



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Horvath v. The Owners, Strata Plan 1773*, 2022 BCCRT 852

B E T W E E N :

BRIGETTE HORVATH

APPLICANT

A N D :

The Owners, Strata Plan 1773

RESPONDENT

A N D :

BRIGETTE HORVATH

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. Brigette Horvath owns a strata lot in the strata corporation, The Owners, Strata Plan SP1773 (strata). Miss Horvath and the strata have been at odds for many years over many issues. Briefly put, in this dispute Miss Horvath alleges that the strata breaches the *Strata Property Act* (SPA) and its own bylaws in almost all aspects of its operation.
2. Miss Horvath asks for 3 orders. First, she asks for \$5,000 to reimburse her for the time she has spent overseeing the strata's work, educating other owners about the strata's alleged misdeeds, and generally doing the strata council's job for it. Second, she asks for an order that the strata follow the SPA and its bylaws. Finally, she asks for an order that the current strata council be given a "cease-and-desist order" or, failing that, be put on a probationary period. I infer from this that she wants me to restrict the strata council's authority either permanently or for some set period of time. Miss Horvath is self-represented.
3. The strata denies Miss Horvath's allegations. The strata says that Miss Horvath harasses its strata manager and council members with constant emails that are full of unfounded allegations of impropriety. The strata also counterclaims against Miss Horvath for "all fines, strata fees and judgments". In its Dispute Notice, the strata claimed \$6,500 but in submissions asked to increase that amount to \$9,133.94. I address this amendment request below. The strata also asks for orders that Miss Horvath "stop all inappropriate correspondence and harassment", communicate respectfully, and that she follow the strata's bylaws. The strata is represented by a council member.
4. For the reasons that follow, I dismiss 2 of Miss Horvath's claims and refuse to resolve the other. I order Miss Horvath to comply with the strata's bylaw that prohibits off-leash pets but dismiss the strata's remaining counterclaims.

JURISDICTION AND PROCEDURE

5. 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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.

6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to hear this dispute through written submissions.
7. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
8. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the tribunal 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.
9. Miss Horvath initially named the strata as "The Owners, Strata Plan SP 1773". The parties agreed during facilitation that based on section 2 of the SPA, the strata's legal name is "The Owners, Strata Plan 1773". I have amended the style of cause in this decision to reflect that agreement under section 61 of the CRTA.

Amendment Request

10. As mentioned above, the strata asked to increase its counterclaim from \$6,500 to \$9,133.94. The Dispute Notice did not break down the \$6,500 claim, but I infer from the evidence that it had 2 components - \$5,000 for a judgment from a previous CRT dispute, *The Owners Strata Plan 1773 v. Horvath*, 2021 BCCRT 641, and \$1,500 in for breaching the strata's bylaw against off-leash pets. I reach this conclusion

because there is no other plausible explanation in the evidence for the strata to claim \$6,500.

11. As of March 8, 2022, when the parties provided their evidence, the strata's statement of account for Miss Horvath showed an outstanding balance of \$9,133.94. The increase is a combination of fines, strata fees, interest, and charges associated with a lien. Miss Horvath did not comment on the strata's request in her reply submissions.
12. I allow the strata's requested amendment to the extent it is about additional fines. I find that the issues about these additional fines' validity is the same as the fines that were initially included in the Dispute Notice, which both parties made submissions about. So, I find that neither party is prejudiced by the amendment. Based on the evidence before me, as of March 8, 2022, Miss Horvath had \$3,000 in fines on her strata lot account.
13. I do not allow the increase for strata fees and the lien charge. Even though the initial Dispute Notice mentioned strata fees, I find that there were no outstanding strata fees actually included in the claimed amount. The initial claim did not mention the lien charge at all. I find that it would be procedurally unfair to Miss Horvath to amend the strata's claim to include strata fees and the lien charge at this late stage. I therefore have not considered any outstanding allegedly outstanding strata fees or the lien charge in this dispute.
14. I therefore amend the strata's counterclaim to \$8,000 to reflect the additional \$1,500 in fines up to March 8, 2022.

