



# Civil Resolution Tribunal

Date Issued: October 31, 2022

File: ST-2022-002823

Type: Strata

Civil Resolution Tribunal

Indexed as: *NCAH B.C. Holdings Ltd. v. The Owners, Strata Plan EPS1290, 2022*  
BCCRT 1192

B E T W E E N :

NCAH B.C. HOLDINGS LTD.

**APPLICANT**

A N D :

The Owners, Strata Plan EPS1290

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Leah Volkers

## INTRODUCTION

1. The applicant, NCAH B.C. Holdings Ltd. (NCAH) owns a strata lot in the respondent strata corporation, The Owners, Strata Plan EPS1290 (strata). NCAH says the strata did not follow the correct process when it issued various bylaw contravention fines against NCAH, including fines for unpaid strata fees, rentals, short term

accommodation, and aggressive behaviour. NCAH also says the strata should not be allowed to charge interest and apply bylaw contravention fines for the same unpaid strata fees. NCAH asks for orders that the strata reverse all fines and interest charges until the strata has a proper procedure for issuing fines and not double charge for interest and fines.

2. The strata disputes NCAH's claims. It says the fines and interest charges were validly imposed in accordance with the *Strata Property Act* (SPA) and its bylaws.
3. NCAH is represented by an authorized employee. The strata is represented by a strata council member.

## **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.

Preliminary Issue – HVAC company charge back

8. NCAH's submissions include allegations that the strata, strata manager and an HVAC company were colluding to "rack up inspection fees". NCAH provided an invoice from an HVAC company that the strata then charged back to NCAH. NCAH says this illustrates unreasonable billing practices. However, NCAH did not raise any issue with the strata's chargeback of the HVAC company's invoice in its application for dispute resolution, nor did it dispute the chargeback or otherwise ask for any remedy related to the chargeback. Therefore, I find the chargeback is not at issue in this dispute, and I have not addressed it further in this decision.

## **ISSUES**

9. The issues in this dispute are:
  - a. Whether the strata must reverse any bylaw contravention fines, and
  - b. Whether the strata must reverse the interest charges on unpaid strata fees.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding such as this one, as the applicant NCAH 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.
11. The strata's initial bylaws were the SPA's standard bylaws. The strata has made some amendments to the SPA's standard bylaws, including a 2016 amendment that prohibits short-term accommodation and rentals shorter than 3 months. I will address the relevant bylaws below.

***Which bylaw fines and interest charges are at issue in this dispute?***

12. NCAH submitted its strata lot account ledger in evidence and highlighted bylaw contravention fines and interest charges between June 2021 and June 2022. It shows that the strata imposed bylaw contravention fines for rentals, short term accommodations, aggressive behaviour and unpaid strata fees between June 2021 and April 27, 2021, when NCAH submitted its application for dispute resolution was filed. It also shows the strata charged interest on unpaid strata fees on several occasions.
13. One of the bylaw fines for unpaid strata fees and two of the interest charges on unpaid strata fees were imposed after NCAH filed its application for dispute resolution on April 27, 2022. However, the bylaw fines and interest charges on unpaid strata fees were raised by NCAH in its application for dispute resolution. I find the strata had notice of this issue and specifically addressed unpaid strata fee interest and fines in its Dispute Response. Further, even including the bylaw fine and interest charges between April 27, 2022 and June 30, 2022, the total amount of bylaw fines and interest charges between June 2021 and June 2022 is less than the amount listed for the fines and interest charges in NCAH's application for dispute resolution. Therefore, in the specific circumstances of this dispute, I find there is no breach in procedural fairness for me to address the bylaw fine and two interest charges on unpaid strata fees applied to NCAH's strata lot account between April 27, 2022 and June 30, 2022, after the dispute application was submitted.
14. In addition to the fines discussed above, NCAH's strata lot account ledger also shows that the strata imposed a \$50 bylaw contravention fine for parking on April 27, 2022. NCAH also highlighted this bylaw fine in its account ledger in evidence. In its application for dispute resolution submitted on April 27, 2022, NCAH asked for all fines to be reversed. Arguably, this could include the April 27, 2022 parking fine that NCAH highlighted in its evidence. However, unlike the other fines discussed above, NCAH did not mention any parking fine in its application for dispute resolution or its submissions. Therefore, I find the strata did not have notice of the parking fine issue or any opportunity to respond to it, and it would be procedurally unfair to the strata to

address it in this decision. I find the parking bylaw contravention fine is not properly before me in this dispute, and I make no findings about it.

15. The rental, short term accommodation, aggressive behaviour and unpaid strata fee bylaw fines total \$9,500 and the unpaid strata fee interest charges total \$157.75. Collectively, they total \$9,657.75. As noted, this less than the \$10,312.80 listed in NCAH's application for dispute resolution. It is unclear how the amount listed in NCAH's application for dispute resolution was calculated. NCAH did not explain or breakdown the amount listed in its application for dispute resolution. Despite this, I find NCAH clearly indicated these disputed bylaw fines and interest charges in its strata lot account ledger between June 1, 2021 and June 30, 2022. I find these disputed fines and interest charges are consistent with NCAH's claims as set out in its application for dispute resolution. I find they are also consistent with the bylaw fines and interest charges that the strata addressed in its Dispute Response. So, although the above fines and interest charges between June 2021 and June 2022 total less than the amount listed in the application for dispute resolution, I find these are the bylaw fines and interest charges at issue in this dispute.
16. For clarity, in this decision I will address \$9,657.75 in bylaw fines and interest charges identified in NCAH's strata lot account ledger between June 1, 2021 and June 30, 2022. This does not include the \$50 April 27, 2022 parking fine discussed above.

