



Civil Resolution Tribunal

Date Issued: January 14, 2022

File: ST-2021-002759

Type: Strata

Civil Resolution Tribunal

Indexed as: *Takhar v. The Owners, Strata Plan BCS 2212*, 2022 BCCRT 56

BETWEEN:

ROBERT TAKHAR

APPLICANT

AND:

The Owners, Strata Plan BCS 2212

RESPONDENT

AND:

ROBERT TAKHAR

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about bylaw fines in a strata. The applicant and respondent by counterclaim, Robert Takhar, owns and lives in strata lot 18 (SL18) in the respondent strata corporation, The Owners, Strata Plan BCS 2212 (strata). The strata is also an applicant by counterclaim.
2. Mr. Takhar says the noise complaints against him are unfounded and he feels he is being personally targeted. Mr. Takhar asks that the strata withdraw \$1,400 in unpaid bylaw contravention fines. Mr. Takhar is self-represented.
3. The strata says it levied the fines against Mr. Takhar for “good and just reasons”. In its counterclaim, the strata seeks an order for payment of \$1,400 for fines it says are owing. The strata is represented by a strata council member.

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.

Late Evidence

8. Mr. Takhar submitted late evidence in this dispute with his final reply submissions, but before the strata submitted their final reply for the counterclaim. The strata was given the opportunity to review the late evidence and provide submissions on it. The late evidence consists of two photographs, one of a man standing outside, and one of cigarette butts in an elevator. I find this evidence is marginally relevant, if relevant at all. However, the strata did not object to this late evidence. Give the CRT's mandate that includes flexibility, I admit the late evidence and where relevant I have considered it in this decision.

Issues and requested remedies in this dispute

9. In the Dispute Notice, Mr. Takhar claims that the strata wrongly imposed \$1,400 in fines for violating the noise bylaw. In submissions, Mr. Takhar says that some of the fines were also imposed for smoking contrary to the strata's bylaws. The strata responded to these allegations in its submissions, and counterclaimed for payment Mr. Takhar's "existing fines", which I find include some smoking fines. So, although the smoking fines were not specifically raised in Mr. Takhar's Dispute Notice, I find the alleged smoking fines formed part of the strata's imposed fines and were included in the strata's counterclaim. Therefore, I find the smoking bylaw fines are properly in issue in this dispute, and I have addressed them.
10. I also note that Mr. Takhar initially requested an order that the strata refund him \$400 in paid fines. However, he withdrew this requested remedy during the facilitation phase, so I have not addressed it in this decision.

ISSUES

11. The issues in this dispute are:
 - a. Are the bylaw fines against Mr. Takhar valid?
 - b. Did the strata adequately investigate the noise and smoking complaints, and did Mr. Takhar contravene the strata's noise and smoking bylaws?

EVIDENCE AND ANALYSIS

12. In a civil proceeding such as this, the applicant, whether by claim or counterclaim, must prove their claims 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.
13. The strata is comprised of a 35-unit building. The strata filed the applicable bylaw amendments at the Land Title Office on February 12, 2007, which I find are applicable in this dispute. I find the subsequent amendments are not relevant, except one amendment filed April 11, 2017, adding bylaw 42 to the strata's bylaws. I will discuss the relevant bylaws below.
14. As noted, Mr. Takhar claims that the strata wrongly imposed fines against him for violating the noise and smoking bylaws. He says all but two of the complaints are baseless, and he already paid those two fines. The strata says Mr. Takhar is not being honest and forthright, and says police have attended several times due to calls from owners and renters. Mr. Takhar does not dispute this. The strata says Mr. Takhar needs to be held accountable for his poor decisions and judgment.
15. Bylaw 4(1) says an owner, tenant, occupant or visitor must not use a strata lot, common property or common assets in a way that causes a nuisance or hazard to another person, or unreasonable noise.
16. Bylaw 42 prohibits an owner, tenant, occupant from smoking in a strata lot and on patios and balconies, among other areas.

17. Under bylaw 30, contraventions of bylaw 4 and bylaw 42 are subject to a \$200 fine for each contravention.

Fines for noise and smoking

18. The strata is obligated to enforce its bylaws under SPA section 26. However, it must do so in accordance with the SPA. SPA section 135 provides for how and when the strata can impose fines.

19. SPA section 135(1) states that a strata corporation may not impose a bylaw fine unless it has received a complaint, given the owner or tenant written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if requested. SPA section 135(2) says the strata must also give notice in writing of its decision to impose the fine to the owner as soon as feasible. SPA section 135(3) says that once the strata has complied with these procedural steps, the strata may impose fines or penalties for a continuing contravention without further compliance with the steps.

20. The BC Court of Appeal has found that strict compliance with section 135 of the SPA is required before a strata corporation can impose fines. The court also determined that bylaw fines are invalid if the section 135 procedural requirements are not followed: *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449. Terry is binding precedent that the CRT must follow.

21. In the binding decision in *The Owners v. Grabarczyk*, 2006 BCSC 1960 at paragraph 43, appeal dismissed 2007 BCCA 295, the court indicated that noise violations are not continuous or continuing contraventions when observed on different dates. Noise violations are distinct contraventions for which a fine may be imposed only if the section 135 requirements are met for each contravention. Following *Grabarczyk*, I must consider whether the strata complied with SPA section 135 for each individual noise bylaw violation.

