



Civil Resolution Tribunal

Date Issued: February 22, 2022

File: ST-2021-001775

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan N.W. 2207 v. Ohrlein*, 2022 BCCRT 191

BETWEEN:

The Owners, Strata Plan N.W. 2207

APPLICANT

AND:

EILEEN OHRLEIN and WADE OHRLEIN

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about collection of bylaw fines.
2. The applicant, The Owners, Strata Plan N.W. 2207 (strata) is a strata corporation existing under the *Strata Property Act* (SPA). The strata is represented by a strata council member.

3. The respondents, Eileen Ohrlein and Wade Ohrlein are mother and son. They co-own strata lot 83 (SL83) in the strata. According to Eileen Ohrlein's Dispute Response, Mr. Ohrlein does not reside in SL83.
4. The strata says the respondents have not paid fines it imposed about the appearance of their balcony and stairs despite the strata's warnings and demands. It seeks an order that the respondents pay fines totalling \$2,250.
5. The respondents essentially say the strata failed to provide details of the alleged bylaw infractions. They also say their balcony was inspected by a council member who said it was "okay". I infer the respondents ask that the strata's claim be dismissed.
6. I note that Mr. Ohrlein did not provide a completed Dispute Response for this dispute so technically he could be found to be in default. However, given Eileen Ohrlein stated in her Dispute Response that Mr. Ohrlein would not be responding, I infer and accept that Eileen Ohrlein's completed Dispute Response was provided on behalf of both respondents. Therefore, I find the respondents are represented by Eileen Ohrlein.
7. For the reasons that follow, I dismiss the strata's claim and this dispute.

JURISDICTION AND PROCEDURE

8. 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.
9. 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.

10. 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.
11. 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.

ISSUE

12. The sole issue in this dispute is whether the strata is entitled to an order that the respondents pay it \$2,250 in fines.

BACKGROUND, EVIDENCE AND ANALYSIS

13. In a civil proceeding such as this, as applicant, the strata must prove its claims on a balance of probabilities, meaning more likely than not. 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.
14. I note the respondents did not provide any evidence even though they were given an opportunity to do so. I also find some of the respondents' submissions are not relevant to the issue in this dispute. For example, how some strata council members were appointed and whether 2 members live together in the same residence. These arguments do not address the strata's claim, which I have found is about the strata's requested order for \$2,250 in fines about the appearance of their balcony and stairs. Therefore, I have not addressed these submissions in my reasons.
15. The strata was created in October 2009 and continues to exist under the SPA. It is a residential strata corporation consisting of 84 apartment-style strata lots in several 2-level buildings. SL83 is a single-level strata lot located on a building's top level. The

strata plan shows there are 2 balconies next to SL83 identified as limited common property (LCP) for SL83. The strata plan also identifies a single set of stairs as “joint limited common property” for SL83 and strata lot 84 (SL84). I find the intent of the “joint limited property” designation is to designate the stairs as LCP for exclusive use of the owners of both SL83 and SL84, given the stairs appear to provide access to both strata lots.

16. On June 1, 2001, the strata repealed and replaced all of its bylaws filed with the Land Title Office (LTO), including the Standard Bylaws under the SPA, with a complete new set of bylaws. There are subsequent bylaw amendments filed with the LTO, but I find they are not relevant to this dispute. I address the applicable bylaws below as necessary.
17. I infer the strata has also passed rules, which it refers to as “rules and regulations” in its evidence, but the rules are not before me. However, given the respondents did not contest the rules, I accept rules have been properly passed and apply here. Specifically, I find rule 3 cited by the strata applies as I discuss below.

Is the strata entitled to payment of \$2,250 in fines?

