



# Civil Resolution Tribunal

Date Issued: March 9, 2022

File: ST-2021-003939

Type: Strata

Civil Resolution Tribunal

Indexed as: *Cipparrone v. The Owners, Strata Plan LMS 2211*, 2022 BCCRT 257

B E T W E E N :

ANTHONY CIPPARRONE

**APPLICANT**

A N D :

The Owners, Strata Plan LMS 2211

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about fines for alleged contraventions of rental and occupancy bylaws. The applicant, Anthony Cipparrone, formerly owned strata lot 128 (SL128) in the respondent strata corporation, The Owners, Strata Plan LMS 2211 (strata).

2. Mr. Cipparrone says he paid the strata \$5,000 in bylaw fines despite not breaching the bylaws. He says he did so to complete the sale of SL128. He says the strata did not provide “proper clarity” in levying the fines. He claims for a refund of \$5,000.
3. The strata disagrees. It says Mr. Cipparrone breached the bylaws. It also says it levied the fines in a procedurally correct and appropriate manner.
4. Mr. Cipparrone represents himself. A strata council member represents the strata.
5. For the reasons that follow, I dismiss Mr. Cipparrone’s claims.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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.
8. 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.

9. 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**

10. The issues in this dispute are as follows:
  - a. Did Mr. Cipparrone breach the strata's rental or occupancy bylaws?
  - b. Did the strata appropriately fine Mr. Cipparrone \$5,000, and if not, what is the appropriate remedy?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, the applicant Mr. Cipparrone must prove his claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
12. I begin with the undisputed background. The strata registered a complete set of bylaws in the Land Title Office in April 2002. The strata also registered subsequent bylaw amendments. I discuss the relevant ones below.
13. Bylaw 40 says that strata lots shall be "owner occupied only". This is subject to certain exceptions: 1) with the strata council's permission under bylaw 40.1, up to a maximum of 25 strata lots, or 2) notwithstanding this limit, under bylaw 40.2 with the strata council's permission due to hardship. Further, under bylaw 40.3, a "family member" can move in. The bylaws define a family member to mean the owner's spouse, parent, or child, or child of the spouse of the owner. There are other exceptions that are not relevant.
14. In addition to that, section 144 of the *Strata Property Act* (SPA) says an owner may apply to the strata for an exemption from a bylaw that prohibits or limits rental on the grounds that the bylaw causes hardship to the owner.

15. Bylaw 40.6 says that the strata may impose a fine of up to \$500 for a contravention of bylaw 40 and impose a fine for a continuing contravention every 7 days.
16. Bylaws 40.7, 40.8, and 40.9 were added in 2016. They are largely irrelevant, but I cite them here as they are referred to in the evidence. Bylaw 40.7 is about strata lots that have been approved for rental. This does not apply to SL128 because I find it was never approved for rental, as discussed below. Bylaw 40.8 prohibits residents, owners, or occupants from using or allowing a strata lot to be advertised for occupation or licensing as a short-term accommodation or student housing. Bylaw 40.9 allows the strata to take measures to enforce bylaws 40.7 and 40.8, including injunctions, and to recover legal costs from the owner.
17. Mr. Cipparrone became the registered owner of SL128 in June 2018. In an October 15, 2018 email, he asked the strata for permission to rent out SL128 due to hardship. He did not request a hearing about the issue. The strata council denied Mr. Cipparrone's request in an October 17, 2018 letter. It said Mr. Cipparrone provided insufficient detail to support his request. In his short email request, Mr. Cipparrone only said he had "come into a little bit of financial problems at the moment".
18. In March 2020, the strata received a complaint that Mr. Cipparrone was renting out SL128. The strata decided to start fining him \$500 weekly, starting from April 1, 2020. It is undisputed that Mr. Cipparrone paid \$5,000 for the fines when he sold his strata lot in May 2021.

***Issue #1. Did Mr. Cipparrone breach the strata's rental or occupancy bylaws?***

19. For the reasons that follow, I find Mr. Cipparrone essentially admitted to breaching bylaw 40 in correspondence with the strata.
20. On March 2, 2020, the strata's property manager received an email complaint that Mr. Cipparrone was renting out SL128. The complainant said someone appeared to be moving furniture out of SL128. The March 2020 correspondence and voicemail messages in evidence also show that Mr. Cipparrone booked the strata's elevator to move furniture and requested a new garage door opener and key fobs from the

property manager at around this time. As discussed below, I find this was likely because Mr. Cipparrone's tenants or roommates were moving in.

