



Civil Resolution Tribunal

Date Issued: November 16, 2021

File: ST-2021-001803

Type: Strata

Civil Resolution Tribunal

Indexed as: *Pinkney v. The Owners, Strata Plan VR 392*, 2021 BCCRT 1209

B E T W E E N :

CAROLYN ANNE PINKNEY

APPLICANT

A N D :

The Owners, Strata Plan VR 392

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. The applicant Carolyn Anne Pinkney owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VR 392 (strata). Ms. Pinkney says her strata lot is occupied by tenants, and the strata applied \$1,000 in fines to Ms. Pinkney's strata lot account for her tenants' noise bylaw contraventions. Ms. Pinkney says her tenants did not contravene the strata's noise bylaw and the strata failed to investigate

the complaints before imposing the fines. Ms. Pinkney also says the strata did not inform her of the August 13, 2020 fines, and failed to hear her appeal of the October 29, 2020 and November 4, 2020 fines, as required by the strata's bylaws. Ms. Pinkney asks for an order that the strata remove the bylaw contravention fines from her strata lot account.

2. The strata says it imposed the fines in accordance with the *Strata Property Act* (SPA) and its bylaws. The strata says it gave Ms. Pinkney written notice of the fines, made several efforts to hear her appeal in person without success, and gave her an opportunity to provide written submissions on the fines. The strata says Ms. Pinkney has not done so.
3. Both Ms. Pinkney and the strata are represented by lawyers.

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.

ISSUES

8. The issues in this dispute are:
 - a. Whether the strata properly imposed the bylaw fines, and if not, must the strata remove the fine amounts from Ms. Pinkney's strata lot account?
 - b. Did Ms. Pinkney's tenants contravene the strata's noise bylaws as alleged?
 - c. Was the strata's imposition of bylaw contravention fines significantly unfair to Ms. Pinkney?

EVIDENCE AND ANALYSIS

9. In a civil proceeding such as this, Ms. Pinkney must prove her claim on a balance of probabilities, meaning more likely than not. While I have read all the evidence and submissions, I only refer to what is necessary to explain my decision.
10. The strata is a 33-unit apartment style building. Ms. Pinkney's strata lot is a corner unit located on the first floor.
11. The strata filed consolidated bylaws in the Land Title Office on July 12, 2013.
12. The strata's bylaw 4.2 prohibits owners, tenants and occupants from causing a nuisance or unreasonable noise, or doing anything that unreasonably interferes with any owner, tenant or occupant (noise bylaw). Bylaw 37 allows the strata to fine an owner or tenant a maximum of \$200 for each bylaw contravention.

13. It is undisputed that Ms. Pinkney did not live in her strata lot at the time of the alleged bylaw contraventions. Ms. Pinkney says tenants lived in her strata lot at the time of the alleged bylaw contraventions. The strata does not dispute that Ms. Pinkney had rented her strata lot. However, the strata says that the people occupying Ms. Pinkney's strata lot were occupants rather than tenants because Ms. Pinkney did not provide the strata with a signed Notice of Tenant's Responsibilities (form K notice), as required by SPA section 146. Ms. Pinkney did not address this allegation in her submissions.
14. A "tenant" is defined in the SPA as a person who rents all or part of a strata lot. SPA section 146(3) says that if a landlord (here, Ms. Pinkney) fails to give the tenant and the strata the form K notice, the tenant is still bound by the bylaws and rules. So, although Ms. Pinkney may have failed to provide the form K notice to the strata as required by the SPA, I find this does not make a person renting a strata lot an occupant rather than a tenant. I find that tenants occupied Ms. Pinkney's strata lot at the time of the alleged bylaw contraventions. I also note that in July 2020 email correspondence between the strata and Ms. Pinkney, the strata referred to the persons renting Ms. Pinkney's strata lot as "your tenants". So, despite the strata's submissions that Ms. Pinkney failed to submit the form K notice, I find the strata was aware that tenants occupied Ms. Pinkney's strata lot and treated them as such.

The fines

15. A June 24, 2020 letter to the tenants from the strata's property manager, advised of a June 6, 2020 noise complaint and warned a fine might be imposed if it continued.
16. A second June 24, 2020 letter to the tenants from the strata's property manager advised of a June 22, 2020 noise complaint and said "as this is the 2nd noise complaint a fine of \$200.00 has been placed on your strata lot account". There is no evidence that the tenants had a strata lot account, or that this fine was placed on either the tenants' strata lot account or Ms. Pinkney's strata lot account in June 2020.

