



Civil Resolution Tribunal

Date Issued: November 7, 2022

File: ST-2022-003115

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan EPS 5010 v. Nguyen*, 2022 BCCRT 1221

B E T W E E N :

The Owners, Strata Plan EPS 5010

APPLICANT

A N D :

PHI TRUONG NGUYEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about strata corporation bylaw fines. The respondent, Phi Truong Nguyen, owns strata lot 4 (SL4) in the applicant strata corporation, The Owners, Strata Plan EPS 5010 (strata). The strata claims Mr. Nguyen breached strata bylaws 3 and 7.1(1)(b) by creating excessive noise, smoking and not providing access to his strata lot for a fire alarm inspection. The strata claims \$970 in bylaw fines.

2. Mr. Nguyen denies the strata's claims. In the Dispute Response, he says that his strata lot occupants did not disturb other owners because SL4 is located in the bottom level, at the end of the building. Further, he says he did not deny access to his strata lot for a fire alarm inspection. Rather, Mr. Nguyen says that the strata's fire alarm inspector did not ring his doorbell to let him know that they were seeking entry.
3. The strata is represented by a strata council member. Mr. Nguyen is self-represented.

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.

Evidence resubmission

8. The strata submitted multiple documents which I was unable to view. At my request, the CRT gave the strata an opportunity to resubmit these documents, which it did. I find that Mr. Nguyen was not prejudiced by the resubmission of this evidence because he was given an opportunity to respond to the resubmitted documents. So, I have considered the strata's resubmitted evidence in this decision.

Claim relating to smoking

9. In its submissions, the strata admits that Mr. Nguyen has paid the bylaw fine relating to smoking prior to this hearing. Based on this submission, I find that this claim is no longer at issue and I dismiss it.

Request for order requiring fire alarm testing access

10. In its reply submissions, the strata requested an order requiring Mr. Nguyen to provide access to his strata lot for future fire alarm inspections. This remedy was not requested in the Dispute Notice. Though the CRTA and CRT rules permit applicants to request to amend the Dispute Notice to add new claims or remedies, the strata did not do so. I find the purpose of a Dispute Notice is to define the issues and provide notice to the respondents of the claims against them. CRT rule 1.17 says that the Dispute Notice will only be amended after the dispute has entered the CRT decision process where exceptional circumstances apply. I find no exceptional circumstances here that would justify adding a request for a new remedy at this late stage in the CRT process. Further, since the strata first requested this remedy in its reply submissions, Mr. Nguyen did not have an opportunity to respond. I find that Mr. Nguyen would be prejudiced if the strata was permitted to request a new remedy at this late stage in the CRT process, without an opportunity to respond.
11. For the above reasons, I decline to address the strata's request for an order requiring Mr. Nguyen to provide access to his strata lot in the future. Also, I note that, even if this remedy was considered, the CRT does not generally grant prospective orders, meaning orders about things that have yet to happen (see, *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379, paragraph 55.)

ISSUES

12. The issues in this dispute are:

- a. Must Mr. Nguyen pay bylaw fines to the strata for making unreasonable noise?
If so, how much?
- b. Must Mr. Nguyen pay the bylaw fines to the strata for not providing fire alarm inspection access? If so, how much?

EVIDENCE AND ANALYSIS

13. In a civil proceeding like 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 refer only to the evidence and argument that I find relevant to provide context for my decision. Though he had the opportunity to do so, Mr. Nguyen did not provide any submissions or evidence.
14. The strata was created in 2019 and consists of 10 residential strata lots in a multilevel building.
15. The strata filed a complete set of bylaws with the Land Title Office (LTO) on November 28, 2019 which repealed and replaced the standard bylaws. The strata filed an amendment to bylaws 3.1(1) at the LTO on May 9, 2022 which altered the strata's noise bylaws. However, I find that this bylaw amendment does not apply to this dispute because it was filed after the strata requested dispute resolution on May 5, 2022. The strata also filed additional bylaw amendments at the LTO which are not relevant to this dispute. I discuss the relevant bylaws in my reasons below.

