unnecessarily identifying the strata lot or its owners or tenant. The strata also says that although it was willing to provide Mr. Frass with requested video evidence, that evidence does not exist. The strata opposes the claimed order.
4. Mr. Frass is self-represented in this dispute. The strata council 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.
9. Mr. Frass says he would like to clear his name, and that the strata council's bylaw breach allegation has caused irreparable harm to his name and reputation. I find this suggests he considers the allegations to be defamatory. This dispute was brought under the CRT's strata property jurisdiction, as set out in CRTA section 121. I find that defamation claims are not within the CRT's section 121 jurisdiction. Further, even if Mr. Frass had brought a claim under the CRT's small claims jurisdiction, CRTA section 119 specifically excludes claims for libel or slander. So, I did not consider whether the strata council defamed Mr. Frass, because that issue is beyond the CRT's jurisdiction to decide.
10. Mr. Frass asks that I disallow a strata council member's written statement submitted as evidence. He says the document is the strata council member's summary of events, and contains hearsay and third party conversations but no admissible evidence. I note that the CRTA and the CRT's rules do not prohibit hearsay evidence. I find that the document is a witness statement and that it is largely consistent with the strata's other evidence. Although Mr. Frass disagrees with some aspects of the statement, that is also not a basis for excluding it. I find I am able to appropriately weigh any hearsay evidence in the document, which I find is reliable and admissible.

ISSUE

11. The issue in this dispute is whether the strata must withdraw its bylaw breach allegation, and if not, whether the strata must provide Mr. Frass with requested evidence and another hearing opportunity.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, Mr. Frass must prove his 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.
13. A tenant operated a business out of Mr. Frass' strata lot 7, known as unit 107. The tenant is not named as an applicant in this dispute.
14. On January 21, 2020, the strata sent the owners and the tenant identical warning letters through its property management company. The letter said that on November 29, 2019, Mr. Frass' tenant had filled most of a garbage bin with recyclables only a few days after it was emptied. The letter quoted "Garbage and Recycling" bylaws numbered 47.1 through 47.6. The parties refer to these bylaws as bylaw 47, which is also the number applied to those bylaws in a submitted schedule of bylaws. I find these bylaws were actually numbered as bylaws 46.1 through 46.6 in the amendment filed with the Land Title Office on January 16, 2014. However, I find nothing turns on this.
15. Bylaw 46.2 says: "Each strata lot is limited to three (3) – 70 liter garbage bags per week. The resident of a strata lot that needs to dispose of garbage in excess of this restriction is required to arrange for their own offsite disposal. If a resident breaches this bylaw, the owner of the applicable strata lot shall be subject to a fine of \$100 for each breach, as well as any additional disposal costs incurred by the strata corporation."
16. In addition, bylaw 46.3 says that a strata lot must not use more than 20% of the recycling bin per week, to ensure that all strata lots are afforded an opportunity to use the bin.
17. The strata letter said, "you are alleged to be in violation" of the quoted bylaws, and gave an opportunity to answer the complaint in writing or to request a hearing, within 14 days. The letter noted that the strata might decide to apply a \$100 fine and charge

it to the strata lot account, but as discussed below, I find the strata did not ultimately apply a fine.

18. Mr. Frass says the strata alleged that he had broken strata bylaws. SPA section 135 says that before a strata corporation may impose a fine against a tenant, it must give both the tenant and the strata lot owner written particulars of the complaint, and a reasonable opportunity to answer the complaint, including a hearing if requested. As noted, although the letter alleged that “you” had violated strata bylaws, the identical letter was sent to both the strata lot owners and the tenant. Given the particulars of the complaint described in the letter, I find that the letter alleges that the tenant, not Mr. Frass, violated strata bylaws. Under SPA section 131, the strata may collect bylaw violation fines imposed on a tenant from the owner, and the tenant would then owe that amount to the owner. However, that is not the same as imposing a fine directly on the owner for a bylaw violation by the owner.
19. In a March 25, 2020 email about the alleged bylaw violation, the strata’s property manager said, “it seems you have allegedly broken every Bylaw in the list” provided in the January 21, 2020 warning letter. However, in a letter attached to that email, the property manager also said that the strata had already decided to cancel the issued bylaw infraction letter, which “has been removed with no fine or action” by the strata council. Upon weighing the evidence and submissions, I find the statement that Mr. Frass seemed to have allegedly broken strata bylaws, was not accurate. Despite that statement, I find the strata’s January 21, 2020 letter did not allege that Mr. Frass had personally broken bylaws 46.1 through 46.6. I find that this statement appears to be the property manager’s mistaken interpretation of previous correspondence with Mr. Frass. However, it is understandable that the statement may have been confusing at the time, given that it was inconsistent with the warning letter and other strata correspondence.
20. Mr. Frass says that the essence of this dispute is whether or not “#107” violated the bylaws as alleged in the strata’s January 21, 2020 letter. I disagree. Mr. Frass claims an order for the strata’s bylaw breach **allegation** to be somehow “withdrawn” or

