



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Watson v. The Owners, Strata Plan NW 177*, 2021 BCCRT 1044

B E T W E E N :

JACQUELINE WATSON

APPLICANT

A N D :

The Owners, Strata Plan NW 177

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about a rental restriction bylaw and related fines.
2. The applicant, Jacqueline Watson, is a former owner of a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 177 (strata).

3. Ms. Watson says the strata unreasonably refused her 2 requests to rent her strata lot under the hardship provisions of the *Strata Property Act* (SPA). She seeks reimbursement of \$10,600 she says she paid to the strata “in trust” for rental restriction bylaw fines when she sold her strata lot.
4. The strata says Ms. Watson did not establish hardship and that it reasonably denied her requests to rent her strata lot under the provisions of the SPA. It also says that the fines assessed against Ms. Watson are valid because she rented her strata lot contrary to the strata’s bylaws. The strata asks that Ms. Watson’s claims be dismissed. In submissions, the strata asks that the funds it holds in trust be released to the strata.
5. Ms Watson is self-represented. The strata is represented by a strata council member.
6. For the reasons that follow, I find the strata did not unreasonably refuse to grant Ms. Watson’s hardship requests. However, I order the strata to release to Ms. Watson \$10,000.00 for rental restriction bylaw fines that it holds in trust because the strata failed to follow the procedural requirements of the SPA, when it imposed the bylaw fines.

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). CRTA section 2 says the CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute’s parties that will likely continue after the CRT process has ended.
8. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT’s mandate that

includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.

9. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other 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 Issues

Claims not in the Dispute Notice

11. The strata says Dispute Notice (DN) only refers to bylaw fines resulting from Ms. Watson renting her strata lot in contravention of the rental restriction bylaw. It says Ms. Watson has raised matters about fines relating to breaches of the pet bylaw and age restriction bylaw, which were not raised in the DN. The strata says the matters of pet bylaw and age restriction bylaw fines are not properly before the CRT.
12. In response, Ms. Watson says this is her first involvement with a CRT dispute and that she is not a lawyer.
13. The purpose of a DN is to define the applicant's issues and provide notice to the respondents of the claims made against them, as well as describe the remedies sought by the applicant. CRT rule 1.17 says that the DN will only be amended after the dispute has entered the CRT decision process (adjudication) where exceptional circumstances apply. I agree with the strata that Ms. Watson's attempt to add claims about the pet bylaw and age restriction bylaw fines in submissions is not appropriate because I find no exceptional circumstances apply at this late stage to allow the DN to be amended. Therefore, I make no findings about pet bylaw or age restriction bylaw fines because I find these claims are not properly before me.

Additional Evidence

14. The strata notes that Ms. Watson improperly submitted evidence as a "response" to a written statement of a strata witness. It says Ms. Watson's "response" should be part of her argument and not submitted as evidence. Ms. Watson says she was unfamiliar with the CRT's process and was "just trying to do [her] level best" at understanding the process. The strata also correctly notes the CRT's mandate is to be flexible but says Ms. Watson's additional evidence is a "misuse of the flexibility provided for in the CRT Rules". I disagree. I accept Ms. Watson is unfamiliar with the CRT's process and may not have followed appropriate protocol when submitting her response to the strata's witness' statement. However, I find the strata was not prejudiced by the way in which Ms. Watson provided her response as it had the opportunity to provide submissions on the additional evidence. Therefore, I have accepted Ms. Watson's additional evidence in response to the strata's witness' statement and refer to it below.

ISSUES

15. The issues in this dispute are:

- a. Did the strata comply with the SPA's procedural requirements when it refused Ms. Watson's hardship exemption requests?
- b. Did the strata unreasonably refuse Ms. Watson's hardship requests to rent her strata lot?
- c. Is Ms. Watson entitled to reimbursement of \$10,600 she paid to the strata "in trust", or a different amount?

BACKGROUND

16. In a civil proceeding such as this, as applicant, Ms. Watson must prove her claims on a balance of probabilities. I have read all the submissions and evidence provided by the parties but refer only to information I find relevant to give context for my decision.

