



Civil Resolution Tribunal

Date Issued: December 6, 2022

File: ST-2022-002738

Type: Strata

Civil Resolution Tribunal

Indexed as: *Edwards v. The Owners, Strata Plan 1157*, 2022 BCCRT 1311

B E T W E E N :

ALLISON EDWARDS

APPLICANT

A N D :

The Owners, Strata Plan 1157

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about a strata bylaw violation fine.
2. The applicant, Allison Edwards, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VIS 1157 (strata). Ms. Edwards says the strata fined her

\$50 for having an “ivy lattice” on her balcony. She says the lattice is allowed under the strata’s bylaws, which allow owners to have plants on their balconies. She also says the strata failed to find a compromise to the lattice. Ms. Edwards seeks an order that the fine be removed from her strata lot account.

3. The strata says the lattice contravenes the strata’s bylaws and so the fine should stand. It asks that I dismiss this dispute.
4. Ms. Edwards 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.

ISSUES

9. The issues in this dispute are:
 - a. Did the strata comply with the procedural requirements of section 135 of the *Strata Property Act* (SPA)?
 - b. Does Ms. Edwards' balcony lattice violate the strata's bylaws?
 - c. Did the strata act significantly unfairly in levying the \$50 fine?
 - d. Must the strata remove the \$50 fine from Ms. Edwards' strata lot account?

EVIDENCE AND ANALYSIS

10. In a civil dispute like this one the applicant, Ms. Edwards, must prove her claim on a balance of probabilities (meaning "more likely than not"). I have reviewed the parties' submissions and weighed the evidence submitted by both parties but only refer to that necessary to explain and give context to my decision.
11. The strata was created in 1982 under the *Condominium Act* and is now governed by the SPA. Ms. Edwards owns strata lot 20 (unit 210), which includes a balcony.

Background

12. On January 23, 2017, the strata filed a consolidated set of bylaws at the Land Title Office, repealing all former bylaws. Bylaw 31(1) places prohibitions on strata lot and common property use. Bylaw 31(1)(h) specifically prohibits an owner from hanging anything on a balcony, except a laundry rack not exceeding the balcony railing height. Bylaw 31(1)(r) prohibits window boxes or rail box planters on balconies.
13. On July 22, 2021, the strata filed amendments to bylaw 31, which I find apply in this dispute. Bylaw 31(1)(o) specifically prohibits an owner from installing a "railing,

awning or other similar item” on a balcony or deck, excluding free-standing blinds or screens which are permitted for heat reduction and additional privacy. Bylaw 31(1)(s) prohibits using balconies to store items, except for “plants, flowers, patio furniture and one barbeque”.

14. In a January 4, 2022 letter, the strata warned Ms. Edwards that it had received a complaint about the lattice structure on her balcony. It referred to bylaw 31(1)(s) and warned Ms. Edwards she could be fined.
15. In an April 20, 2022 letter, the strata fined Ms. Edwards \$50 for having the lattice on her balcony. Based on correspondence between the parties, I find the strata decided to levy this fine at a March 22, 2021 strata council meeting, even though those minutes are not in evidence.

Did the strata comply with section 135 of the SPA?

16. Section 135 of the SPA says the strata cannot impose a bylaw contravention fine unless it has first received a complaint, given the owner written particulars about the complaint, and provided the owner an opportunity to respond to the complaint, including a hearing if requested. Ms. Edwards says the strata council granted her request for a strata council hearing about the initial complaint, and before imposing the fine. Given that, and the January 4, 2022 warning letter, I find the strata complied with the procedural requirements set out in section 135 of the SPA, before levying the fine.
17. In her submissions, Ms. Edwards says the strata repeatedly declined to answer her questions or find compromises. However, as the parties’ communications in evidence are all dated after the strata’s March 22, 2022 council meeting, I find Ms. Edwards has not shown that the strata failed to provide particulars about the complaint or answer any of Ms. Edwards’ questions before imposing the fine. So, I find the strata did not contravene section 135 of the SPA, as noted above.
18. In a March 30, 2022 email, Ms. Edwards asked the strata to cancel the fine. She said she had planted vines on the lattice, which she said made the lattice a “plant” to

comply with the bylaws. Essentially, Ms. Edwards asked the strata to reconsider its decision to fine her.

19. Contrary to Ms. Edwards' claim, I find the strata did reconsider its decision, but declined to cancel the fine. This is clearly stated in the strata manager's April 22, 2022 email to Ms. Edwards. In any event, I find the strata has no statutory obligation to reconsider a fine or otherwise find a compromise once it has complied with SPA section 135 in finding a bylaw contravention.

Does the lattice violate the bylaws?

