



Civil Resolution Tribunal

Date Issued: August 22, 2023

File: ST-2022-008137

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 1336 v. Bendsen, 2023 BCCRT 715*

B E T W E E N :

The Owners, Strata Plan LMS 1336

APPLICANT

A N D :

DOROTHY BENDSEN and JOHN METSON

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about fines imposed for alleged contravention of an age restriction bylaw.
2. The respondents Dorothy Bendsen and John Metson co-own strata lot 1 (SL1) in the applicant strata corporation, The Owners, Strata LMS 1336 (strata) together with their mother, RM, who is not a party to this dispute. Ms. Bendsen and Mr. Metson are

siblings. They are represented by Mr. Metson. The strata is represented by a strata council member.

3. The strata says the respondents breached its age restriction bylaws by allowing RM's grandson (Ms. Bendsen's son), who was under the age of 55, to occupy SL1. The strata seeks an order that the respondents pay it \$2,400 for imposed bylaw fines.
4. The respondents say RM was the sole occupant of SL1 for many years until she was hospitalized in 2019. They say when RM returned to SL1 in early 2020, she required overnight medical care, which her grandson provided. The respondents do not dispute RM's grandson was under 55 years old, and that he stayed with her most nights. The respondents essentially say that RM's disability required overnight medical care and that she was entitled to reasonable accommodation under the *Human Rights Code* (Code). They ask that the bylaw fines be removed but they did not file a counterclaim.
5. As explained below, I find in favour of the respondents and dismiss the strata's claims.

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).
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.

Code Jurisdiction

8. There is evidence that the respondents filed a BC Human Rights claim in June 2022, but that claim has not yet been heard by the Human Rights Tribunal. CRTA section

114 gives the CRT jurisdiction to apply the Code. CRTA section 11(1)(d) says the CRT may refuse to resolve a claim or dispute within its jurisdiction that involves the Code. Read together, I find this means the CRT has discretion to resolve a discrimination claim. Given the respondents arguments about the Code, and I have exercised that discretion in this decision.

ISSUES

9. The issues in this dispute are:
 - a. Did the respondents breach the strata's age restriction bylaws and, if so, is the strata entitled to bylaw fines of any amount?
 - b. Has the strata failed to accommodate RM's disabilities and if so, what is an appropriate remedy?

BACKGROUND, EVIDENCE AND ANALYSIS

10. 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. I note that the strata did not provide reply submissions although they were given an opportunity to do so.
11. The strata plan shows the strata was created in April 1994 under the *Condominium Act*. It continues to exist under the *Strata Property Act* (SPA) and is comprised of 24 strata lots in single 3-storey building.
12. According to Land Title Office (LTO) documents, the respondents purchased SL1 with their mother in 2013.
13. The strata first filed age restriction bylaws with the LTO on January 29, 2014. On December 21, 2021, the strata filed consolidated bylaws with the LTO that retained bylaw 33.1 and amended bylaws 4.2 and 33.2. I find December 2021 bylaws apply to

this dispute. The relevant bylaws are bylaws 4.2, 33.1 and 33.2. I reproduce them in their entirety as follows:

4.2 New resident owners must request approval, in writing, to the Strata Corporation of any permanent living arrangements other than a spouse, partner or immediate family member, in compliance with Section 33 of these Bylaws. The Strata Corporation must not unreasonably withhold their approval.

33.1 Except for the Spouse of an Owner, the occupancy of the strata lot is restricted to persons fifty-five (55) years of age or over, unless ordered by a court or duly authorized administrative tribunal. Any such permission granted by the Strata Council shall be revocable only by special resolution of the Strata Corporation. For purposes of clarity, "occupation" means "residency", and this Bylaw deals with the power of the Strata Corporation pursuant to Section 123 of the Strata Property Act.

33.2 Except for the Spouse of an Owner, the occupancy of the strata lot is restricted to one additional person 55 years of age or over: in compliance with section 4.2 of these Bylaws.

14. The following facts are not in dispute.

15. RM resided in SL1 since 2013. She was 80 years old at the time. She suffered a stroke in late 2019 and was hospitalized. When RM returned from the hospital in early 2020, Ms. Bendsen advised the strata that her son (RM's grandson) would be staying with RM in SL1 for a few weeks. There is no evidence the strata objected to this arrangement. At that time, RM was about 87 and her grandson was in his mid-40s. By late 2021, the grandson was still staying in SL1, and RM required healthcare aides 2 to 3 times per week.