17. The strata is residential strata corporation consisting of 16 strata lots in a single 3-storey building. The strata was created in November 1975 under the *Strata Tiles Act* and continues to exist under the SPA.
18. On November 14, 2013, the strata filed a complete new set of bylaws with the Land Title Office (LTO). I infer the Standard Bylaws do not apply. Subsequent bylaw amendments have been filed with the LTO but are not relevant to this dispute.
19. Bylaw 13 prohibits an owner from renting their strata lot except as permitted under the provisions of the SPA. It also says that a person who contravenes the bylaw may be fined \$500 per week, that the strata may take steps to evict the tenant, and the owner will be responsible for any legal costs the strata incurs to enforce the bylaw.
20. Ms. Watson purchased her strata lot on about July 5, 2018 for \$335,000. The parties agree that she immediately completed renovations to the strata lot and listed it for sale on November 19, 2018 for \$479,000. Multiple Listing Service (MLS) documents show Ms. Watson's strata lot was listed for sale about 6 times with various real estate agents between November 2018 and January 2021. The listing price varied each time. The MLS document shows the strata lot sold on January 29, 2021 for \$436,000. Ms. Watson does not dispute the strata lot was listed various times or the price she sold her strata lot. However, she says she sold her strata lot on March 14, 2021. I infer this was the closing date of the sale, but nothing turns on the date the strata lot was sold.

EVIDENCE AND ANALYSIS

Did the strata comply with the SPA's procedural requirements when it refused Ms. Watson's hardship exemption request?

21. Ms. Watson argues that the strata failed to give her a written decision denying her request within the statutory timelines and that an automatic exemption under SPA section 144 should be granted. She also says the strata did not give reasons for its decision. For the reasons that follow, I disagree.

22. Section 144 of the SPA says an owner wishing to apply for a hardship exemption from a bylaw prohibiting or limiting rentals must do so in writing, state the reason the owner thinks the strata council should make an exemption, and state whether they want a hearing. The exemption is automatically allowed if the strata does not give the owner its decision in writing within 1 week after the hearing, or if the strata does not hold a hearing within 4 weeks of the request. If a hearing is not requested, the exemption is automatically allowed if the strata does not provide its decision within 2 weeks of the receiving the owner's application. The strata may grant an exemption for a limited time, and the strata must not unreasonably refuse to grant an exemption.
23. The deadlines in section 144 of the SPA are strict as Ms. Watson states. In *The Owners, Strata Corporation LMS3442 v. Storozuk*, 2014 BCSC 1507, a strata corporation missed the deadline to provide a written decision by 1 day and the court permitted the exemption request on that basis. The strata corporation had already verbally told the owner the outcome of the hearing, so there was no prejudice to the owner from the delay. The Court acknowledged that its strict interpretation of the SPA might seem unjust but found that the SPA specifically states a hardship exemption is allowed if the deadline is missed. The Court found it had no discretion to provide relief because the exemption is allowed automatically by operation of the statute.
24. On June 21, 2020, Ms. Watson wrote to the strata requesting permission to rent her strata lot "to a family member or a lease to purchase", stating if her family members "find it disagreeable", she would find someone to lease to purchase her strata lot. She advised that her strata lot was currently for sale. She says the reason for her request was because she felt the building created an unhealthy environment for her to live because of several alleged complaints and verbal attacks by other owners and strata council members. She also stated she was out of work and unable to "meet the demands of the strata", and that she was applying for a hardship exemption from the rental restriction bylaw. It is clear Ms. Watson understood the requirements of making a hardship exemption request as she paraphrased the SPA provisions in her letter, including that she needed to specify if she wanted a hearing, as set out in SPA section 144(2). However, she did not specify in her letter whether she wanted a hearing.

25. In *Levesque v. The Owners, Strata Plan KAS 1202*, 2020 BCCRT 1089, I considered whether an owner's request for a hardship exemption under SPA section 144 that did not specify if the owner wanted a hearing, was contrary to the SPA and found that, in the circumstances of that dispute, the fact the owner's hardship request was silent about a hearing was contrary to the SPA. Another CRT member reached the same conclusion in *Gordon v. The Owners, Strata Plan LMS 2405*, 2018 BCCRT 674, as noted by the strata.
26. In *Storozuk*, the court found that the requirements under SPA section 144(2) for an owner to provide the reasons for their hardship request and whether they want a hearing do not have to be in the same correspondence. Rather, the court found the requirements can be set out in various items of correspondence. In the words of the court, "the strata acquiesced to the imperfect form of rental exemption request" made by Mr. Storozuk. I interpret the court's findings in *Storozuk* to mean the requirements of section 144(2) are mandatory and that an owner must provide a strata corporation with written reasons why they request a hardship exemption **and** whether they want a hearing. I also find a plain reading of the legislation supports this interpretation.
27. However, the facts are different here. Following *Storozuk*, I can reasonably find the correspondence between the parties established Ms. Watson's June 21, 2020 exemption request was for hardship, but there is no evidence she ever requested a hearing. As was my conclusion in *Levesque*, I find that by not making any statement about whether she wanted a hearing, Ms. Watson failed to meet the section 144(2)(b) requirement for a hardship request.
28. Therefore, I find Ms. Watson's June 21, 2020 exemption request did not comply with the mandatory requirements of section 144(2) of the SPA, nor was the deficient hearing request later rectified. As such, there was no automatic exemption available to Ms. Watson under section 144(4).
29. Even if I am wrong in my interpretation of *Storozuk*, on June 28, 2020, the strata, through its property manager, replied by email, stating Ms. Watson's request for an exemption from the rental restriction bylaw was denied, but left it open to her to re-apply providing clear reasons why she should be exempt with supporting documents.

