



# Civil Resolution Tribunal

Date of Original Decision: March 28, 2022

Date of Amended Decision: March 29, 2022

File: ST-2021-001755

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan EPS5138 v Li*, 2022 BCCRT 347

B E T W E E N :

The Owners, Strata Plan EPS5138

**APPLICANT**

A N D :

QUANRONG LI

**RESPONDENT**

A N D :

MOHSEN EBRAHIM BABAEE and MAHNAZ EBRAHIM BABAEE

**RESPONDENTS BY THIRD PARTY CLAIM**

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**AMENDED REASONS FOR DECISION**

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Tribunal Member:

Richard McAndrew

## **INTRODUCTION**

1. This dispute is about bylaw fines relating to strata lot tenants. The respondent and applicant by third party claim, Quanrong Li, is the owner of a strata lot in the applicant strata corporation, The Owners, Strata Plan EPS5138 (strata). The respondents by third party claim, Mohsen Ebrahim Babae and Mahnaz Ebrahim Babae, are Quanrong Li's former tenants. The strata claims that Quanrong Li owes \$800 for bylaw fines incurred while the Babaees resided at the strata lot. Specifically, the strata claims that Quanrong Li violated the following bylaws:
  - bylaw 3(1), by creating a nuisance by letting water and debris fall from the balcony,
  - bylaw 34, by improperly storing garbage, and,
  - bylaw 43, by letting pets urinate on common property.
2. Quanrong Li does not dispute that the Babaees violated the bylaws. However, Quanrong Li argues that the Babaees are solely responsible for the bylaw fines. Quanrong Li makes a third party claim against the Babaees claiming that they are responsible for the bylaw fines. The Babaees are in default as they have not responded to the third party claim.
3. The strata is represented by the strata council president, MR. Quanrong Li 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.

### ***Residential Tenancy Branch Dispute***

8. Quanrong Li provided submissions and evidence showing that they had a prior dispute against the Babaees in the Residential Tenancy Branch (RTB). At my request, CRT staff asked Quanrong Li to provide submissions about whether Quanrong Li's third party claim against the Babaees has already been resolved in the prior RTB dispute. Based on the submissions and evidence provided, I am satisfied that Quanrong Li's third party claim has not been resolved in the prior RTB dispute. So, I have considered Quanrong Li's third party claim below.

## **ISSUES**

9. The issues in this dispute are:
  - a. Is the strata entitled to collect the November 21, 2019 bylaw fine of \$50 for pet urination and garbage disposal from Quanrong Li?

- b. Is the strata entitled to collect the April 8, 2019 bylaw fine of \$50 for garbage disposal from Quanrong Li?
- c. Is the strata entitled to collect the August 21, 2019 bylaw fine of \$50 for dripping water from the balcony from Quanrong Li?
- d. Is the strata entitled to collect the November 21, 2019 bylaw fine of \$50 for pet urination and garbage disposal bylaw fine of \$50 for pet urination and garbage disposal from Quanrong Li?
- e. Is the strata entitled to collect the January 27, 2020 bylaw fines of \$600 for garbage disposal bylaw fine of \$50 for pet urination and garbage disposal from Quanrong Li?
- f. Must the Babaees reimburse Quanrong Li for the bylaw fines? If so, how much do they owe Quanrong Li?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding such as this, the strata must prove its claims on a balance of probabilities. Quanrong Li has the same burden for their third party claim. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
11. The strata was created on July 11, 2018. The strata filed bylaw amendments at the Land Titles Office (LTO) on July 11, 2018 adding bylaws 34 and 43 to the existing standard bylaws. A bylaw amendment was filed at the LTO on November 4, 2019 amending bylaw 23 to increase the maximum bylaw fine to \$200. Further bylaw amendments have been filed at the LTO which are not relevant to this dispute.
12. The strata claims that Quanrong Li is responsible for bylaw fines totaling \$800. These bylaw fines were imposed on multiple dates from February 18, 2019 to January 16, 2020. Quanrong Li says that the Babaees rented the strata lot during this entire time period and that they are responsible for the bylaw fines.

