



Civil Resolution Tribunal

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File: ST-2021-008409

Type: Strata

Civil Resolution Tribunal

Indexed as: *Woods v. The Owners, Strata Plan KAS 2811*, 2022 BCCRT 812

B E T W E E N :

ELIZABETH WOODS

APPLICANT

A N D :

The Owners, Strata Plan KAS 2811

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about dog barking in a strata corporation.
2. The applicant, Elizabeth Woods, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan KAS 2811 (strata).

3. Ms. Woods says the strata has enforced its bylaws unreasonably. She says the strata fined her and threatened to make her remove her dog Willow from her strata lot, due to alleged barking. Ms. Woods says Willow, who was 8 months old when this dispute was filed in November 2021, does not bark continuously. She says the strata has not proved otherwise, and did not provide sufficient particulars before imposing fines, such as the times of the alleged barking.
4. Ms. Woods asks for an order that the strata reverse the \$200 fine it imposed, and give her an opportunity to get professional dog training. She also requests disclosure of unredacted copies of the complaint letters about barking.
5. The strata says the fine was justified, based on the complaint letters, a noise log from a neighbouring owner, and the strata's investigation. The strata says the barking decreased after it imposed the fine, and is not currently a problem.
6. Ms. Woods is self-represented in this dispute. The strata is represented by a strata council member.
7. As set out in my reasons below, I order the strata to reverse the \$200 fine. I dismiss Ms. Woods' remaining claims.

JURISDICTION AND PROCEDURE

8. 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.
9. 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 which includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.

10. 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.

11. 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.

Time for Dog Training

12. As noted above, Ms. Woods requested an order that the strata give her time to obtain professional dog training. Eight months have passed since that request, which I find is sufficient time for dog training. I therefore find this claim is moot, and I dismiss it.

Complaint Letters

13. Ms. Woods requests an order that the strata provide unedited copies of the bylaw complaint letters it received about the alleged barking. The strata provided copies of the complaint letters (emails) as evidence in this dispute. So, I find no further order is necessary, and I dismiss this claim.

ISSUE

14. The remaining issue in this dispute is whether the strata must reverse the \$200 bylaw fine it imposed for dog barking.

BACKGROUND

15. In a civil claim like this one, Ms. Woods, as applicant, must prove her 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.

16. The strata filed consolidated bylaws at the Land Title Office in June 2019, which I find are the bylaws applicable to this dispute. The strata filed a bylaw amendment about electronic meeting attendance in September 2021, which is not relevant to this dispute. I discuss the relevant bylaws below.
17. The evidence shows that Ms. Woods got her puppy around May 2021, and provided the strata with its required pet registration form. The parties agree that at some point, a neighbour complained about barking, and a strata council member visited Ms. Woods to discuss the problem.
18. On September 29, 2021, the strata sent Ms. Woods a letter stating it had received a complaint that the following bylaws were being violated:
 - 7.1(b) – unreasonable noise or disturbance
 - 7.1(c) – unreasonable interference with rights of other persons to use and enjoy common property, common assets, or another strata lot.
 - 13.5 – an owner is fully responsible for the behaviour of their animals.
 - 13.11 – if the council receives a complaint about an animal, it will hold a bylaw enforcement hearing and then make a decision about whether to take no action, fine the owner, or order immediate removal of the animal.
 - 13.12 – if an animal is a nuisance or has caused unreasonable interference, the council may order it to be permanently removed.
19. The September 29, 2021 letter said, “It has been reported that your dog continuously barks during all hours of the day”. The letter said Ms. Woods could request a hearing “to present your evidence in relation to the alleged breaches of the above noted bylaws”. The letter concluded by stating that if the council found Ms. Woods had breached the bylaws, she might be fined or face other enforcement steps.