22. The strata submitted a word document titled “fines listed by date” in evidence that summarized \$1,400 in fines imposed, as follows:

- a. July 18, 2019 - \$200 fine for smoking in unit
- b. October 28, 2020 - \$200 fine for noise
- c. April 21, 2020 - \$200 fine for smoking in unit and on balcony
- d. April 2020 (specific date not listed) - \$200 fine for noise
- e. October 24, 2020 - \$200 fine for noise
- f. January 4, 2021 - \$200 fine for noise
- g. February 3, 2021 - \$200 fine for noise

23. Neither party submitted Mr. Takhar's strata lot account ledger confirming the above fines were imposed on Mr. Takhar's strata lot account, or any other documentary evidence confirming that the fines were imposed on the dates listed above. However, given that Mr. Takhar asks that the strata withdraw \$1,400 in fines imposed, and the strata counterclaims for payment of \$1,400 in fines, I find it undisputed that the strata imposed \$1,400 in fines against Mr. Takhar. However, I find it is unclear whether the dates listed above reflect the date the fines were issued, or the complaints received. However, Mr. Takhar did not dispute the fine dates listed above, and did not provide any evidence or submissions about the fine dates. So, I am satisfied that on balance, the fines were imposed on or about the dates listed above.

24. Mr. Takhar's documentary evidence consists of six photographs. The only letters to Mr. Takhar in evidence, related to the fines, are two letters submitted by the strata from the strata's property manager dated January 4, 2021 and February 10, 2021. These two letters indicate that they relate to December 29, 2020 and February 1, 2021 noise complaints, respectively. I will address each of these letters in turn.

January 4, 2021 letter

25. The January 4, 2021 letter advised Mr. Takhar of a December 29, 2020 noise complaint for a party contrary to bylaw 4(1), and said the strata had authorized another \$200 fine to be charged to Mr. Takhar's account. It also warned that further

finer of \$200 would be charged every seven days if Mr. Takhar continued to violate the noise and nuisance bylaws. As noted above, noise complaints are not continuous contraventions and the strata must comply with SPA section 135 for each contravention.

26. Although the letter indicated that the strata would give Mr. Takhar 14 days to dispute the complaint, the strata's fine summary indicates that the fine was imposed on the same day as the letter. I find the strata did not comply with SPA section 135 for the January 4, 2021 fine because despite giving him the written particulars of the complaint, it failed to give Mr. Takhar a reasonable opportunity to respond to the complaint before imposing the fine.

February 10, 2021 letter

27. The February 4, 2021 letter advised Mr. Takhar of a February 1, 2021 noise complaint for excessive noise, contrary to bylaw 4(1), and said the strata had authorized another \$200 fine to be charged to Mr. Takhar's account. However, the strata did not list any fines imposed after February 3, 2021. So, I find that one of the following two things happened:

- a. the strata imposed a \$200 fine on February 3, 2021 for the February 1, 2021 noise complaint, before sending this letter, in which case the strata failed to comply with SPA section 135 by failing to give Mr. Takhar notice of the February 1, 2021 noise complaint before issuing the February 3, 2021 fine and the February 3, 2021 fine is therefore invalid, or
- b. the strata did not actually impose a fine on or after February 10, 2021, in which case this letter is irrelevant to fines at issue in this dispute.

28. In either case, I find the February 10, 2021 letter does not show that the strata complied with SPA section 135 before imposing the February 3, 2021 fine or any other fine at issue in this dispute. I find any fines after February 3, 2021 are not in issue in this dispute.

29. I note that the strata provided emails in evidence that show there were numerous complaints made about Mr. Takhar. However, I do not have any other evidence

before me that the strata provided written particulars of any other complaints to Mr. Takhar or provided him with a reasonable opportunity to answer the complaints, as required by SPA section 135, before imposing the fines between July 19, 2019 and February 3, 2021 for either smoking or noise. So, I find the strata failed to comply with SPA section 135.

30. I find the strata's failure to comply with SPA section 135 means the above \$1,400 in fines are invalid. So, I order the strata to immediately reverse the \$1,400 in fines imposed on Mr. Takhar between July 19, 2019 and February 3, 2021. I also dismiss the strata's counterclaim for payment of \$1,400 in fines.
31. I have already found that the fines are invalid because the strata failed to comply with SPA section 135. So, I find I do not need to address whether Mr. Takhar contravened the noise or smoking bylaws, or whether the strata adequately investigated the complaints before imposing the fines.

CRT FEES AND EXPENSES

32. 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 Mr. Takhar for CRT fees of \$225. Mr. Takhar did not claim any dispute-related expenses, so I award none.
33. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Takhar.

ORDERS

34. I order that the strata must:
 - a. immediately reverse the \$1,400 in fines imposed on Mr. Takhar between July 19, 2019 and February 3, 2021, and
 - b. pay Mr. Takhar \$225 in CRT fees within 30 days of the date of this decision.

35. Mr. Takhar is entitled to post-judgment interest under the *Court Order Interest Act*.

36. I dismiss the strata's counterclaim.

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 Volkers, Tribunal Member