



Civil Resolution Tribunal

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File: ST-2020-009271

Type: Strata

Civil Resolution Tribunal

Indexed as: *He v. The Owners, Strata Plan EPS5073*, 2021 BCCRT 1081

B E T W E E N :

WEI HE

APPLICANT

A N D :

The Owners, Strata Plan EPS5073

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about strata bylaw fines for changing a door lock without prior approval. The applicant, Wei He, owns strata lot 153 in the respondent strata corporation, The Owners, Strata Plan EPS5073 (strata). Mr. He replaced the conventional lock on his strata lot's door with a combination lock, without first obtaining the strata's approval. The strata said this broke strata bylaw 1.5(1), and it

fined Mr. He several times over a period of months, until he re-installed the original lock.

2. Mr. He claims a refund of the \$3,800 he paid for those bylaw fines, because he says the bylaw was inapplicable to his lock replacement. The strata says the bylaw applied to the lock change and that the fines were valid.
3. Mr. He is self-represented in this dispute. A strata council member represents the strata.

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). 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.
5. 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.
6. 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.

7. Under CRTA section 123, 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.
8. Before this adjudication, Mr. He withdrew 2 of the remedies requested in his Dispute Notice, namely \$525 for a debt recovery fee and \$1,350 for legal fees and disbursements. Those issues are not before me in this decision.

ISSUE

9. Did the strata properly fine Mr. He for his lock change, and if not, is he entitled to a \$3,800 refund for bylaw fines?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. He must prove his claim on a balance of probabilities, which means proving it is more likely than not that his position is correct. 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 2018 under the *Strata Property Act* (SPA). Its premises are a 13-storey building with several dozen residential strata lots, including strata lot 153. The strata filed a complete set of bylaws with the Land Title Office on July 31, 2018, which I find are the bylaws applicable to this dispute. The strata also filed several bylaw amendments on February 20, 2020, none of which are relevant to this dispute.
12. Bylaw 1.5(1) says that an owner must obtain the strata's written approval before making an alteration to a strata lot that involves, among other things, doors that front on common property (CP), including their casings, frames, and sills. Bylaw 1.6 says that an owner must obtain the strata's written approval before making an alteration to CP. Bylaw 3.1 says that the maximum bylaw contravention fine is \$200. Under bylaw 3.2, if an activity or lack of activity that constitutes a bylaw contravention continues without interruption for longer than 7 days, a fine may be imposed every 7 days.

13. According to the strata plan, Mr. He's strata lot fronts on a CP corridor. The strata lot's door has a handle, as well as a separate bolt mechanism for locking the door with a conventional key. Photos in evidence show that the appearances of the handle and bolt mechanism match, and both have the same glossy finish.
14. Sometime in early 2020, Mr. He removed the bolt mechanism and replaced it with a different style of lock. It is undisputed that Mr. He did not seek the strata's approval before replacing the bolt mechanism. Photos show that the new bolt mechanism had both a combination keypad and a conventional key cylinder, and was significantly larger than the original mechanism. Further, I find that the new bolt mechanism appeared to have a brushed finish, and its appearance was not well-matched to the door handle.
15. In a March 5, 2020 bylaw infraction notification letter, the strata told Mr. He that it had received a complaint about the new bolt mechanism. The strata alleged that Mr. He had "made unapproved alterations to common property by changing the lock on the front door of the unit." However, the strata quoted bylaw 1.5(1), which is about strata lot alterations, not CP alterations. Given the outcome of my decision below, I find nothing turns on whether the door is CP or is part of Mr. He's strata lot.
16. The letter said that the lock must be restored to its original condition by March 19, 2020 "in order to prevent any further action." The letter did not say what the further actions were. The letter gave Mr. He an opportunity to request a hearing under SPA section 135(1). Finally, the letter said that if no response was received within 14 days, the strata council would make an appropriate decision on the matter. The letter did not say what its decision might be, or whether the strata was contemplating a bylaw fine.
17. Mr. He did not respond within 14 days, and did not restore the bolt mechanism by March 19, 2020. In a March 20, 2020 letter, the strata imposed a \$200 fine for contravening bylaw 1.5 because Mr. He had not replaced the original lock. The strata imposed another \$200 fine on May 15, 2020 for the same reason. In a May 26, 2020 letter, the strata imposed another \$200 fine, and said that a fine would be assessed

every 7 days until the lock “repair” was completed. It is undisputed that the strata imposed further \$200 fines for the continuing contravention of bylaw 1.5 for several weeks. In correspondence dated September 21, 2020, Mr. He notified the strata that he had replaced the original lock, although he denied breaking any bylaws. It is undisputed that the strata charged a total of \$3,800 in bylaw fines for the unapproved lock change, and that Mr. He paid those fines in full by October 13, 2020, under protest.