13. Quanrong Li provided a tenancy agreement showing the Babaees' tenancy started on January 24, 2019. They also provided a RTB Order of Possession dated February 4, 2020, ending the tenancy. Though Quanrong Li says that the Babaees did not immediately leave the strata lot after the Order of Possession was issued.
14. Based on the Babaees' tenancy agreement, and since the strata does not dispute the Babaees' tenancy, I find that the Babaees rented the strata lot during the entire time period that the strata had imposed the bylaw fines relating to this dispute. Further, the strata does not dispute Quanrong Li's submission that the Babaees, and not Quanrong Li, performed the alleged conduct relating to each of the bylaw fines at issue in this dispute. So, I accept this as accurate.
15. *Strata Property Act* (SPA) section 130(1) says a strata corporation may fine an owner if a bylaw is contravened by the owner, an owner's visitor, or an occupant if the strata lot is not rented by the owner. SPA section 130(2) says that a strata corporation may fine a tenant if a bylaw or rule is contravened by the tenant, a visitor of the tenant, or an occupant if the strata lot is sublet by the tenant. The SPA does not permit the strata to fine owners for their tenants' bylaw contraventions.
16. Since the alleged bylaw violations relate to the Babaees' conduct, rather than Quanrong Li's, the strata can only impose bylaw fines against the Babaees, and not Quanrong Li, for bylaw contraventions under SPA section 130. However, after imposing bylaw fines against the Babaees, the strata can collect these fines from Quanrong Li under SPA section 131(1). Further, if Quanrong Li pays the strata these amounts, Quanrong Li can recover these amounts paid from the Babaees under SPA section 131(2).

***April 8, 2019 bylaw fine of for pet urination***

17. The strata's property manager sent Quanrong Li a February 28, 2019 letter that said a pet urinated on a common property elevator on February 18, 2019 in violation of bylaw 43(3). This bylaw says pet owners are responsible for cleaning up after pets and removing pet waste from common property.

18. The strata says that Quanrong Li told it that the Babaees were renting the strata lot and they were responsible for the alleged bylaw violation. Quanrong Li sent the strata a Form K on March 4, 2019 which says the tenancy started on January 24, 2019. The Form K says that the tenant was “Mahnaz Ebrahim” rather than the Babaees. However, I find that nothing turns on this discrepancy.
19. The strata’s property manager sent April 8, 2019 letters to both Quanrong Li and the Babaees saying that it had issued a \$50 bylaw fine against both Quanrong Li and the Babaees for breaching bylaw 43(3).
20. As discussed above, the strata cannot impose bylaw fines against Quanrong Li for the Babaees’ conduct. The strata can collect amounts from Quanrong Li relating to bylaw fines imposed against the Babaees.
21. So, did the strata properly impose these bylaw fines against the Babaees?
22. When dealing with an alleged contravention of the strata bylaws or rules, section 135 of the SPA prevents the strata from imposing fines unless certain requirements are met. The BC Court of Appeal has found that strict compliance with section 135 of the SPA is a requirement before a strata corporation can impose fines. (See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.)
23. SPA section 135’s requirements include that the strata must have received a complaint about the contravention and must have given written notice to the owner or tenant about the complaint, including an opportunity to answer the complaint and a hearing, “if requested by the owner or tenant.” Section 135 also states that if the contravention is alleged against a tenant, the strata must also give notice of the complaint to the tenant’s landlord and the owner. The strata must also give written notice of its decision to the “persons referred to in subsection 135(1) (e) and (f),” namely, the owner, tenant, and landlord, as applicable, as soon as feasible. I interpret section 135 of the SPA to mean that where an owner or tenant is alleged to have contravened the bylaws or rules, the person who is the subject of the allegation is entitled to the notice and hearing rights provided in section 135 (see the non-binding

but persuasive decision in *Lin v. The Owners, Strata Plan EPS3602*, 2020 BCCRT 52).

24. For the above reasons, I find that the strata was required by SPA section 135(1) to give the Babaees written notice of the particulars of each complaint before imposing bylaw fines. However, though the strata sent Quanrong Li a letter on February 28, 2019 notifying them of the alleged bylaw violation, the strata has not provided any submissions or evidence showing that it also notified the Babaees. So, I find that the strata did not notify the Babaees of the bylaw violation. In so doing, I find that the strata has not complied with SPA section 135(1). So, I find that this bylaw fine against the Babaees is not valid. As such, I find that the strata cannot collect payment of this bylaw fine from Quanrong Li. So, I dismiss this claim.

