



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan KAS 1622 v. Kamloops (Pacific No. 52) Branch of the Royal Canadian Legion, 2022 BCCRT 205*

B E T W E E N :

The Owners, Strata Plan KAS 1622

APPLICANT

A N D :

KAMLOOPS (PACIFIC NO. 52) BRANCH OF THE ROYAL CANADIAN
LEGION

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This is a dispute about bylaw fines for smoking in a strata lot and on common property. Kamloops (Pacific No. 52) Branch of the Royal Canadian Legion (the Legion) leases strata lot 30 in The Owners, Strata Plan KAS 1622 (strata). Strata lot 30 is also known as unit 306. At the relevant times, the Legion subleased unit 306 to

2 subtenants. In 2021, the strata imposed 4 \$100 fines on the Legion because the strata says the subtenants breached the strata's no-smoking bylaw. The strata asks for an order that the Legion pay the \$400 in fines and an order that the Legion make its subtenants stop smoking on strata property.

2. The Legion denies that the subtenants smoked in unit 306 or on common property. It asks that I dismiss the strata's claims.
3. The strata is represented by a strata council member. The Legion is represented by its president.

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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
5. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
6. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
7. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the tribunal 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. Can the strata fine the Legion for the subtenants' alleged bylaw breaches?
 - b. Should I order the Legion to stop the subtenants from smoking on strata property?

BACKGROUND AND EVIDENCE

9. In a civil claim such as this, the strata as the applicant must prove its case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. The strata consists of 48 residential strata lots in a 4-storey apartment building. Unit 306 is on the third floor. The City of Kamloops owns unit 306 and has leased it to the Legion since 1994, when the strata was built. The Legion is a non-profit that subleases unit 306 to provide affordable housing to its subtenants. The Legion began subleasing unit 306 to LV and MV in 2018. MV passed away after the strata started this CRT dispute.
11. The strata filed bylaw amendments in the Land Title Office on September 9, 2012, that included new bylaws 4.16.1 and 4.16.2. Together, these bylaws prohibit smoking in a strata lot, on limited common property, or on common property.
12. The residents beside and above unit 306 have complained about smoking in unit 306 and on its balcony since at least early 2019. The 4 fines at issue are all from 2021. The 4 letters imposing the fines are identical other than the particulars of the complaints. They are dated January 5, May 5, May 25, and May 27, 2021.
13. The letters are from the strata's property manager. They are addressed to the Legion (incorrectly referring to the Legion as unit 306's owner). They outlined the complaints of smoking from other residents and set out the applicable no smoking bylaws. They then informed the Legion that "your account has been fined \$100", which is the

maximum fine under the strata's bylaws. The letters finished by telling the Legion that it was entitled to an opportunity to respond to the complaints and could request a hearing.

ANALYSIS

Can the strata fine the Legion for its subtenant's alleged bylaw breaches?

14. As mentioned above, the parties dispute whether the subtenants smoked in unit 306 or on its balcony. I find that I do not need to decide this issue because the strata did not follow the correct procedure in imposing the fines. My reasons follow.
15. I start with the applicable sections of the SPA. Section 130(1) says that the strata can fine an owner if the owner breaches a bylaw. Section 130(2) says that the strata can fine a tenant if the tenant breaches a bylaw. Section 135 sets out the process that the strata must follow before imposing a fine, including giving the owner or tenant written notice of the complaint and a reasonable opportunity to answer the complaint.
16. Under section 1 of the SPA, a "tenant" includes a subtenant.
17. The CRT has consistently found that the combined effect of these sections is that a strata corporation cannot fine an owner directly for a tenant's bylaw breach. This is because doing so deprives the tenant of the procedural protections found in section 135 of the SPA. On this point, I agree with the then CRT chair's reasoning in *Clark v. The Owners, Strata Plan BCS 2785*, 2017 BCCRT 49, at paragraphs 26 to 31. By necessary implication, I find that a strata corporation cannot fine a tenant for the bylaw breaches of its subtenant. This is because the purpose of these provisions is to give the person alleged to have breached a bylaw the opportunity to defend themselves.
18. Here, the fine letters were all addressed to the Legion, not the subtenants. I acknowledge that the subtenants were apparently copied on the letter. I find that this does not change the fact that the letters were addressed to the Legion and only gave the Legion the procedural rights under section 135 of the SPA. The subtenants had no opportunity to answer the complaints or request a hearing. I therefore find that the

strata had no right to fine the Legion for the actions of the subtenants. For this reason alone, I dismiss the strata's claim for payment of the outstanding fines.

19. Even if the property manager's letters had been properly addressed to the subtenants, I still would have dismissed the strata's claim. This is because they all informed the Legion about the complaints and imposed fines in the same letter. The law is clear that a strata corporation must notify an owner or tenant about a complaint and give a reasonable opportunity to respond to it *before* imposing a fine. See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, at paragraphs 27 to 35.
20. I acknowledge that neither party raised these issues in their submissions. I did not ask for further submissions because the property manager's letters speak for themselves, and I find that the effect of the applicable SPA sections is clear and unambiguous. In other words, asking the parties for further submissions would have delayed resolution of this dispute with no corresponding benefit, and been disproportionate to the amount at stake.

Should I order the Legion to stop the subtenants from smoking on strata property?

21. The strata also asks for an order that the Legion stop the subtenants from smoking on strata property. Again, I find that I do not need to determine whether the subtenants were, or LV still is, smoking on strata property. This is because I find that this order would be inappropriate.
22. As mentioned above, the CRT has jurisdiction to order parties to do something or stop doing something. Orders of this nature are known as injunctions. An injunction is a legal order that can be enforced by the court, including in contempt proceedings.
23. The difficulty with the order the strata asks for is that the Legion cannot control LV's behaviour. If I grant the order and LV later smokes on their balcony, the Legion would be in breach of a court order for something someone else did. I find that an injunction can only impose obligations on the Legion that the Legion is actually capable of obeying through its own actions. See *Hope (District of) v. L-156 Holdings Ltd.*, 1995 CanLII 565 (BC SC), at paragraph 3.

24. For this reason, I dismiss the strata's claim for an order requiring the Legion to stop the subtenants from smoking on strata property.

TRIBUNAL FEES AND EXPENSES

25. Under section 49 of the CRTA and 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 unsuccessful so I dismiss its claim for CRT fees and dispute-related expenses. The Legion did not claim any dispute-related expenses or pay any CRT fees.

DECISION AND ORDER

26. I dismiss the strata's claims, and this dispute.

Eric Regehr, Tribunal Member