20. The evidence shows that Ms. Woods requested a hearing, which was held on October 25, 2021.
21. On November 1, 2021, the strata sent Ms. Woods a letter imposing a fine. That letter was replaced by an amended letter dated November 2, 2021.
22. The November 1 and 2 letters both said Ms. Woods' responses at the hearing were "unsatisfactory", and the strata was imposing a \$200 fine for breaches of bylaws 13.11 and 13.12. Both letters also said, "Copies of the complaint(s) including dates and times will be forthcoming within the following 7 days." The November 2, 2021 letter said if Ms. Woods did not stop the dog barking within 7 days, the strata would ask her to remove the dog.

REASONS AND ANALYSIS

23. *Strata Property Act* (SPA) section 135 says a strata corporation may not impose a bylaw fine unless, among other things, the strata has given the person it intends to fine the particulars of the complaint in writing and a reasonable opportunity to answer the complaint. In *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, the BC Court of Appeal said that SPA section 135 must be strictly followed.
24. Ms. Woods says the strata did not provide sufficient particulars before imposing the fine. She says the strata did not disclose who filed the complaints, or what they said, or provide any specifics about the dates or times of the alleged infractions until after she filed this dispute. Ms. Woods says the council president told her that the complainant had recorded times and dates of barking, but those were not provided until the strata uploaded its evidence in this dispute. Ms. Woods says that she could not defend herself against the allegations at the council hearing, because the council refused to provide her with the dates and times of alleged barking.
25. For the following reasons, I agree with Ms. Woods. I find the strata did not provide her with sufficient particulars before imposing the fine, contrary to SPA section 135.

26. In paragraph 28 of *Terry*, the court explained what constitutes sufficient particulars for the purpose of section 135:

...an owner or tenant who may be subject to a fine must be given notice that the strata corporation is contemplating the imposition of a fine for the alleged contravention of an identified bylaw or rule, **and particulars sufficient to call to the attention of the owner or tenant the contravention at issue** (my emphasis added).

27. The strata says it provided Ms. Woods the details of the complaint in writing, as required under the SPA, and treated her in a fair and reasonable manner. However, the evidence before me does not support this conclusion. The strata did not say what details it provided Ms. Woods prior to this dispute, other than the warning and fine letters summarized above. Those letters do not mention any dates or times, or any specific incident. While the September 29, 2021 letter mentions “continuous” barking, there are no date or time parameters.

28. The strata provided an incident log provided by a neighbour as evidence in this dispute. However, Ms. Woods says, and the strata does not dispute, that it did not give Ms. Woods the log before this CRT dispute began. I find it was unreasonable and unfair to withhold that information, and not provide particulars about dates and times, until after it imposed the fine. The strata says it wanted to avoid a possible confrontation between neighbours, but the strata could have redacted identifying information from the log.

29. Also, as explained in *Raitt v. The Owners, Strata Plan LMS 1087*, 2022 BCCRT 279, all correspondence with the strata, including complaint letters, is disclosable to an owner under SPA section 36. While the evidence before me does not indicate Ms. Woods made a specific request under SPA section 36 before this dispute, she was clearly entitled to particulars of the complaints against her, including some version of the incident log. I agree with Ms. Woods’ argument that without knowing any times or dates of the alleged barking, she could not defend herself against the complaint.

30. For these reasons, I find the strata did not meet the SPA section 135 requirements before imposing the \$200 fine. So, I order the strata to immediately reverse it.

CRT FEES AND EXPENSES

31. As Ms. Woods was substantially successful in this dispute, under the CRTA and the CRT's rules I find she is entitled to reimbursement of \$225.00 in CRT fees. Neither party claimed dispute-related expenses, so I order no reimbursement.

32. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Ms. Woods.

ORDERS

33. I order that:

- a. The strata must immediately reverse the \$200 fine on Ms. Woods' strata lot account.
- b. Within 30 days of this decision, the strata must reimburse Ms. Woods \$225 for CRT fees.

34. Ms. Woods is entitled to postjudgment interest under the *Court Order Interest Act*, as applicable.

35. I dismiss Ms. Woods' claims about dog training and complaint letters.

36. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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.

Kate Campbell, Vice Chair