



Civil Resolution Tribunal

Date Issued: March 22, 2022

File: ST-2021-004948

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 2386 v. Grauer, 2022 BCCRT 316*

B E T W E E N :

The Owners, Strata Plan LMS 2386

APPLICANT

A N D :

LESLIE GRAUER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. The respondent, Leslie Grauer, owns a strata lot in the applicant strata corporation, The Owners, Strata Plan LMS 2386 (strata).
2. The strata says that under its bylaws, Ms. Grauer is not entitled to smoke in her strata lot. The strata says it has fined Ms. Grauer repeatedly under its smoking and nuisance

bylaws. The strata says Ms. Grauer pays the fines and continues to smoke. The strata seeks orders that Ms. Grauer follow the non-smoking bylaw and stop smoking in her strata lot.

3. The strata is represented by a strata council member. Ms. Grauer is self-represented.

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.

ISSUE

8. The issue in this dispute is whether Ms. Grauer is permitted, under the strata's bylaws, to smoke in her strata lot, and if not, what remedies are appropriate.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one the applicant strata must prove its claims on a balance of probabilities (meaning "more likely than not"). I have reviewed the strata's evidence and submissions, and Ms. Grauer's Dispute Response. I only refer to what is necessary to explain my decision. I note that Ms. Grauer did not submit evidence or provide submissions despite being provided with the opportunity to do so.
10. The strata consists of six townhouse-style strata lots.
11. The strata filed consolidated bylaws in the Land Title Office (LTO) on November 12, 2002.
12. Bylaw 4.1 says that a resident must not use a strata lot or common property in a way that causes a nuisance or hazard to another person.
13. The consolidated bylaws did not include a non-smoking bylaw. On August 16, 2018, the strata filed a bylaw amendment in the LTO adding bylaws 4.4 to 4.7, among other bylaws.
14. Bylaw 4.4 prohibited all forms of smoking "on the townhouse property" including inside all strata lots, on limited common property, and on common property. Bylaw 4.7 said that a contravention of bylaw 4.4 is subject to a \$200 fine.
15. On December 8, 2020, the strata filed further bylaw amendments in the LTO. Among other things, the strata added the following wording to the beginning of bylaw 4.4: "[the strata] is a designated "non-smoking" strata corporation. Smoking and vaping is prohibited everywhere, including inside individual suites".

16. The strata says despite the non-smoking bylaw, Ms. Grauer smokes in her strata lot on a regular basis. The strata says it has received dozens of complaints from other strata lot owners about Ms. Grauer smoking. The strata submitted a letter from the neighbouring strata lot occupants to Ms. Grauer, which noted their complaints with her smoking, and the effects on their strata lot. The strata also submitted a timeline, which I infer was prepared by the neighbouring strata lot occupants or owners. It lists complaints about Ms. Grauer's smoking dating back to 2014.
17. The strata says it has issued 16 contravention letters to Ms. Grauer for smoking, and fined her numerous times. The strata submitted several contravention letters imposing fines on Ms. Grauer in evidence. I find the strata has fined Ms. Grauer for smoking repeatedly between 2018 and 2021. The strata says Ms. Grauer does not dispute the fines, and pays them. The strata says even with the substantial fines, Ms. Grauer continues to smoke. The strata says she is "essentially paying for her right to smoke".
18. As noted, Ms. Grauer did not submit evidence or provide submissions, despite having the opportunity to do so. In her Dispute Response, Ms. Grauer did not deny smoking. Rather, she noted only that "the bylaw is too restrictive for accommodation" and she "doubts" whether strata lots other than the neighbouring strata lot are affected. She said she also attempted to fix walls and add a fan. However, Ms. Grauer did not dispute that she was smoking in her strata lot contrary to bylaw 4.4 and 4.1, or that she continues to do so.
19. Bylaws 4.4 and 4.1 are binding on Ms. Grauer. Bylaw 4.4 specifically prohibits her from smoking within her strata lot or on common property. Bylaw 4.1 prohibits her from using her strata lot or the common property in a way that causes a nuisance or hazard to another person. On balance, and considering the available evidence and Ms. Grauer's admission, I find Ms. Grauer's continues to smoke within her strata lot contrary to bylaw 4.4.
20. The strata's only requested remedy is an order that Ms. Grauer comply with "the non-smoking bylaw" and stop smoking in her strata lot. Since bylaw 4.4 prohibits all

smoking, I find it is not necessary for me to determine whether Ms. Grauer smoking in her strata lot is also a nuisance or hazard contrary to bylaw 4.1.

21. The strata has already tried to enforce its non-smoking bylaw by fining Ms. Grauer repeatedly and without success. Given this, I find it is appropriate to order Mr. Grauer to comply with bylaw 4.4 and immediately stop smoking in her strata lot.

CRT FEES AND EXPENSES

22. 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 Ms. Grauer to reimburse the strata for CRT fees of \$225. The strata did not claim any dispute-related expenses and so I award none.
23. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Grauer.

ORDERS

24. I order that:
 - a. Ms. Grauer must immediately comply with bylaw 4.4 and must not smoke in her strata lot.
 - b. Within 30 days of the date of this order, Ms. Grauer must pay the strata \$225 in CRT fees.
25. The strata is also entitled to postjudgment interest under the *Court Order Interest Act*.
26. 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