



# Civil Resolution Tribunal

Date Issued: April 6, 2022

File: ST-2021-001793

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 2371 v. Zarif Properties Ltd.*,

2022 BCCRT 388

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

The Owners, Strata Plan LMS 2371

**APPLICANT**

**A N D :**

ZARIRF PROPERTIES LTD.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Richard McAndrew

## **INTRODUCTION**

1. This dispute is about water leak repairs, strata bylaw fines and strata fees. The respondent corporation, Zarif Properties Ltd. (Zarif) owns strata lot 101 (SL101) in the applicant strata corporation, The Owners, Strata Plan LMS 2371 (strata). The

strata says a water leak originated in SL101 and it claims that Zarif owes the following amounts:

- \$473.81 for plumbing repairs,
  - \$4,330.47 for water remediation expenses,
  - \$600 in bylaw fines relating to multiple bylaws,
  - \$41.56 in unpaid strata fees, and
  - \$150 for a move-in fee.
2. Zarif denies the strata's claims. Zarif says that the water leak did not come from its strata lot. Further, Zarif says that it has complied with the bylaws and it does not owe any unpaid strata fees.
  3. The applicant is represented by a strata council member. Zarif is represented by a director.

## **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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Must Zarif reimburse the strata \$473.81 for plumbing repairs?
  - b. Must Zarif reimburse the strata \$4,330.47 for water remediation expenses?
  - c. Must Zarif pay the strata bylaw fines totalling \$450 relating to tenant move-ins?
  - d. Must Zarif pay a \$150 move-in fee?
  - e. Does Zarif owe the strata \$10.39 in unpaid strata fees?
  - f. Does Zarif owe the strata \$31.17 in unpaid strata fees?
  - g. Must Zarif pay the strata a \$50 bylaw fine for allowing a non-resident to use its parking spaces?
  - h. Must Zarif pay the strata \$100 for an unspecified bylaw fine?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant the strata must prove its claims on a balance of probabilities. 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. Though it had the opportunity to do so, Zarif did not provide any evidence.

10. The strata was created in 1996 and it filed a complete set of bylaws with the Land Title Office (LTO) on February 22, 2006. The strata filed bylaw amendments at the LTO on March 27, 2007 and September 19, 2019, adding bylaws 3(a)(x) and 12(d). Bylaw 3(a)(x) requires owners to give the strata a Form K – Tenant’s Undertaking (Form K ) within 2 weeks of starting a tenancy in a strata lot. Bylaw 12(d) increases the maximum bylaw fine to \$200. Further bylaw amendments have been filed at the LTO which are not relevant to this dispute.

***Must Zarif reimburse the strata \$473.81 for plumbing repairs?***

11. The strata says a water leak originated in SL101 and it hired Pacific West Mechanical Ltd. (Pacific West) to perform plumbing repairs. Pacific West sent the strata’s property manager a March 2, 2020 invoice for \$473.81 for SL101’s plumbing repair. Pacific West’s invoice says the strata’s property manager hired it to repair a leaking bathtub diverter in SL101 on February 27, 2020. The invoice said that it replaced a leaking bathtub spout. Based on Pacific West’s invoice, I am satisfied that SL101’s bathtub spout was leaking. The strata says it paid Pacific West’s \$473.81 invoice, which Zarif does not dispute.

12. The strata claims that Zarif is responsible for reimbursing the plumbing expenses. However, the strata does not specify which bylaws, if any, require this.

13. Strata bylaw 3(a)(iii) requires an owner to repair and maintain their strata lot and keep it in a state of good repair, other than reasonable wear and tear. The strata, on the other hand, is responsible under section 72 of the *Strata Property Act* (SPA) and its bylaws to maintain and repair the common property and common assets.

14. Even if Zarif is responsible under bylaw 3(a)(iii) to repair and maintain the bathtub, I find the strata must have a legal basis to charge Zarif’s strata lot account for Pacific West’s repair work. Prior CRT decisions have concluded that a strata corporation is not entitled to charge costs it has incurred to an owner’s strata lot account without an agreement or enforceable bylaw or rule that creates the debt: see *Rintoul et al v. The Owners, Strata Plan KAS 2428*, 2019 BCCRT 1007 at paragraphs 33 to 38, citing *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512; *The Owners, Strata Plan LMS1092*

*v. Souki*, 2021 BCCRT 55 paragraphs 23 to 28; and *Sanchez v. The Owners, Strata Plan BCS 4281*, 2021 BCCRT 26 at paragraphs 21 to 23. Although CRT decisions are not binding on me, I find the reasoning in these CRT decisions persuasive and I adopt it.

