



Civil Resolution Tribunal

Date Issued: January 6, 2023

File: ST-2022-000205

Type: Strata

Civil Resolution Tribunal

Indexed as: *Mashinchi v. The Owners, Strata Plan BCS3165*, 2023 BCCRT 14

B E T W E E N :

OMID MASHINCHI

APPLICANT

A N D :

The Owners, Strata Plan BCS3165

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about an alleged breach of short-term accommodation bylaws. The applicant, Omid Mashinchi, was a former tenant of strata lot 21 (SL21) in the respondent strata corporation, The Owners, Strata Plan BCS3165 (strata). Mr. Mashinchi says the strata wrongly fined him \$19,000 for breaching the bylaws. He seeks an order for the strata to reverse the fines.

2. The strata disagrees. It says it followed proper procedures for levying the fines after Mr. Mashinchi breached the bylaws. The strata does not counterclaim for payment of the fines. However, it claims for reimbursement of legal fees as a dispute-related expense.
3. Mr. Mashinchi represents himself. A lawyer, Kathrine Uppal, represents the strata.
4. For the reasons that follow, I dismiss Mr. Mashinchi's claim. I also allow the strata's claims for reimbursement of legal expenses incurred in connection with this dispute.

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.

Is the matter of this dispute moot?

9. The strata says this dispute is moot. Mr. Mashinchi did not directly comment on this. However, I infer he disagrees as he did not withdraw his claims.
10. A claim is moot when something happens after a legal proceeding starts that removes any “present live controversy” between the parties. Generally, moot claims will be dismissed. However, the CRT has discretion to decide the claim if doing so would have a practical impact and potentially help avoid future disputes. See *Binnorsley v. BCSPCA*, 2016 BCCA 259.
11. The strata says the matter is moot because it entered into an agreement with SL21’s owner for payment of the bylaw fines. However, the strata did not provide a copy of the agreement. There is no evidence or submission that the owner has fulfilled the alleged agreement and actually paid the fines. So, I find it unproven that there is no live controversy between the parties. Given this, I decline to dismiss this dispute as moot.

ISSUES

12. The issues in this dispute are as follows:
 - a. Did Mr. Mashinchi breach the bylaws?
 - b. Are any remedies appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, the applicant Mr. Mashinchi must prove his 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.

14. I begin with the undisputed facts. From at least 2021, Mr. Mashinchi rented SL21 as a tenant. SL21's owner, ER, is not a party to this dispute. Emails show another individual, Mika Goto, managed SL21 for ER.
15. The strata filed a complete set of bylaws in the Land Title Office in May 2019. Bylaw 39(1) says no owner shall rent their strata lot for a period of less than 30 days. Bylaw 39(3) says a residential strata lot must not be used for accommodation purposes of less than 30 days, including vacation rental, nor may a resident enter into a license for use of all or part of a residential strata lot.
16. Bylaw 39(7) says the strata may fine an owner up to \$1,000 for a contravention of subsections 1 through 6 of bylaw 39. Further, it says the strata may fine an owner on a daily basis for a breach of bylaw 39 if an activity or lack of activity that constitutes a bylaw contravention continues.
17. I turn to the chronology. On August 1, 2021, Mr. Mashinchi provided the strata manager at the time, Thomas McGreer, a Form K. Thomas McGreer referred to this in his signed September 26, 2022 written statement. I note that a Form K provides tenants notice of their responsibilities to comply with the strata's bylaws and rules. When completed, it also includes basic information about the tenancy and tenants. Under section 146 of the *Strata Property Act* (SPA), a landlord is required to give both prospective tenants and the strata a copy of the Form K.
18. The Form K said that Mr. Mashinchi was adding 2 individuals, JS and KC, as co-tenants. The parties dispute whether Mr. Mashinchi forged Mika Goto's signature on the Form K. I find he likely did so. I explain why below.
19. On August 20, 2021, Olga Zabairatska, the strata's concierge, met a young couple in the building. Olga Zabairatska documented what happened in a signed July 25, 2022 written statement. According to Olga Zabairatska, the couple said the following. They were departing and dropping off SL21's keys. One of them identified themselves as

JS. As noted above, JS' name is on the Form K, so I find the couple was likely comprised of JS and KC. The couple said they were AirBnB guests and had left the door unlocked for the cleaners to get in.

