Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Hall v. The Owners, Strata Plan EPS5293*, 2023 BCCRT 695

B E T W E E N :

DENNIS WILLIAM HALL and CATHERINE ANN HALL

APPLICANTS

A N D :

The Owners, Strata Plan EPS5293

RESPONDENT

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. This dispute is about move-in and move-out fees and change in occupancy fees charged under 2 sets of rules. The applicants, Dennis William Hall and Catherine Ann Hall, are former owners of strata lot 48 (SL48) in the respondent strata corporation, The Owners, Strata Plan EPS5293 (strata). The Halls say they paid the

fees under protest when they sold SL48. They say they are not liable under the wording of the rules. They seek reimbursement of $1,500.

2. The strata disagrees. It says it appropriately charged the fees as required under its rules.

3. Dennis Hall represents the Halls. A strata council member represents the strata.

4. For the reasons that follow, I find the Halls have proven part of 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.

9. I note that the strata previously counterclaimed for the fees at issue. The strata later withdrew its counterclaim because the Halls paid the fees. So, I have only decided the Halls' claim in this dispute.

The Limitation Act

10. Section 6 of the *Limitation Act* says that the basic limitation period is 2 years, and that a claim may not be started more than 2 years after the day on which it is "discovered". Under section 8, a claim is "discovered" when the applicant knew or reasonably ought to have known they had a claim against the respondent and a court or tribunal proceeding was an appropriate means to seek a remedy. CRTA section 13.1 says the basic limitation period under the *Limitation Act* does not run after the applicant requests dispute resolution with the CRT.

11. The strata says that the Halls' claim for reimbursement of some of the fees "may be" out of time. The Halls did not directly address this submission. I find all the Hall's claims are in time for the following reasons.

12. As noted below, the evidence shows the strata charged fees totaling $1,500 over the period of June 24, 2021 to September 14, 2022. The Halls applied for dispute resolution on August 12, 2022. A receipt shows the Halls paid the $1,500 on February 21, 2023.

13. Given the above, I find that the earliest the Halls could have discovered any part of their claims was June 24, 2021. So, they had until June 24, 2023 to apply for dispute resolution. The Halls applied almost a year before the time to do so expired. So, I find all their claims are in time.

Settlement Privilege

14. In submissions, the Halls say they sent emails to the strata manager, Sam Hasham, on February 16 and 17, 2023. They say these emails were about a proposal to pay the $1,500 at issue into trust instead of to the strata.

15. The strata objects to Halls' submissions about these emails. It says that the Halls are referring to settlement discussions that occurred during the facilitation stage. The Halls disagree. They say they were not settlement discussions and were simply exercising a right under section 114 of the *Strata Property Act* (SPA). In general terms, that section allows an owner to pay money into court or to the strata in trust, pending resolution of whether the money should be paid to the strata.

16. Settlement privilege normally protects documents and communications created for the purpose of settlement from production to other parties to the negotiations and to strangers. See *Middlekamp et al v. Fraser Valley Real Estate Board*, 1992 CanLII 4039 (BC CA) at paragraphs 18 to 20.

17. As the February 2023 emails to Sam Hasham are only mentioned in submissions, I put no weight on them as evidence. Alternatively, I find from the parties' submissions that the emails were likely created for settlement purposes, and are protected from disclosure under settlement privilege. For both those reasons, I have not considered the February 2023 emails in this dispute. In any event, I find nothing would turn on these emails.

ISSUES

18. As discussed below, it is undisputed that the Halls claim reimbursement for fees charged under 2 different sets of rules. So, I find the issues in this dispute are as follows:

    a. Must the strata reimburse the Halls any of the move-in and move-out fees totaling $300, charged under the rules in effect from June to October 2021?

    b. Must the strata reimburse the Halls any of the change in occupancy fees totaling $1,200, charged under the rules in effect from December 2021 to September 2022?

BACKGROUND, EVIDENCE AND ANALYSIS

19. In a civil proceeding like this one, the Halls as 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, including cited case law, but refer only to the evidence and argument that I find relevant to provide context for my decision.

20. The following facts are undisputed. A title search shows the Halls first became owners of SL48 in February 2019. The strata plan shows SL48 is on the fourth floor. The Halls rented it out using a property manager, Elite Vacation Homes (Elite).

21. The strata provided copies of Elite's rental ads for SL48. Elite advertised on the websites for Airbnb, Booking.com, and Vrbo. The text and photos show that SL48 was a 1 bedroom, fully furnished apartment. Each stay was advertised for a minimum of 30 days. However, the fees discussed below show that the stays were often shorter than that.