18. Under section 26 of the SPA, the strata council, acting on the strata’s behalf, must enforce the strata’s bylaws and rules. Enforcement options available to the strata are set out under section 129 of the SPA and include imposing fines, which is the option the strata has chosen here. Based on the overall evidence and submissions before me, I find the strata is not entitled to payment of the fines. My reasons follow.
19. It seems from the evidence that the strata had written to the respondents about the appearance of their balcony as early 2019. However, the correspondence before me begins on March 24, 2020. On that date, the strata wrote Eileen Ohrlein a “FINAL REQUEST” that it had observed her “patio/balcony and rear stairs remain cluttered and messy”. It reminded her that strata rule 3, entitled “OUTSIDE STORAGE” required owners to keep LCP balconies, patios and back stairs in a clean and tidy state. The letter recited the rule as follows (reproduced as written):

3. A Strata Lot Owner shall keep in a clean and tidy condition all areas of Common Property designated as the limited Common Property of his/her strata lot including balconies, patios and back stairs. These areas shall:

(a) NOT be used for visible hanging of laundry or for storage of garden or household items (including boxes, barrels, appliances, pails, power tools, indoor furniture, garbage cans, containers, tires, tuck canopies, boats, engines, uninsured or unlicensed vehicles, garden sheds, lumber construction materials, radio or television antennae, or waste material of any kind).

(b) BUT may be used for suitable, properly maintained outdoor furnishings, small plants in flower containers, and Christmas lights.

(c) Bicycles may be parked on back patios or sundecks for the use of residents. Violation of this Rule and Regulation will be dealt with in accordance with Bylaw 26 (ii) and 27.

20. The May 2020 letter requested Ms. Ohrlein immediately “clean the patio/balcony and stairs immediately”, failing which fines could be imposed. The letter also cited bylaws 26 (ii) and 27, which respectively permit a \$50 fine for contravention of a rule, and provide that fines can be imposed every 7 days for continuing contraventions.

21. The strata wrote a similar letter to Ms. Ohrlein on May 11, 2020 except the letter stated that an unspecified amount of fines had been imposed, and that fines of \$50 would continue to be charged every 7 days “until compliance is achieved”. The letter also stated that Ms. Ohrlein was required to limit the number of potted plants on the balcony “for both a general overall appearance as well as reducing the weight on the balcony”.

22. The strata wrote Ms. Ohrlein another identical letter on June 1, 2020, except the letter stated the recurring \$50 fine would be charged every 7 days effective June 15, 2020.

23. On March 1, 2021, the strata wrote to Ms. Ohrlein advising her that her “indebtedness” to the strata was \$1,810 as of January 31, 2021. The letter demanded

she pay that amount plus any additional “accruals’ within 2 weeks consistent with SPA section 112. The letter also stated that if the strata did not receive payment by March 15, 2021, the strata would be obligated to take collection procedures prescribed by the SPA, including selling SL83 pursuant to SPA section 117. I note that SPA section 112 requires a strata corporation to give 2-weeks written notice demanding payment before commencing legal action, arbitration, or a CRT dispute. It also requires a strata corporation to give 2-weeks written notice demanding payment of things for which the strata is entitled to file a lien under section 117. However, unpaid fines are not things for which the strata can file a lien.

24. There is no evidence or submissions that indicate the respondents replied to the strata’s correspondence. In any event, I find the strata’s letters did not meet all of the procedural requirements of SPA section 135, which I discuss below.
25. Under section 135(1) of the SPA, before imposing fines for bylaw or rule infractions, 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”.
26. 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 has also determined that 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.

Making a complaint

27. None of the strata’s letters expressly state the strata received a complaint. I note there is nothing in the SPA that restricts a council member from making a complaint. I also note that verbal complaints have been found to be valid by the BC Provincial Court in *The Owners, Strata Plan NW3075 v. Stevens*, 2018 BCPC 2 (at paragraph 52). I am prepared to accept the strata received a complaint before it wrote to Ms. Ohrlein, but find the strata failed to meet other procedural requirements of section 135.