15. Bylaw 12(b) says that owners are responsible for expenses resulting from their acts, omissions or violations of bylaws or rules. Further, bylaw 12(a) says such expenses can be charged back to the owner's strata lot account. I also considered SPA section 133(2), which permits a strata corporation to charge an owner for the reasonable costs of remedying a bylaw contravention.
16. In considering bylaw 3(a)(iii) and 12(b), I find that there is no evidence that Zarirf's actions, omissions or its failure to perform reasonable maintenance caused SL101's water leak. So, I find that the evidence does not establish that Zarirf breached bylaw 3(a)(iii) or 12(b) or that the strata is entitled to recovery under bylaw 12(a) or SPA section 133(2) in relation to the water leak.
17. Further, even if the strata had proved that Zarirf was responsible for the water leak, I would still dismiss this claim because the strata has not proved that it complied with SPA section 135(1). This section requires strata corporations to give owners written particulars of bylaw complaints and provide a reasonable opportunity to answer the complaint or hold a hearing before a repair charge can be imposed for violating a bylaw. 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. The court also determined that bylaw fines may be found to be invalid if the procedural requirements set out in section 135 are not followed.
18. Here, the strata did not provide any evidence or submissions showing that it notified Zarirf of an alleged bylaw violation before charging back the \$473.81 plumbing invoice to its strata lot account on April 9, 2020. So, I find that the strata has not complied with SPA section 135(1).

19. For all of the above reasons, I dismiss the strata’s claim for reimbursement of the \$473.81 plumbing invoice.

***Must Zarirf reimburse the strata \$4,330.47 for water remediation expenses?***

20. The strata hired Avenue Restoration Services Ltd. (Avenue) to perform water remediation work. Avenue sent the strata’s property manager an April 24, 2020 invoice for \$4,330.47. The work was performed on multiple dates between February 25, 2020 to March 12, 2020. The strata says it paid the invoice which Zarirf does not dispute.

21. As discussed above, I find that the strata has not proved that Zarirf’s actions, omissions or the failure to perform reasonable maintenance caused the water leak. So, I find that the evidence does not establish that Zarirf breached the bylaws.

22. Further, the strata did not provide any evidence or submissions showing that it provided advanced written notice of the alleged bylaw complaint particulars before charging these expenses to Zarirf’s strata lot account. I find that this violates SPA section 135(1).

23. For the above reasons, I dismiss the strata’s claim for reimbursement of the \$4,330.47 water remediation expenses.

***Must Zarirf pay the \$450 in strata bylaw fines relating to tenant move-ins?***

24. The strata says that Zarirf owes fines for bylaw or rules violations totaling \$450 for the following alleged infractions:

- Excessive occupants in the strata lot,
- Failure to book a move in or pay the move in fee, and,
- Failure to submit a Form K.

25. The strata does not say when these alleged violations occurred or the specific bylaws allegedly violated. The strata's property manager sent Zarif 3 letters on April 2, 2020 imposing bylaw fines totalling \$450. Since both this claim and the April 2, 2020 letters total \$450, I infer that this claim is based on the allegations described in those letters. The April 2, 2020 letters say the following:

- a) The strata imposed a \$50 fine for breaching strata "bylaw/rules" 12. The strata says that this bylaw or rule requires owners to reserve a move-in time. The strata did not specify whether it was referring to a bylaw or rule. I find that bylaw 12 does not relate to move-ins or require owners to schedule move-ins. So, I find that Zarif did not breach bylaw 12 by failing to do so. I infer that strata is referring to a strata rule, rather than a bylaw. However, the strata has not provided a copy of its rules, if any, or evidence showing that such rules have been distributed to the owners or ratified by them, as required by SPA section 125. So, I find that the strata has failed to prove that Zarif breached the strata's bylaws or rules by allegedly failing to schedule a move-in.
- b) The strata imposed a \$200 bylaw fine for breaching bylaw 3(a)(x) for allegedly failing to provide a Form K for tenants within 2 weeks of moving in.
- c) The strata imposed a \$200 bylaw fine for breaching bylaw 16(h) by letting an allegedly excessive number of people reside in the strata lot. Bylaw 16(h) says that a maximum of 2 adults can reside in a 1-bedroom strata lot and 4 adults can reside in a 2-bedroom strata lot. The strata did not provide any evidence or submissions saying how many bedrooms SL101 has.

26. I find that the strata has failed to prove that Zarif breached bylaws 3(a)(x) or 16(h). The strata has not provided any evidence showing that Zarif breached any of these bylaws, such as complaints or witness statements. Further, the strata did not provide any evidence or submissions showing that it provided Zarif advanced written notice of the alleged bylaw complaint particulars before imposing these bylaw fines. I find that this violates SPA section 135(1).