22. It is undisputed that from around June to October 2021, the strata had specific rules about moving in and out of the strata. Rule 3 initially said, "A $100 Move-In/Move-out Fee is required to be paid to the concierge prior to your elevator reservation." It is undisputed that around November or December 2021, these rules changed. Rule 3 now said, "A $150 Change in Occupancy Fee is required to be paid to the Property Manager or Concierge on or before the date of occupancy".

23. A November 18, 2022 letter from the strata's property manager shows the strata charged the Halls $300 in fees under the old rules. They are as follows: $100 for a move-out fee on June 24, 2021, $100 for a move-in fee on July 9, 2021, and $100 for a move-in fee on October 2, 2021.

24. The letter also shows the strata charged $150 for change in occupancy fees under the new rules for a total of $1,200. The dates of each charge are as follows: December 30, 2021, January 6, February 1, April 12, May 17, June 27, August 2, and September 14, 2022.

25. The Halls requested a meeting that the strata held on July 21, 2022. In its July 28, 2022 decision letter, the strata refused to reduce or eliminate any of the fees. The strata demanded payment of the fees in a subsequent November 18, 2022 letter.

26. It is undisputed that the Halls sold SL48 around February 2023. A February 21, 2023 receipts shows the Halls paid the strata the $1,500 owing.

Issue #1. Must the strata reimburse the Halls any of the move-in and move-out fees totaling $300, charged under the rules in effect from June to October 2021?

27. Under SPA section 125(1), a strata may make rules governing the use, safety and condition of common property and common assets. Section 6.9 of the *Strata Property Regulation* (SPR) says a strata corporation may impose user fees for the use of common property or common assets if they are reasonable and set out in a bylaw or a rule that has been ratified under SPA section 125(6).

28. Previous decisions have held that move-in and move-out fees are a form of user fee. See, for example, The *Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164. It is undisputed that all versions of the rules were ratified and valid at the time.

29. I will consider the prior rule first. As noted above, it said, “A $100 Move-In/Move-out Fee is required to be paid to the concierge prior to your elevator reservation.” Neither the rules nor the bylaws define the terms move-in or move-out.

30. The Halls say they are not liable for the move-in and move-out fees because they should only apply if the renters are tenants. They say their renters were licensees instead, so they never “moved in” or “moved out”. They cite, among other cases, *Clark v. The Owners, Strata Plan EPS741*, 2022 BCCRT 567 to support this interpretation. They also say alternatively that the rule’s wording says that the fees only apply if the renter uses the strata’s elevator to bring in heavy items. They say that the renters did not do so. The Halls also say the fee is unreasonable and cite *Frost v. The Owners, Strata Plan BCS 3463*, 2022 BCCRT 1327 in support.

31. The strata disagrees and says it applies to all changes in occupancy, regardless of whether the elevator has been used. It also says that it has consistently applied the rule to other owners in the strata in this manner.

32. In *Clark* at paragraph 36, the Vice Chair concluded that someone occupying a furnished strata lot with limited personal belongings was not "moving in" in the ordinary sense of the phrase. In *The Owners, Strata Plan VR245 v. Jiwa*, 2021 BCCRT 1171, the CRT similarly found that "move" implied moving furniture or large household items. In both these decisions, the bylaws at issue did not define a "move" or "move-in".

33. Although CRT decisions are not binding, I find their reasoning applies. Here, I find the renters did not "move in" or "move out" under the rules for several reasons.

34. First, I find the renters of SL48 were licensees and not tenants. The applicable law is laid out in *Semmler v. The Owners, Strata Plan NES3039*, 2018 BCSC 2064 at paragraph 45:

    a. A person may occupy a strata lot under a tenancy agreement or a license agreement.

    b. A tenant is a person who rents all or part of a strata lot and receives an interest in the property including exclusive possession of the premises.

    c. An occupant is a person other than an owner or tenant who occupies a strata lot.

    d. A licensee is an occupant but not a tenant.

    e. Provisions of that SPA that relate to tenants and tenancies do not apply to licensees.

35. I find it clear from the ads in evidence that the Halls did not intend to create any tenancy agreements. The renters were called "guests" on the websites and had fixed check-in and check-out dates. The strata's demand letter shows that these guests frequently changed, sometimes less than the advertised minimum stay of 30 days.

36. I acknowledge the strata's submission that each time the SL48 occupants changed, the Halls provided the strata a Form K. Under SPA section 146(2), a landlord must provide the strata a Form K signed by the tenant. The Form K provides a tenant notice of a tenant's responsibilities in the strata, including complying with the strata's bylaws and rules. The Form K identifies its signatories as landlord and tenant.

