



Civil Resolution Tribunal

Date Issued: December 15, 2021

File: ST-2021-002349

Type: Strata

Civil Resolution Tribunal

Indexed as: *Lauwers v. The Owners, Strata Plan EPS3450*, 2021 BCCRT 1311

B E T W E E N :

ANDREW LAUWERS

APPLICANT

A N D :

The Owners, Strata Plan EPS 3450

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about bylaw contraventions involving a tenanted strata lot.
2. The applicant, Andrew Lauwers, owned a strata lot (SL3) in the respondent strata corporation, The Owners, Strata Plan EPS3450 (strata), which he rented out. Mr.

Lauwers owned SL3 when he applied for dispute resolution services, but based on the parties' submissions and evidence, I understand Mr. Lauwers is no longer an owner in the strata.

3. Mr. Lauwers says the strata improperly fined him for failing to pick up pet waste and garbage from limited common property (LCP) next to SL3. He also says the strata council abused its power, harassed his tenants, and treated his tenants unfairly by not allowing them to keep a trampoline, which resulted in his tenants moving out. Mr. Lauwers seeks orders that the strata reimburse him for bylaw fines of \$2,000 he paid when sold SL3, and \$3,375 in damages for lost rental income.
4. The strata denies it improperly imposed bylaw fines and says it is not responsible to reimburse Mr. Lauwers for lost rental income.
5. Mr. Lauwers is self-represented. The strata is represented by a strata council member.
6. As explained below, I find the strata improperly fined Mr. Lauwers and order it to reimburse him \$2,000. I dismiss Mr. Lauwers' claim for lost rental income and refuse to resolve his claims against the strata council for harassment and abuse of power.

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 Issue – Strata Council Harassment, Abuse of Power

11. In the Dispute Notice, and in his submissions, Mr. Lauwers alleges the strata council harassed his tenants and abused its power by not treating his tenants in the same manner as owners who occupied their strata lots. I find these allegations are about a failure of the strata council to meet its duties under SPA section 31. Section 31 says that in exercising the powers and performing the duties of the strata corporation, each council member must act honestly and in good faith with a view to the best interests of the strata corporation, and must exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.
12. I find that Mr. Lauwers has no standing (legal right) to make claims under SPA section 31. In *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32, the BC Supreme Court said that the duties of strata council members under SPA section 31 are owed to the strata corporation, and not to individual strata lot owners (see paragraph 267). This means that a strata lot owner cannot succeed in a claim against the strata or against individual strata council members for a breach of section 31. *Sze Hang* is a binding precedent, and the CRT must apply it.
13. I also note that Mr. Lauwers is attempting to make these claims on behalf of his tenants, which I find he has no legal right to do. For these reasons, I make no findings in this decision about alleged breaches of SPA section 31, and refuse to resolve these claims.

ISSUES

14. The issues in this dispute are:
- a. Did the strata follow the procedural requirements of the SPA when it imposed bylaw fines, and what is an appropriate remedy?
 - b. Is the strata responsible to reimburse Mr. Lauwers for lost rental income?

BACKGROUND

15. In a civil proceeding such as this, as applicant, Mr. Lauwers must prove his 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.
16. The strata was created in October 2016 under the *Strata Property Act* (SPA). SL3 is a 3-level strata lot located in building 49 next to 1 other strata lot. There are no strata lots above or below SL3.
17. At the time the strata was created in October 2016, the bylaws were the Standard Bylaws under the SPA, as set out under SPA section 120(1). On May 2, 2019, the strata filed bylaw amendments with the Land Title Office (LTO) that amended some of the Standard Bylaws, including increasing the maximum amount of fines for bylaw contraventions to \$200 as permitted under the SPA. Further bylaw amendments were filed with the LTO on January 20, 2021, but they are not relevant to this dispute.

EVIDENCE AND ANALYSIS

Did the strata follow the procedural requirements of the SPA when it imposed bylaw fines, and what is an appropriate remedy?

18. The strata wrote to Mr. Lauwers on May 4, 2018 and February 20, 2019 about Mr. Lauwers' tenant's use of a children's trampoline, alleging the trampoline's use was contrary to strata's bylaws. The strata says the use of the trampoline did not result in bylaw fines because the tenants removed the trampoline as the strata requested. Given Mr. Lauwers did not dispute this, I accept the bylaw fines at issue do not relate to the trampoline use.

19. On March 15, 2020, Mr. Lauwers says he rented out SL3 to new tenants. A partial residential tenancy agreement provided in evidence supports this. The strata also referenced the rental status of SL3 in the November 24, 2020 letter discussed below, where the strata said “your tenants are your responsibility... be advised that any future fines will be attributable to you”. Therefore, and as discussed further below, I find there is no dispute SL3 was rented out when bylaw fines relevant to this dispute were imposed.
20. On November 24 and December 10, 2020, and February 25, 2021, the strata wrote to Mr. Lauwers alleging various bylaw contraventions by his tenants for garbage and pet waste not being picked up from limited common property (LCP), and ultimately imposed fines against Mr. Lauwers for not removing the garbage. Given my finding below, I need not review the alleged bylaw contraventions in detail. The photographs in evidence show litter in the back yard area of SL3, and litter and cigarette butts in the front of SL3 were the main reasons for the fines. These areas are shown as common property on the strata plan rather than LCP as claimed by the strata, but nothing turns on this.
21. Based on the parties’ submissions, I find Mr. Lauwers paid \$2,000 in bylaw fines at the time he sold his strata lot, although no sales date was provided.
22. For the following 2 reasons, I find the strata did not follow proper procedures when it imposed fines against Mr. Lauwers.
23. First, SPA section 130 says the strata may fine an owner if a bylaw is breached by an owner, an owner’s visitor, or an occupant if the strata lot is not rented. It also says that the strata may fine a tenant if the bylaw is breached by the tenant, a tenant’s visitor, or an occupant if the strata lot is not sublet. Because Mr. Lauwers did not reside in SL3 and the strata’s allegations were against his tenants, I find the strata was not permitted to fine Mr. Lauwers for the garbage located on the CP yard and driveway areas. Rather, the strata was only permitted to fine Mr. Lauwers’ tenants, which it did not do.
24. Second, 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”. Under section 135(3), the strata may impose fines for continuing bylaw contraventions once it complies with the procedural requirements in sections 123(1) and (2).