I find the email response was within the 2-week deadline established in SPA section 144 (4)(a)(ii), and no automatic exemption is available to Ms. Watson.

30. As for Ms. Watson's argument that the strata did not provide reasons for its denial of her hardship request, I find section 144(2) only requires the strata to provide its decision within the established timeframe. The SPA does not require the strata to give reasons for why it denies an exemption.
31. For these reasons, I find the strata complied with the SPA's procedural requirements when it refused Ms. Watson's June 21, 2020 hardship exemption request.
32. Ms. Watson says she made a second hearing request. The additional facts follow.
33. On June 26, 2020, Ms. Watson emailed a strata council member advising that she was leaving June 29, 2020, and that her cousin was moving into her strata lot and might be interested in purchasing her strata lot.
34. On July 2, 2020, the strata's property manager wrote to Ms. Watson restating its denial of her June 26, 2020 request and advising that strata planned to enforce the rental restriction bylaw because Ms. Watson had rented her strata lot in contravention of the bylaw. The letter advised that fines, effective July 1, 2020, would be assessed at \$500 every 7 days for as long as the strata lot was rented out, but that Ms. Watson had until July 15, 2020 to respond to the letter or request a hearing.
35. On July 7, 2020, Ms. Watson requested a hearing by email. It is arguable that the hearing request was in response to the strata's July 2, 2020 letter about bylaw fines, even though Ms. Watson stated the reason for her hearing request was "hardship". I discuss this further below but will consider here that the request for a hearing was for a hardship exemption given the parties appear to agree this was the purpose of the hearing.
36. The hearing date was originally set for July 27, 2020. Email evidence shows there was miscommunication and a misunderstanding in arranging a hearing date as Ms. Watson had accepted employment out of town and wanted her 2 sons to attend as her representatives. The hearing occurred on August 12, 2020 which, based on the email exchanges in evidence, I find was mutually agreed between the parties.

37. For these reasons, I find the strata complied with the SPA's procedural requirements when it refused Ms. Watson's July 7, 2020 hardship exemption request. I dismiss this part of Ms. Watson's claim.

Did the strata unreasonably refuse Ms. Watson's hardship request to rent her strata lot?

38. The leading case about hardship exemptions in *Als v. The Owners, Strata Corporation NW 1067*, 2002 BCSC 134. In *Als*, the BC Supreme Court said that whether an owner is suffering hardship under section 144 of the SPA depends on the circumstances of each case. The applicant has the burden of proving hardship, and what may be considered hardship to one owner may not be hardship to another. The court also said that determining whether a strata complied with section 144 of the SPA requires a consideration of the facts that were before the strata council when it decided to deny an exemption.

39. The question I must decide is whether the strata's decisions to refuse Ms. Watson's hardship requests were reasonable in all the circumstances, as contemplated in *Als*. Based on the evidence before me, I find that they were.

40. The court in *Als* reviewed several prior decisions about hardship exemptions and identified a non-exhaustive list of factors that may arise in a hardship application as stated in paragraphs 21 through 23 of its decision. I find that the factors are only intended to provide guidance given they were derived from various different facts particular to each case. I find the following factors are relevant to this dispute:

- a. Whether the strata lot's sale price would be less than the purchase price.
- b. Whether the owner has been unable to sell the strata lot.
- c. Whether the strata lot makes up all or substantially all the owner's assets.
- d. Whether the bylaw causes hardship, defined as meaning "hardness of fate or circumstance; severe toil or suffering; extreme privation".