37. Ultimately, I do not find the Form Ks determinative. The Halls say that they filled out the Form Ks because they felt the strata should have the renters' contact information. I accept this explanation. I put greater weight on the fact that the renters stayed for short periods of time and the website ads showed a lack of any intent to create a tenancy agreement.

38. Second, the ads show SL48 was furnished. I find that this, combined with the relatively short stays of the licensees, means that the licensees did not move any furniture or other large household appliances. This is inconsistent with a conclusion that any of them "moved in" or "moved out".

39. Third, the rule said that the move-in and move-out fees must be paid prior to reserving an elevator. I find that this wording means that the fees were meant to apply to tenants or owners moving in as they would likely have furniture or other large items, rather than licensees.

40. For all those reasons, I find the Halls were not required to pay the move-in or move-out fees. I order the strata to reimburse the Halls $300 for the move-in and move-out fees charged from June to October 2021. Given this, I need not consider whether the fees were reasonable under SPR section 6.9(1)(a).

Issue #2. Must the strata reimburse the Halls any of the change in occupancy fees totaling $1,200, charged under the rules in effect from December 2021 to September 2022?

41. I will now consider the second, newer rule. For reference, it said, "A $150 Change in Occupancy Fee is required to be paid to the Property Manager or Concierge on or before the date of occupancy".

42. The strata says that the current rule captures both tenants and licensees. As stated above, in *Semmler* the court held that a licensee is an occupant. So, I find that the rule applies to changes in licensees. Further, the rule does not mention moving in or moving out, so I find there is no requirement for the fee to require a person to move large furniture or other such items to apply.

43. As the rule applies, I find this only leaves the question of whether the fee of $150 was reasonable as required by SPR section 6.9(1). The correct approach in determining whether fees are reasonable is to weigh the objective evidence of a) prevailing market conditions at the time, b) the costs the strata corporation incurs in facilitating moves in and out of the property, or both. See *Watson* at paragraphs 89 to 90.

44. The strata provided an undated letter from Sam Hasham. They said that they were a supervisor and strata manager with Proline Management Ltd. I find that Sam Hasham's letter is not expert evidence under the CRT rules because 1) the author works as the strata's manager, and 2) the author also had some involvement in the events in this dispute. So, I find they are not neutral. That said, I also find the letter provides the best evidence on what the prevailing market conditions may be and the costs involved to the strata for a change in occupancy.

45. Sam Hasham wrote the following. In their experience, strata corporations charged fees within a range of $100 to $500. They did so regardless of whether the occupant brought furniture or not. The fees were used to cover both administrative costs and wear and tear on the building. New occupants also disproportionately used the concierge's time to become familiar with the building. Generally, a change in occupancy involved 3 to 6 hours of work. This could include updating the phone security system, updating parking and storage assignments, checking for damage post-move, updating financial records and accounts, providing welcome packages for new occupants, and responding to new inquiries.

46. The strata's concierge, Nik Covey, also provided a May 7, 2023 letter. They outlined 22 administrative tasks across 3 pages that they had to complete with a change in

occupancy. They said it was not uncommon for them to spend 2 or more hours on the administration of a new resident at the strata.

47. The strata also provided evidence that the Halls' renters had been troublesome by causing a noise disturbance, fire, and gas leak. I do not find this relevant to the issue of the cost of changing occupancy.

48. The Halls did not provide any evidence about the prevailing market rates or the cost the strata incurs on changing occupants. Given the above, I find the strata has shown its fee is within the prevailing market conditions and is likely proportionate to the time spent by the strata manager and the concierge on such matters.

49. I dismiss the balance of the Halls' claim for reimbursement of $1,200.

CRT FEES, EXPENSES AND INTEREST

50. 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. The Halls had limited success and proved only a minor part of their claim. So, I order the strata to partially reimburse the Halls only $56.25 in CRT fees. The parties did not claim any dispute-related expenses.

51. The *Court Order Interest Act* applies to the CRT. The Halls are entitled to prejudgment interest on the reimbursed $300 move-in fee from February 21, 2023, the date of the payment, to the date of this decision. This equals $6.63.

52. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the Halls.

ORDERS

53. Within 30 days of the date of this order, I order the strata to pay the Halls a total of $362.88, broken down as follows:

a. $300 for reimbursement of move-in and move-out fees,

b. $6.63 in pre-judgment interest under the *Court Order Interest Act*, and

c. $56.25 in CRT fees.

54. The Halls are entitled to post-judgment interest, as applicable.

55. I dismiss the balance of the Halls' claims.

56. 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