



Civil Resolution Tribunal

Date Issued: November 23, 2022

File: ST-2021-007413

Type: Strata

Civil Resolution Tribunal

Indexed as: *Ryder v. The Owners, Strata Plan NW 57*, 2022 BCCRT 1266

BETWEEN:

DANA RYDER

APPLICANT

AND:

The Owners, Strata Plan NW 57

RESPONDENT

AND:

DANA RYDER

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about bylaw fines and other charges in a strata corporation. The applicant and respondent by counterclaim, Dana Ryder, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 57 (strata). The strata is also an applicant by counterclaim.
2. Miss Ryder says 2 bylaw contravention fines and a title search fee the strata charged to her strata lot account are unjustified. Miss Ryder also says the strata had intimidated and extorted her by threatening to use the *Strata Property Act* (SPA) lien provisions. Miss Ryder asks for orders that the strata:
 - a. Cancel the two \$200 bylaw contravention fines,
 - b. Stop imposing fines on Miss Ryder,
 - c. Cancel a \$35.28 “charge back title search” fee imposed on July 28, 2021,
 - d. Not file the threatened lien against Miss Ryder’s strata lot, and
 - e. Reimburse Miss Ryder \$1,907 for the costs of this dispute.
3. The strata says the fines are valid, and the potential lien and title search were due to unpaid strata fees which Miss Ryder later paid. In its counterclaim, the strata seeks an order for payment of \$400 for fines it says are owing.
4. Ms. Ryder is self-represented. The strata is represented by a strata council member.

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). 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.

6. 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.
7. 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.
8. 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.
9. CRT documents incorrectly show the name of the respondent as The Owners, Strata Plan, NWS 57. Based on SPA section 2, the correct legal name of the strata is The Owners, Strata Plan NW 57. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. So, I have amended the strata's name above.

ISSUES

10. The issues in this dispute are:
 - a. Are the strata's two \$200 bylaw contravention fines valid?
 - b. Should I order the strata to stop imposing fines?

- c. Was the strata entitled to use the SPA lien provisions, and if not, what remedies are appropriate?
- d. Is the strata's \$35.28 land title search charge back valid?
- e. Must the strata reimburse Miss Ryder \$1,907, or any other amount, for her claimed costs to bring this dispute?

EVIDENCE AND ANALYSIS

- 11. In a civil proceeding such as this one, Miss Ryder, as the applicant, must prove her claims on a balance of probabilities (meaning more likely than not). The strata bears the same burden for its counterclaim. I have reviewed all the parties' submissions and evidence, but I only refer to what I find relevant to provide context for my decision.
- 12. The strata filed a complete set of bylaws in the Land Title Office (LTO) on January 18, 2019, that repealed and replaced all previous bylaws except the strata's pet bylaw. I find these are the bylaws that apply here. Two further bylaw amendments were also filed in the LTO on the same day, January 18, 2019. However, neither of these two amendments are applicable to this dispute. I will discuss the relevant bylaws below.

Bylaw fines

- 13. Miss Ryder says that the strata did not provide notice prior to imposing two bylaw contravention fines and the fines are unjustified. The strata disputes this and says the fines are valid.
- 14. 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.
- 15. 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.
16. 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.
17. I turn now to the fines at issue.
18. Miss Ryder's strata lot account ledger shows the strata imposed two \$200 fines on May 31, 2021: one for "common property use" related to an April 27, 2021 bylaw contravention notice letter, and one for "storage on common property" related to a May 3, 2021 bylaw contravention notice letter.

Common property use

19. The strata manager sent Miss Ryder a bylaw contravention notice letter dated April 27, 2021. The letter said that an occupant of Miss Ryder's strata lot had been using the common property in "a manner not allowed by the bylaws as shown below", and cited bylaw 3(10) and bylaw "11(f)". The letter attached a photograph that I find shows various patio furniture sets, a shed, and a motorcycle on common property.
20. Bylaw 3(10) says an owner must not place a hot tub or swimming pool on the common or limited common property.
21. The letter also referred to bylaw 11(f). However, I find the strata does not have a bylaw "11(f)". However, the language after the letter's reference to bylaw 11(f) was the language of bylaw 3(2)(f). So, I infer the strata mistakenly referred to bylaw 11(f) when it likely intended to refer to bylaw 3(2)(f). Bylaw 3(2)(f) says an owner must not obstruct the common property or interfere with another person's use of common property.

