



# Civil Resolution Tribunal

Date Issued: July 30, 2021

File: ST-2020-005133

Type: Strata

Civil Resolution Tribunal

Indexed as: *Feng v. The Owners, Strata Plan EPS 3242*, 2021 BCCRT 836

**B E T W E E N :**

XIAOYAN FENG

**APPLICANT**

**A N D :**

The Owners, Strata Plan EPS3242

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Chad McCarthy

## **INTRODUCTION**

1. This dispute is about strata corporation bylaw fines and moving fees. The applicant, Xiaoyan Feng, owns strata lot 280, known as unit 3209, in the respondent strata corporation, The Owners, Strata Plan EPS3242 (strata).

2. Ms. Feng says that that the strata improperly fined her several times in 2018 for violating the strata's bylaws prohibiting short-term accommodation (STA). Ms. Feng says that the strata lot is rented to a long-term tenant, and that neither she nor the tenant violated applicable STA bylaws. Ms. Feng claims an order for \$3,180 in STA bylaw-related fines and moving fees to be removed from her strata lot account.
3. The strata says "unit 3209" violated the strata's bylaws prohibiting STA, and the fines and moving fees were properly applied to Ms. Feng's strata lot account.
4. Ms. Feng is self-represented in this dispute. The strata is represented by a strata council member. The strata lot 280 tenant is not named as a party to this CRT dispute.

## **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. Is Ms. Feng responsible for paying moving fees for the alleged STA at her strata lot?
  - b. Did Ms. Feng break strata bylaws about STA, and if not, must the strata remove those bylaw fines from her strata lot account?

## EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Ms. Feng must prove her 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.
11. The strata was formed in 2016 under the *Strata Property Act* (SPA). Ms. Feng purchased unit 3209 in July 2016. She says that a property manager assists her with managing the strata lot, and that a long-term tenant resides in it. This dispute is about alleged STA in the strata lot.
12. On November 6, 2017, the strata filed a complete set of bylaws at the Land Title Office. I find these November 6, 2017 bylaws applied to the disputed events, which involved bylaw fines and moving fees arising from July 2018 to October 2018. The strata revised some of its bylaws, including some STA-related bylaws, in amendments filed November 15, 2018 and later. I find none of these later amendments were in effect at the time of the disputed events or when the strata issued the disputed fines and moving fees, so they do not apply to this dispute.
13. Bylaw 36.1 said, "A resident, owner or occupant must not use or allow a strata lot to be advertised, promoted, used, occupied or licensed for use as (a) a vacation or travel accommodation, including but not limited to, as a hotel room, bed and breakfast, home stay, AirBnB for any period of time, or (b) any other short term rental less than thirty (30) days. Compliance with the City of Vancouver bylaws is required."

14. Ms. Feng does not dispute a strata lot account statement submitted by the strata that showed an outstanding balance of \$3,905. The balance consisted of \$2,100 in moving fees and \$1,700 in fines, all related to alleged STA. There was also a balance of \$105 for “title” which is not explained and which I find is not at issue here. Although Ms. Feng submitted no bylaw infraction or fine letters, the strata submitted 11 bylaw infraction letters and 5 bylaw fine letters, which I discuss below. Those letters applied a total \$2,000 in fines to Ms. Feng’s strata lot account, and also said that Ms. Feng owed a total of \$3,300 in moving fees. The parties do not explain why the strata lot account balance is less than the sum of the fines and moving fees charged in the letters. Ms. Feng asked the strata council to reverse all of the fines and moving fees applied in 2018, which the council refused to do in a January 30, 2019 letter.
15. Ms. Feng claims \$3,180 for STA-related strata lot account charges, which is less than the outstanding strata lot account balance. She provided no further breakdown of the \$3,180 claimed, but it is undisputed that she disagrees with the moving fees and bylaw fines applied in the letters submitted by the strata. The strata says that Ms. Feng owes the outstanding balance shown on the strata lot account statement. Having reviewed the evidence and submissions, and despite Ms. Feng’s original claim for the removal of only \$3,180 in strata lot account charges, I find the parties agree that the issues in this CRT dispute are whether \$2,100 in moving fees and \$1,700 in strata bylaw fines should be removed from Ms. Feng’s strata lot account.

***Is Ms. Feng responsible for moving fees for alleged STA?***

16. First, I will consider moving fees. Strata bylaw 37.2 says that all “moves” require advance approval from the concierge. Strata bylaw 37.4(a) says that before any “move” in or out of the strata building will be approved, the strata must be paid a non-refundable fee of \$300 (Move Fee) that also applies to furnished rentals. The bylaws do not explicitly define what a “move” is. Bylaw 37.14 says that any breach of “these bylaws” may result in a fine being imposed against the strata lot owner. In context, I find this means any breach of a bylaw beginning with the number 37.

