



# Civil Resolution Tribunal

Date Issued: August 2, 2022

File: ST-2022-001543

Type: Strata

Civil Resolution Tribunal

Indexed as: *De Azevedo Rossi v. The Owners, Strata Plan EPS682, 2022 BCCRT 870*

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

LEONARDO DE AZEVEDO ROSSI

**APPLICANT**

**A N D :**

The Owners, Strata Plan EPS682

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Chad McCarthy

## **INTRODUCTION**

1. This dispute is about a bylaw violation fine. The applicant, Leonardo de Azevedo Rossi, was a strata lot tenant in the respondent strata corporation, The Owners, Strata Plan EPS682 (strata). The applicant did not specify a preferred surname, so intending no disrespect, I will refer to him as Mr. Rossi. The strata fined Mr. Rossi \$200 for placing prohibited items in the strata's recycling bins, in violation of strata

bylaws. The parties agree that the strata lot owner paid the fine, and Mr. Rossi reimbursed the owner for it.

2. Mr. Rossi admits that he mistakenly put prohibited items in the recycling bins, but says his neighbour removed them before the strata issued the bylaw infraction letter. He also says that under the strata's bylaws, the strata was required to provide only a "warning" and not a fine for a first bylaw infraction, although the strata's infraction letter suggested it would do both. Mr. Rossi says the strata improperly imposed the fine, and he requests a \$200 reimbursement for it.
3. The strata says that it properly imposed the \$200 fine and owes Mr. Rossi nothing.
4. Mr. Rossi is self-represented in this dispute. The strata is represented by CR, who is not a lawyer. The evidence before me does not describe CR's role at the strata, although she gave her address as "c/o" the strata's property management company. I infer, based on text messages and correspondence in evidence, that CR is likely a strata council member. In any event, Mr. Rossi did not object to CR representing the strata.
5. For the following reasons, I find that the strata properly imposed the \$200 fine on Mr. Rossi, so I dismiss Mr. Rossi's \$200 claim for reimbursement.

## **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.

## **ISSUE**

10. The issue in this dispute is whether the strata properly imposed a \$200 bylaw violation fine on Mr. Rossi.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, Mr. Rossi, as the applicant, must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read and weighed the parties' evidence and submissions, but I refer only to that which I find necessary to explain my decision.
12. The strata plan shows the strata contains several strata lots in 2 buildings. Mr. Rossi was a residential tenant in one of the strata lots, as shown on a submitted "Form K" Notice of Tenant's Responsibilities.
13. The strata repealed and replaced all of its bylaws at the Land Title Office (LTO) on July 15, 2016. The strata later amended several bylaws, but I find none of those amendments are relevant to this dispute. I note that bylaw 36.3, discussed below, is relevant to this dispute, although the strata registered a bylaw amendment with the

LTO on November 10, 2021 that repealed it. However, I find bylaw 36.3 was still in effect when the strata imposed the July 14, 2021 bylaw fine at issue here. I find the bylaws applicable to this dispute are those registered at the LTO on July 15, 2016.

14. Bylaw 13.2 says a tenant must ensure that ordinary household garbage is placed in the containers provided for it, and recyclable material must be kept in designated areas. Bylaw 13.4 says that a tenant must ensure that all items prohibited or banned from the garbage and recycling are disposed of correctly. Bylaw 13.4 also says that anyone who dumps a banned item into the garbage or recycling bins “will be fined” and charged for all associated disposal fees.
15. Photos in evidence show what appears to be styrofoam and plastic wrap surrounded by a flat cardboard box and placed in a recycling bin labelled “Flattened Cardboard Only.” Mr. Rossi’s name and contact information were attached to the box. As noted, Mr. Rossi admits that he placed the styrofoam and plastic into the cardboard recycling bin, and that those items were prohibited from that container. I find that Mr. Rossi placed banned items into the cardboard recycling bin, contrary to bylaw 13.4.
16. It is unclear when Mr. Rossi placed the banned items in the recycling bin. However, I find a June 19, 2021 text message from Mr. Rossi’s neighbour, TH, shows that TH warned Mr. Rossi about the banned items and removed them from the recycling bin. The strata says it has no knowledge of that alleged removal. However, I find there is no evidence showing that the prohibited items remained in the recycling bin after June 19, 2021. So, I find that TH removed the prohibited items.
17. Although this removal corrected Mr. Rossi’s bylaw 13.4 contravention, I find it does not erase the fact that he did contravene that bylaw for a significant time period. According to TH’s text message, which is not directly disputed, the banned items were in the recycling bin long enough for another resident, C, to send an email to the strata complaining about it.
18. 10 days after TH removed the banned items from the recycling bin, the strata sent identical bylaw infraction letters dated June 29, 2021 to the strata lot owner and to “Occupants” at the strata lot address. I find that addressing the letter to “Occupants”

sufficiently indicated that the letter was for the tenant, Mr. Rossi, as permitted under SPA section 61(2).