41. In summary, Ms. Watson's position is that she was suffering from mental and financial hardship that met the hardship requirements, so the strata should have granted her

exemption requests. As I have mentioned, her June 21, 2020 letter states her mental hardship was caused by several alleged complaints and verbal attacks by other owners and strata council members. She felt this created an unhealthy living environment. She also stated she was out of work and unable to “meet the demands of the strata”, which I infer means she could not meet the financial requirements of the living in her strata lot. These were Ms. Watson’s assertions, but I find there is insufficient supporting evidence before me to find that hardship existed. My reasons follow.

42. Although the strata stated Ms Watson provided a sworn affidavit in support of her request dated June 29, 2020, there is no affidavit before me. Whether the affidavit appended any documents supporting Ms. Watson’s position is unknown.
43. At the August 12, 2020 hearing Ms. Watson’s sons provided letters from a mental health clinician with Fraser Health Authority and Ms. Watson’s medical doctor affirming Ms. Watson was suffering from a mental health diagnosis. While I accept Ms. Watson may have found it difficult to reside in her strata lot because of the environment, I agree with the strata that the letters do not confirm the environment, or alleged owner and strata council member complaints, were a direct cause of Ms. Watson’s condition.
44. Also provided at the August 12, 2020 hearing was a single-page cash flow summary allegedly representing Ms. Watson financial circumstances for the month of July. Bank balances were noted on the summary, and while Ms. Watson says she provided bank statements to the strata, the strata denies it received bank statements and none were provided in evidence. Further, in identical letters written to the strata confirming their understanding of the August 12, 2020 hearing, Ms. Watson’s sons did not mention bank statements were provided to the strata and only mentioned the 2 medical letters and cash flow summary. I find it is most likely the bank statements were not provided. Without any supporting evidence, I find the single-page cash flow summary are simply numbers that do not prove Ms. Watson’s financial situation.
45. The summary also shows income and expenses from 3 properties, other than Ms. Watson’s strata lot. In her submissions, Ms. Watson stated these were family

properties. I find if the properties were family owned, it is implied that they were not Ms. Watson's assets.

46. As for other relevant factors set out in *A/s*, I have noted that Ms. Watson purchased her strata lot in July 2018 for \$335,000. The MLS information shows Ms. Watson had the strata lot listed for sale for most of the time between November 2018 and January 2021 when she sold it for \$436,000. It is unclear what the renovation costs were, but the selling price was clearly more than purchase price. There is also no evidence before me to indicate Ms. Watson had difficulty selling her strata lot and she did not say she had such difficulty. In submissions, Ms. Watson simply says that the MLS information shows she was trying to sell her strata lot by lowering her asking price.
47. For all these reasons, I agree with the strata that Ms. Watson did not prove hardship existed. Therefore, I dismiss Ms. Watson's claim that the strata unreasonably refused to grant her hardship requests.

Is Ms. Watson entitled to reimbursement of \$10,600.00 she paid to the strata "in trust", or a different amount?

48. Despite Ms. Watson's claim for reimbursement of \$10,600.00, correspondence exchanged between the strata's property management company and Ms. Watson's lawyer at the time her strata lot was sold confirms \$10,303.45 was the amount paid to the strata. A copy of a March 15, 2021 cancelled cheque from Ms. Watson's lawyer provided to the strata also confirms this. Based on the overall submissions, I find this amount was paid to the strata as a disputed debt under SPA section 114.
49. In reviewing the exchanged correspondence and a December 18, 2020 account statement for Ms. Watson's strata lot I find only \$10,000 was contested and paid to the strata in trust. I find this is made up of weekly \$500 bylaw fines related to the unapproved rental of Ms. Watson's strata lot from July 1, 2020 to November 11, 2020, a period of 20 weeks. The remaining \$303.45, along with a \$250.00 move in fee was not contested. I find these amounts were not paid to the strata in trust and do not form part of this dispute.