***Must the strata reverse any of the bylaw contravention fines?***

17. As noted, NCAH says that the strata used an incorrect process when it imposed the fines between June 2021 and June 2022.
18. SPA section 135 sets out the procedural requirements the strata must follow before it imposes a fine. The requirements are strict and the strata has no leeway in following section 135. See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449 and *The Owners, Strata Plan NW 307 v. Desaulniers*, 2019 BCCA 343.
19. SPA section 135(1) says that the strata cannot impose a fine unless it has:
  - a. Received a complaint,

- b. Given the owner or tenant the details of the complaint, in writing,
  - c. Given the owner or tenant a reasonable opportunity to answer the complaint, including a hearing if requested, and
  - d. If the person is a tenant, given notice of the complaint to the person's landlord and to the owner.
20. SPA section 135(2) says that a strata corporation must, as soon as feasible, give notice in writing of a decision imposing the bylaw fine.
21. I turn now to the fines at issue.

*Unpaid strata fees and aggressive behaviour fines*

22. NCAH's strata lot account ledger shows that the strata imposed 9 bylaw contravention fines for unpaid strata fees between June 2021 and June 2022. Each fine was \$200, and they collectively total \$1,800. The account ledger also shows that the strata imposed a \$200 bylaw contravention fine for alleged aggressive behaviour on April 27, 2022.
23. The evidence does not show that the strata complied with SPA section 135 before imposing any of these 10 fines. The evidence does not show that the strata gave NCAH details of the complaints or an opportunity to respond. The evidence also does not show that the strata advised NCAH in writing of its decision to impose the fines. Therefore, I find the strata did not comply with SPA section 135 before imposing the fines for unpaid strata fees between June 2021 and June 2022, or the April 27, 2022 aggressive behaviour fine. I find all 10 fines are invalid, and I order the strata to reverse them from NCAH's strata lot account.

*Rental fine*

24. NCAH's strata lot account ledger shows that the strata imposed a \$500 bylaw contravention fine on December 29, 2021 for a rental contrary to bylaw 37.
25. Bylaw 37(1) says there is a 3 month minimum lease or rental period.

26. Bylaw 37(2) says a strata lot must not be used for short term accommodation purposes, such as a bed-and-breakfast, lodging house, hotel, home exchange, time share or vacation rental. It also says a resident must not enter into a license for the use of all or part of a strata lot.
27. Bylaw 37(3) required owners to advise the strata of any changes in tenants and complete a Notice of Tenant's Responsibilities (form K) within 2 weeks of renting, in accordance with SPA section 146.
28. The strata received a complaint from its concierge and gave written particulars of the alleged bylaw contravention in a December 8, 2021 letter to NCAH. The strata advised that a group of people had informed the concierge that they were renting NCAH's strata lot for two months through Airbnb. The strata gave NCAH two weeks to dispute the alleged contravention of bylaw 37, and warned that it might impose \$500 fines for continuing contraventions of bylaw 37, as permitted under bylaw 24.
29. The strata says NCAH did not dispute the alleged bylaw contravention within two weeks, so a \$500 fine was applied. As noted, NCAH's strata lot account ledger shows the fine was imposed on December 29, 2021. However, for the following reasons, I find the strata did not give NCAH written notice of its decision to impose the fine as required by SPA section 135(2).
30. The evidence shows NCAH disputed the alleged bylaw contravention in a December 28, 2021 letter to the strata and requested a hearing, one day before the strata imposed the fine. It is unclear whether the strata received NCAH's letter before or after it imposed the fine. However, the strata did not provide notice of its decision to impose the fine until January 20, 2022, 3 weeks after the fine was imposed. I find the January 20, 2022 letter was in response to NCAH disputing the fine, and confirmed the fine would remain standing. However, the evidence does not show that the strata gave NCAH notice of its decision to apply the fine in the first place. The strata also did not reverse the fine when NCAH disputed it, pending its decision following a hearing. Therefore, I find the strata did not give NCAH notice of its decision to impose

the fine as soon as feasible. I find the December 29, 2021 rental fine is invalid, and I order the strata to reverse it from NCAH's strata lot account.

31. There are other irregularities in the strata's January 20, 2022 letter. However, given that I have already found the strata failed to comply with SPA section 135(2) when it imposed the December 29, 2021 fine, I find I do not need to address this issue.