25. The BC Court of Appeal has found that strict compliance with SPA section 135 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.
26. I have reviewed the 3 letters the strata wrote to Mr. Lauwers and make the following findings. The November 24, 2020 letter did not state Mr. Lauwers could question the strata’s allegation so I find Mr. Lauwers did not have a reasonable opportunity to answer the complaint about garbage. Rather, the letter stated that if the strata received another complaint it might take bylaw enforcement action. The December 10, 2020 letter was a follow up to the November 24, 2020 letter and stated that “another \$200 fine will be assessed to your [strata lot]”. There was no prior notification of the strata’s decision to impose a fine after the November 24, 2020 letter, as required under SPA section 135(2) and again, Mr. Lauwers was not given a reasonable opportunity to answer the complaint about garbage before another fine was imposed.
27. The February 25, 2021 letter was a follow up to the December 10, 2020 letter and stated because the garbage remained on the property another \$200 fine had been imposed. Again, the letter did not provide Mr. Lauwers a reasonable opportunity to respond and does not identify when the strata decided to impose the fine.
28. Overall, I find the strata did not follow the procedural requirements of SPA section 135 before imposing fines as the court found is required in *Terry*. As for any bylaw fines imposed for continuing contraventions, 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.

29. For these reasons, I find all bylaw fines imposed by the strata against Mr. Lauwers from November 24, 2020 for garbage on property surrounding SL3, including fines for continuing bylaw contraventions, are invalid. Therefore, the strata was not entitled to collect any fines it imposed against Mr. Lauwers that relate to this issue. I order the strata to reimburse Mr. Lauwers \$2,000 for bylaw fines he paid.

Is the strata responsible to reimburse Mr. Lauwers for lost rental income?

30. As discussed above, the strata wrote to Mr. Lauwers on May 4, 2018 and February 20, 2019 about Mr. Lauwers' tenants' use of a children's trampoline alleging the trampoline's use was contrary to strata's bylaws. Mr. Lauwers' tenants complied with the strata's requests to remove the trampoline, despite their allegations of the strata's bias towards renters while allowing things such as hot tubs to remain on common property used by owners. In submissions, the strata says after speaking with its insurance broker, it understood that trampolines could be a potential liability issue because of personal injury accidents. The strata admits trampolines were never banned and the decision to request the trampoline's removal from SL3 was made by the strata council. The strata's letters to Mr. Lauwers do not mention liability concerns.
31. Mr. Lauwers claims the strata's actions to force his tenants to remove the trampoline, which his tenants found unfair, was reason why his tenants moved out of SL3. He claims damages of \$3,375, which he says is his lost rent while SL3 was vacant between February 1 and March 15, 2020, a period of 1.5 months at a monthly rent of \$2,250.
32. I do not agree with Mr. Lauwers that the strata caused his tenants to move out of SL3. My reasons follow.
33. First, the trampoline was removed in about February 2019. The tenants did not move out of SL3 until the end of January 2020, 11 months later. I find it is not reasonable to conclude the strata's action 11 months prior, was sufficient reason for Mr. Lauwers' tenants to vacate SL3. Further, in an undated letter I infer was given in support of Mr.

Lauwers' claim, his tenants say they felt there was a "prejudice against [them] as renters", and their "interactions with strata were a contributing factor" for moving out. I find it is reasonable to conclude "a contributing factor" means there were other factors involved in Mr. Lauwers' tenants' decision to vacate SL3. Those other factors were not given.

34. Based on the overall evidence and submissions, I find that Mr. Lauwers has failed to prove his tenants moved out based on the strata's actions. Nor did Mr. Lauwers explain what actions he took to re-rent SL3 after the tenants moved out.

35. For these reasons, I dismiss Mr. Lauwers' claim for lost rent.

CRT FEES, EXPENSES AND INTEREST

36. 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. Mr. Lauwers was partially successful in this dispute and paid \$225.00 in CRT fees. I order the strata to reimburse him ½ of that amount, or \$112.50. Neither party claims dispute-related fees so I make no order for that.

37. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Lauwers is entitled to pre-judgement interest under the COIA for the \$2,000 he paid in bylaw fines. The date SL3 was sold, and the fines paid, is unclear. However, on a judgement basis, I find it reasonable to use the date of the amended Dispute Notice of July 8, 2021 as the starting date for pre-judgment interest. I find Mr. Lauwers is entitled to pre-judgement interest from July 8, 2021 until the date of this decision and calculate interest under the COIA to be \$12.97.

ORDERS

38. I refuse to resolve Mr. Lauwers' claims against the strata council or its members about alleged breach of SPA section 31.

39. I order that within 30 days of this decision, the strata must pay Mr. Lauwers a total of \$2,125.47, broken down as follows:

- a. \$2,000.00 for bylaw fines,
- b. \$112.50 for CRT fees, and
- c. \$12.97 for pre-judgement interest under the COIA.

40. I dismiss Mr. Lauwers' remaining claims.

41. Mr. Lauwers is entitled to post-judgement interest under the COIA, as applicable.

42. 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