16. On March 22, 2022, the strata wrote to Ms. Bendsen asking that her son vacate SL1 by April 30, 2022, to comply with the strata's age restriction bylaws. Notably, the letter cited the age restriction bylaws but did not advise fines would be imposed if the

grandson failed to vacate the strata lot. Ms. Bendsen requested a council hearing, which was held on May 5, 2022. Ms. Bendsen and Mr. Metson's daughter attended on behalf of the SL1 owners. The minutes of the May 5, 2022, strata council meeting contain a detailed description of the discussion that took place. At the meeting, Ms. Bendsen presented the strata council with a May 3, 2022, note from RM's doctor, Dr. Martin Dodds. The note stated RM had been a patient of Dr. Dodds "for many years" and was struggling with health issues that occasionally required someone to stay with RM overnight, but not live with her permanently. The note also stated the frequency of overnight care was expected to increase.

17. On May 12, 2022, the strata wrote to the respondents recounting the hearing discussion and advising the strata council's decision for the grandson vacate SL1 was unchanged. However, the strata extended the deadline for the grandson to vacate to June 30, 2022. The letter went on to say that if the grandson did not vacate by June 30, the strata would immediately impose bylaw fines.
18. On May 13, 2022, Dr. Dodds wrote another note. The note reiterated that RM had ongoing medical concerns requiring overnight care, as well as a disability that required accommodation for the overnight care. The note did not specify what RM's disability was. The strata says it received this note on about May 16, 2022, but it did not comment on the note.
19. On July 5, 2022, the strata again wrote to respondents. The letter states the grandson was still residing in SL1 and that the strata had imposed a \$200 fine effective July 1, 2022, and that \$200 fines would continue every 7 days until the bylaw contravention ceased.
20. The strata informed the respondents of the fines imposed by correspondence dated July 30, August 29, and September 16, 2022. Between July 1 and September 16, 2022, the strata imposed a total of \$2,400 in fines. Mr. Metson responded to the strata's September 16, 2022, letter on September 20, 2022, stating that RM had been hospitalized again since about August 2, 2022.

Did the respondents breach the strata's age restriction bylaws and, if so, is the strata entitled to bylaw fines of any amount?

21. I find that bylaw 33.1 could be interpreted to allow the strata to make exceptions to the age bylaws, but the respondents do not make that argument. Further, the respondents do not explicitly deny RM's grandson mostly lived with her in SL1 since late 2020. Therefore, I find there is no issue that the age restriction bylaws were breached.
22. One of the bylaw enforcement options available to the strata under SPA section 129 is to impose fines. Under SPA section 130(1)(b), the strata may fine an owner if the bylaw is breached by "a person who is visiting the owner or was admitted to the premises by the owner for ... family reasons or any other reason". Applying these provisions to the circumstance here, I find the strata was entitled to fine the respondents. The maximum fine under the strata's bylaw is \$200, which is consistent with the maximum fine permitted under the SPA and *Strata Property Regulation*, and the weekly fine amount the strata imposed.
23. Under SPA section 135(1), before imposing fines, the strata must have received a complaint, given the owner written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if one is requested. Under section 135(2), the strata must give the owner written notice of its decision to impose fines "as soon as feasible". If a strata corporation fails to strictly follow these procedural requirements, the bylaw fines are invalid. See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449 and *The Owners, Strata Plan NW 307 v. Desaulniers*, 2019 BCCA 343.
24. For the following reasons, I find the strata did not strictly follow the procedural requirements of SPA section 135.
25. First, I accept a complaint was made, however, the strata did not inform the respondents that it was contemplating fines for breaches of its age bylaws before the May 5, 2022, council hearing. The strata's March 18, 2022, letter cited the age bylaws as well as smoking bylaws. I find the letter only advised that the strata was

contemplating fines for breach of the smoking bylaw and not the age bylaw. The strata confirmed this in the May 5, 2022, hearing minutes.

26. The Court in *Terry* stated at paragraph 28 (my emphasis):

In my view, an owner or tenant who may be subject to a *fine must be given notice that the strata corporation is contemplating the imposition of a fine for the alleged contravention of an identified bylaw or rule, and* particulars sufficient to call to the attention of the owner or tenant the contravention at issue.

27. So, while the respondents were aware of the age restriction bylaw contravention, they were not given notice that the strata was contemplating fines for the contravention.