Claim for bylaw fines for noise

16. Bylaw 3.1(1)(a) says that an owner, tenant, occupant or visitor must not use the strata lot, the common property or common assets in a way that causes unreasonable noise. The strata claims that Mr. Nguyen violated this bylaw by making excessive noise on numerous occasions.
17. SPA section 135(1) says a strata corporation may not impose a bylaw fine unless it has received a complaint, given the owner or tenant written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if requested. SPA section 135(2) says the strata must also give notice in writing of its decision to impose the fine to the owner as soon as feasible.
18. The BC Court of Appeal has found that strict compliance with section 135 of the SPA is required before a strata corporation can impose fines. The court also determined that bylaw fines will be found to be invalid if the section 135 procedural requirements are not followed (*Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449).
19. The strata sent Mr. Nguyen bylaw contravention notices on September 14, 2021 and November 4, 2021. These notices allege that Mr. Nguyen violated bylaw 3(1)(b) by making excessive noise on multiple dates between August to September 2021. However, there is no evidence before me showing that the strata imposed bylaw fines in relation to either of these notices. So, I find it unnecessary to consider them.
20. On January 14, 2022, the strata sent Mr. Nguyen a notice alleging that he violated bylaw 3 by making excessive noise on the following dates:
 - November 10 and 24, 2021,
 - December 15, 17, 20, 21, 22, 23, 24, 26 and 30, 2021, and
 - January 5 and 7, 2022.
21. The strata sent Mr. Nguyen a notice of bylaw contravention on February 16, 2022. The notice says that the strata had imposed bylaw fines of \$200 per bylaw

contravention for noise complaints occurring on January 11 and 14, 2022. However, these dates do not match any the alleged bylaw violation dates referenced in the strata's January 14, 2022 notice, or any other bylaw violation notice provided by the strata.

22. In the binding decision in *The Owners v. Grabarczyk*, 2006 BCSC 1960 at paragraph 43, the court indicated that noise violations are not continuous or continuing contraventions when observed on different dates. Noise violations are distinct contraventions for which a fine may be imposed only if the section 135 requirements are met for each contravention. Here, the strata notified Mr. Nguyen of alleged bylaw violations on multiple dates in November 2021 to January 2022. However, applying *Grabarczyk*, I find that the strata was still required under SPA 135(1) to provide notice of bylaw violations allegedly occurring on January 11 and 14, 2022 before the strata could impose bylaw fines relating to those dates. Since the strata has not provided evidence showing that it did so, I find that the strata's bylaw fines relating to those dates do not comply with SPA 135. So, I find that these bylaw fines are invalid.
23. The strata also provided additional notices of bylaw complaints it sent to the Mr. Nguyen on May 13, 2022 and July 19, 2022. However, I find that these complaints are not at issue in this dispute since they were sent after the strata requested dispute resolution on May 5, 2022. So, I make no findings relating to these notices.
24. For the above reasons, I find that the strata's bylaw fines alleging unreasonable noise in contravention of bylaw 3 do not comply with SPA 135. So, I dismiss this claim.

Claim for bylaw fines for fire alarm access

25. The strata also claims that Mr. Nguyen violated bylaw 7.1(1)(b) by failing to provide access to his strata lot for a fire alarm inspection.
26. Bylaw 7.1(1)(b) says an owner, tenant, occupant or visitor must allow a person authorized by the strata corporation to enter the strata lot at a reasonable time, on 48 hours' written notice, to inspect, repair or maintain common property, common assets

and any portions of a strata lot that are the responsibility of the strata corporation to repair and maintain under the bylaws or insure under the SPA.

27. On December 3, 2021, the strata emailed Mr. Nguyen a notice saying that a fire inspection service would need to access his strata lot at 8:00 am on December 13, 2021 to test the fire alarms in his strata lot. Mr. Nguyen acknowledges receiving this notice. The strata says that Mr. Nguyen did not provide access to perform the inspection. In contrast, Mr. Nguyen says the fire inspector did not ring his doorbell to announce their presence.
28. The strata provided a strata lot account record showing that strata had imposed a \$200 bylaw fine on March 4, 2022 relating to this fire inspection notice. However, as discussed above, SPA section 135(1) requires the strata to notify Mr. Nguyen of an alleged bylaw infraction, provide the particulars of the complaint and give him an opportunity to respond before imposing a bylaw fine. Further, SPA section 135(2) requires the strata to notify Mr. Nguyen of its decision to impose the fine as soon as possible.
29. Here, the strata has not provided evidence showing that it notified Mr. Nguyen of the alleged bylaw violation or its decision to impose the bylaw fine. So, I find that the strata's bylaw fines relating to the fire inspection access do not comply with SPA 135 and I dismiss this claim.

CRT FEES AND EXPENSES

30. 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. Since the strata was not successful in its claim, I find that it is not entitled to reimbursement of its CRT fees. Neither party claimed any dispute-related expenses and so I award none.
31. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Nguyen.

ORDER

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

Richard McAndrew, Tribunal Member