



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Richardson v. The Owners, Strata Plan VR283*, 2023 BCCRT 383

B E T W E E N :

HAMISH RICHARDSON

APPLICANT

A N D :

The Owners, Strata Plan VR283

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. Hamish Richardson is a tenant in the strata corporation, The Owners, Strata Plan VR283 (strata). The strata imposed 4 \$200 fines against Mr. Richardson for various bylaw contraventions. Mr. Richardson disputes 2 of the bylaw breaches, which were about his alleged mistreatment of the strata's security contractor and strata manager. He admits to the other 2 bylaw breaches, which occurred when he moved into the

strata, but says that the fines were excessive. He says that \$50 per breach would be reasonable. He asks for an order reducing the total amount of fines by \$700 by cancelling 2 of the fines and reducing the other 2 to \$50 each. Mr. Richardson is self-represented.

2. The strata stands behind its decisions to fine Mr. Richardson, including the amounts. It asks me to dismiss his claims. The strata is represented by a council member.

JURISDICTION AND PROCEDURE

3. 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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
4. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
5. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.

6. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the tribunal 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

7. The issues in this dispute are:
 - a. Was it significantly unfair for the strata to fine Mr. Richardson the \$200 maximum for violating the strata's moving and parking bylaws?
 - b. Did Mr. Richardson verbally abuse, threaten, or harass a security guard or the strata manager?
 - c. Should I order the strata to reduce or cancel any of the fines?

BACKGROUND AND EVIDENCE

8. In a civil claim such as this, Mr. Richardson as the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. The strata was created in 1976 and comprises a residential high-rise tower. Mr. Richardson is a tenant in a strata lot on the 19th floor.
10. The strata repealed and replaced its previous bylaws by filing a complete set of bylaws in the Land Title Office on December 6, 2018. Relevant to this dispute, bylaw 11(6) requires tenants to park only in the parking stall the strata has allocated to them. Bylaw 44(1) requires tenants to provide the strata with 5 days' notice prior to moving furniture and other effects into or out of the building, restricts moving hours to between 8am and 6pm, requires users to lock the elevator door open rather than propping it open to prevent damage, and to use the strata's rear loading bay and a designated "freight elevator".

11. The strata filed a bylaw amendment on May 11, 2021, which added bylaw 53. Among other things, this bylaw prohibits tenants from harassing, threatening, or verbally abusing any strata employee, contractor, or agent.

EVIDENCE AND ANALYSIS

Was it significantly unfair for the strata to fine Mr. Richardson the \$200 maximum for violating the strata's moving and parking bylaws?

12. Mr. Richardson moved into the strata between December 30, 2021, and January 1, 2022. He made several loads spread out over these 3 days. It is undisputed that most of the items he moved were small items but did include some larger items like a bunkbed and mattress.
13. Mr. Richardson says that he spoke to the strata's building manager on December 30, 2021, who approved his gradual move-in plan. In an email that day to Mr. Richardson's landlord, the building manager confirmed that Mr. Richardson would not be subject to a move-in fee but asked that he "bring his stuff little by little since the elevator will not be locked for him". There were apparently no issues with Mr. Richardson's move on December 30, 2021. However, on January 1, 2022, the building manager emailed the landlord again, indicating that Mr. Richardson had moved in much more than the building manager had anticipated. The building manager said that the amount of things Mr. Richardson had moved in between December 30 and January 1 was "not okay".
14. A January 1, 2022 report from the strata's security contractor outlines other issues with Mr. Richardson's move. It said that on December 31, Mr. Richardson used a parking spot with a 15-minute limit rather than the strata's loading bay. It also noted that Mr. Richardson was still moving at 10:30pm. The report also said that on January 1, Mr. Richardson moved multiple times and declined the use of the freight elevator when the security guard offered it.
15. On February 1, 2022, the strata manager wrote Mr. Richardson that it had received a complaint about his move. The strata manager identified 5 bylaw breaches: failing

to provide the required 5 days' notice of the move, moving outside approved hours, failing to use the loading door and freight elevator, using a visitor parking stall, and damaging an elevator by propping its door open. The letter said that the strata was contemplating a \$200 fine per infraction, and invited Mr. Richardson to respond to the complaint within 21 days. Mr. Richard sent a lengthy response on February 16, 2022, in which he admitted most of the alleged bylaw breaches (he disputed propping the elevator door open). The strata imposed 2 \$200 fines on March 23, 2022.

