



# Civil Resolution Tribunal

Date Issued: March 22, 2022

File: ST-2021-004000

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 2269 v. Tilley*, 2022 BCCRT 318

**B E T W E E N :**

The Owners, Strata Plan LMS 2269

**APPLICANT**

**A N D :**

CATHERINE PATRICIA TILLEY

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell, Vice Chair

### **INTRODUCTION**

1. This strata property dispute is about legal fees.
2. The respondent, Catherine Patricia Tilley, owns a strata lot in the applicant strata corporation, The Owners, Strata Plan LMS 2269 (strata).

3. In its dispute application, the strata claims \$3,975.79 against Ms. Tilley for legal fees. The strata says the legal fees are owed under strata bylaw 40(2), which says the strata is entitled to recover its “its actual legal costs incurred” where the strata takes steps to enforce its bylaws.
4. In this current dispute, strata says it incurred the claimed legal fees in the course of enforcing its bylaws against Ms. Tilley, including through a prior Civil Resolution Tribunal (CRT) dispute, ST-2020-007307 (prior dispute). The strata says it is therefore entitled to reimbursement of legal fees under bylaw 40(2).
5. In the prior dispute, the strata alleged Ms. Tilley or her son stored items and parked a vehicle contrary to the strata bylaws. The strata sought orders that Ms. Tilley comply with the bylaws, stop doing certain things, and reimburse the strata’s legal costs allegedly owed under bylaw 40(2). The strata withdrew the prior dispute before the CRT’s adjudication stage. The parties agree there was no formal settlement agreement and no final CRT Order.
6. Ms. Tilley says the strata is not entitled to bring this fees claim again, since it was part of the prior dispute. In her dispute response form, Ms. Tilley also denies breaching any bylaws, and says the strata is harassing her.
7. The strata is represented by a strata council member in this dispute. Ms. Tilley is self-represented.
8. For the reasons set out below, I dismiss the strata’s claim for reimbursement of legal fees.

## **JURISDICTION AND PROCEDURE**

9. These are the CRT’s formal written reasons. 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.

10. 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.
11. 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.
12. 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.

***Preliminary Issue – Standing to Pursue Withdrawn Claim***

13. It is undisputed that the strata claimed reimbursement of legal fees against Ms. Tilley in the prior dispute, and withdrew that claim, and the entire prior dispute, with no finalized settlement agreement or CRT order.
14. CRT rule 6.1(3) says a party who withdraws a claim can only pursue the same claim again with the CRT's permission. Ms. Tilley raised rule 6.1(3) at the outset of this dispute, and on August 23, 2021, a CRT member issued a preliminary decision allowing the legal fees claim to proceed, based on the factors under rule 6.1(5). In summary, the member found that the claim potentially had merit, Ms. Tilley has an ongoing requirement to comply with the bylaws, the strata has a chargeback bylaw related to legal fees, the parties signed no release, and the limitation period had not expired. The member concluded it would be unjust and prejudicial to the strata to

deny it the right to pursue its claims in these circumstances. As noted by the CRT member, the preliminary decision is not binding on me.

### ***Late Evidence***

15. The strata submitted evidence about its total legal fees owed past the CRT's deadline. Based on the CRT's mandate, and the fact that Ms. Tilley had an opportunity to comment on it, I allow the late evidence because I find it relevant.

### ***Amount of Claim***

16. The strata's claim, as set out in the Dispute Notice for this dispute, is for reimbursement of \$3,975.79 in legal fees. In its submissions, the strata claims a total of \$15,120.79 for legal fees. It says the initial \$3,975.79 was incurred in the course of the prior dispute, and the remaining amount was incurred after that, including legal fees for this present dispute.

17. The strata did not request to amend the Dispute Notice, However, given the litigation history and with a view to finality, I find it reasonable in the context of this dispute to decide the strata's entire claimed amount for legal fees, since I also agree that additional fees accrued in the course of this dispute. I note that nothing turns on this in any event, as I dismiss the strata's claim for the reasons explained below.

## **ISSUE**

18. Must Ms. Tilley reimburse the strata for legal fees, and if so, how much?

## **REASONS AND ANALYSIS**

19. In a civil claim like this one, the strata, as applicant, must prove its claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.

20. In April 2020, the strata repealed and replaced its previous bylaws by filing new bylaws in the Land Title Office. I find these are the bylaws applicable to this dispute. Bylaw 40(2) is key to this dispute, and it states in full:

40. Court Actions and Legal Proceedings

(2) Where the strata corporation takes steps, including commencing any form of legal proceeding against an owner or tenant, in order to:

(a) enforce the bylaws or the rules; or

(b) collect monies owing to the strata corporation (including, but not limited to, fines, chargebacks and insurance deductibles)

it shall be entitled to recover from that owner or tenant its actual legal costs incurred in doing so.

21. Ms. Tilley argues that the strata is not entitled to reimbursement of legal fees in this dispute, based on CRT rule 9.5(3) and *Strata Property Act* (SPA) section 171(5). For the reasons that follow, I do not agree that those provisions exclude the possibility of fee reimbursement where specifically permitted under a strata bylaw.