21. The strata sent a March 31, 2020 bylaw infraction letter. The strata noted that it had not approved SL128 for rental, and that it had received a complaint about SL128 changing occupants. The strata cited bylaws 40.6, 40.7, 40.8, and 40.9, discussed above. It did not specifically cite bylaw 40.
22. On April 14, 2020, Mr. Cipparrone replied to the letter by email. He acknowledged changing "roommates" at the beginning of March 2020. He said he thought he had been granted permission to do so under the hardship exemption in the bylaws because the strata did not reply to his October 2018 email.
23. Under SPA section 144(4)(a), a hardship exemption is allowed if the strata corporation does not give its decision in writing to the owner within 2 weeks after the application is given to the strata corporation. I find the strata complied with these requirements. As noted earlier, the strata denied the request in an October 17, 2018 letter. The letter is dated within 2 days of Mr. Cipparrone's request. On balance, I find it likely that Mr. Cipparrone received the strata's October 17, 2018 letter as well. It is addressed to the same address that the strata used to send other correspondence to Mr. Cipparrone, such as the March 31, 2020 infraction letter. The address also matches the address Mr. Cipparrone provided to the CRT for this dispute.
24. I also find the strata's denial was reasonable, as required by SPA section 144(6). This is because the strata said it required more information, and I find Mr. Cipparrone's October 15, 2018 email request contained almost no details. So, I find the strata's decision was reasonable in these circumstances.
25. As Mr. Cipparrone did not have permission to rent SL128, I find bylaw 40 applied. As stated above, bylaw 40 provides that strata lots must generally be occupied their owners only. Mr. Cipparrone's roommates or tenants occupied SL128. There is no evidence that the exceptions for owners or "family members", as defined under the bylaws, applied to them. The parties disputed whether Mr. Cipparrone collected rent

from the roommates or tenants. However, given the wording of bylaw 40, I find nothing turns on this.

26. Given the above, I find Mr. Cipparrone breached bylaw 40. There is no indication that Mr. Cipparrone's roommates moved out until he sold SL128. He did not provide any statements from his roommates. So, I find it likely that he breached bylaw 40 from March 1, 2020, until he sold SL128 around May 2021.

***Issue #2. Did the strata appropriately fine Mr. Cipparrone \$5,000, and if not, what is the appropriate remedy?***

27. Mr. Cipparrone says the strata did not provide proper clarity throughout its enforcement of the bylaws. The procedural requirements applicable are outlined in section 135(1) of the *Strata Property Act* (SPA). It says a strata corporation must not impose a fine against a person for contravening a bylaw until it has 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. In *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, the BC Court of Appeal found that strict compliance with SPA section 135 is required before a strata corporation can impose fines.
28. I find the strata complied with SPA section 135(1). The strata received an email complaint in March 2020. I find the strata gave adequate written particulars in the March 31, 2020 infraction letter to levy fines for breaching bylaw 40. Although the strata did not specifically cite this bylaw, the letter said it received a complaint about someone moving into SL128 in breach of the bylaws. As noted above, this is what ultimately happened.
29. The strata also provided Mr. Cipparrone a reasonable opportunity to respond by allowing him 14 days to either respond in writing or by requesting a hearing. Mr. Cipparrone responded through his April 14, 2020 email, which the strata considered. The strata also specifically warned of fines and cited bylaw 40.6, mentioned above, which allows for fines for continuing contraventions.

30. I also find that the strata provided a written decision in compliance with SPA section 135(2). It did so in its May 15, 2020 letter. I note that in this letter, the strata erroneously said that it did not receive a written response. However, the strata clarified in a May 29, 2020 email to Mr. Cipparrone that it had used the wrong template and had received Mr. Cipparrone's response and decided to assess the fines. As this did not substantively change the decision in the May 15, 2020 letter, I find the strata did not breach SPA section 135(2).
31. Given the above, I find that the strata was entitled to impose fines for a continuing contravention of bylaw 40 under SPA section 135(3) and bylaw 40.6. The strata applied fines for 10 weeks' worth of contraventions. As Mr. Cipparrone sold SL128 in May 2021, I find he breached bylaw 40 for at least 10 weeks. I find the strata was entitled to find Mr. Cipparrone for at least \$5,000.
32. Given my findings, I dismiss Mr. Cipparrone's claims for reimbursement of the fines.

## **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 dismiss Mr. Cipparrone's claims for reimbursement. The parties did not claim for any specific dispute-related expenses.

## **ORDER**

34. I dismiss Mr. Cipparrone's claims and this dispute.

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David Jiang, Tribunal Member