18. According to *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, in order to impose a bylaw contravention fine, the strata must strictly comply with the requirements of SPA section 135. *Terry* is binding precedent that the CRT must follow.
19. Further, I note that the strata’s bylaw infraction notice and fine letters contain similar language to the notices considered in the non-binding CRT decision, *The Owners, Strata Plan EPS3454 v. Prior*, 2021 BCCRT 704. My reasoning below is similar to my reasoning in *Prior* at paragraphs 21 to 25.
20. SPA section 135(1) says that the strata must not impose a bylaw contravention fine against an owner unless the strata has given the owner written particulars of the contravention complaint and a reasonable opportunity to answer the complaint, including a hearing if requested. Paragraph 28 of *Terry* explains that an owner who may be subject to a fine must be given notice that the strata corporation is contemplating the imposition of a fine for the alleged contravention of an identified bylaw or rule, and sufficient particulars about the contravention at issue. According to *Terry*, these section 135(1) requirements must be followed before a fine may be imposed.
21. As noted, although the March 5, 2020 bylaw infraction letter said that the strata might take further action or make an appropriate future decision, I find it did not notify Mr. He that the strata was contemplating a fine. Given paragraph 28 of *Terry*, I find this means that the March 5, 2020 letter did not satisfy the SPA section 135 notice

requirements. I find that Mr. He did not receive sufficient notice before the strata fined him \$200 on March 20, 2020, so that fine was not validly issued under the SPA.

22. SPA 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. I find that the \$200 fines imposed on May 15, 2020 and afterward were for a continuing contravention of bylaw 1.5(1). However, Mr. He was not given the required notice of the original March 20, 2020 fine. On the evidence before me, I also find that the strata gave no further notice or hearing opportunity for the fines issued on May 15, 2020 and later.
23. In *Dimitrov v. Summit Square Strata Corp.*, 2006 BCSC 967 at paragraph 33, the court found that continuing fines under SPA section 135(3) are invalid if section 135(1) has not been followed. I find that is the case here. I find that the strata did not provide sufficient SPA section 135 notice for any of the continuing contravention fines from May 15, 2020 onward, and that those fines are invalid.
24. I find that none of the \$3,800 in bylaw fines for Mr. He's unapproved lock change were validly issued under the SPA. I find that Mr. He is entitled to a refund of those fines. For the purposes of this dispute, I find there is no need to determine whether the lock change actually violated bylaw 1.5(1). I allow Mr. He's claim for \$3,800.

CRT FEES, EXPENSES, AND INTEREST

25. Mr. He claims 4% interest from October 13, 2020 onward on the \$3,800 he paid in invalid bylaw fines. I find there is no evidence that the parties had an agreement about interest on amounts paid for invalid fines. However, I find that under the *Court Order Interest Act*, Mr. He is entitled to pre-judgment interest on the \$3,800 owed by the strata. I find this interest is properly calculated from October 13, 2020 to the date of this decision. This equals \$17.10.
26. 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. I find Mr. He was successful in this dispute, so he is entitled to reimbursement of the \$225 he paid in CRT fees. Given that Mr. He withdrew his claims for a debt recovery fee and legal fees and disbursements, I find that neither party claims CRT dispute-related expenses.

27. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. He.

ORDERS

28. Within 30 days of the date of this decision, I order the strata to pay Mr. He a total of \$4,042.10, broken down as follows:

- a. \$3,800 in debt for bylaw fine refunds,
- b. \$17.10 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$225 in CRT fees.

29. Mr. He is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

Chad McCarthy, Tribunal Member