22. CRT rule 9.5(3) says the CRT will not order one party to pay another party's legal fees in a strata property dispute unless there are "extraordinary circumstances which make it appropriate". SPA section 171(5) says that if a strata corporation sues an owner, all owners, except any being sued, must contribute to the expense of the suit (my underline emphasis added). SPA section 189.4 confirms that section 171(5) applies to the CRT.

23. In general, these provisions support that the CRT will rarely order reimbursement of legal fees to a strata in a CRT decision. However, I find that both CRT rule 9.5(3) and SPA section 171(5) must be read in conjunction with SPA section 133(2). SPA section 133(2) says a strata corporation may require that the reasonable costs of remedying a bylaw contravention be paid by the person who may be fined for that contravention. As detailed below, the BC Supreme Court (BCSC) has said that SPA section 133(2)

permits a strata corporation to collect its actual legal costs incurred in enforcing bylaws.

24. In *The Owners, Strata Plan VIS 1437 v Abolins*, 2018 BCSC 2422 and *The Owners, Strata Plan NWS3075 v Stevens*, 2018 BCSC 1784, the BCSC held that a strata corporation is entitled to recover its reasonable costs of remedying a bylaw contravention, including legal expenses incurred in the course of BCSC actions.
25. Also, in *Wang v. The Owners, Strata Plan LMS2970*, 2021 BCCA 369, the Court of Appeal considered SPA section 167(2), which says an owner who sues a strata corporation does not have to contribute to the strata's expenses of defending the suit. Section 167(2) provision mirrors SPA section 171(5), which says an owner being sued by the strata also does not have to contribute. In *Wang*, the Court of Appeal clarified that SPA section 167(2) does not prevent a court from ordering legal costs against an owner, and that to suggest otherwise is "misguided".
26. Based on the reasoning in these cases, which are binding on the CRT, I find that SPA sections 167(2) and 171(5) cannot entirely preclude a strata corporation from successfully claiming reimbursement of legal fees in a CRT dispute. Rather, as explain in *Wang* at paragraph 11:

Section 167(2) deals with the manner in which a strata corporation imposes assessments to finance defence of a lawsuit. It has nothing to do with whether a court may exercise its jurisdiction to award costs against an unsuccessful plaintiff at the end of the litigation.

27. I find that this reasoning also applies to the CRT, since SPA section 189.4 confirms that SPA sections 167(2) and 171(5) both apply to CRT disputes. I also find that the existence of a bylaw permitting reimbursement, such as the strata's bylaw 40(2) in this dispute, may constitute an "extraordinary circumstance" for the purpose of CRT rule 9.5(3).
28. However, based on the particular circumstances and evidence in this dispute, nothing turns on the statutory interpretation issues above. This is because I find that the strata

has not proven that Ms. Tilley breached any strata bylaws. The strata provided warning letters and fine letters in evidence, but no evidence actually confirming that the alleged bylaw breaches occurred. The letters assert that Ms. Tilley or her son breached various bylaws from June 2016 to September 2020. These alleged breaches include parking violations, storing items on a balcony or in a parking stall, storing an uninsured vehicle, placing garbage or other items in a hallway, smoking, and making excessive noise. Ms. Tilley denies she or her son breached any bylaws, although she does admit to storing some items on a balcony. She says the balcony was cleaned before the prior dispute was filed.

29. Although the strata has asserted bylaw breaches, I find they are unproven by the evidence before me. There is no evidence such as photos, videos, log entries, written complaints, or a statement from a caretaker, manager, or council member. The prior dispute involved requested orders that Ms. Tilley follow the bylaws, but since that dispute was withdrawn before adjudication, there were no findings of fact made about whether any bylaws had been breached. Since no bylaw breaches were proven in the prior dispute, and I find none have been proven in this dispute, the strata cannot rely on bylaw 40(2)(a) as justification for collecting legal fees against Ms. Tilley. I find it would be unreasonable and significantly unfair for a strata corporation to collect legal fees against an owner for bylaw enforcement, if the alleged bylaw breaches are unproven and not admitted.
30. I acknowledge the parties agree that Ms. Tilley paid \$1,200 in bylaw fines imposed by the strata after the prior dispute was filed. However, I find this was not, in itself, an admission of any bylaw breaches. In making that finding, I note that the agreement to pay the fines was reached in the context of the CRT's facilitation process in the prior dispute.
31. Next, the strata alleges there have been ongoing bylaw contraventions since November 2020, but the last bylaw breach warning letter in evidence is from September 2020, which is before the prior dispute was withdrawn in November 2020. So, I find the strata has not proven that the legal fees it continued to incur after November 2020 were for the purpose of enforcing bylaws or remedying bylaw

contraventions, since there is no evidence of what bylaws were allegedly broken after September 2020.

32. For these reasons, I dismiss the strata's claim for reimbursement of legal fees.

### **CRT FEES AND EXPENSES**

33. Under CRTA section 49 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.

34. Ms. Tilley is the successful party. She paid no CRT fees and claims no dispute-related expenses. I therefore do not award them to any party.

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

### **ORDER**

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

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Kate Campbell, Vice Chair