



# Civil Resolution Tribunal

Date Issued: May 17, 2022

File: ST-2021-007347

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan EPS2933 v. Milkov*, 2022 BCCRT 587

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

The Owners, Strata Plan EPS2933

**APPLICANT**

**A N D :**

NEBOJSA MILKOV, ABDUL EMAMI and AYESHA EMAMI

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Leah Volkers

## **INTRODUCTION**

1. This dispute is about alleged bylaw contraventions and fines.
2. The respondents, Abdul Emami and Ayesha Emami, own a strata lot in the applicant strata corporation, The Owners, Strata Plan EPS2933 (strata). The other respondent, Nebojsa Milkov, is the Emamis' tenant.

3. The strata says the respondents have failed to pay bylaw contravention fines and continue to violate the strata's rules and bylaws. The strata asks for orders that the respondents pay \$2,632.10 in bylaw fines and stop violating the strata's rules and bylaws. The strata says the bylaw contraventions and fines are ongoing since a previous CRT claim.
4. Mr. Milkov disputes the strata's claims. He says he has not contravened the strata's bylaws and has already paid the previous fines. Mrs. Emami and Mr. Emami both say the issues in this dispute have been dealt with between Mr. Milkov and the strata.
5. The strata is represented by a strata council member. The respondents are each self-represented.

## **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:
  - a. Did the respondents contravene the strata's bylaws?
  - b. If yes, to what extent, if any, must the Emamis or Mr. Milkov pay the strata \$2,632.10 for bylaw fines?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding such as this one, as the applicant the strata must prove its claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence, but I only refer to what I find relevant to provide context for my decision.
12. The strata filed consolidated bylaws in the Land Title Office on December 23, 2016. The strata filed further bylaw amendments since that time, including amendments to bylaw 3, which I find are relevant to this dispute.
13. Bylaw 3(1) says owners and tenants must not use a strata lot, common property, common assets or limited common property, in a way that causes a nuisance to another person, causes unreasonable noise, or unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets, or another strata lot.
14. Bylaw 3(29) and 3(30) sets out owners and tenants' obligations about garbage and recycling. Given my findings below, I find it is not necessary to discuss the bylaws in further detail.

15. The strata claims \$2,632.10 for outstanding bylaw contravention fines. However, the strata did not submit an account statement or other documentation showing the outstanding amounts, and does not specifically identify each claimed bylaw fine in its submissions. The strata says it has provided evidence that it communicated with both Mr. Milkov and the Emamis about the bylaw contraventions.
16. It is undisputed that the strata fined Mr. Milkov, as the Emamis' tenant in strata lot 227, for alleged bylaw contraventions. In order collect tenant bylaw fines from either Mr. Milkov or the Emamis, the strata must show that Mr. Milkov breached a particular bylaw, and must satisfy the requirements of sections 130, 131, and 135 of the *Strata Property Act* (SPA).
17. The only evidence submitted by the strata were several bylaw contravention notice letters from the strata manager to Mr. Milkov and the Emamis, and subsequent letters to the Emamis imposing the following fines:
  - a. noise and nuisance fines under bylaw 3(1) for alleged contraventions spanning from August 2020 to January 2021.
  - b. Garbage-related fines under bylaw 3(30) for alleged contraventions spanning from August to November 2021.
18. I find the above letters, without more, are not sufficient to prove that Mr. Milkov breached any of the strata's bylaws. There are no complaint letters, witness statements, or similar documentation about any of the alleged bylaw contraventions. The available evidence does not show whether the strata took any steps to investigate the alleged bylaw infractions, and the strata did not provide any explanation in its submissions. For these reasons, I find the evidence before me does not establish that Mr. Milkov caused unreasonable noise under bylaw 3(1), or failed to comply with the garbage and recycling bylaws, and I dismiss the strata's claim for payment of \$2,632.10 in bylaw fines.
19. Also, the letters from the strata manager imposing the fines were only provided to the Emamis, and were not provided to Mr. Milkov. Given this, I find the strata also failed

to comply with SPA section 135, which requires the strata to provide notice of the fines imposed to both Mr. Milkov, as the tenant, and the Emamis, as the owners. However, given my findings above, I find it is not necessary to further address whether the strata complied with SPA sections 130, 131, or 135.

20. As noted, the strata also requests an order that the respondents stop breaching its rules and bylaws. That strata has not proved that any of the respondents have breached the bylaws or rules, and did not provide its rules in evidence. Even if the strata had proved that the respondents breached the bylaws, an order to stop breaching the bylaws is the same as an order to follow the bylaws. The respondents are already required to follow the bylaws. I therefore find that a general order that the respondents to stop breaching the bylaws would serve no effective purpose and I decline to make an order about bylaw compliance.

### ***Previous CRT decision***

21. On January 22, 2021, the strata obtained a default order against Mr. Milkov in another CRT dispute (ST-2020-008227) for \$3,850 in bylaw fines for “excessive noise” and “aggressive behaviour in the parkade”. The Emamis were not named parties to that dispute. The strata also asked for an order that Mr. Milkov stop making noise and behave civilly towards other owners, which the CRT declined to order because it was vague and unenforceable. The CRT also noted that Mr. Milkov was already required to follow the strata’s bylaws, which included provisions about noise and nuisance.

22. As discussed above, the strata is also seeking payment of noise and nuisance fines in this dispute. There is evidence in this dispute that suggests some of the fines at issue in this dispute may pre-date the previous CRT dispute, and the strata has again asked for an order that Mr. Milkov (and the Emamis) follow the strata’s bylaws and rules. This means that it is possible that some of the issues raised in this dispute may be *res judicata*. *Res judicata* is a legal principal that prevents parties from bringing multiple legal proceedings about the same issues.

23. In this dispute I have already found that the strata has failed to prove that Mr. Milkov contravened any bylaws, and I have dismissed the strata’s claims. Given this, I find I

do not need to determine whether any of issues raised by the strata in this dispute are *res judicata*. I say this because even if some of the strata's claims are *res judicata*, I would dismiss the strata's claims and the result would be the same.

## **CRT FEES AND EXPENSES**

24. 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. As the strata was unsuccessful, I dismiss its CRT fee claim. None of the respondents paid any CRT fees or claimed any dispute-related expenses and so I award none
25. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the Emamis.

## **ORDER**

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

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Leah Volkers, Tribunal Member