Miss Horvath's Submissions and Evidence

15. Miss Horvath did not provide initial submissions during the CRT's decision phase for her claims. She also did not provide responding submissions to the strata's initial submissions in its counterclaim. She requested several extensions, which the CRT granted. She eventually provided lengthy reply submissions, which I find set out her position on the matters at issue in both her claim and the counterclaim. Also, during the CRT's facilitation process, the case manager asked Miss Horvath to create a

document that provided more specific information about her claims, which she did. I find that Miss Horvath has had a reasonable opportunity to provide submissions in support of her position.

16. Miss Horvath also provided all her evidence after the CRT's deadline, which amounted to around 160 pieces of evidence. The CRT notified the strata and gave it an opportunity to comment on the late evidence. I find that the strata was not prejudiced by the late evidence. In keeping with the CRT's mandate for flexibility and informality, I have admitted and considered the late evidence in making this decision.
17. After the CRT chair assigned this dispute to me, Miss Horvath sent the CRT staff 2 emails asking to reorganize and better explain the evidence she had uploaded. She also alleged that the strata had provided fraudulent or fabricated evidence. Based on my conclusions, I find that there would be no possible benefit to receiving additional evidence or submissions from Miss Horvath. As discussed in more detail below, I dismiss Miss Horvath's claims because she asked for orders that I would not grant no matter what the evidence showed. I dismissed the strata's main counterclaims on their merits based on the evidence and submissions Miss Horvath already provided. The only order I made is that Miss Horvath must follow a particular bylaw, which is based solely on the strata's filed bylaws and the SPA. In other words, none of my conclusions would change if Miss Horvath could prove that the strata fabricated evidence.
18. Also, based on Miss Horvath's submissions, I find that the main reason she wants the opportunity to argue that the strata provided false or fabricated evidence is so that the CRT can fine the strata and possibly send the responsible strata council member to prison. This is based on section 92 of the CRTA, which says that it is an offence to provide false or misleading evidence in a CRT dispute with a maximum penalty of a \$10,000 fine or up to 6 months imprisonment. Miss Horvath correctly points out that the CRT has never fined or imprisoned a party under this provision. This is because the CRT has no authority to prosecute criminal offences, and those matters must be decided by the courts.

19. For these reasons, I decided not to permit Miss Horvath to provide further evidence and submissions at this late stage in the proceeding.

ISSUES

20. The issues in this dispute are:

- a. Should I make the requested orders against at the strata?
- b. Does Miss Horvath have to comply with the strata's bylaw about off-leash pets?
- c. If so, did the strata properly impose fines against Miss Horvath?
- d. Can I order Miss Horvath to pay the previous \$5,000 CRT judgment?
- e. Should I make an order about Miss Horvath's communication with the strata?

BACKGROUND

21. In a civil claim such as this, Miss Horvath as the applicant must prove her claims on a balance of probabilities, which means "more likely than not". The strata must prove its counterclaims to the same standard. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

22. The strata was created in 1973. It consists of 64 residential strata lots. Miss Horvath has lived in her strata lot since at least 2003.

EVIDENCE AND ANALYSIS

Should I make the requested orders against at the strata?

23. As mentioned above, Miss Horvath raises many issues with the strata's operations. I find it unnecessary to analyze any of the issues she raises because I would not grant any of the 3 orders she requested in any event. I will address each requested order in turn.

24. The first requested order is for \$5,000 for Miss Horvath's "time and costs" associated with "over two years' worth" of overseeing the strata's operations. In submissions, Miss Horvath characterizes her claim as a "fee" for the time she has spend "educating" the strata council and strata manager, talking to other owners, researching, copying and printing.
25. I find that there is no legal basis for this claim. The strata council members who run the strata are unpaid volunteers. I find that it makes no sense that Miss Horvath would be paid to question the strata council members' decisions, something no one asked her to do.
26. More importantly, I find that paying Miss Horvath for her time would do nothing to remedy any of the problems she alleges. For example, Miss Horvath alleges that the strata has spent money outside of its budget but does not ask for an order that would correct the alleged errors or ensure future compliance. Miss Horvath has dozens of complaints about the validity of the current bylaws but does not ask for any orders about their enforceability. Miss Horvath says that the strata has withheld records but does not ask for an order that the strata provide them.
27. For these reasons, I dismiss Miss Horvath's claim for \$5,000.
28. The second order is that the strata comply with the SPA and bylaws. Owners in strata disputes often ask for a general order along these lines, which the CRT very rarely grants. This is because the strata must follow the SPA and bylaws whether the CRT orders it to or not. A general order that the strata follow the SPA and bylaws is therefore pointless and, in any event, too vague to be enforceable. For this reason, I dismiss this claim.
29. The third order is somewhat confusingly written, but as mentioned in the introduction, I find that Miss Horvath wants me to suspend or restrict the strata council's decision-making authority. Miss Horvath does not say who should make decisions instead.