20. Mr. Mashinchi objects to this evidence as hearsay. I find I may rely upon it under CRTA section 42 and do so. I also find Olga Zabairatska's evidence is likely accurate and place significant weight on it. This is because the described events are consistent with Olga Zabairatska's employment as a concierge and there is no indication that they had any reason to fabricate the encounter. Notably, Mr. Mashinchi did not obtain a statement from either JS or KC to contradict Olga Zabairatska's version of events. So, I also draw an adverse inference against Mr. Mashinchi on this issue.
21. Further, shortly after the meeting, Brad Ruud, the director of safety and security at the strata, summarized Olga Zabairatska's report about these events in an August 23, 2021 email report to the strata manager. Olga Zabairatska's statement is consistent with the report. So, I find it unlikely that they misremembered events.
22. On August 26, 2021, the strata manager Thomas McGreer sent Mr. Mashinchi a letter. Thomas McGreer wrote that the strata had received a complaint that Mr. Mashinchi was using SL21 as a short-term accommodation from August 1 to 20, 2021. Thomas McGreer said this breached bylaw 39 and warned Mr. Mashinchi of the fines outlined in bylaw 39(7). Thomas McGreer provided Mr. Mashinchi an opportunity to respond.
23. On September 9, 2021, Mr. Mashinchi provided a written response to the strata. He denied breaching the bylaws. He requested a hearing weeks later. The strata held it on December 2, 2021.
24. On December 6, 2021, the strata provided Mr. Mashinchi a written decision. It said it had decided that Mr. Mashinchi had breached bylaw 39. It fined him \$1,000 for each day of the breach, for a total of \$19,000. It is undisputed that Mr. Mashinchi subsequently moved out of SL21 under the terms of an eviction order granted by the Residential Tenancy Branch in January 2022.

Did Mr. Mashinchi breach the bylaws?

25. For the reasons that follow, I find Mr. Mashinchi breached bylaw 39 by using SL21 as a short-term AirBnB accommodation for 20 days.
26. It is undisputed that JS and KC began occupying SL21 on August 1, 2021. This is consistent with the Form K in evidence. Olga Zabairatska's evidence shows that both JS and KC moved out 19 days later, on August 20, 2021. Olga Zabairatska's statement indicates that JS was staying as part of an AirBnB accommodation. Numerous CRT decisions have noted that AirBnB is used to provide short-term accommodations.
27. Further, the evidence supports the conclusion that Mr. Mashinchi rented SL21 to a new AirBnB occupant, DM, by September 8, 2021 at the latest. On that date, Olga Zabairatska emailed Brad Ruud about another incident. Olga Zabairatska wrote the following. They encountered a woman that day. The woman asked for access to the SL21. She said she was visiting a resident, DM. She specifically said SL21 was being used as an AirBnB accommodation.
28. I find this email relevant because it supports the allegation that Mr. Mashinchi was using SL21 as an AirBnB rental in breach of bylaw 39. I place weight on the email because it was made close in time to the event it documents, and I find Olga Zabairatska had no reason to fabricate it. There is no evidence from the unnamed woman or DM to contradict Olga Zabairatska's evidence. I rely on the email even though it is hearsay.
29. Mr. Mashinchi disagrees. He relies on a signed tenancy agreement that shows JS and KC agreed to rent SL21 from August 1 to September 15, 2021. I put no weight on the tenancy agreement for the following reasons.
30. The tenancy agreement lacks basic information that I find a person would reasonably expect of a binding contract. In particular, it lacks the rent amount. Further, the actions of JS, KC, and Mr. Mashinchi are inconsistent with the tenancy agreement. As noted earlier, JS and KC moved out early on August 20, 2021. I have also found that Mr.

Mashinchi likely used SL21 as a short-term accommodation again, by September 8, 2021 at the latest, instead of leaving it available for JS and KC to return to. There is no direct evidence from JS or KC about what happened, such as a written statement, so I make an adverse inference against Mr. Mashinchi on this issue as well.

31. Mr. Mashinchi also relies on the Form K. It says that SL21's tenants were changing on August 1, 2021 to add JS and KC. The Form K was signed by an unnamed tenant and, purportedly, Mika Goto as agent for the landlord. The Form K did not state the end date of the tenancy.
32. As noted earlier, the parties dispute whether Mika Goto signed the Form K. Mika Goto signed a September 27, 2022 written statement denying that they signed the Form K or otherwise approved it. They specifically said the signature was a forgery. From my review, I find that Mika Goto's signatures on the Form K and written statement are clearly different. Given the large discrepancy, I find it unnecessary for a handwriting expert to provide evidence to make such a finding. So, I find Mika Goto did not sign the Form K because of their statement, the apparent difference in signatures, and the evidence, discussed above, that is inconsistent with the existence of a binding tenancy agreement. I find it likely that Mr. Mashinchi forged Mika Goto's signature as he provided the form.
33. Given my findings about the Form K, I find Mr. Mashinchi to be less credible overall. I find this supports a finding that the tenancy agreement in evidence does not document any actual agreement at all.
34. In summary, as bylaw 30 prohibits rentals of less than 30 days, I find Mr. Mashinchi breached bylaw 39 for renting out SL21 to JS and KC for 20 days.