22. In submissions, the strata said Miss Ryder was fined for allowing a parked motorcycle to block the sidewalk of the common property patio and pool area. Ms. Ryder says the strata's submissions in this CRT dispute is the first time she has been told that the alleged bylaw contravention was related to a motorcycle. She says the motorcycle is not her property or the property of any of her guests. She says she has no idea who parked it on common property, and it was not mentioned in the bylaw contravention notice letter she received from the strata.
23. The April 27, 2021 letter did not say that the alleged bylaw contravention was related to a motorcycle. I find it is not obvious from either the photograph or the cited bylaws that the alleged contravention is related to a motorcycle. Other than the photograph that includes a motorcycle, the strata did not provide any particulars of the alleged complaint, and did not say the motorcycle or any other objects shown in the photograph were obstructing common property contrary to bylaw 3(2)(f). As noted, the letter only said that Miss Ryder had been using common property in a "manner not allowed by the bylaws as shown below". Therefore, I find the letter does not provide details of the complaint as required by SPA section 135(1)(b). Even if it did, the strata did not provide evidence to confirm that it received a complaint about a motorcycle, or that Miss Ryder placed the motorcycle shown in the photograph on common property.
24. I find the strata failed to comply with SPA section 135(1) before imposing this fine. I find this \$200 fine is invalid and I order the strata to remove it from Miss Ryder's strata lot account.

Storage on common property

25. The strata manager sent Miss Ryder a bylaw contravention notice letter dated May 3, 2021. The letter said that a resident of Miss Ryder's strata lot had placed an inflatable pool and patio chairs on common property, and was storing inflatable flotation devices on "the unit's patio". The strata referred to bylaw 3(4), 3(5) and 3(10).
26. Bylaw 3(4) says patios, decks and balconies attached to or designated for the exclusive use of a strata lot must not be used for storage except bicycles.

27. Bylaw 3(5) says only patio furniture, electric barbecues, bicycles, privacy screens and potted plants shall be placed on the patios, decks or balconies.
28. Bylaw 3(10) says an owner must not place a hot tub or swimming pool on the common or limited common property.
29. SPA section 135(2) requires the strata to give written notice of its decision to impose a bylaw fine. The evidence does not show that the strata gave Miss Ryder written notice of its decision to impose the fine at any time after it sent the May 3, 2021 bylaw contravention notice letter. Therefore, I find the strata did not comply with SPA section 135(2) when it imposed the fine. I find the \$200 fine is invalid and I order the strata to remove it from Miss Ryder's strata lot account.

Should I order the strata to stop imposing fines?

30. As noted, Miss Ryder also asks for an order that the strata stop imposing fines against her. However, I find such an order is unnecessary because I have already found the two \$200 fines imposed on May 31, 2021 invalid and ordered them removed, and the evidence does not show the strata imposed any other fines on Miss Ryder's strata lot account since May 31, 2021.
31. Further, SPA section 26 requires the strata council to exercise the powers and perform the duties of the strata, including enforcing bylaws. The strata council is required to act reasonably when carrying out these duties, and this includes a duty to investigate alleged bylaw contraventions. As noted above, the strata must comply with SPA section 135 before imposing a bylaw contravention fine. Once the strata has complied with the SPA, it is entitled to levy a fine for a bylaw contravention. While the strata has discretion whether to enforce its bylaws in certain circumstances that discretion is limited, particularly in circumstances where the strata owners have a reasonable expectation that the bylaws will be consistently enforced. See *Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32.

Was the strata entitled to use the SPA lien provisions, and if not, what remedies are appropriate?