#### Short-term accommodation fines

32. The strata lot ledger shows the strata imposed \$1,000 fines for 7 weeks from January 27, 2022 to March 10, 2022, for short-term accommodation contrary to bylaw 37. I note the strata lot ledger indicates that all 7 of these fines are continuing contravention fines. However, I find that the January 27, 2022 fine was the first fine imposed for short-term accommodation contrary to bylaw 37(2). I say this because in submissions, the strata says that it had not confirmed that NCAH's strata lot was being used for short term accommodation when it levied the December 29, 2021 fine discussed above. Rather, the strata says at that point it only had information that the rental was for a period less than 3 months, contrary to bylaw 37(1).
33. The strata received a complaint on December 13, 2021 and gave written particulars of the alleged bylaw contravention in a January 13, 2021 letter to NCAH. The strata advised that NCAH's tenants confirmed that they were renting NCAH's strata lot for two months through Airbnb, and NCAH's strata lot was currently listed on Airbnb. The letter included a screen shot of the Airbnb listing. NCAH did not dispute this listing. The strata gave NCAH two weeks to dispute the alleged bylaw contravention, and warned that it might impose \$1,000 fines for continuing contraventions of bylaw 37, as permitted under bylaw 24.
34. The strata says NCAH did not dispute the January 13, 2021 letter, and so the strata began levying weekly fines for the short-term accommodation. NCAH does not dispute this. However, the evidence does not show that the strata ever provided NCAH with written notice of its decision to impose the first \$1,000 fine for short term accommodation on January 27, 2021. Therefore, I find the strata did not comply with SPA section 135(2) when it imposed the January 27, 2021 fine.



35. SPA section 135(3) says that once the strata has complied with section 135 in respect of a bylaw contravention, the strata may impose a fine for a continuing contravention of that bylaw without further compliance with SPA section 135.
36. Here, the strata failed to comply with SPA section 135(2) before it imposed the January 27, 2021 fine for short term accommodation contrary to bylaw 37(2). Therefore, I find the strata was not entitled to issue any continuing contravention fines. I find all 7 short-term accommodation fines imposed between January 27, 2022 and March 15, 2022 are invalid, and I order the strata to reverse them from NCAH's strata lot account.

***Must the strata reverse any interest charges on unpaid strata fees?***

37. As noted, NCAH says that the strata "double charged" by imposing bylaw contravention fines for unpaid strata fees and charging interest on the same unpaid strata fees between June 2021 and June 2022.
38. SPA section 107(1) permits the strata to charge interest on unpaid strata fees as set out in the strata's bylaws. SPA section 107(2) says the interest payable on unpaid strata fees is not a fine.
39. Bylaw 1(1) says an owner must pay strata fees on or before the first day of the month to which the strata fees relate. Bylaw 1(2) says that when an owner fails to pay strata fees as required by bylaw 1(1), outstanding strata fees will be subject to a 10% yearly interest charge. In addition to interest, failure to pay strata fees on the due date will result in a \$200 fine for each contravention of bylaw 1(1).
40. Given SPA section 107 and the bylaws, I find the strata is entitled to charge 10% interest on unpaid strata fees and also impose bylaw contravention fines for failing to pay the strata fees as required by the bylaws. I find the strata doing so does not result in NCAH being double charged, as it alleges. As noted, I have already found the bylaw fines for the unpaid strata fees are invalid. However, even if the fines were validly imposed, the strata would still be entitled to charge interest on any unpaid strata fees that also resulted in a bylaw contravention fine.

41. The evidence shows that NCAH was in arrears paying strata fees, and NCAH does not dispute this. NCAH says this was partially due to the strata's new strata manager sending confusing notices about whether NCAH's pre-authorized payment was set up. However, I find the evidence shows that in May 2021, the strata manager sent NCAH a letter with clear instructions on how strata fees could be paid. NCAH did not dispute receiving this letter and did not further detail or explain why it failed to pay strata fees on or before the first day of the month as required by the bylaws for several months afterwards. I find NCAH's evidence and submissions do not show that the strata or strata manager was responsible for NCAH's failure to pay its strata fees as required by the bylaws. Therefore, I find that NCAH has not proved that the strata must reverse the interest charges for the unpaid strata fees between June 2021 and June 2022, and I dismiss this aspect of NCAH's claims.

### ***CRT fees and expenses***

42. 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. As NCAH was largely successful in this dispute, I find NCAH is entitled to reimbursement of \$225 for its paid CRT fees. The strata did not pay CRT fees and neither party claimed dispute-related expenses, so I award none.

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

### **ORDERS**

44. I order the strata to:

- a. Immediately reverse the 10 bylaw contravention fines imposed between June 2021 and June 2022 on NCAH's strata lot account for unpaid strata fees and aggressive behaviour, totalling \$2,000.
- b. Immediately reverse the \$500 bylaw contravention fine imposed on December 29, 2021 on NCAH's strata lot account for a rental.

- c. Immediately reverse the 7 bylaw contravention fines imposed between January 27, 2022 and March 10, 2022 imposed on NCAH's strata lot account for short-term accommodation, totalling \$7,000.
- d. Within 30 days of the date of this order, pay NCAH \$225 in CRT fees.

45. I dismiss NCAH's remaining claims.

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

---

Leah Volkers, Tribunal Member