



Civil Resolution Tribunal

Date Issued: October 15, 2021

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS 2785 v. Douhlani*, 2021 BCCRT 1097

B E T W E E N :

The Owners, Strata Plan BCS 2785

APPLICANT

A N D :

MARK MOEUN DOUHLANI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. The applicant, The Owners, Strata Plan BCS 2785 (strata), is a strata corporation existing under the *Strata Property Act* (SPA). The respondent, Mark Moeun Douhlani, owns a strata lot in the strata.

2. The strata says that since about 2017, Mr. Douhlani failed to manage the tenant living in his strata lot. The strata says the tenant caused harm and damage to other owners in the strata, and Mr. Douhlani did not take sufficient steps to fix the problem. In its dispute application, the strata requests an order that Mr. Douhlani pay \$3,450 for bylaw fines and lien-related fees.
3. Mr. Douhlani says the strata's claim should be denied. He says the strata should have fined the tenant directly, and that he is not responsible for any fines or fees. He also says it took time to go through the process of evicting the tenants so he was not able to remove them until August 2020.
4. The strata is represented in this dispute by a strata council member. Mr. Douhlani is represented by a family member.
5. For the reasons set out below, I dismiss the strata's claim for lien-related expenses. I order Mr. Douhlani to pay \$50 in bylaw violation fines.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
9. 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.
10. In its submissions, the strata says Mr. Douhlani must pay chargebacks for damage caused by his tenant. However, there is no claim for payment of chargebacks in the Dispute Notice, and no evidence before me showing that any chargebacks were imposed. I therefore make no findings or orders about chargebacks in this decision.

ISSUE

11. Must Mr. Douhlani pay any bylaw fines or lien-related fees, and if so, how much?

REASONS AND ANALYSIS

12. In a civil claim like this one, the strata, as applicant, must prove its claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.
13. As noted above, the strata claims \$3,450 in bylaw fines and lien-related fees. The strata provided printouts of Mr. Douhlani's strata lot account dated October 29, 2020 and April 9, 2021. These show the dates various fines were imposed.
14. In the Dispute Notice, the strata claims an unspecified portion of the \$3,450 as “lien fee”. However, there is no record of lien fees on the strata lot account printouts, no evidence that a lien was imposed, and no evidence of what lien fees the strata incurred, if any. For these reasons, I dismiss the strata's claim for lien fees.

15. For the following reasons, I find Mr. Douhlani must only pay \$50 in bylaw fines.
16. The strata did not explain what portion of the claimed \$3,450 was for bylaw fines, and what portion was for lien fees. The strata lot account printout dated April 9, 2021 shows a total of \$3,000 in outstanding bylaw fines, plus an unspecified “balance forward” of \$550. The previous strata lot account statement from October 2020 also shows bylaw fines. However, I cannot tell from the evidence before me whether Mr. Douhlani paid these previous fines, or what the “balance forward” on the April 2021 statement is for.
17. The strata only provided copies of 2 letters imposing fines, although the strata lot account statements and other correspondence in evidence indicates that fines were imposed against Mr. Douhlani on many other occasions.
18. The first letter from the strata in evidence in which fines were imposed is dated July 31, 2017. The letter is addressed to Mr. Douhlani, and says he was fined \$200 for a breach of strata bylaw 30, because his tenant moved furniture without booking the elevator, or paying the required damage deposit and move-in fee.
19. The evidence before me suggests that like the July 31, 2017 fine, many of the other bylaw fines against imposed against Mr. Douhlani were because his tenant allegedly breached various strata bylaws. Mr. Douhlani does not particularly dispute these breaches, and the strata provided evidence about them, so I accept the tenant breached the bylaws. However, based on the provisions of the *Strata Property Act* (SPA), I find the strata was not entitled to fine Mr. Douhlani for his tenant’s actions.
20. SPA section 130 sets out how a strata corporation may impose fines. Section 130(1) says that the strata may fine an owner for their own bylaw breaches, or breaches by the owner’s visitors or guests, or a breach by an occupant. However, if the strata lot is rented to a tenant, the strata may not fine an owner or landlord for the tenant’s breaches. Rather, if the strata lot is rented, the strata may fine the tenant for the tenant’s bylaw breaches, but cannot fine the owner or landlord directly.

21. SPA section 131(1) says if the strata fines a tenant, the strata may collect the fine from the tenant, the landlord, or the owner of the strata lot.
22. There is no indication in the evidence before me that the strata ever fined Mr. Douhlani's tenant. Rather, the correspondence suggests it fined Mr. Douhlani directly. The fines, in general, are about 2 separate sets of actions. First, there are fines about conduct by the tenant, such as littering in the elevator, having an aggressive unleashed dog, and moving furniture without booking the elevator. Since all of this alleged conduct was done by the tenant, and not by Mr. Douhlani, I find the strata was not entitled to fine Mr. Douhlani for any of it. Since there is no evidence before me that the strata fined the tenant for any of this alleged conduct, I find the strata was also not entitled to try to collect the fines from Mr. Douhlani under SPA section 131(1).
23. The second set of alleged conduct is about unpaid strata fees. The strata's correspondence says that at various times, Mr. Douhlani's monthly strata fees were in arrears. Strata bylaw 1 says strata fees must be paid on the first day of each month.
24. Mr. Douhlani did not specifically deny that his strata fees were in arrears, and did not provide evidence to the contrary. So, I accept that allegation is true. However, the only letter the strata provided in evidence imposing a fine for unpaid strata fees is dated March 4, 2021. On that date, the strata fined Mr. Douhlani \$50 for unpaid strata fees. Since Mr. Douhlani has not proven otherwise, I accept his strata fees were late, contrary to bylaw 1, and order him to pay the \$50 fine.
25. However, I find the strata has not proven its claim to other bylaw fines. Although the strata discussed other fines in its submissions and correspondence in evidence, there is no document specifically stating when other fines were imposed for late strata fees. For example, some of the letters provided by the strata refer to fines on October 29, 2020 and December 4, 2020. However, the strata did not provide copies of the letters imposing those fines, so I cannot tell what the fines were for. Specifically, I cannot tell whether the fines were for conduct by Mr. Douhlani, such as non-payment of strata fees, or conduct by his tenant, for which Mr. Douhlani cannot be fined directly.

26. Similarly, the strata lot account statements list various fines, but do not say what the fine was specifically for. Since the evidence before me shows that at times the strata attempted to fine Mr. Douhlani for conduct by his tenant, and since I cannot tell which of the claimed fines other than the March 4, 2021 fine is for, I find the strata has not proven its claim that Mr. Douhlani must pay bylaw fines other than the March 4 fine.
27. In making this finding, I note that parties are instructed in writing during the CRT's process to provide all relevant evidence.
28. For these reasons, I order Mr. Douhlani to pay the strata \$50 for the March 4 bylaw fine. I dismiss the strata's remaining claims for bylaw fines.

CRT FEES AND EXPENSES

29. Under CRTA section 49 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. The strata was substantially unsuccessful in this dispute, so I order no reimbursement of CRT fees. Neither party claimed dispute-related expenses, so none are ordered.
30. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Mr. Douhlani.

ORDER

31. I order that within 30 days of this decision, Mr. Douhlani must pay the strata \$50 in bylaw fines.
32. The strata's remaining claims are dismissed.
33. The strata is entitled to postjudgment interest under the *Court Order Interest Act*, as applicable.

34. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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.

Kate Campbell, Vice Chair