28. Second, I do not find the strata's May 12, 2022, letter requesting the respondents comply with the age restriction bylaws or face "immediate" fines meets the requirements of section 135. I note this is the first correspondence that mentions the strata would impose fines for contravention of the age restriction bylaws, and that it followed a council hearing where bylaw fines were contemplated for other issues. The May 5, 2022, hearing minutes also do not say fines would be imposed if the respondents failed to address the age restriction bylaws. While the respondents were clearly aware of the age bylaw contravention, the strata did not give them notice that it was contemplating fines until the May 12, 2022 letter, where the strata said fines would be immediate. To comply with SPA section 135(1) and *Terry*, I find the strata should have given the respondents an opportunity to respond to the strata's May 12, 2022 letter including another hearing, which it did not.

29. Third, the July 5, 2022 letter also does not follow SPA section 135 as it states the strata had already imposed a \$200 fine on July 1, 2022, without giving the respondents an opportunity to respond.

30. Finally, the courts have found that continuing fines imposed under SPA section 135(3) are invalid if the strata does not follow section 135(1) before imposing the first fine. See *Dimitrov v. Summit Square Strata Corp.*, 2006 BCSC 967, at paragraph 33.

31. For these reasons, I find the bylaws imposed against the respondents are invalid. I dismiss the strata's claims and this dispute.
32. If I am wrong in this conclusion, I have also considered whether the strata has failed to accommodate RM's alleged disabilities.

Has the strata failed to accommodate RM's disabilities?

33. The respondents argue the strata failed to accommodate their mother's disability, contrary to the Code.
34. The strata argues it has a duty to uphold and enforce the strata's bylaws. While that is true, it may also have a duty to accommodate RM's disability. Under SPA section 121(1)(a), a bylaw is not enforceable to the extent it contravenes any enactment or law, including the Code.
35. Section 8 of the Code says, in part, that unless there is a bona fide (genuine) and reasonable justification, a person must not, because of a physical or mental disability, discriminate against another person regarding any accommodation, service, or facility customarily available to the public.
36. A strata corporation has a duty to accommodate occupants' disabilities unless the accommodation would cause the strata undue hardship. See *Konieczna v. Strata Plan NW2489*, 2003 BCHRT 38 and *St Pierre v. The Owners, Strata Plan BCS1586*, 2022 BCCRT 1284.
37. For the accommodation argument to succeed, the respondents must first prove that RM has a disability which triggers a duty to accommodate under the Code. They then must prove RM was adversely impacted by the strata's actions to impose fines while her grandson lived in SL1, and that her disability was a factor in the adverse impact. After that, the burden shifts to the strata to establish a bona fide and reasonable justification for not permitting RM's grandson to continue living in SL1.
38. The Code does not define "disability". However, I find the strata accepted RM's disability. I say this for 2 reasons. First, in its May 5, 2022 strata council hearing minutes, after hearing arguments about RM's circumstances, the strata expressly

stated it would not send a copy of the minutes to RM, “due to the fragile nature of [RM’s] health”. Second, the strata does not dispute Dr. Dodds’ statements that RM has a disability.

39. Therefore, I find the strata was aware of the respondents’ accommodation request about RM’s physical disability, which is captured by the Code.
40. It is undisputed RM’s overnight care could not be provided through other people. It is also clear that RM’s overnight care was required due to her physical ability, and possibly her age.
41. Given this conclusion, the onus shifts to the strata to justify its actions, including by showing that it has accommodated RM to the point of undue hardship: see *Moore v. British Columbia (Education)*, 2012 SCC 61 at paragraph 49.
42. I find strata made no accommodation for RM’s disabilities. The strata’s only argument is that RM’s grandson was under 55 years old, and it had a duty to uphold and enforce its age bylaws. The strata made this position clear in its May 12, 2022, letter to the respondents and did not address the respondents’ accommodation arguments. I find the strata would not have suffered undue hardship by allowing RM’s grandson to remain an overnight caregiver for the time that was required, without imposing fines.
43. For these reasons, I find the strata failed to accommodate RM’s disabilities. Therefore, under SPA section 121(1)(a), the strata’s age restriction bylaws are not enforceable against SL1 for the grandson’s overnight caregiving.

CRT FEES AND EXPENSES

44. 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 respondents were successful but did not pay CRT fees or claim dispute-related expenses, so I order none.
45. Under section 189.4 of the SPA, the strata may not charge any dispute-related expenses against the respondents.

ORDER

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

J. Garth Cambrey, Vice Chair