19. The letters alleged that Mr. Rossi had breached bylaws 13.2 and 13.4 by leaving the prohibited items in the recycling bin. The letters said that if the owner or Mr. Rossi wished to respond, to dispute the matter, or to request a hearing, to do so “within the next 14 days to the undersigned via email.” The letters said that if there was no response or dispute within the specified timeline, a \$200 fine “will be applied to your account.” The strata followed up with 2 identical letters dated July 14, 2021, which imposed a \$200 fine for Mr. Rossi’s infraction.
20. I will first consider whether the strata gave Mr. Rossi a reasonable opportunity to answer the bylaw infraction notice. Under SPA section 135(1)(e), a bylaw fine must not be imposed unless the strata first gives the owner or tenant the particulars of the complaint and a reasonable opportunity to answer it, including a hearing if requested. According to *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, the strata must strictly comply with SPA section 135 in order to collect fines, including the notice requirements and an opportunity to respond and request a hearing.
21. As noted, the June 29, 2021 letters said that Mr. Rossi could respond within “the next 14 days”, without saying what the starting date was. In the circumstances, I find the letters implied that Mr. Rossi had 14 days to respond from the date of the letter, June 29, 2021. I find the bylaw fine was imposed more than 14 days later, on July 14, 2021. Neither Mr. Rossi nor the strata lot owner requested a hearing before July 14, 2021.
22. SPA section 61(1) describes how notice must be provided to a person under the SPA and strata bylaws, which I find includes notices of bylaw violations and fines. From the letters in evidence, I infer that the strata mailed the June 29, 2021 bylaw infraction letters, or left the “Occupants” letter in the strata lot mailbox. I find that under SPA section 61(3), the letters are conclusively deemed to have been given 4 days after being mailed or put into the mailbox. So, I find that Mr. Rossi and the strata lot owner are conclusively deemed to have received the letter on July 3, 2021, which is 11 days before the strata imposed the bylaw fine.

23. Mr. Rossi says he never received the June 29, 2021 letter, and only found out about it when the strata lot owner informed him on July 12, 2021. However, I find the evidence does not show that the strata failed to send the letter, or that there was an issue with Mr. Rossi's mail service generally. On the evidence before me, I find the July 3, 2021 deemed receipt date applies to Mr. Rossi's infraction letter, and he had 11 days to respond to it. I find this was a reasonable opportunity to answer the bylaw complaint under SPA section 135.
24. Further, I find that email correspondence in evidence shows the owner disputed the bylaw fine on Mr. Rossi's behalf on July 12 through July 22, 2021. The owner gave the strata evidence from Mr. Rossi and arguments similar to those Mr. Rossi makes in this dispute. The strata's email replies show the strata council considered the owner's correspondence, and decided not to waive the bylaw fine. There is no evidence that Mr. Rossi emailed the strata during this period, although the evidence does not show he was unable to. I find the evidence shows the strata received and considered Mr. Rossi's objections that he apparently made through the strata lot owner.
25. Turning to the penalty for the bylaw infraction, bylaw 36.1 says the strata may fine a tenant up to \$200 for each bylaw contravention. As noted, bylaw 36.3 was also in effect on the July 14, 2021 bylaw fine date. Bylaw 36.3 says that a tenant's bylaw infraction "**may be** corrected, remedied or cured by the Strata Corporation, as follows: a. First Violation - warning letter; b. Second Violation (by-law or rule) - \$50 fine; c. Further Violation (by-law only) - \$200 fine" (my emphasis).
26. Mr. Rossi says that because this was a first violation, bylaw 36.3 required the strata to give only a warning letter, and that a \$200 fine was only available for a third or later violation. With respect, I disagree. I find the words "may be" in bylaw 36.3 are permissive, and indicate that the strata may use its discretion to provide only a warning letter for a first violation, but it is not required to do so. Further, as noted, bylaw 13.4 says that anyone who puts a banned item into the recycling bins "will be fined". I find the strata's email correspondence shows that it considered Mr. Rossi's evidence and decided not to waive the fine, because it said the strata had a history

of improperly disposed items resulting in extra fees from its waste collection company. I find this was a reasonable exercise of its discretion under bylaw 36.3.

27. Mr. Rossi also says that he was given online access to strata council meeting minutes, and was unable to find any minutes recording the strata's decision to fine him. He suggests this means there was no strata council decision, and the fine is invalid. The strata does not directly comment on this allegation.
28. I note that SPA section 35(1)(a) requires the strata to keep council meeting minutes, which must record the results of any votes. However, failing to keep adequate council minutes of a bylaw fine decision does not necessarily mean that the council did not make that decision. I find the submitted evidence does not show that the bylaw fine was issued without proper strata authorization, in particular given the strata bylaw violation letters, bylaw fine letters, and email correspondence in evidence.
29. I note that Mr. Rossi does not seek a remedy specifically for the strata's alleged failure to record a bylaw fine decision in council meeting minutes, so I find I need not consider that issue further.
30. Overall, I find Mr. Rossi breached bylaw 13.4, and he had adequate notice of and an opportunity to respond to that complaint under SPA section 135. I find the strata properly imposed the \$200 fine on him. I dismiss Mr. Rossi's claim for reimbursement of that fine amount.

### ***CRT Fees and Expenses***

31. 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. Mr. Rossi was unsuccessful in this dispute, but the strata paid no CRT fees. Neither party claimed CRT dispute-related expenses. So, I order no reimbursements.

## **ORDER**

32. I dismiss Mr. Rossi's claim, and this dispute.

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Chad McCarthy, Tribunal Member