***April 8, 2019 bylaw fine of \$50 for garbage disposal***

25. The strata's property manager's February 28, 2019 letter to Quanrong Li also said that they violated bylaw 34(1) by leaving garbage on the garbage room floor on February 19, 2019.

26. Bylaw 34(1) says that all refuse materials will be placed in plastic bags or recycling containers. Bylaw 34(2) says that the owners or tenants must remove garbage from the strata lot. The strata's property manager sent Quanrong Li and the Babaees a April 8, 20219 imposing a \$50 fine for violating bylaw 34.

27. However, I find that the strata did not notify the Babaees of this bylaw violation before imposing the bylaw fine. Though the strata sent a February 28, 2019 bylaw violation letter to Quanrong Li, there is no evidence or submissions showing that it notified the Babaees as required by SPA section 135(1). So, I find that this bylaw fine is not valid. As such, I find that the strata cannot collect payment of this bylaw fine from Quanrong Li under SPA section 131(2). So, I dismiss this claim.

***August 21, 2019 bylaw fine of \$50 for dripping water from the balcony***

28. The strata's property manager sent Quanrong Li and the Babaees a June 3, 2019 letter saying that both breached bylaw 3(1) by letting water drip from the balcony on

May 29, 2019, causing a nuisance for other owners. Bylaw 3(1) says that an owner or tenant must not use their strata lot in a way causes a nuisance.

29. The strata's property manager also sent Quanrong Li and the Babaees July 23, 2019 letter saying that both breached bylaw 3(1) by debris fall from their balcony on July 15, 2019, causing a nuisance for other owners. The letter also said they violated strata parking rules. However, I find that this is not relevant since the strata did not impose a fine for violating strata rules.
30. The strata's property manager sent Quanrong Li and the Babaees an August 21, 2019 letter saying that it had imposed a \$50 fine against Quanrong Li and Babaees for violating bylaw 3(1) by dripping water and letting debris fall.
31. I find that the strata has not proved that the Babaees breached bylaw 3(1) by dripping water because the strata has not provided evidence supporting this claim, such as owner complaints, witness statements or photographs. However, the strata has provided a photograph showing balcony debris and based on this photograph, I am satisfied that the Babaees breached bylaw 3(1) by letting debris fall from the balcony. Further, I find that the strata complied with SPA section 135 by notifying the Babaees and Quanrong Li of the bylaw contravention, providing an opportunity to hold a hearing and by notifying them of the imposed bylaw fines.
32. For the above reasons, I find that this bylaw fine against the Babaees is valid. As discussed above, SPA section 130(2) prevents the strata from imposing this bylaw fine directly against Quanrong Li. However, I find that the strata was entitled to impose the bylaw fine against the Babaees and collect the \$50 fine from Quanrong Li under SPA 131(2). So, I find that Quanrong Li owes the strata \$50 for the August 21, 2019 bylaw fine imposed against the Babaees.

***November 21, 2019 bylaw fine of \$50 for pet urination and garbage disposal***

33. On October 22, 2019, the strata's property manager sent the Babaees a letter that said they violated bylaw 43 by letting a pet urinate in an elevator on October 11, 2019. Further, the letter said they violated bylaw 34 by leaving garbage in the stairwell and



outside of the garbage room. The strata's property manager sent the same letter to Quanrong Li on October 23, 2019. The strata's property manager sent the Babaees and Quanrong Li a November 21, 2019 imposing a \$50 fine against them for these alleged bylaw violations.

34. The strata provided an October 15, 2019 email complaint from another resident that says that the Babaees' pet urinated in the elevator October 11, 2019. Based on this undisputed complaint, I am satisfied that the Babaees breached bylaw 43 by letting their pet urinate on the elevator.
35. However, I find that the strata has not proved that bylaw 34 prohibits leaving trash in the stairwell. Bylaw 34 requires owners and tenants to place garbage in plastic garbage bags and to remove the garbage bags from the strata. However, it does not place restrictions on where garbage bags can be stored outside of the strata lot. Although leaving garbage bags in the stairwell may violate other bylaws, I find that it does not violate bylaw 34.
36. The strata imposed the November 21, 2019 bylaw fine for violating both bylaw 43 and 34. Though the Babaees did not violate bylaw 34, I find that they had violated bylaw 43. Further, I find that the strata complied with SPA section 135 by notifying the Babaees and Quanrong Li of the bylaw contravention, providing an opportunity to hold a hearing and by notifying them of the imposed bylaw fines.
37. So, I find that this bylaw fine against the Babaees is valid and the strata is entitled to collect the \$50 bylaw fine imposed against the Babaees from Quanrong Li.

