



Civil Resolution Tribunal

Date Issued: December 9, 2022

File: ST-2021-003079

Type: Strata

Civil Resolution Tribunal

Indexed as: *Frost v. The Owners, Strata Plan BCS 3463*, 2022 BCCRT 1327

BETWEEN:

JEANNIE FROST

APPLICANT

AND:

The Owners, Strata Plan BCS 3463

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about move-in fees and fines for short-term accommodations (STA) in a strata lot. The applicant, Jeannie Frost, is a leasehold tenant in the applicant leasehold strata corporation, The Owners, Strata Plan BCS 3463 (strata).

2. When the strata discovered that Ms. Frost was using her strata lot (unit 535) for STA, it imposed on her strata lot account fifty-six \$200 move-in fees (\$11,200) and fifty-six \$50 bylaw contravention fines (\$2,800) for a total of \$14,000. The strata has continued to impose some of these charges.
3. Ms. Frost does not dispute that she uses unit 535 for STA. However, she says the move-in fee rules do not apply to STA as the occupants do not actually move into her unit and the fees are unreasonable. Ms. Frost says the bylaw requiring a Notice of Tenant's Responsibilities (Form K) also does not apply to STA. She seeks an order that the strata remove the fees and fines from her account. Ms. Frost represents herself.
4. The strata disagrees with Ms. Frost's claims and says it has acted reasonably in enforcing its bylaws and rules. A strata council member represents the strata.
5. As I explain below, I find in Ms. Frost's favour and order the strata to cancel the fees and bylaw fines.

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. Based on the evidence and submissions provided, I am satisfied that I can fairly decide this dispute without an oral hearing.

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 the parties and witnesses questions of 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.
10. In submissions, Ms. Frost says on April 16, 2021, she received a letter from the strata saying it was considering deactivating the electronic property access devices assigned to her strata lot. She says this is not permitted but she does not ask for a remedy, such as an order that the strata not deactivate her devices. I agree with the strata that it would be unfair to consider this potential claim that was not identified in the Dispute Notice. As well, the CRT does not generally make prospective orders about events that have yet to occur. So, I have not considered the issue of device deactivation in this dispute.

ISSUES

11. The issues in this dispute are:
 - a. Was Ms. Frost required to pay move-in fees for the STA use of her strata lot?
 - b. Did Ms. Frost's STA use contravene the strata's bylaws requiring a Form K?
 - c. Must the strata cancel any fees or fines from Ms. Frost's strata lot account?

EVIDENCE AND ANALYSIS

12. As the applicant in this civil proceeding, Ms. Frost must prove her claims on a balance of probabilities, meaning more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

13. The strata was created in 2009 and includes 146 strata lots. Ms. Frost has owned unit 535 since 2009 but has never lived in it. She previously rented it furnished to long-term tenants, but in recent years has used it for STA.
14. On March 10, 2021, the strata wrote to Ms. Frost claiming that she was responsible for a \$200 move-in fee for each of the 56 “tenancies” it identified based on Airbnb reviews, and possible \$50 fines for failing to provide Form K under section 146 of the *Strata Property Act* (SPA) and the strata’s bylaws.
15. Ms. Frost does not dispute the strata’s evidence that between 2016 and 2020 she had at least 56 short-term occupants in unit 535. Rather, she says her STA use does not offend the strata’s bylaws or trigger the rule requiring payment of move-in fees. On that basis, she says the strata should remove all fees and fines from her strata lot account.
16. The most recent statement of Ms. Frost’s account in evidence, dated September 15, 2022, shows that since March 10, 2021, the strata has only imposed one \$200 move-in fee, on May 17, 2021. However, the strata has continued to apply \$50 fines, generally each week, for failing to provide Form Ks for her alleged tenants. The balance showing on September 15, 2022 was \$17,400.

Was Ms. Frost required to pay move-in fees?

17. SPA section 125 allows strata corporations to make rules governing the use, safety and condition of common property and common assets. Section 125(6) says a rule stops having effect at the first annual general meeting (AGM) after it is made, unless the rule is ratified by majority vote at the AGM or an earlier special general meeting. Once ratified, the rule is effective until it is repealed, replaced or altered.
18. Section 6.9 of the *Strata Property Regulation* (Regulation) says a strata corporation may impose user fees for the use of common property or common assets if they are reasonable and set out in a bylaw or a rule that has been ratified under SPA section 125(6).