16. As mentioned above, Mr. Richardson admits that his move breached several bylaws, and I find that the evidence establishes 4 bylaw breaches. I find that the evidence falls short of proving that Mr. Richardson propped the elevator door open. The January 1, 2022 security report indicates that the security guard did not witness this behaviour but made an assumption based on an elevator malfunction.
17. Mr. Richardson says that it would be fair for him to pay \$100 in fines for 2 bylaw infractions. He makes 2 related arguments about why he considers \$400 excessive.
18. First, he says that no one gave him a copy of the bylaws before he moved in. Section 146 of the *Strata Property Act* (SPA) requires a landlord to give a prospective tenant a copy of the current bylaws and rules before the rental begins. According to Mr. Richardson, his landlord breached this obligation, so he was unaware of the strata's detailed moving bylaws when he moved in. While that may be true, section 146(3) of the SPA says that a tenant is bound by the bylaws even if the landlord failed to give them a copy. I therefore find that the landlord's failure to give Mr. Richardson a copy of the bylaws has no direct impact on the strata's ability to enforce the bylaws against him.
19. Second, Mr. Richardson argues that his fines should be lowered because others share the blame for his missteps. He says that he attempted to follow the directions of the building manager, his landlord, and the security guards, which was at times contradictory. He says that he acted in good faith. Based on the emails from the building manager and several text messages between Mr. Richardson and his

landlord, I find that Mr. Richardson did not generally intend to breach the moving bylaws.

20. Mr. Richardson does not identify the legal basis for arguing that the strata should be ordered to reduce the fines. In *Chorney v. The Owners, Strata Plan VIS770*, 2016 BCSC 148, the court said that a strata corporation has wide discretion on how to address bylaw enforcement as long as it complies with principles of procedural fairness and does not treat anyone significantly unfairly. While *Chorney* was about a strata corporation's enforcement procedure, I find that these comments apply equally to a strata corporation's decisions about whether, and how much, to fine someone. I find that Mr. Richardson must prove that the strata's decision to impose 2 separate \$200 fines for breaching the bylaws during his move was significantly unfair.
21. The CRT has authority to make orders remedying a significantly unfair act or decision by a strata corporation under section 123(2) of the CRTA. This provision contains similar language to section 164 of the SPA, which allows the BC Supreme Court to make orders remedying significantly unfair acts or decisions. The legal test for significant unfairness is the same for CRT disputes and court actions: *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113.
22. In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, the court confirmed that significantly unfair actions are those that are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust, or inequitable. In applying this test, the owner or tenant's reasonable expectations are a relevant factor but are not determinative. The use of the word "significant" means that the impugned conduct must go beyond mere prejudice or trifling unfairness. Generally, democratic strata council decisions are entitled to considerable deference: *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44.
23. Here, I find that the strata's decision to impose \$400 in fines was not significantly unfair. First, the strata's bylaws authorize fines up to \$200 per bylaw infraction, which is also the maximum set by the *Strata Property Regulation*. There is no bylaw

mandating stepped fines or otherwise limiting the strata's discretion about how much to fine someone.

24. As for Mr. Richardson's suggestion that others share the blame for his bylaw infractions, I am not persuaded that it was significantly unfair for the strata to impose \$400 in fines even if Mr. Richardson was earnestly attempting to follow directions. I note that he took no active steps to determine what the strata's bylaws actually were, such as by requesting a copy of them. I also note that Mr. Richardson breached 4 bylaws during the move, and did so multiple times over several days because each load represented a separate breach. Despite this, the strata only proceeded with 2 bylaw fines. In other words, the strata could have fined Mr. Richardson much more than \$400, so in that sense, I find it exercised restraint. While it would have been open to the strata to impose smaller fines, I find that fairness did not demand that it do so. I find that the strata's decision was not unduly harsh or burdensome, or otherwise significantly unfair. I dismiss this aspect of Mr. Richardson's claim.

Did Mr. Richardson verbally abuse, threaten, or harass a security guard or the strata manager?

25. The other 2 fines at issue relate to the strata's allegation that Mr. Richardson's conduct towards the strata's security contractor and strata manager constituted verbal abuse or harassment, contrary to bylaw 53. Mr. Richard denies any such conduct.

26. The first fine relates to a January 12, 2022 incident at the strata manager's office, which is not located on strata property. Much of what happened that day is undisputed. Mr. Richardson attended the strata manager's office to discuss several issues with the beginning of his tenancy, including the move and parking issues. He wanted to speak with the strata manager personally, but the receptionist told him to put his concerns in writing. He did not want to leave until he had been assured that his concerns would be addressed. The strata manager entered the office's reception area and asked Mr. Richardson to leave, but Mr. Richardson refused. Then a security guard attended who also asked Mr. Richardson to leave, and Mr. Richardson refused again. Eventually, Mr. Richardson spoke to his landlord on the phone and, reassured

by the landlord that his concerns would be addressed, he left. By this point, the strata manager had called the police, but it appears the incident ended before the police arrived.