17. Bylaw 36.4 says that a strata lot owner must pay the Move Fee within 2 weeks of **renting** a strata lot (my bold emphasis). Bylaw 36.7 says that the \$300 Move Fee applies any time there is a change of **tenants** for a strata lot, including furnished strata lots (my bold emphasis).
18. Although not binding on me, I find the explanation of STA in *Rutherford v. The Owners, Strata Plan 170*, 2019 BCCRT 531 persuasive, as I did in my previous decision *The Owners, Strata Plan EPS3454 v. Prior*, 2021 BCCRT 704. 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 falls within the category of “occupancy licences” that did not give the alleged short-term 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. As noted above, bylaws 36.4 and 36.7 refer to rentals and tenants, which I find are not related to STA.
19. I find that the bylaws do not explicitly require a Move Fee to be paid for a change in STA occupants. Further, I find that charging a Move Fee for STA would be inconsistent with bylaw 36.1 that prohibits the use or licensing of strata lots as STA. Bylaw 37.4 requires the Move Fee to be paid before any move is approved. But given that no STA is permitted, I find no STA occupants would be approved to “move”, and I find it makes no sense that a Move Fee would be required. I find the only way that the strata’s bylaws are internally consistent is if a Move Fee is only required for permitted types of strata lot occupation, such as by the strata lot’s owner or under a residential tenancy 30 days or longer. I find that the strata’s bylaws do not require a Move Fee to be paid for persons arriving or leaving from prohibited STA in a strata lot.
20. The 11 bylaw infraction notice letters submitted by the strata were nearly identical. The first was dated July 16, 2018 and the last was dated September 18, 2018. Each letter alleged that STA had taken place in unit 3209 in breach of strata bylaws, and

said that a corresponding \$300 Move Fee had been charged to Ms. Feng's strata lot account.

21. As noted, the undisputed unit 3209 strata lot account statement in evidence showed that \$2,100 in Move Fees remained outstanding, which is equivalent to 7 Move Fees. I presume that the \$2,100 charge is for 7 of the 11 \$300 Move Fees applied in the infraction letters. I find the evidence does not show whether the strata charged Ms. Feng for the other 4 Move Fees described in the remaining letters, or whether Ms. Feng paid for any other Move Fees.
22. The parties do not dispute, and I find, that the \$2,100 in Move Fees was charged for occupants allegedly moving into or out of STA in strata lot 280 in July 2018 to September 2018. I found above that the strata's bylaws do not allow the strata to charge a Move Fee in relation to STA. So, I find the strata did not have authority, under its bylaws or the SPA, to charge Ms. Feng \$2,100 in Move Fees for the alleged STA. I order the strata to remove the \$2,100 Move Fee balance from Ms. Feng's strata lot account.

***Did Ms. Feng break strata STA bylaws, and if not, must the strata remove those bylaw fines from her strata lot account?***

23. As noted, the only bylaw fine letters in evidence are the 5 bylaw fine letters submitted by the strata, 1 dated August 23, 2018, 2 dated September 19, 2018, and 2 dated October 25, 2018. Each letter is nearly identical. Each corresponds to a different, earlier bylaw infraction notice letter that warned about possible bylaw fines for allowing STA and provided an opportunity to request a hearing. It is undisputed that Ms. Feng or her property manager received the infraction notice letters, and I find they did not request a hearing for any of the 5 alleged infractions by the time the strata issued the 5 bylaw fine letters. Each of the 5 bylaw fine letters applied a \$200 fine for breaking strata bylaw 36.1, as it was numbered at the time, which prohibited STA. Each fine letter also applied a \$200 fine for breaking strata bylaw 36.4, which required a strata lot owner to pay the Move Fee within 2 weeks of renting a strata lot.

24. I found above that the strata was not able to charge a Move Fee for the STA alleged in the bylaw infraction letters. So, I find that Ms. Feng could not have broken bylaw 36.4 by not paying the Move Fee, because she was not required to pay the Move Fee for the alleged STA in the first place. Further, I find that none of the bylaw infraction notice letters warned Ms. Feng that she had allegedly broken bylaw 36.4 by not paying the Move Fee, that a fine was being considered for that alleged breach, and that she could request a hearing about it. I find this was a violation of the SPA section 135(1) notice and hearing requirements for bylaw fines. 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*).
25. For the above reasons, I find that Ms. Feng did not breach bylaw 36.4 as alleged, and that the 5 \$200 bylaw fines for violating bylaw 36.4 are invalid.
26. I turn now to the bylaw 36.1 fines. SPA section 130(1) says that the strata may fine a strata lot owner if a bylaw is contravened by the owner, a person visiting the owner or admitted to the premises by the owner, or an occupant if the strata lot is not rented to a tenant. Section 130(2) similarly provides that the strata may fine a tenant if a bylaw is contravened by the tenant, a person visiting the tenant or admitted by the tenant, or an occupant. Section 131 says that if the strata fines a tenant, the strata may collect the fine from the tenant, the tenant's landlord, or the strata lot owner. The tenant owes the landlord or owner for any tenant fines they pay to the strata. Notably, the SPA does not allow a strata lot to be fined for a bylaw contravention, only an owner or a tenant.
27. I find that SPA section 130 says that if a strata lot is rented to a tenant, the strata may only fine the strata lot owner for bylaw contraventions by the owner or a person visiting the owner or admitted by the owner.
28. The strata does not directly dispute Ms. Feng's submission that her tenant, JM, rented the strata lot at the time of all of the alleged bylaw violations in July 2018 through September 2018. There is no residential lease agreement in evidence, but JM's July 23, 2018 letter to the strata's management company confirmed that he was the sole