“retracted”. As discussed further below, it is undisputed that the strata did not take any enforcement steps about the alleged bylaw breach after its January 21, 2020 letter, and has not pursued any fines or other penalties. So, I find it is not necessary to determine whether the tenant behaviour that led to the alleged bylaw breach actually occurred, whether the tenant actually violated a bylaw, or whether the bylaws in question are valid and enforceable. I made a similar finding in my decision *Welsh v. The Owners, Strata Plan 962*, 2021 BCCRT 634, which involved a similar claim. I find the question before me is whether the strata must further “withdraw” its now-abandoned allegation.

21. On January 23, 2020 Mr. Frass emailed the strata’s property manager and asked for a hearing and security video of the alleged incident. He also requested the names of the persons who allegedly broke the bylaws, which specific bylaws were allegedly broken, and why it took 2 months to issue the warning letter. The strata gave Mr. Frass an opportunity to be heard at the next strata council meeting on January 28, 2020, which Mr. Frass declined to attend because of short notice. Minutes of that meeting say that a bylaw infraction warning letter had been issued to a “unit”, and the owner of that unit had requested a hearing. The minutes did not identify the owner, tenant, strata lot or its address, or any details of the alleged bylaw breach.
22. In a February 4, 2020 letter, the tenant told the strata that the closest recycling depot confirmed that the type of materials the tenant disposed were non-recyclable garbage, although it did not address the volume of garbage disposed on November 29, 2019. In written correspondence, including emails dated January 30, 2020, and February 13, 14, and 19, 2020, among others, the strata told Mr. Frass that no fines would be issued. The strata confirmed that it had decided to remove the January 21, 2020 warning letter from Mr. Frass’ file, and that it was not considering any further enforcement, so there was no need for a hearing and it considered the matter closed.
23. Mr. Frass told the strata he still wanted a hearing, so the strata scheduled one for March 6, 2020. The strata told Mr. Frass that the hearing’s purpose was to better understand Mr. Frass’ concerns and not to determine whether a bylaw violation had

occurred or a fine was appropriate, because the strata had already removed the bylaw warning letter from Mr. Frass' file. Mr. Frass declined to attend the March 6, 2020 meeting because he said the strata had not yet answered his questions from January 23, 2020. I find the evidence shows the strata answered all of Mr. Frass' questions no later than March 2020, including by saying the requested security video did not exist except for a single still image that Mr. Frass already possessed.

24. May 26, 2020 strata council meeting minutes said that the owner of unit 107 did not attend a requested hearing, and that the strata issued a letter to the owner saying that the matter was considered closed. Mr. Frass then asked for an apology from strata council regarding the "false" bylaw violation allegations. The strata apologized for not providing security video in an email to Mr. Frass and in August 13, 2020 strata council minutes. Mr. Frass says that is not a sufficient apology. He also says that the strata council did not properly investigate the bylaw violation allegations, which is a violation of SPA section 26.
25. I find a strata council may investigate and deal with bylaw contravention complaints as it sees fit, as long as it complies with principles of procedural fairness and does not act significantly unfairly (see *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148). I find this means the strata must be reasonable in assessing bylaw complaints. Although he does not use these words, I find Mr. Frass argues that the strata acted significantly unfairly by not adequately investigating the alleged bylaw violation.
26. Under section 123(2) of the CRTA (formerly section 48.1(2)), the CRT can make orders remedying significantly unfair actions or decisions by a strata corporation or its strata council (see *The Owners, Strata Plan LMS 1721 v. Watson*, 2018 BCSC 164). Courts have found that a strata's actions are significantly unfair when they are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, or are unjust or inequitable (see *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126 and *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44). *Dollan* also established a reasonable expectations test. According to paragraph 28 of *Watson*, the reasonable expectations test asks whether an objectively reasonable expectation

by an owner or tenant was violated by a significantly unfair action. More recently, *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173 (at paragraphs 91 to 95) determined that the reasonable expectations test is a factor to be considered in deciding whether significant unfairness has occurred, together with other relevant factors such as the nature of the decisions and the effect of overturning them.