27. The strata says that Mr. Richardson spoke “loudly, forcefully, and in a threatening manner” and that when refusing to leave the office he postured himself “aggressively and defiantly”. There is no evidence to corroborate the strata’s more detailed allegations, such as a statement from the security guard, the strata manager, or the receptionist. So, find these allegations unproven. The only evidence supporting the strata’s claim is the security guard’s written report, which said that Mr. Richardson “became verbally abusive” towards the security guard. However, the report does not describe Mr. Richardson’s behaviour further. For his part, Mr. Richardson denies any abusive, threatening, or harassing conduct.
28. I find that the security guard’s vague reference to “verbal abuse” in their report is insufficient to prove that Mr. Richardson breached bylaw 53. I find that the allegation of verbal abuse is unproven because of the absence of evidence about what Mr. Richardson is alleged to have said.
29. The strata also argues that Mr. Richardson’s refusal to leave the strata manager’s office was threatening and harassing. I find that refusing to leave an office after being asked to do so is inherently confrontational. I further find that it could be perceived as threatening in some circumstances. The question is whether the strata has proven that Mr. Richardson’s conduct rose to that level.
30. In considering whether Mr. Richardson’s refusal to leave breached bylaw 53, I bear in mind that under section 119 of the SPA, a strata corporation may only make bylaws about the control, management, maintenance, use and enjoyment of strata lots, common property, and common assets, and for the administration of the strata corporation. Given those constraints, I find that a strata corporation may only make bylaws about a person’s conduct off strata property if it affects the administration of the strata. Applied to bylaw 53, I find that the bylaw’s scope is limited to misconduct that is serious enough to jeopardize a strata contractors’ willingness to work with the

strata. In other words, I find that the scope of the strata's authority to regulate an owner or tenant's behaviour off strata property is limited.

31. Bearing that in mind, while Mr. Richardson's refusal to leave was confrontational, I find that it was not harassing, abusive, or threatening within the meaning of bylaw 53. There is no evidence that anyone felt unsafe during the encounter, or that Mr. Richardson's conduct affected the strata's relationship with either its manager or security contractor. I find that the strata was not entitled to fine Mr. Richardson for anything that happened on January 12, 2022. I order the strata to cancel the fine.
32. The second fine relates to Mr. Richardson's decision to contact the security contractor complaining about a security guard's job performance. The strata provided an email between employees of the security contractor that said Mr. Richardson accused a security guard of "filing false reports" and "harassing him regarding decal parking rules". The strata manager's February 11, 2022 letter outlining the alleged bylaw contravention also said that Mr. Richardson intended to contact the Security Licensing Department. The strata said these actions amounted to harassment.
33. I disagree with the strata's characterization of Mr. Richardson's complaint. I find that harassment involves repetitive or persistent actions designed to annoy or bother someone. While Mr. Richardson and the security guard had disagreements on Mr. Richardson's moving day and in the strata manager's office, I find that complaining to the security guard's employer was not part of a repetitive or persistent effort to annoy or bother the security guard. There is no suggestion that Mr. Richardson ever contacted the security contractor again after his initial complaint or that he had any further conflicts with the security guard. There is no evidence that anything came of the complaint, such as discipline against the security guard. There is no evidence that he actually contacted the Security Licensing Department. There is no statement from the security guard that they felt harassed by the complaint. I order the strata to cancel the \$200 fine.
34. Mr. Richardson also asks that the interest on any cancelled fines should also be cancelled. He says that his landlord told him the strata had charged interest on the

fines. The strata does not deny that it charged interest. Instead, the strata says that Mr. Richardson has not proven that it charged interest. It is difficult to understand this submission given the strata must know whether it has charged interest or not, whereas it is understandable that Mr. Richardson does not have direct access to that information. I also note that the SPA does not provide for charging interest on fines. I find it appropriate to order the strata to also cancel any interest charged on the 2 cancelled fines, even though the evidence is not clear that the strata has imposed any interest.

TRIBUNAL FEES AND EXPENSES

35. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mr. Richardson was partially successful, so I find he is entitled to reimbursement of half of his \$225 in CRT fees, which is \$112.50. Neither party claimed any dispute-related expenses.

DECISION AND ORDERS

36. I order that:

- a. The strata immediately cancel the 2 \$200 fines (a total of \$400) it imposed on Mr. Richardson for breaching bylaw 53, including any interest it charged on those fines.
- b. Within 30 days of this decision, the strata pay Mr. Richardson \$112.50 in CRT fees.

37. Mr. Richardson is entitled to post judgement interest under the *Court Order Interest Act*, as applicable.

38. I dismiss Mr. Richardson's remaining claims.

39. 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.

Eric Regehr, Vice Chair