17. A July 5, 2020 email to Ms. Pinkney from a strata council member advised her of noise complaints on June 22, 2020 and July 5, 2020. The email did not say that any fines had been imposed.
18. An August 12, 2020 letter to Ms. Pinkney from the strata's property manager advised of a "3rd noise complaint" on August 9, 2020 and said "as this is the 3rd noise/nuisance complaint a fine of \$200.00 has been placed on the owners" (reproduced as written).
19. An October 26, 2020 letter to Ms. Pinkney from the strata's property manager advised of a "3rd noise/nuisance complaint" on October 17, 2020 and said "as this is the 3rd noise/nuisance complaint a fine of \$200.00 has been placed on the owners" (reproduced as written). I find the letter's identification of a 3rd complaint is more likely than not an error and was intended to identify a 4th complaint, as the email from the strata attaching the letter to Ms. Pinkney states "please find attached a 4th infraction and fine at your unit".
20. A November 4, 2020 letter to Ms. Pinkney from the strata's property manager advised of a "5th noise/nuisance complaint" on October 31, 2020 and said "as this is the 5th noise/nuisance complaint a fine of \$200 has been placed on the owners" (reproduced as written).
21. Ms. Pinkney's strata lot account statement shows the following fines totalling \$1,000:
 - a. Three \$200 fines imposed on August 13, 2020 (two fines for June 2020 contraventions, one fine for an August 2020 contravention),
 - b. \$200 fine imposed on October 29, 2020, and
 - c. \$200 fine imposed on November 4, 2020.

Did the strata properly impose the fines?

22. It is undisputed that Ms. Pinkney's tenants, and not Ms. Pinkney, allegedly created the noise that led to the bylaw fines at issue here. So, I find that only the tenants could have contravened the noise bylaw.

23. In *The Owners, Strata Plan NW3075 v. Stevens*, 2018 BCPC 2 at paragraph 48, the court said that the persons who may be subject to a bylaw fine must be given a reasonable opportunity to answer the complaint, including requesting a hearing. In this case, I find those persons are the tenants. *Stevens* also confirmed that under section 135(1)(f), the strata must notify owners of complaints about tenants. In *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449 at paragraphs 27 and 28, the court confirmed that the strata must strictly follow the requirements of section 135 before it can impose a fine.

June 2020 fines

24. As noted above, two June 2020 fines were imposed on Ms. Pinkney's strata lot account on August 13, 2020. The June 24, 2020 letters were sent directly to the tenants. In one of the two letters, the strata advised that it was imposing a \$200 fine for the 2nd noise complaint. As the strata imposed the fine the same day it advised the tenants of the noise complaints, I find that the strata did not give the tenants a reasonable opportunity to respond to the noise complaints and to request a hearing before issuing the fine, as required by SPA section 135(1)(e). There is no evidence that the strata advised either the tenants or Ms. Pinkney that it was imposing a \$200 fine for the first noise complaint identified on June 24, 2020 before it applied \$400 in fines for the alleged June 2020 contraventions to Ms. Pinkney's strata lot account on August 13, 2020. I find that the two June 2020 fines are invalid because the strata failed to give the tenants a reasonable opportunity to respond to the June 2020 noise complaints before issuing the fines.

25. Although the strata can collect fines imposed on tenants from an owner under SPA section 131, the fines must still be validly imposed in order to do so. As I find the two June 2020 fines are invalid, I order the strata to reverse them from Ms. Pinkney's strata lot account.

August, October and November 2020 fines

26. The strata advised Ms. Pinkney that it was imposing fines for alleged noise bylaw contraventions on August 12, 2020, October 26, 2020, and November 4, 2020. As

noted above, all of the fines were placed on her strata lot account, including the two June 2020 fines. I have already addressed the June 2020 fines. I will now address the August, October, and November 2020 fines.

27. SPA section 131 says that if a strata fines a tenant, the strata may require the owner or landlord to pay the fine. However, the strata never fined the tenants for the alleged bylaw contraventions in August, October, or November 2020. There is no evidence that the tenants were advised of any complaints or any fines in August, October, or November 2020. Rather, the evidence shows that the strata fined Ms. Pinkney directly and applied the bylaw fines to her strata lot account. This is not consistent with SPA requirements.
28. SPA section 130(1) says the strata may fine an owner in the following 3 circumstances: if a bylaw is contravened by the owner, if a person visiting the owner or admitted to the premises by the owner violates a bylaw, or if an occupant violates a bylaw and the strata lot is not rented by the owner to a tenant (emphasis added).
29. SPA section 130(2) says the strata may fine a tenant if a bylaw is contravened by the tenant, a person visiting the tenant or admitted to the premises by the tenant, or an occupant, if the strata lot is not sublet to a subtenant.
30. The strata does not allege that Ms. Pinkney contravened the noise bylaw. Therefore, since the strata lot was rented, the strata cannot fine Ms. Pinkney directly, as specified in SPA section 130(1).
31. For these reasons, I find the August 13, 2020, October 29, 2020 and November 4, 2020 fines cannot stand, and I order the strata to reverse them.
32. As I have already found that the strata did not impose the fines in accordance with SPA sections 135 and 130, I find I do not need to address whether the tenants contravened the noise bylaw, whether the strata otherwise complied with the SPA in imposing the fines, or whether the strata treated Ms. Pinkney significantly unfairly.

CRT fees and expenses

33. 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 therefore order the strata to reimburse Ms. Pinkney \$225 for CRT fees. Ms. Pinkney did not claim any dispute-related expenses.
34. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Pinkney.

ORDERS

35. I order that:
- a. The strata must immediately reverse \$1,000 in bylaw contravention fines charged against Ms. Pinkney's strata lot account.
 - b. Within 30 days of this decision, the strata must reimburse Ms. Pinkney's \$225 in CRT fees.
36. Ms. Pinkney is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
37. 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.

Leah Volkens, Tribunal Member