20. Based on photos submitted by the parties, I find Ms. Edwards' balcony has a large open work wooden lattice structure on her balcony, just inside the opaque glass railing. The lattice reaches from the balcony floor nearly to the ceiling and is the width of 1 of her 3 windows and doors on the balcony. Ms. Edwards' close up photos show window boxes attached to the inside of the lattice, with ivy starting to grow up the lattice structure.
21. Contrary to Ms. Edwards' arguments, I find the lattice is not allowed under the strata's bylaws. I find bylaw 31(1) sets out the only items allowed on a patio or balcony. Those are plants, patio furniture, free-standing screens or blinds, 1 barbecue, and a laundry rack below railing height. I find the bylaw specifically prohibits an owner from having any other items on their balcony. As explained below, I find Ms. Edwards' lattice does not qualify as any of the allowed balcony items identified in bylaw 31(1).
22. I find the lattice itself is not a plant, but rather a structure used to support the plants. Further, I find the lattice exists independently from the ivy, which I find Ms. Edwards planted only after receiving the January 2022 complaint letter, based on her March 30, 2022 email to the strata manager. So, Ms. Edwards' argument that the lattice is a plant must fail.
23. In *Trent v. The Owners, Strata Plan EPS3454*, 2020 BCCRT 358, another tribunal member found that patio furniture is a moveable article that is necessary, useful or desirable for occupancy or use. Although prior CRT decisions are not binding on me,

I accept and adopt the reasoning in *Trent*. Although Ms. Edwards says the lattice is moveable, I find it is not patio furniture, because it is not used for anything other than to support plants. It is not used for sitting, lounging, eating off, or otherwise holding items.

24. To the extent Ms. Edwards argues the lattice is a permitted screen or blind, I disagree. This is because I find the lattice has large openings, so it is clearly not designed for heat reduction, shade, or privacy as required under bylaw 31(1)(o).
25. The lattice is clearly not a barbecue or a laundry rack. So, I find the lattice is not a permitted balcony item and so violates bylaw 31(1)(o) and (s).

Is the fine significantly unfair?

26. Ms. Edwards says that other balconies and patios in the strata have “plants and structures for plants that go above the railings”. Although she does not use these words, I infer Ms. Edwards argues that the strata’s decision to levy a fine against her for her lattice is significantly unfair, given that other owners appear to be allowed to have similar items on their balconies and patios.
27. The CRT can make orders to remedy a strata’s significantly unfair actions or decisions under CRTA section 123(2). In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the court interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable. In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the court confirmed that the reasonable expectations of an owner may also be relevant to determining whether the strata’s discretionary decisions or actions were significantly unfair. I find the same reasoning applies in this dispute.
28. In *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, the court applied a “reasonable expectations” test when considering whether a discretionary action of strata council was significantly unfair. I find the same test applies to the section executive. The test asks:
 - a. What was the applicants’ expectation?

b. Was that expectation objectively reasonable?

c. Did the strata violate that expectation with a significantly unfair action or decision?

29. I find Ms. Edward's expectation that the strata not enforce its bylaws with a fine is not objectively reasonable. I find the bylaws are clearly worded about what is, and is not, permitted on a strata lot balcony and deck. Further, under SPA section 26, a strata council is obliged to carry out the powers and duties of the strata, including enforcing its bylaws.

30. I also find Ms. Edwards has not proven that the strata has acted unfairly by failing to enforce its balcony bylaws against other strata lot owners. Ms. Edwards' submitted photos show a tree or plant with no obvious supporting structure and sun blinds, both of which I find are permitted under the strata's bylaw 31(1). I acknowledge that 1 of Ms. Edwards' photos shows ropes or lines draped on the outside of a balcony railing. However, she provided no evidence that the strata has failed to enforce its bylaws against those particular strata lot owners. In its submissions, the strata says it will address those photos at its council meeting. So, I find the strata has not treated Ms. Edwards differently than other strata lot owner in regard to her balcony.

31. On balance, I find the strata has not acted significantly unfairly in fining Ms. Edwards \$50 for the lattice.

32. I find Ms. Edwards' lattice violates the strata's bylaw and that the \$50 fine was validly levied. So, I find Ms. Edwards is not entitled to the order she seeks, and I dismiss her claims.

CRT FEES and EXPENSES

33. 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 Ms. Edwards was unsuccessful in her claims, she is

not entitled to reimbursement of her paid CRT fees. As the successful respondent, the strata paid no CRT fees and claimed no dispute-related expenses.

34. The strata must comply with section 189.4 of the SPA, which includes not charging Ms. Edwards her proportional share of defending this dispute.

ORDER

35. I dismiss Ms. Edwards' claims and this dispute.

Sherelle Goodwin, Tribunal Member