30. Under section 4 of the SPA, the strata's powers and duties are exercised and performed by the elected strata council. The only mechanism in the SPA for someone else to govern the strata is found in section 174, which allows the court to appoint an administrator. An administrator is an individual who exercises some or all the powers and duties of the strata, either for a set period of time or indefinitely. Section 174 also allows the court to relieve the strata (and by extension the strata council) of some or all of its powers and duties. Under section 122(1)(i) of the CRTA, the CRT does not have jurisdiction to make orders under section 174 of the SPA. Section 10 of the CRTA says that the CRT must refuse to resolve a claim that is outside its jurisdiction. On that basis, I refuse to resolve Miss Horvath's claim about suspending or restricting the strata council's authority.

31. I acknowledge that Miss Horvath put a great deal of effort into her evidence and submissions, and that my decision not to address the merits of her claims will likely be disappointing or frustrating. Like most CRT participants, Miss Horvath is self-represented. In keeping with the CRT's mandate for informal and flexible dispute resolution services, the CRT often liberally interprets a party's claims in order to do justice between the parties. However, as a matter of procedural fairness and impartiality, there is a limit to how far the CRT can reasonably go in doing so. Here, I find that Miss Horvath's requested orders are clear. I find that it would be procedurally unfair to the strata for me to substitute different orders for the ones that Miss Horvath requested. I also note that, according to the strata, Miss Horvath has started 2 more CRT disputes after this one. The details of those disputes are not before me. In this context, I find that it would be inappropriate for me to unnecessarily comment on any ongoing disagreements between the parties.

32. With that, I turn to the strata's counterclaims.

Does Miss Horvath have to comply with the strata's bylaw about off-leash pets?

33. One of the main disagreements between the parties relates to Miss Horvath's cats being on common property unleashed. While Miss Horvath suggests that she generally supervises her cats while they are outside on common property, such as

by walking near them or watching them from her strata lot, she does not dispute that she lets her cats onto common property unleashed.

34. I note that Miss Horvath disputes the enforceability of some bylaws because they were not filed in the Land Title Office (LTO). Under section 128 of the SPA, a bylaw amendment is only enforceable if it is filed in the LTO. As part of its standard process, the CRT retrieved all of the strata's electronically available bylaw amendments directly from the LTO, which in the strata's case dates back to 1995. I have relied only on these filed bylaws.
35. One of Miss Horvath's arguments is that the strata should not enforce the off-leash bylaw against her because her cats are used to being outdoor cats. This argument is apparently based on Miss Horvath's belief that the bylaw prohibiting off-leash pets is relatively new because the strata did not enforce it against Miss Horvath until around 2019.
36. However, the first available bylaw about leashing pets was filed on June 22, 1995. The precise wording has changed over time but there has been a bylaw prohibiting off-leash pets on common property ever since. Under the current bylaw 46(a), an owner must ensure that their pets are "leashed or otherwise under their control while on common property".
37. I find that Miss Horvath acquired all of her current cats while there was a bylaw prohibiting off-leash pets in force. The strata's bylaw enforcement obligations are complaint-driven, and there is no evidence that anyone complained about Miss Horvath's cats before 2019. This likely explains the lack of enforcement. Regardless, I find that owners are expected to know and follow the bylaws regardless of whether they are actively enforced.
38. With that, I see no reason why the bylaw should not apply to Miss Horvath. The strata asked for an order that Miss Horvath comply with the bylaws. The only bylaw that Miss Horvath argues should not be enforced against her is the off-leash pet bylaw. I therefore order Miss Horvath not to permit her cats onto common property unless they are leashed or otherwise under her control. For clarity, I find that the cats are not

“under control” within the meaning of this bylaw unless they are physically restrained in some way, such as in a cat carrier. I make this clarification because Miss Horvath appears to consider the cats to be under her control if she is nearby or watching them, which I find is contrary to a plain reading and the obvious intent of the bylaw.