19. The strata provided an April 8, 2021 copy of its current rules. Rule 5 is titled “Moves and Deliveries”. Rule 5(a) says that an “owner, tenant, resident or occupant must pay a non-refundable move-in fee of \$200.”

20. Rule 5(c) defines a “move-in” as

The initial movement of a new occupant’s household goods and/or personal effects into the building [...] regardless of the quantity of items/goods/effects, whether the elevator is required, or whether it is a furnished unit.

21. The strata says from September 17, 2015 until the more recent rules were approved on April 8, 2021, the rules defined a “move” as:

The initial movement of a new occupant’s household goods and personal effects into the building and subsequent removal of same, regardless of whether the elevator is required or whether it is a furnished rental.

22. The strata did not provide a copy of the former rules, but Ms. Frost does not dispute the former definition of a move, so I accept it as accurate. Although there is no documentation that either of the rules were ratified as required by the Regulation and SPA section 125(6), Ms. Frost does not challenge the strata’s assertions that the former rules were ratified at an October 29, 2015 AGM and the new rules will be ratified at the next general meeting. So, I accept that the former rules were in effect until April 8, 2021, and the current rules in effect since then.

23. I find that until April 8, 2021, Ms. Frost was not required to pay a fee when unit 535’s occupants changed. I say this because the former rules defined a “move” to require the occupant to move “household goods *and* personal effects” into the building. This suggests moves of some degree of permanence. The strata does not dispute Ms. Frost’s evidence that her occupants brought nothing more than their hand-carried luggage into the building. That is, the occupants did not bring any household goods, which I find means furniture, small appliances, cookware, bedding and the like. On that basis, I order the strata to remove all move-in fees imposed for alleged moves up to April 8, 2021, from Ms. Frost’s strata lot account.

24. As noted, Ms. Frost's strata lot account ledger shows only one move-in fee imposed after March 10, 2021. On May 17, the strata imposed a \$200 fee for "tenant Brenner per Form K rec'd May 17/21". Ms. Frost does not dispute that she had an STA guest on or around that date. So, I must consider whether the current rules allowed the strata to impose a \$200 fee for this use.
25. Ms. Frost relies on 2 CRT decisions involving move fees charged under bylaws: *The Owners, Strata Plan VR245 v. Jiwa*, 2021 BCCRT 1171, and *Clark v. The Owners, Strata Plan EPS741*, 2022 BCCRT 567.
26. In *Jiwa* and *Clark*, the respective bylaws did not define a move or move-in. In *Jiwa*, the CRT relied on the plain and ordinary meaning of a "move" in context and found that those bylaws implied that a move involved moving furniture or large household items. Similarly, in *Clark*, the CRT found that someone occupying a furnished strata lot for a month was not "moving in" in the ordinary sense of that phrase.
27. Unlike in *Jiwa* and *Clark*, a "move-in" here is defined in the current rules. Rule 5 provides a broad definition, referring to all occupants, not just tenants. Unlike the former rules, the current rule 5 does not require the occupant to move household goods. Instead, simply moving personal effects constitutes a move-in. The rule applies regardless of whether the elevator is required or the strata lot is rented furnished. Ms. Frost concedes that her Airbnb guests typically bring luggage. I find luggage constitutes personal effects. So, I find a move-in under rule 5(c) includes the occupancy changes associated with Ms. Frost's STA use of unit 535.
28. However, as Ms. Frost points out, the Regulation requires user fees to be reasonable. The strata says Ms. Frost has provided no evidence that the \$200 fee is unreasonable. However, as the strata established and imposed the \$200 fee, I find the strata must prove on a balance of probabilities that the fee is reasonable.
29. The correct approach in determining whether fees are reasonable is to weigh the objective evidence of a) prevailing market conditions at the time, or b) the costs the strata corporation incurs in facilitating moves in and out of the property, or both (see *The Owners, Strata Plan BCS 1721 v Watson*, 2018 BCSC 164).