Providing Written Particulars of the Complaint

28. In *Terry*, the court said the particulars of a complaint must be “sufficient to call to the attention of the owner... the contravention at issue.” In *Stevens*, the court said the “particulars must simply be sufficient to make the alleged bylaw [or rule] violator aware of what his or her alleged breach is.” I find the strata’s letters do not make clear the particulars of the complaint. While the strata states rule 3 had been violated, that rule identifies many things that are not permitted to be stored on patios, balconies, and stairs, and some that are permitted provided they are “suitable”. It is not clear from the letters what was being stored on the SL83 balcony or stairs that contravened the rule or whether what was being stored was simply unsuitable, which I find is a vague term that can mean different things to different people.

Reasonable Opportunity to Respond

29. Most importantly, in *Terry*, the court found an owner must be given a “reasonable opportunity to answer the complaint”. The court determined that what constitutes a reasonable opportunity to be heard is case-specific. However, given the strata’s letters do not give the respondents any opportunity to answer the complaint, I find the letters are contrary to section 135(1). In the May 11, 2020 letter, the strata said fines had already been imposed. I find it does not matter that according to an account statement provided in evidence, the fines were not added to SL83’s account until June 22, 2020. There is no evidence the account statement was ever provided to the respondents, and I find they were entitled to take the May 11, 2020 letter at face value.

30. In *Cheung v. The Owners, Strata Plan VR 1902*, 2004 BCSC 1750, the court found that a procedural error under section 135 of the SPA may be corrected by reversing the fines, and essentially re-starting the procedural requirements of section 135. I have considered *Cheung* in the circumstance of this dispute given fines were not imposed until June 22, 2020, which is more in line with the strata’s June 1, 2020 letter.

31. However, I find the fact the strata’s June 1, 2020 letter provided a date fines would start did not correct the strata’s procedural deficiencies. I say this because the strata still did not provide the respondents with clear written particulars of the complaint or

give them an opportunity to respond to the complaint.

Written Notice of Fines

32. As mentioned, section 135(2) requires the strata to give an owner written notice of its decision to impose fines “as soon as feasible”. None of the strata’s letters in evidence show the decision to impose fines was made by the strata. For example, there is no mention of a council meeting where the decision was made. Further, there are no strata council meeting in evidence that show the strata council voted to impose fines against the respondents.
33. I also note that based on the account statement for SL83 provided by the strata, the fines imposed do not agree with the letters sent by the strata. The strata did not provide an explanation as to why. For example, the statement shows that \$50 fines were charged on each of June 22, 29, July 6, 13, 20, and 27, 2020. As I have noted, the May 11, 2020 letter stated fines had been imposed but the statement does not. The fines for June and July 2020 do follow the June 1, 2020 letter, but the statement also shows fines of \$250 and \$200 were charged at various times between October 1, 2020 and April 4, 2021. The maximum fine chargeable for a rule violation under strata bylaw 27 is \$50, but the fines shown on the statement exceed that amount.
34. Finally, the strata’s March 1, 2021 letter states the respondents’ owe \$1,810 as of January 31, 2021. It does not say the amount is strictly for fines. The statement shows the respondents owed \$1,400 as of January 31, 2021. This difference was also not explained by the strata.
35. For all of these reasons, I find the strata did not properly follow the procedural requirements of SPA section 135 when it imposed fines against the respondents.
36. As for continuing fines, 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.
37. Following *Terry* and *Dimitrov*, I find the strata’s imposed fines against SL83 totalling \$2,250 are invalid. Therefore, the strata is not entitled to the fines.

38. Accordingly, I dismiss the strata's claim and this dispute.

CRT FEES AND EXPENSES

39. 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. Here, the strata paid \$225 in CRT fees but was not successful, so I make no order for reimbursement of CRT fees.

40. Neither party claimed dispute-related expenses, so I order none.

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

ORDER

42. I dismiss the strata's claim and this dispute.

J. Garth Cambrey, Vice Chair