27. I find Mr. Frass' expectation that the strata should have continued to investigate and make pronouncements about the alleged bylaw violation, when Mr. Frass says that the strata had already correctly decided not to take any enforcement action, was not objectively reasonable. I find the strata's letter notifying Mr. Frass of the bylaw violation complaint against the tenant, followed by a decision not to pursue any enforcement and to apologize in some respects, did not violate the SPA, strata bylaws, or principles of procedural fairness, and was not significantly unfair to Mr. Frass.
28. Mr. Frass also says the strata council "decides who they want to go after and who gets away with bylaw infractions," and suggests that fines are rarely issued despite there being many alleged breaches of the strata's garbage and recycling bylaws. Considering that the strata did not pursue a fine or other enforcement action against the tenant or Mr. Frass, and that Mr. Frass does not argue that the strata should have issued a fine against him or the tenant, I find the allegation of generally unfair bylaw enforcement is not directly relevant to Mr. Frass' dispute claims.
29. Further, I find there is no requirement, under the SPA, strata bylaws, or otherwise, for the strata to withdraw, retract, or otherwise cancel communications such as the January 21, 2020 bylaw letter. I also find that the evidence shows the strata has already retracted the letter and has not acted further on it. Mr. Frass wants the strata to publish or distribute a statement confirming that no bylaw violation occurred as alleged. Mr. Frass appears to suggest this is necessary to "clear his name," although as noted the strata does not allege that Mr. Frass himself broke a bylaw. I find there is no actionable "wrong" here, and no valid basis for ordering a further retraction of the abandoned allegations against Mr. Frass' non-party tenants. I dismiss Mr. Frass'

claim for an order that the strata further withdraw the allegations in the already-cancelled January 21, 2020 bylaw letter.

30. Mr. Frass says that the strata has made previous apologies and retractions similar to those he claims in the dispute. However, as the strata correctly observed in its submissions, the CRT generally does not order apologies (see for example *Lane et al v. The Owners, Strata Plan 212*, 2019 BCCRT 249). These prior CRT cases discuss that forced apologies are generally unproductive, unhelpful, and being involuntary they are not necessarily sincere. I find there is no reason or requirement to order a further strata apology here, which would serve no useful purpose. I decline to order an apology.
31. Turning to Mr. Frass' alternative claim for evidence and a hearing, I find that the strata has already provided him with all of the requested evidence, apart from security video. Mr. Frass says that the strata withheld or destroyed the relevant video because it did not support its position, but I find that allegation is unsupported on the evidence before me. The strata says it was having problems with its surveillance system, which automatically deleted the video in question before Mr. Frass requested it. The strata says it was only able to recover a single still photo, which it gave to Mr. Frass. I find the submitted evidence fails to show that the strata destroyed or withheld video evidence, or that the alleged video evidence exists.
32. Even if such video evidence did exist, and although the strata says it was willing to share it with Mr. Frass, I find nothing before me shows Mr. Frass has a right to view it. The strata withdrew the bylaw violation warning letter and is no longer contemplating any enforcement against the strata lot 7 owners or tenant, so I find Mr. Frass is not entitled to answer the bylaw violation complaint under SPA section 135 and has no need to see video evidence to formulate an answer. Further, video surveillance footage is not a type of strata record that must be disclosed at an owner's request under SPA section 36.
33. I dismiss Mr. Frass' claims.

CRT FEES AND EXPENSES

34. 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. Mr. Frass was unsuccessful here, and the strata paid no CRT fees and claimed no CRT dispute-related expenses. So, I order no reimbursements.
35. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Frass.

ORDER

36. I dismiss Mr. Frass' claims, and this dispute.

Chad McCarthy, Tribunal Member