



Civil Resolution Tribunal

Date Issued: January 20, 2023

File: ST-2022-000697

Type: Strata

Civil Resolution Tribunal

Indexed as: *Yu v. Aijoba*, 2023 BCCRT 56

B E T W E E N :

YUEK KUEN YU

APPLICANT

A N D :

EHIMEN AIJOBA and The Owners, Strata Plan EPS3495

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This strata property dispute is about bylaw fines.
2. The applicant, Yuek Kuen Yu, owns strata lot 91 (SL91) in the respondent strata corporation, the Owners, Strata Plan EPS3495 (strata). The other respondent,

Ehimen Aijoba, was Ms. Yu's tenant in SL91 from September 2019 to November 2021.

3. Ms. Yu and Mr. Aijoba are self-represented in this dispute. The strata is represented by a strata council member.
4. Ms. Yu says that during Mr. Aijoba's tenancy, the strata imposed \$3,950 in bylaw fines on him. Ms. Yu says she received no notice of the bylaw complaints or fines, as the correspondence was sent to the wrong address. She says she only learned about the fines when the strata began deducting money for the fines from her strata lot account. In her dispute application, Ms. Yu said the strata added \$2,400.00 in fines to her strata lot account, although later in submissions she said the fines amounted to \$2,350.00. Ms. Yu also says Mr. Aijoba refuses to reimburse her for the fines.
5. In her dispute application, Ms. Yu requested an order that the strata reimburse her for the fines, which she says are "illegal". Alternatively, if the fines are found to be valid, she requests an order that Mr. Aijoba reimburse her for them.
6. In its Dispute Response Form, the strata said the fines are valid, and were mostly imposed for violations of smoking and noise bylaws. The strata also says it "imposed the fines against the owner, not the tenant", although Mr. Aijoba was copied on the correspondence. The strata also says it "forgave" a remaining \$1,600.00 in unpaid fines.
7. Mr. Aijoba says the fines are invalid, in part because some of the alleged bylaw violations occurred when he was on vacation and not occupying the strata lot. He also says he paid Ms. Yu \$1,300.00 from the damage deposit, which should be refunded.

JURISDICTION AND PROCEDURE

8. 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.

9. 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 which includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
10. 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.
11. 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.

Jurisdiction Over Damage Deposit

12. In his Dispute Response Form, Mr. Aijoba requests reimbursement of \$1,300 he says he paid Ms. Yu from his damage deposit. Damage deposits arise from the *Residential Tenancy Act*, over which CRT does not have jurisdiction. Disputes about rental damage deposits are adjudicated by the Residential Tenancy Branch. So, I make no findings about the damage deposit in this dispute.

ISSUES

13. The issues in this dispute are:
 - a. Are the bylaw fines valid?

- b. If not, how much must the strata refund to Ms. Yu?
- c. Must Mr. Aijoba reimburse Ms. Yu for the fines, and if so, how much?

REASONS AND ANALYSIS

14. In a civil claim like this one, Ms. Yu, as applicant, must prove her claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision. I note that Mr. Aijoba did not provide evidence or submissions, despite having the opportunity to do so.

Validity of Fines

- 15. *Strata Property Act* (SPA) section 130(1) says a strata corporation may fine an owner for their own bylaw breaches, or breaches by the owner's visitors or guests, or a breach by an occupant if there is no tenant. However, if the strata lot is rented to a tenant, the strata may not fine an owner or landlord for the tenant's breaches. Rather, if the strata lot is rented, the strata may fine the tenant for the tenant's bylaw breaches, but cannot fine the owner or landlord directly.
- 16. SPA section 131(1) says if the strata fines a tenant, the strata may collect the fine from the tenant, the landlord, or the owner of the strata lot. But based on SPA section 130(1), the strata must first impose the fine on the tenant.
- 17. The parties agree that at the time of the alleged bylaw breaches, SL91 was rented to Mr. Aijoba. However, the correspondence in evidence indicates that the strata fined Ms. Yu, not Mr. Aijoba. Except for a August 28, 2020 fine letter, all of the correspondence in evidence about the alleged breaches and fines is addressed to Ms. Yu. All of the letters, including the August 28, 2020, specify that the “owner of the unit” was the person being fined. Also, in its Dispute Response Form, the strata stated that it “imposed the fines against the owner, not the tenant”.
- 18. Based on this, I find the strata imposed the bylaw fines on Ms. Yu, and did not fine Mr. Aijoba.

19. Since SPA section 130(1) says the strata was not entitled to fine Ms. Yu directly for her tenant's alleged bylaw breaches, I find the fines are invalid. For this reason, it is not necessary for me to address the parties' arguments about whether Ms. Yu received the notice letters.

Settlement Agreement

20. Email correspondence in evidence shows that during the CRT's facilitation phase, Ms. Yu and the strata agreed to the following:

- The Respondent The Owners, Strata Plan EPS3495 (the "Respondent Strata") has agreed to pay the Applicant the sum of \$1,175.00 (the "Strata Settlement Amount") in full and final settlement of the Applicant's claims against the Respondent Strata in this Dispute.
- The Applicant has agreed to accept the Strata Settlement Amount in full and final settlement of the Applicant's claims against the Respondent Strata in this Dispute.
- The Applicant and the Respondent Strata agree that the Tribunal Member hearing this Dispute may order the Respondent Strata to pay the Strata Settlement Amount to the Applicant within 30 days of the date of the final order in this Dispute.

21. Since the parties have agreed to these terms, I order that the strata must reimburse Ms. Yu \$1,175.00 for the bylaw fines.

22. Ms. Yu is also entitled to prejudgment interest on this amount, under the *Court Order Interest Act* (COIA). I calculate this from April 7, 2021, which equals \$19.88.

Must Mr. Aijoba reimburse Ms. Yu for the fines?

23. In her claim against Mr. Aijoba, Ms. Yu relies on SPA section 131(2). That section states:

If the landlord or owner pays some or all of the fine or costs **levied against the tenant**, the tenant owes the landlord or owner the amount paid. (Emphasis added.)

24. As explained above, the strata did not levy any fines against the tenant, Mr. Aijoba. Rather, the strata fined Ms. Yu directly. Therefore, even if there are fines for which the strata will not reimburse Ms. Yu, I find Ms. Yu is not entitled to collect them from Mr. Aijoba. I therefore dismiss Ms. Yu's claim against Mr. Aijoba.

CRT FEES AND EXPENSES

25. I find Ms. Yu was not substantially successful in this dispute, since she was not awarded anything more than what was agreed to in the CRT's facilitation phase. I therefore order no reimbursement of CRT fees. No party claimed dispute-related expenses, so I order none.

26. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Ms. Yu.

ORDERS

27. I order that within 30 days of this dispute, the strata must pay Ms. Yu \$1194.45, broken down as:

- a. \$1,175.00 as reimbursement of bylaw fines, and
- b. \$19.45 in prejudgment interest under the COIA.

28. Ms. Yu is entitled to postjudgment interest under the COIA, as applicable.

29. I dismiss Ms. Yu's claims against Mr. Aijoba.

30. 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.

Kate Campbell, Vice Chair