30. The strata provided evidence from 4 other strata corporations that charge \$200 or \$250 move-in fees. However, it is not clear that those fees apply to STAs as opposed to moves involving household goods or furniture. Based on the wording in those bylaws and the reasoning in *Jiwa* and *Clark*, I find it unlikely that they do. I find this evidence does not assist the strata.
31. The strata says moving personal effects, including luggage, results in wear and tear on common property. However, the strata provided no objective evidence of this, such as photos of damage, or invoices showing it has incurred maintenance costs related to moves. The strata also provided no evidence of administrative costs incurred.
32. The strata argues that Ms. Frost is allowing strangers into the strata building unsupervised. It says those strangers could damage common property. I find this argument speculative, as the strata does not say that any short-term guests have damaged common property.
33. The strata says move-in fees create accountability. I do not agree that a fee imposed for each occupancy change creates accountability. It is not like a damage deposit that is returned to Ms. Frost or the occupant if they cause no damage.
34. Overall, I find there is almost no evidence that the strata's \$200 fee is reasonable. I find the \$200 fee is not reasonable and therefore contravenes section 6.9(1)(a) of the Regulation. Although reasonableness is determined on the facts in each dispute, my conclusion is consistent with *Clark*, where the CRT found that a \$50 fee for moves without furniture was unreasonable.
35. SPA section 121(1) says that a bylaw that contravenes the Regulation is unenforceable. Section 125(2) says a rule is not enforceable to the same extent that a bylaw is not enforceable under section 121(1). I therefore find rule 5(a) unenforceable in the context of STA use. I order the strata to cancel any move-in fees imposed on Ms. Frost's strata lot account under either the former or current rules.

Did Ms. Frost contravene the bylaws about Form Ks?

36. The strata's bylaw 4(c) says that within 2 weeks of renting a strata lot, the owner must give the strata a copy of the Form K signed by both the owner and the tenant, in accordance with SPA section 146. Bylaw 4(e) says a strata lot contravening bylaw 4(c) will be subject to a fine of \$50 per month. It also says if the contravention is not rectified, it is dealt with as a continuing contravention and can be fined every 7 days.
37. SPA section 146 says a landlord must give a prospective tenant the current bylaws and rules and a Form K, and then within 2 weeks of renting the strata lot must give the strata a copy of the signed Form K.
38. Ms. Frost argues that bylaw 4(c) and SPA section 146 do not apply to her STA use. She says she used unit 535 for vacation accommodation under licence agreements rather than tenancies. The strata does not address this argument.
39. A determination of whether an occupancy is a licence or a tenancy requires an examination of the facts in each circumstance. In *Semmler v The Owners, Strata Plan NES3039*, 2018 BCSC 2064, the court summarized the relevant principles at paragraph 45:
 - a. A person may occupy a strata lot under a tenancy agreement or a license agreement.
 - b. A tenant is a person who rents all or part of a strata lot and receives an interest in the property including exclusive possession of the premises.
 - c. An occupant is a person other than an owner or tenant who occupies a strata lot.
 - d. A licensee is an occupant but not a tenant.
 - e. Provisions of that SPA that relate to tenants and tenancies do not apply to licensees.

40. In *Semmler*, the court found that the agreements in question were licensing agreements because they permitted guests to use the property on a short-term basis and did not convey an interest in the property to the guests. The court found no intention to create a tenancy in the license agreements. Since the agreements were licences and not tenancies, the court found that obligations under SPA section 146 did not apply.
41. *Semmler* is binding on me. Although copies of the individual agreements are not before me, the strata does not dispute Ms. Frost's evidence that her guests stayed for short durations. The strata does not allege that Ms. Frost's Airbnb guests had a property interest in unit 535. Consistent with *Semmler*, I find Ms. Frost's STA use involved licensing agreements and did not create tenancies. This means she was not renting her strata lot, SPA section 146 did not apply, and she was not required to provide the strata with Form Ks for her licensees. Therefore, I order the strata to cancel all fines it imposed against Ms. Frost's strata lot account related to bylaw 4(c) or bylaw 4(e).
42. I acknowledge the strata's parenthetical submission that short term occupancies are not permitted under "bylaw 33". However, the strata's bylaws in evidence stop at bylaw 32. The strata did not elaborate on bylaw 33 or provide its wording. Given that there is no evidence the strata imposed a fine against Ms. Frost for contravention of bylaw 33, I have not considered the issue further.

CRT FEES AND EXPENSES

43. 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. Ms. Frost was successful, so I order the strata to reimburse her for CRT fees of \$125. Neither party claimed any dispute-related expenses.
44. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Ms. Frost.

ORDERS

45. I order the strata to, within 30 days of the date of this decision:

- a. Cancel all move-in fees on Ms. Frost's strata lot account,
- b. Cancel all bylaw contravention fines on Ms. Frost's strata lot account related to bylaw 4(c) or 4(e), and
- c. Pay Ms. Frost \$125 for CRT fees.

46. Ms. Frost is also entitled to post-judgment interest, as applicable.

47. 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.

Micah Carmody, Tribunal Member