Did the strata properly impose fines against Miss Horvath?

39. Miss Horvath says that the strata failed to follow proper procedures as set out in section 135 of the SPA. In particular, she argues that the strata failed to provide her with a hearing before imposing fines. She therefore argues that the fines are invalid.
40. Section 135 of the SPA sets out the procedural requirements that a strata corporation must follow before enforcing a bylaw or rule infraction. Section 135 says that the strata cannot impose a fine unless it has:
 - a. Received a complaint,
 - b. Given the owner the details of the complaint, in writing, and
 - c. Given the owner a reasonable opportunity to answer the complaint, including a hearing if requested.
41. These procedural requirements are strict, with no leeway. See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, and *The Owners, Strata Plan NW 307 v. Desaulniers*, 2019 BCCA 343.
42. With those principles in mind, I turn to the fines at issue. The strata switched strata managers in August 2020. I will address the fines from the former and current strata manager separately.
43. According to a June 30, 2020 statement of account, Miss Horvath owed \$850 in fines at that time. The former strata manager did not impose any further fines before the current strata manager took over.

44. There is only evidence about one of these fines. On October 4, 2019, the former strata manager wrote to Miss Horvath that there had been multiple complaints about her cats “running free” on common property. The former strata manager said that further complaints would result in fines.
45. On April 24, 2020, the former strata manager wrote Miss Horvath that it had received more complaints about her cats. The former strata manager said that residents had seen the cats laying in the parking lot and on vehicles’ hoods. The former strata manager said that the strata had imposed a \$50 fine for the contravention.
46. I find that the strata did not comply with section 135 of the SPA before imposing this \$50 fine. There were 2 problems with the strata’s approach.
47. First, I find that the strata did not provide Miss Horvath with sufficient details of the alleged bylaw breach. While I do not agree with Miss Horvath that the strata necessarily needs to provide her with the written complaint itself, I find that section 135 of the SPA requires enough detail to allow Miss Horvath to meaningfully respond. In the context of an allegation about an off-leash cat, I find at a minimum this should include the location, date, and approximate time the cat was observed, and a description or photo of the cat. Without this information, I find that Miss Horvath would be unable to determine whether it was her cat.
48. Second, the strata did not give Miss Horvath a reasonable opportunity to respond. It appears that the former strata manager believed that it was free to impose the \$50 fine because of its October 4, 2019 warning letter about a similar bylaw breach. This is not correct. It is not enough that there had been previous complaints about Miss Horvath’s cat. Section 135 of the SPA requires the strata to provide a reasonable opportunity to respond to each complaint before it imposes a fine. In other words, fining an owner for a bylaw breach is always a 2-step process. First, the strata must tell the owner the details of an alleged bylaw breach. Only after giving the owner a reasonable opportunity to respond to that specific complaint can the strata impose a fine. If the strata attempts to do both steps at once by sending a single letter that sets

out the details of the complaint and imposes a fine, the process will offend section 135 of the SPA.

