



Civil Resolution Tribunal

Date Issued: December 14, 2022

File: ST-2022-002511

Type: Strata

Civil Resolution Tribunal

Indexed as: *Sun v. The Owners, Strata Plan NW2434*, 2022 BCCRT 1344

BETWEEN:

HAI FENG SUN and HAI YAN YANG

APPLICANTS

AND:

The Owners, Strata Plan NW2434

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about bylaw fines concerning a cat. The applicants, Hai Feng Sun and Hai Yan Yang, co-own strata lot 23 (SL23) in the respondent strata corporation, The Owners, Strata Plan NW2434 (strata). The applicants say that the strata levied fines

in breach of the *Strata Property Act* (SPA) and in an unfair manner. They seek orders for the strata to withdraw or cancel fines totaling \$250.

2. The strata disagrees. It says the applicants breached the strata's bylaws multiple times by allowing their cat to roam the common property freely. It denies breaching the procedural requirements of the SPA or acting in an unfair manner.
3. Mr. Sun represents the applicants. A strata council member represents the strata.
4. For the reasons that follow, I find the applicants have proven their claim.

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.

Submission Requests for Additional Orders

9. In submissions the applicants seek additional orders they did not include in their application for dispute resolution. They say the strata should “tolerate” their cat’s presence on common property. They also seek apologies from the strata council members and another person, TC. I find it would be procedurally unfair to consider claims for these remedies as they were not included in the Dispute Notice.
10. Consistent with my conclusion, CRT rule 1.19 allows applicants to ask the CRT to amend the Dispute Notice. Under CRT rule 1.19(3), the CRT will not issue an amended Dispute Notice after the dispute has entered the CRT decision process, except where exceptional circumstances apply. The applicants did not ask the CRT to amend the Dispute Notice. Even if they had, I find the submissions and evidence lack any indication of exceptional circumstances. For example, there is no submission that the applicants were prevented from amending the Dispute Notice because of their circumstances.

ISSUE

11. Must the strata reverse the bylaw fines totaling \$250?

BACKGROUND, EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. This means 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.
13. The strata plan shows the strata’s buildings consist of several duplexes. As noted above, a title search shows that the applicants became the registered co-owners of

SL23 in June 2016. It is undisputed that they live in SL23 with a cat they adopted in May 2020.

14. The strata's bylaws are relevant. The strata repealed its bylaws and registered a complete replacement set in the Land Title Office in November 2001. There are several registered amendments that I find irrelevant to this dispute.
15. Of note, bylaw 4(1) says an owner may keep 1 dog or cat in a strata lot. Bylaw 4(2) says all pets must be leashed and under the control of their owner while on common property. I find this includes the applicants' cat as the bylaws state no exceptions. Bylaw 4(3) says that a pet's owner must remove any waste or excrement left by the pet on common property.
16. I turn to the chronology. On March 17, 2020, the strata manager sent Mr. Sun a "friendly reminder" letter. The strata manager asked the applicants to comply with bylaw 4(2). They said the strata had received a complaint that the applicants' cat was seen running through yards and gardens.
17. The applicants admit that their cat "escaped a few times" in the past when they opened SL23's door. So, I find they breached bylaw 4(2) several times on unspecified dates. However, nothing turns on this for reasons discussed below.
18. On March 19, 2021, the strata manager sent Mr. Sun a letter about another complaint. It said someone saw the cat roaming freely and using an owner's garden as a litter box. The strata manager said the strata would levy a \$50 fine the next time the cat was seen off leash or using the gardens. The applicants say they never received this letter. Again, I find nothing turns on this for reasons discussed below.
19. On April 8, 2021, the strata manager sent Mr. Sun another letter. They said they had received more complaints about the cat roaming freely and using gardens as a litter box. They said the strata had decided to levy a \$50 fine. Notably, the strata manager did not provide the applicants any opportunity to respond to the latest complaints before levying the fine.

20. On September 22, 2021, the strata manager wrote another letter. They said that they had received further complaints about the applicants' cat roaming off leash in April, May, June, August, and September 2021. They added that the strata had levied an additional fine of \$200. As above, the strata manager did not provide the applicants any opportunity to respond to these latest complaints before levying the fine. The evidence and submissions before me indicate the applicants never paid any of the levied fines.

Must the strata reverse the levied bylaw fines totaling \$250?

21. The parties disagree on whether the strata complied with the procedural requirements of the SPA. So, I begin by discussing the applicable law.

22. SPA section 135(1) says a strata corporation may not impose a bylaw fine or require a person to pay the costs of remedying a bylaw contravention, unless, among other things, the strata has given that person the particulars of the complaint in writing and a reasonable opportunity to answer the complaint. 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. Bylaw fines are not valid if a strata corporation does not strictly comply with SPA section 135. See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.

23. As noted above, the strata levied fines of \$50 and \$200 in its March and September 2021 letters. I find the strata breached SPA section 135 as both letters show the strata levied the fines before providing the applicants a reasonable opportunity to answer the complaints. This is because the strata advised the applicants about the complaints and levied fines about the complaints in the same letters.

24. Case law holds that a strata corporation may "cure" procedural defects by reversing fines and restarting the process following proper procedures. See *Cheung v. Strata Plan VR 1902*, 2004 BCSC 1750. However, that did not happen here. So, even though I have found that the applicants breached the bylaws, I find the fines are invalid.

25. The applicants say they never received the March 19, 2021 letter. I find that even if they had, the strata still breached SPA section 135 for the reasons discussed above. So, I find nothing turns on this.
26. For all those reasons, I order the strata to reverse the fines totaling \$250 levied on SL23's account in the letters dated April 8 and September 22, 2021. Given the applicants' success, I find it unnecessary to consider allegations that the strata unreasonably delayed holding a requested hearing or treated the applicants in a significantly unfair manner.

CRT FEES AND EXPENSES

27. 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. I therefore order the strata to reimburse the applicants for CRT fees of \$225. The parties did not claim for any specific dispute-related expenses.
28. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDERS

29. I order the strata to reverse the fines totaling \$250 levied on SL23's account in the letters dated April 8 and September 22, 2021.
30. I order that within 30 days of the date of this order, the strata pay the applicants a total of \$225 in CRT fees.
31. The applicants are entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
32. 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.

David Jiang, Tribunal Member