32. Miss Ryder says the strata intimidated and extorted her by threatening to use the SPA lien provisions. The strata says it issued a lien warning for unpaid strata fees.
33. SPA section 112(2) says that before the strata corporation registers a lien against an owner's strata lot under SPA section 116, the strata corporation must give the owner at least 2 weeks' written notice demanding payment and indicating that a lien may be registered if payment is not made within that 2 week period.
34. A September 16, 2021 letter from the strata manager to Miss Ryder asked Miss Ryder to pay \$15.91 for strata fees, and \$400 for fines. It also warned that the strata would file a lien if the "lienable amounts" were not paid within 21 days. Only the \$15.91 in strata fees were identified as a "lienable amount" in the letter. Miss Ryder does not dispute that \$15.91 was owing, although she says it was a result of a strata manager error when collecting strata fees. I find the strata properly demanded payment of the undisputedly unpaid strata fees under SPA section 112(2).
35. As noted, Miss Ryder also asks for an order that the strata not file the threatened lien on Miss Ryder's strata lot account.
36. SPA section 116 allows a strata corporation to register a lien against an owner's strata lot by registering a certificate of lien at the LTO for failure to pay strata fees, as well as for other items that do not apply here.
37. SPA section 116(3) expressly prohibits the registration of a lien for any unpaid fines. However, the evidence does not show that the strata threatened to impose a lien for the two \$200 fines discussed above. As noted, the only lienable amount identified in the September 16, 2021 demand letter was \$15.91 in strata fees.
38. I have already found that the strata properly demanded payment of unpaid strata fees under SPA section 112(2), which included advising Miss Ryder that the strata would file a lien if she did not pay the outstanding lienable amounts. The strata says no lien was ever registered against Miss Ryder's strata lot because she paid the outstanding

amount. Miss Ryder does not dispute this, and the evidence does not show the strata ever registered any lien against Miss Ryder's strata lot. Therefore, I find it unnecessary to order the strata not file a lien against Miss Ryder's strata lot, or otherwise stop using the SPA lien provisions.

Is the strata's \$35.28 land title search charge back valid?

39. On July 12, 2021 the strata imposed a \$35.28 "Charge Back Title Search" on Ms. Ryder's strata lot account ledger.
40. SPA section 118 says that the reasonable costs of registering a lien against an owner's strata lot may be added to the amount owing under a certificate of lien.
41. The strata says the LTO search was part of issuing the lien warning for unpaid strata fees. However, the LTO search was charged to Miss Ryder's strata lot account in July 2021, 2 months before the strata sent the September 16, 2021 letter warning a lien might be filed if Miss Ryder did not pay the unpaid strata fees. The strata did not further explain why the LTO search was required before sending the warning letter under SPA section 112(2). Further, it is undisputed that no lien was ever filed. Therefore, I find the strata is not entitled to charge the LTO search to Miss Ryder's strata lot account under SPA section 118.
42. The strata did not provide any other basis, such as a bylaw, that would allow the strata to charge back the LTO search to Miss Ryder's strata lot account, and I find there is none. Therefore, I find the strata was not entitled to charge the \$35.28 LTO title search to Miss Ryder's strata lot account, and I order the strata to remove it.

Must the strata reimburse Miss Ryder \$1,907, or any other amount, for her claimed costs to bring this dispute?

43. In her application for dispute resolution, Miss Ryder claimed \$1,907 for the costs of bringing this dispute. Miss Ryder provided a one page document that claimed \$865 in dispute related fees and expenses, including various amounts for photocopies, scanning, binders and tabs, assembling documents, travel and parking at a courthouse, and CRT fees. I will address Miss Ryder's CRT fees below.

44. Miss Ryder did not provide submissions further detailing her claimed dispute-related expenses, or provide any receipts to support the claimed amounts. In addition, CRT rule 9.5(5) says that except in extraordinary circumstances, the CRT will not order one party to pay another party compensation for time spent dealing with a CRT proceeding. I find there are no such extraordinary circumstances in this case.
45. I find Miss Ryder is not entitled to reimbursement for any time spent dealing with this dispute. As Miss Ryder did not provide any receipts for the costs she says she incurred, I find she has not proved she is entitled to reimbursement of any dispute-related expenses.

CRT FEES AND EXPENSES

46. Under CRTA section 49, 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. Miss Ryder was partially successful in this dispute. I therefore order the strata to reimburse Miss Ryder \$112.50 for half her CRT fees. As the strata was unsuccessful in its counterclaim, I dismiss its fee claim.
47. I have addressed Miss Ryder's claim for dispute-related expenses above. The strata did not claim dispute-related expenses. So, I order none.
48. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against the Miss Ryder.

ORDERS

49. I order that:
- a. The strata immediately cancel the two \$200 fines imposed on Miss Ryder's strata lot account on May 31, 2021.
 - b. The strata immediately cancel the \$35.28 title search charge imposed on Miss Ryder's strata lot account.

c. Within 30 days of the date of this order, the strata must reimburse Miss Ryder \$112.50 for CRT fees.

50. Miss Ryder is also entitled to postjudgment interest under the *Court Order Interest Act*, as applicable.

51. I dismiss Miss Ryder's remaining claims. I dismiss the strata's counterclaim.

52. 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.

Leah Volkens, Tribunal Member