49. Because the strata did not comply with section 135 of the SPA, the \$50 fine is invalid. As mentioned above, the strata provided no evidence about any of the other \$800 in fines that the strata imposed before August 2020, despite asking to amend its counterclaim to include them. On that basis alone, I dismiss them as unproven. I also find that it is more likely than not that the former strata manager employed the same flawed process for each fine, since they appeared to use a form letter.
50. The current strata manager imposed a total of \$2,150 in fines up to March 8, 2022: \$400 for noise bylaw violations, \$1,700 for off-leash pet bylaw violations, and \$50 for “harassment”. Each of the letters the current strata manager sent to Miss Horvath imposing these fines is in evidence. They all suffer from the same problem as the former strata manager’s letters in that they attempt to condense a 2-step process into a single letter. They all inform Miss Horvath of the complaint and impose a fine at the same time. It is true that some (but not all) of the letters include a statement that Miss Horvath may request a hearing, but I find that this makes no difference. The Court of Appeal was clear in *Terry* that a strata corporation must strictly comply with section 135 before imposing a fine. The CRT has consistently held that allowing an owner to have a hearing after imposing a fine does not comply with section 135, including, for example, my own decision in *The Owners, Strata Plan ABC XXX v. Z.O.K.*, 2020 BCCRT 1359. The current strata manager’s letters also generally fail to set out sufficient details of the complaint. Given my conclusion about the strata’s 1-step process, I find it unnecessary to address these deficiencies in any detail.
51. In summary, I find that the strata did not follow the proper process in imposing any of the \$3,000 fines at issue in this dispute. I agree with Miss Horvath that the fines are therefore invalid. For this reason, I dismiss the strata’s claim for payment of the fines.

Should I order Miss Horvath to pay a previous \$5,000 CRT judgment because she has not paid it yet?

52. As mentioned above, on June 10, 2021, the CRT ordered Miss Horvath to reimburse the strata for a \$5,000 deductible. The CRT's order gave Miss Horvath 30 days to pay. She undisputedly has not done so.
53. The CRT has no jurisdiction to enforce its own orders. Rather, sections 57 and 58 of the CRTA says that the CRT's strata orders can be enforced in the BC Supreme Court or BC Provincial Court (for orders \$35,000 and under). In fact, the strata says that it has already started this process. Under section 10 of the CRTA, I refuse to resolve this claim.

Should I make any order about Miss Horvath's communication with the strata?

54. The strata also asks for an order that Miss Horvath "stop all inappropriate correspondence and harassment" and communicate respectfully. Having reviewed a considerable volume of evidence from Miss Horvath to the strata, I agree with the strata that her emails are frequently disrespectful even when they are about relatively mundane strata matters. I also agree that, at times, the sheer volume of correspondence is unreasonable.
55. As mentioned above, the CRT has jurisdiction to order parties to stop doing something. Orders of this nature are called injunctions. In *Nova Scotia v. Doucet-Boudreau*, 2003 SCC 62, the Supreme Court of Canada said that an injunction must give the parties proper notice of the obligation imposed on them and clearly define the standard of compliance. This is because injunctions can be enforced by the court in contempt proceedings.
56. I find that whether communication is inappropriate, harassing, or disrespectful is necessarily subjective and open to interpretation. I therefore find that an order limiting Miss Horvath's communication in that way lacks the required precision, and I dismiss the claim on that basis.

57. Also, as set out in the recent CRT decision *The Owners, Strata Plan 901 v. Strudwick*, 2022 BCCRT 823, this is not the first time a strata corporation has asked the CRT for an order about an owner's communication. There, the CRT member declined to make the order in part because an owner is entitled to email strata council (or a strata manager), although she noted that owners should refrain from repetitive or rude emails. Also, in *Tenten v. The Owners, Strata Plan VR113*, 2019 BCCRT 1427, a CRT vice chair found that absent a specific bylaw, a strata corporation has no legal obligation to justify its decisions on an ongoing basis by answering owner questions, although a strata corporation should respond to reasonable inquiries. I agree with the reasoning in these decisions. I find that the strata has no legal obligation to respond to Miss Horvath's questions unless the obligation is specifically set out in the SPA or the bylaws.

TRIBUNAL FEES AND EXPENSES

58. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Both parties were largely unsuccessful, so I make no order for the reimbursement of CRT fees. Neither party claimed any dispute-related expenses.

59. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against Miss Horvath.

DECISION AND ORDERS

60. I order Miss Horvath to comply with the strata's bylaw that requires pets to be on-leash or otherwise under control while on common property.

61. I refuse to resolve Miss Horvath's claim about restricting the strata council's powers under section 10 of the CRTA.

62. I refuse to resolve the strata's \$5,000 claim that Miss Horvath pay the previous CRT judgment under section 10 of the CRTA.

63. I dismiss both parties' remaining claims.

64. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Eric Regehr, Tribunal Member