Are any remedies appropriate?

35. Mr. Mashinchi says that, regardless of whether he breached the bylaws, the strata did not comply with the procedural requirements to levy the fines.
36. Section 135 of the SPA 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.

37. I find that the strata strictly complied with SPA section 135 for the following reasons. The strata manager received an emailed complaint from Brad Ruud, as noted above. The strata provided Mr. Mashinchi with written particulars of the complaint in its August 26, 2021 letter. Mr. Mashinchi says the letter should have been more detailed, but I disagree. SPA section 135 only requires the strata to provide written “particulars of the complaint”. The strata stated the allegation, identified the strata lot by unit number, identified the date range of the breaches, and cited bylaw 39 in full. It also warned about fines. I find SPA section 135 does not require more than this.
38. The strata also provided Mr. Mashinchi an opportunity to respond, and he did so through both a written response and by attending a requested hearing.
39. I also find that the strata complied with SPA section 135(2) by giving Mr. Mashinchi written notice of its decision shortly after the hearing of December 2 on December 6, 2021.
40. I also note that section 7.1 of the *Strata Property Regulation* (SPR) allows strata corporations to fine a maximum of \$1,000 daily for contraventions of vacation, travel, and temporary accommodation bylaws. The fines do not exceed this amount, so I find strata’s fines are permitted under the SPR.
41. Given the above, I find the strata properly levied the fines at issue. I dismiss Mr. Mashinchi’s claims.

CRT FEES, EXPENSES AND INTEREST

42. 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 dismiss Mr. Mashinchi's claim for reimbursement of CRT fees.
43. The strata claims reimbursement for legal fees incurred after Mr. Mashinchi applied for dispute resolution at the CRT. The strata says Mr. Mashinchi provided misleading evidence. It says he should pay the strata's legal fees as deterrence or punishment.
44. CRT rule 9.5(3) that says the CRT generally does not order one party to pay another party's lawyer fees unless there are extraordinary circumstances. In making that determination, CRT rule 9.5(4) says I may consider the complexity of the dispute, the degree of involvement of the lawyer, whether a party's conduct caused unnecessary delay or expense, and any other factors the CRT considers appropriate.
45. The CRT has previously awarded reimbursement of legal costs where an element of deterrence or punishment is necessary because of reprehensible conduct during the CRT's proceedings. Although CRT decisions are not binding, I agree with the reasoning in these decisions. See, for example, the Vice Chair's decisions of *Parfitt et al v. The Owners, Strata Plan VR 416 et al*, 2019 BCCRT 330 and *Napoleone v. The Owners, Strata Plan BCS 2460 et al*, 2018 BCCRT 246. As noted in *Parfitt et al* citing *Hirji v. Owners Strata Corporation VR44*, 2016 BCSC 548, reprehensibility will likely be found in circumstances where there is evidence of improper motive, abuse of the court's process, misleading the court and persistent breaches of the rules of professional conduct and the rules of court that prejudice the applicant.
46. I have found on a balance of probability that Mr. Mashinchi forged Mika Goto's signature. As the forged signature and accompanying document were produced as part of the evidence, I find this was both an abuse of the CRT's process and an attempt to mislead it. I find this is reprehensible conduct that requires deterrence or punishment, as discussed in the cases cited above. So, I find it appropriate to order Mr. Mashinchi to reimburse the strata's legal fees.

47. The strata previously claimed reimbursement for \$4,500. In submissions, it says the total legal fees are now \$7,437.37. It supported this amount by providing legal invoices dated April 6, June 1, August 10, and September 30, 2022. They cover work in connection with this dispute for the period of March 14 to September 29, 2022. This date range occurs after the CRT issued the Dispute Notice on January 12, 2022. The invoices total the claimed amount of \$7,437.37. So, I find it appropriate to order Mr. Mashinchi to pay the claimed amount of \$7,437.37.
48. The Court *Order Interest Act* (COIA) applies to the CRT. The strata is entitled to prejudgment interest on the amount of \$7,437.37, calculated from the dates of the underlying invoices to the date of this decision. This equals \$62.06.
49. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Mashinchi.

ORDERS

50. I dismiss Mr. Mashinchi's claims.
51. Within 30 days of the date of this order, I order Mr. Mashinchi to pay the strata a total of \$7,499.43, broken down as follows:
 - a. \$7,437.37 as reimbursement for legal fees, and
 - b. \$62.06 in pre-judgment interest under the COIA.
52. The strata is entitled to post-judgment interest under the COIA.

53. 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