



Civil Resolution Tribunal

Date Issued: June 29, 2023

File: ST-2022-006819

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan EPS3583 v. Kondra*, 2023 BCCRT 551

B E T W E E N :

The Owners, Strata Plan EPS3583

APPLICANT

A N D :

KALE JOHN KONDRA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about bylaw fines imposed for alleged short-term rental of a strata lot.
2. The respondent Kale John Kondra owns strata lot 276 (SL276) in the applicant strata corporation, The Owners, Strata Plan EPS3583 (strata). The respondent is represented by a lawyer, Christine Renner. I infer the strata is represented by a strata council member.

3. The strata says the respondent breached its short-term rental bylaw (bylaw 54) by permitting rental of SL276 through AirBnB and that they are therefore responsible for \$30,000 in bylaw fines. The strata seeks an order that the respondent pay it \$30,000 for the imposed fines.
4. The respondent says, although they are the owner of SL276, they were bound by a BC Supreme Court order that granted exclusive occupancy of SL276 to the respondent's former spouse, AT, during the relevant time when the fines were imposed. They say the conduct of AT was out of their control because the court order prevented them from having any say in how SL276 was used.
5. As explained below, I dismiss the strata's claims and this dispute.

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. 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.
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 questions of the parties and witnesses and inform itself in any other way it considers appropriate.

9. Under section 123 of the CRTA and the CRT rules, 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.

ISSUE

10. The issue in this dispute is did the respondent breach bylaw 54 and if so, is the strata entitled to imposed fines of \$30,000?

BACKGROUND, EVIDENCE AND ANALYSIS

11. As applicant in a civil proceeding such as this, the strata must prove its claims on a balance of probabilities, meaning more likely than not. I have considered all the submissions and evidence provided by the parties, but refer only to information I find relevant to explain my decision.
12. The strata plan shows the strata was created in December 2017 under the SPA. The strata is comprised of a 50-storey high rise building with 280 strata lots.
13. The strata's bylaws were significantly amended on April 24, 2019. Amendments filed with the Land Title Office on that date include new bylaw 54, which is central to this dispute. I reproduce the relevant part of bylaw 54 as follows (my emphasis):

54. Short Term Rental

- (1) No Owner shall rent a strata lot for a period shorter than one (1) month.
- (2) When an owner rents a strata lot in contravention of the above bylaw, the Owner shall be subject to a fine of up to \$1,000 per day and the Strata Corporation shall take all necessary steps to terminate the lease or tenancy, including, but not limited to, seeking a declaration or court injunction to enforce the bylaw(s)....

14. The parties provided brief submissions and limited evidence, however, the following facts are not in dispute.
15. On April 28, 2021, the BC Supreme Court granted an order of exclusive occupancy

of SL276 to AT from April 27, 2021, to June 29, 2021 under the *Family Law Act*, among other things. The Court extended its exclusive occupancy order twice until it was denied on September 24, 2021.

16. On August 5, 2021, a lawyer whom I infer represented the respondent wrote to a law firm representing AT about the exclusive occupancy of SL276, among other matters. The letter advised that the respondent's lawyer became aware that AT was listing SL276 "for rental on AirBnB" based on an email received from the strata manager on July 30, 2021. The lawyer's letter stated the AirBnB listing was contrary to the strata's bylaws and subject to a fine of \$1,000 per day, and requested that AT immediately stop renting SL276 and remove the posting from the AirBnB website. I note a copy of the AirBnB listing is not before me.
17. On August 27, 2021, the strata's concierge prepared an incident report for the strata manager. The report shows the concierge received complaints from building residents about "different people going in and out of [SL276]". The concierge reported they had reviewed fob activities and video camera footage and determined different groups of people lived in SL276 between July 14 and August 16, 2021.
18. On August 31, 2021, the strata manager wrote to the respondent on the strata's behalf. The letter advised of the reported complaints about AT's use of SL276 for short-term rentals between July 14 and August 14, 2021, contrary to bylaw 54, and stated that fines could be imposed at \$1,000 per day. The letter also requested a reply from the respondent within 2 weeks and advised he could request a council hearing. Only the first page of the letter is before me.
19. On September 21, 2021, the strata manager wrote to the respondent to advise of the strata's decision to impose a bylaw fine of \$1,000 per day for 30 days (July 14 through August 14, 2021) and requested payment of \$30,000.

Did the respondent breach bylaw 54?

20. For the reasons that follow, I find the respondent did not breach bylaw 54.

21. First, the bylaw only prohibits owners from renting their strata lots. I find the evidence clearly shows it was not the respondent owner that allegedly allowed any rental of SL276, but rather AT, who had been given exclusive occupancy by the Court.
22. Second, the bylaw only prohibits rentals that are less than 1 month. The strata alleges the respondent breached bylaw 54 because SL276 was being listed or used through the AirBnB platform. However, the strata has no bylaw that explicitly mentions AirBnB or other short-term use.
23. The courts have distinguished rentals from licensing arrangements, such as short-term accommodation. In summary, the courts have found that rentals involve an interest in land, such as a legal right of possession conferred to a tenant by a landlord under a rental agreement, whereas short term accommodations, such as vacation rentals, involve a licensing arrangement. See for example *HighStreet Accommodations Ltd. v The Owners, Strata Plan BCS2478*, 2017 BCSC 1039, affirmed by the Court of Appeal in 2019 BCCA 64, and *Semmler v The Owners, Strata Plan NES3039*, 2018 BCSC 2064.
24. The legislature has also recognized this distinction by allowing maximum fines of \$200 every 7 days for contravention of a rental restriction bylaw, and \$1,000 daily for contravention of vacation, travel, and temporary accommodation bylaws under *Strata Property Regulation* section 7.1.
25. *Semmler* considered a similarly worded bylaw as bylaw 54 here. The Court found within the meaning of the SPA, the words “rent” and “rental” do not apply to licences and only apply to tenancies. Following *Semmler*, I find bylaw 54 only applies to rentals or tenancies and not to short-term accommodations such as vacation rentals through AirBnB.
26. Therefore, I find the respondent did not breach bylaw 54.
27. Given this conclusion, it follows that the imposed fines are invalid. On this basis, I dismiss the strata claims and this dispute.

CRT FEES AND EXPENSES

28. 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. The respondent owner was the successful party but did not pay CRT fees or claim dispute-related expenses, so I order none.
29. Under section 189.4 of the SPA, the strata may not charge any dispute-related expenses against the respondent.

ORDER

30. I dismiss the strata's claims and this dispute.

J. Garth Cambrey, Vice Chair