### ***January 27, 2020 bylaw fines of \$600 for garbage disposal***

38. The strata's property manager sent Quanrong Li a December 18, 2019 bylaw warning letter relating to garbage disposal. The same letter was sent to the Babaees on December 20, 2019. These letters said that garbage was left in a stairwell on December 2, 2019, December 7, 2019 and December 11, 2019 in violation of bylaw 34. The strata's property manager sent Quanrong Li a January 27, 2020 imposing a \$600 fine against them relating to the December 18, 2019 letter.

39. For the reasons discussed above, I find that the strata has not proved that bylaw 34 prohibits the storage of garbage bags in the stairwell. So, I find that the Babaees have not violate bylaw 34 by doing so.
40. Further, even if the Babaees had violated bylaw 34, I find that the strata did not properly impose these bylaw fines. I reach this conclusion because the strata has not provided any submissions or evidence showing that it notified that Babaees of its decision to impose a bylaw fine as required SPA section 135(1).
41. So, I find that these bylaw fines are not invalid against the Babaees and the strata cannot collect payment of this bylaw fine under SPA section 132(2) from Quanrong Li. So, I dismiss this claim.
42. For the above reasons, I find that Quanrong Li owes the strata a total of \$100 under SPA section 131(2) for bylaw fines imposed against the Babaees on August 21, 2019 and November 21, 2019.

***Quanrong Li's third party claim against the Babaees***

43. Quanrong Li claims that the Babaees, not themselves, are responsible for the payment of the bylaw fines. As discussed above, SPA section 131(2) says if a landlord or owner pays some or all of the fine or costs levied against the tenant, the tenant owes the landlord or owner the amount paid.
44. For the reasons discussed above, I find that the strata is entitled to collect \$100 from Quanrong Li for bylaw fines imposed against the Babaees. So, if Quanrong Li had paid the strata this amount, Quanrong Li would be entitled to recover this money from the Babaees under SPA section 131(2). However, there is no evidence or submissions showing that Quanrong Li has paid the bylaw fines imposed against the Babaees. Since reimbursement under SPA section 131(2) is limited to money paid, rather than just money owed, I find that Quanrong Li is not entitled to reimbursement from the Babaees under SPA section 131(2). So, I dismiss his claim.

## **CRT FEES, EXPENSES AND INTEREST**

45. 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. Since the strata was partially successful, I find that it is entitled to reimbursement of one-half of its CRT fees. This equals \$112.50. The strata claimed \$30.63 in dispute-related expenses for a land title search. I am satisfied this document was reasonably ordered as a dispute-related expense. Since the strata was partially successful in this dispute, I order the owner to reimburse the strata one-half of this expense. This equals \$15.31. Since Quanrong Li was unsuccessful in their third party claim, I dismiss their claim for reimbursement of their CRT fees. Quanrong Li did not claim reimbursement of dispute-related expenses.
46. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to prejudgment interest on the \$100 debt starting on the dates that each of the bylaw fines were imposed on the Babaees, being August 21, 2019 and November 21, 2019. The prejudgment interest continued to the date of this decision. This equals \$1.62.
47. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Quanrong Li.

## **ORDERS**

48. I order that within 30 days of this decision, Quanrong Li pay the strata \$229.43 [i], broken down as follows:
- a. \$100 in debt for bylaw fines imposed against the Babaees. [ii]
  - b. \$1.62 in prejudgment COIA interest, ~~and~~ [ii]
  - c. \$112.50 in CRT fees.
  - d. \$15.31 in dispute-related expenses. [iii]
49. Quanrong Li's third party claim is dismissed.

50. The strata is also entitled to post judgment interest under the COIA, as applicable.

51. 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.

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Richard McAndrew, Tribunal Member

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[i] Amended pursuant to CRTA section 64(c) to correct an arithmetic mistake.

[ii] Amended pursuant to CRTA section 64(a) to correct a typographical error.

[iii] Amended pursuant to CRTA section 64(b) to correct an inadvertent omission.