27. For the above reasons, I dismiss this claim.

***Must Zarirf pay a \$150 move-in fee?***

28. The strata claims that Zarirf violated the bylaws by failing to pay a \$150 move-in fee.
29. The strata's property manager sent Zarirf an April 2, 2020 letter saying that the strata had imposed a \$150 fine for breaching "bylaws/rules" 12 on February 18, 2020. The letter says that "bylaw/rules" 12(c) requires owners to pay a \$150 move-in fee if the move-in is booked at least 48 hours in advance.
30. As discussed above, bylaw 12 does not refer to move-in requirements or move-in fees. So, I find that Zarirf has not violated bylaw 12 by allegedly not paying a move-in fee. Since bylaw 12 is not related to this issue, I infer that the strata is referring to its rules. However, as discussed above, the strata has not provided a copy of its rules, if any, or proof that the strata has distributed the rules to the owners or that they have ratified the rules.
31. For the above reasons, I find that the strata has failed to prove that Zarirf owes a \$150 move-in fee under its bylaws or rules. So, I dismiss this claim.

***Does Zarirf owe the strata \$10.39 in unpaid strata fees?***

32. SPA section 92 and bylaw 1 says that owners must pay their strata fees. The strata says that Zarirf owes \$10.39 in unpaid strata fees. Zarirf says it pays its strata fees by post dated cheques, dated for the first day of each month. Since the strata does not dispute this, I accept it as accurate.
33. The strata provided a portion of SL101's strata lot account from May 2018 to February 2021. This statement says that SL101 owed strata fees of \$411.24 on March 1, 2020 and that a \$400.85 cheque payment was made on March 2, 2020. However, I find that the strata has not proved the amount Zarirf owed for monthly strata fees in March 2020 since the strata has not provided an owner-approved budget stating SL101's March 2020 strata fee obligations. Further, the strata has not provided any evidence showing that Zarirf owed payments for any special levies. Also, the strata has not provided any submissions refuting Zarirf's contention that it had fully paid its strata fees.



34. For the above reasons, I find that the strata has not proved that Zarirf owes \$10.39 in unpaid strata fees and I dismiss this claim.

***Does Zarirf owe the strata \$31.17 in unpaid strata fees?***

35. The strata also claims that Zarirf owes an additional \$31.17 in unpaid strata fees. The strata does not say when these alleged strata fees were payable. The strata refers to a February 8, 2021 invoice for \$41.56. However, the strata did not provide this alleged invoice so I am unable to consider this document.

36. SL101's statement of account shows an alleged strata fee of \$31.17 payable on December 1, 2019. However, the strata does not say whether this relates to a monthly strata fees or a special levy. As discussed above, the strata has not provided any evidence showing the amount of SL101's monthly strata fees or SL101's responsibility for any special levies. In the absence of such evidence, I find that the strata has failed to prove that Zarirf owes \$31.17 in unpaid strata fees.

37. For the above reasons, I dismiss this claim.

***Must Zarirf pay the strata a \$50 bylaw fine for allowing a non-resident to use its parking space?***

38. The strata claims that Zarirf is responsible for a \$50 bylaw fine for letting non-residents use its parking space. The strata does not say when this alleged bylaw violation occurred.

39. The strata's property manager sent Zarirf a January 20, 2020 letter saying that the strata had imposed a \$50 fine for breaching "bylaw/rules" F(5) on November 25, 2019. The letter says that "bylaw/rules" F(5) prohibits owners from renting or leasing their parking spaces to non-residents. Based on the January 20, 2020 letter, I infer that this claim relates to an allegation that a non-resident parked their vehicle on SL101's parking space on November 25, 2019.

40. I find that the strata does not have a bylaw F(5) filed at the LTO. So, this alleged bylaw is not enforceable. I infer that the strata may be referring to its rules rather than its bylaws. However, as discussed above, the strata has not provided a copy of its rules, if any, or proof that the strata has distributed the rules to the owners or that they have ratified the rules.
41. For the above reasons, I find that the strata has not proved Zarirf breached the strata bylaws or rules by allegedly allowing vehicles to park in its parking space. Further, the strata has not provided any evidence showing that it provided Zarirf with advanced written notice of the complain particulars or notice of its decision to impose this bylaw fine as required by SPA section 135(1). So, I dismiss this claim.

***Must Zarirf pay the strata \$100 for an unspecified bylaw fine?***

42. The strata claims that Zarirf is responsible for \$100 in unspecified bylaw fines. The strata does not say what bylaws it alleges the Zarirf breached or when the alleged violation occurred. In its submissions, the strata only says that, "Bylaw fines, as outlined in the evidence, have not been paid." However, the strata did not provide any evidence referring to an alleged \$100 bylaw fine.
43. In the absence of any description of the alleged bylaw violation, or any supporting evidence, I find that this claim is unproven. Further, the strata has not provided any evidence showing that it provided Zarirf with advanced written notice of the complain particulars or notice of its decision to impose this bylaw fine as required by SPA section 135(1).
44. For the above reasons, I dismiss this claim.

**CRT FEES AND EXPENSES**

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 not successful, I dismiss its request for reimbursement of CRT fees. Zarif did not request reimbursement of dispute-related expenses.

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

## **ORDER**

47. I dismiss the strata's claims and this dispute.

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Richard McAndrew, Tribunal Member