50. Ms Watson agrees she rented out her strata lot effective July 1, 2020. However, given I have found hardship was not proven, Ms. Watson must show the strata improperly fined her to be successful in her claim for release of the fines.
51. Ms. Watson says the strata's rental restriction bylaw permits the strata to fine a maximum of \$200.00 every seven days for a contravention of the bylaw. However, I find Ms. Watson incorrectly refers to an earlier bylaw that is no longer valid. Based on the LTO documents, the strata's rental restriction bylaw 13 clearly allows for fines of \$500.00 per week as I have mentioned above.
52. The strata submits it properly followed the SPA when it imposed the bylaw fines. Ms. Watson does not dispute this directly, but I find the strata did not strictly follow SPA section 135 when it imposed bylaw fines retroactively for the following reasons.
53. 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".
54. 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.
55. In its July 2, 2020 letter to Ms. Watson, the strata advised that fines, effective July 1, 2020, would be assessed at \$500 every 7 days for as long as the strata lot was rented out. It gave Ms. Watson until July 15, 2020 to respond to the letter or request a hearing. As noted above, Ms. Watson requested a hearing, which was held on August 12, 2020. On August 19, 2020, the strata wrote to Ms. Watson to advise it had denied her request for hardship. The strata again wrote to Ms. Watson on August 28, 2020 advising that because the strata denied her hardship request, it would enforce the bylaw fines retroactively to July 1, 2020 by imposing a \$500.00 fine every 7 days. I find the retroactive nature of the bylaw fine contained in the August 28, 2020 letter is

contrary to section 135(1) of the SPA. I say this because Ms. Watson was effectively given until August 12, 2020 to address her concerns. Section 135(1) says the strata must give an owner a reasonable opportunity to be heard before imposing a fine. Based on a strict interpretation of section 135, I find the strata was not entitled to impose bylaw fines until August 28, 2020 at the earliest, when it first advised Ms. Watson it had made the decision to do so.

56. Ms. Watson's account statement shows 9 \$500.00 bylaw fines were imposed retroactively on September 2, 2020, for a total of \$4,500.00. Given my finding that the strata did not act in strict compliance with SPA section 135(1) before imposing these fines, I find they are invalid.
57. Further, in *Cheung v. The Owners, Strata Plan VR1902*, 2004 BCSC 1750, the court found that a strata corporation can correct procedural unfairness issues relating to SPA section 135 by reversing fines and issuing a new letter to the offending owner in compliance with section 135. There is no other correspondence in evidence about the bylaw fines, so I find the strata did not correct its procedural unfairness.
58. Finally, in *Dimitrov v. Summit Square Strata Corp.*, 2006 BCSC 967, The BC Supreme Court found (at paragraph 33) that continuing fines under SPA section 135(3) are invalid if section 135(1) has not been followed.
59. For these reasons, I find the \$10,000.00 rental restriction bylaw fines invalid because the strata failed to follow the procedural requirements of section 135 of the SPA and did not correct its procedural mistakes, when it imposed continuing fines.
60. I find Ms. Watson is entitled to the release of \$10,000.00 for improper fines and I order the strata to release this amount that it holds in trust under SPA section 114. I order the strata to release these funds to Ms. Watson or her lawyer within 14 days of this decision.

CRT FEES, EXPENSES AND INTEREST

61. 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 not to follow this general rule. I find Ms. Watson was the most successful party in this dispute. I order the strata to reimburse her ½ of the \$225.00 CRT fees she paid, or \$112.50.

62. Ms. Watson also claims dispute-related expenses of \$179.20 for legal fees. However, CRT rule 9.5(3)(b) states the CRT will not order one party to pay to another party any fees charged by a lawyer or another representative in the CRT dispute process except in extraordinary circumstances. Under CRT Rule 9.5(4), when considering whether and to what degree to order reimbursement of legal fees the CRT may consider the complexity of the dispute, the degree of involvement of a parties representative and whether the representative caused any unnecessary delay expense, or any other factors the CRT considers appropriate. I do not find extraordinary circumstances exist in the context of this dispute. Therefore, I dismiss Ms. Watson's claim for reimbursement of legal fees.

63. The *Court Order Interest Act* (COIA) applies to the CRT. There were no details provided about interest earned on the funds held in trust, so I find there was no agreement on trust fund interest. Therefore, I find Ms. Watson is entitled to pre-judgement interest under the COIA for the \$10,000 bylaw fines from March 15, 2021, the date the fines were paid to the strata in trust, until the date of this decision. I calculate pre-judgement interest to be \$24.53.

ORDERS

64. I order that the strata release to Ms. Watson \$10,000.00 for bylaw fines she paid to the strata in trust.

65. I order that, within 15 days of the date of this order, the strata pay Ms. Watson a total of \$137.03, broken down as follows:

a. \$112.50 for CRT fees, and

b. \$24.53 in pre-judgement interest under the COIA.

66. Ms. Watson is entitled to post-judgement interest under the COIA, as applicable.

67. 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.

J. Garth Cambrey, Vice Chair