tenant of unit 3209 since April 2018. On balance, I find that JM had exclusive use and possession of strata lot 280 as Ms. Feng's tenant for the months July 2018 through September 2018, since there is no evidence before me that says otherwise. I also find that under SPA section 130, the strata may not fine Ms. Feng for bylaw 36.1 contraventions committed by JM, although as noted the strata may collect tenant fines by charging them to Ms. Feng's strata lot account.

29. The bylaw infraction letters and bylaw fine letters do not clearly state who allegedly contravened bylaw 36.1. I find the letters simply described incidents where alleged unit 3209 STA occupants were noticed by or interacted with the strata's concierge. The letters all said that an owner or tenant may be fined \$200.00 for each bylaw contravention, but did not say who allegedly contravened the bylaw, only that the fines were applied to the owner's strata lot account. However, the infraction letters said that the strata council might make a decision that could include applying a fine against "you". The letters were addressed to Ms. Feng alone, with no indication that copies were sent to her tenant. On balance, I find that the strata fined Ms. Feng, and not her tenant, 5 times for violating bylaw 36.1.
30. Ms. Feng says she did not advertise, use, or license the strata lot as STA, and that she had rented it to JM. She also says that there is insufficient proof that her tenant advertised or permitted the use of the strata lot as STA. Ms. Feng highlights the strata manager's November 13, 2018 email that said there was "no evidence per se" that unit 3209 STA occurred, apart from the reports contained in the strata's infraction letters.
31. The primary question here is, did Ms. Feng, or a person visiting or admitted by Ms. Feng, use or allow the strata lot to be advertised, promoted, used, occupied, or licensed for use as STA? The 5 bylaw fine letters and their corresponding bylaw infraction notice letters each say that one or more people either confirmed they were staying at unit 3209 as Airbnb guests, or were seen on their way to or from unit 3209. The only evidence supporting these allegations is emails from the strata's concierge. However, even if these allegations are true, I find none of the evidence before me



shows that Ms. Feng knew her tenanted strata lot was being used as STA on each of the alleged infraction dates, or that Ms. Feng had allowed the strata lot to be used or advertised as STA, including by her tenant or others. I need not consider whether Ms. Feng's tenant allowed the strata lot to be used or advertised as STA, because I find there are no tenant fines or moving fees at issue and the tenant is not a party to this CRT dispute.

32. On the evidence before me, I find Ms. Feng did not contravene bylaw 36.1 as it existed in July 2018 through October 2018. So, I find that the 5 \$200 bylaw fines for violating bylaw 36.1 are invalid.
33. The 5 invalid bylaw 36.4 fines and 5 invalid bylaw 36.1 fines total \$2,000. However, as noted, the outstanding strata lot account balance for fines is only \$1,700. I find the evidence does not show whether the strata charged Ms. Feng's strata lot account for all \$2,000 in fines, or whether Ms. Feng has already paid any of those fines. However, the parties do not deny that the \$1,700 balance is for the disputed bylaw 36.1 and 36.4 fines. I order the strata to remove the \$1,700 fine balance from Ms. Feng's strata lot account.

## **CRT FEES, EXPENSES, AND INTEREST**

34. I find that no pre-judgment interest is owed, because Ms. Feng did not pay the invalid strata bylaw fines and moving fees charged to her strata lot account, which I have now ordered to be removed.
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. Ms. Feng was successful in her claims, so I order the strata to reimburse her the \$225 she paid in CRT fees. Neither party claimed CRT-dispute related expenses.
36. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Feng.

## ORDERS

37. I order that, within 15 days of the date of this Order:

- a. The strata remove \$2,100 in moving fees from Ms. Feng's strata lot account balance,
- b. The strata remove \$1,700 in bylaw fines from Ms. Feng's strata lot account balance, and
- c. The strata pay Ms. Feng \$225 in CRT fees.

38. Ms. Feng is also entitled to post-judgment interest, as applicable, from the date of this Order.

39. 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.

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Chad McCarthy, Tribunal Member