



Civil Resolution Tribunal

Date Issued: September 11, 2023

File: ST-2022-006383

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 307 v. Gillis, 2023 BCCRT 767*

B E T W E E N :

The Owners, Strata Plan NW 307

APPLICANT

A N D :

MARILYN GILLIS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This strata property dispute is about alleged bylaw violations.
2. The respondent, Marilyn Gillis (owner), owns strata lot 2 (SL2) in the applicant strata corporation, The Owners, Strata Plan NW 307 (strata).

3. The strata is represented by a strata council member in this dispute. The owner is self-represented.
4. The strata says the owner has accumulated garbage and debris inside SL2 and on common property, which has caused nuisance odours and a mouse problem in the building. The strata also says the owner ran hot and cold water in SL2 for months. The strata initially requested orders that the owner:
 - Remove all items stored on the patio in violation of strata bylaws.
 - Clear and sanitize SL2, and deal with the mouse infestation.
 - Pay \$32,553.64 in charge backs, fines, and costs of water and gas from overusing water.
5. Later, the strata requested orders that the owner to allow the fire department to access SL2 for a risk assessment and follow the fire department's recommendations for repairs and cleaning. I address this additional remedy request below.
6. The owner says the strata has violated her privacy and harassed her. She admits that some work is required in SL2, but says she cannot afford to pay bylaw fines or hire a specialized cleaning service. The owner disputes the amount of water she used, and says she is not liable under strata bylaws for any charges for excessive gas or water use. The owner also says she has already paid the charge backs.

JURISDICTION AND PROCEDURE

7. 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.

8. 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.
9. 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.
10. 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.

Additional Remedy Requests

11. In its submissions, the strata requested an additional order that was not in the Dispute Notice. The strata asked the CRT to order the owner to allow the fire department to access SL2 for a risk assessment and follow the fire department's recommendations for repairs and cleaning. The owner had an opportunity to respond to this additional remedy request, and I find the request is substantially related to the strata's other requested remedies. For these reasons, and given the CRT's mandate which includes flexibility, I have found it appropriate to consider this additional remedy in this decision.
12. In her submissions, the owner says she has already paid the charge backs for water and gas use. She requests that the strata refund these payments, which she says total \$4,379.41. However, since the owner did not file a counterclaim, I cannot make an order against the strata in this decision.

ISSUES

13. The issues in this dispute are:

- a. Must the owner reimburse the strata for water and gas charges, and if so, how much?
- b. Must the owner remove items from the patio?
- c. Must the owner permit the fire department to conduct a risk assessment in SL2?
- d. Must the owner clean and sanitize SL2, and remedy the mouse infestation?
- e. Must the owner pay bylaw fines, and if so, how much?

REASONS AND ANALYSIS

14. In a civil claim like this one, the strata, as applicant, must prove its 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.
15. The strata was created in 1975. It consists of 39 strata lots in a 4-storey building with a basement. SL2 is located on the “lower main” floor. It is surrounded by other strata lots, and shares a wall with one of them. SL2 has a ground-level patio, which the parties agree is limited common property.
16. The strata filed consolidated bylaws at the Land Title Office in 2017, and subsequent bylaw amendments after that. I refer to the relevant bylaws in my reasons below.

Water and Gas Charges

17. The strata says the owner allowed hot and cold water to continuously run in SL2 for months at a time, which significantly increased the strata’s water and gas bills. In a letter to the owner dated May 17, 2022, the strata said it had charged the owner’s strata lot account \$3,154.03 for excessive gas consumption, and \$1,225.25 for excessive water consumption. It is unclear from the evidence how the strata arrived at these amounts, which total \$4,379.41. The letter requested payment.

18. The owner says these charges are not permitted under the strata's bylaws, and cannot reflect the actual amounts used, since SL2 has no separate gas or water meters. The owner also says she already paid the \$4,379.41.
19. I find the strata's statement of account for SL2 confirms that the owner already paid the gas and water charges. The statement of account shows that on March 8, 2023, the strata deposited a cheque for \$4,753.65. As noted in the owner's March 4, 2023 email to the strata, this amount includes the gas and water charges, plus some additional plumbing repair charges.
20. The strata did not provide evidence to contradict the owner's assertion that she already paid for the gas and water charges. Since the statement of account provided by the strata confirms the payment, I dismiss the strata's claim for payment of excess gas and water costs.
21. As explained above, the owner requests an order reimbursing her March 2023 payment. Since she filed no counterclaim, I make no findings or order about that.

Patio Condition

22. The strata says the owner has stored excess items on her patio, contrary to bylaw 31. I summarize bylaw 31 as follows:
 - An owner, tenant, or occupant may not place planters "or other such items or equipment" on limited common property, unless in the strata council's opinion, the items are "in keeping with the balance of the development in terms of design, quality, proportion and colour."
 - The items must be maintained in good and tidy condition on an ongoing basis.
23. The strata provided various photos of the patio, taken between June 2021 and February 2023. All the photos show the patio in a cluttered, crowded condition. There are dozens of objects stored on the patio. In addition to patio furniture and planters, the photos show garbage bags, wet cushions, tools, pieces of wood, trinkets, dishes, trash, lamps, and other items. Some of the photos show upholstered chairs and other

items that are clearly indoor rather than patio furniture. Much of the furniture and other items are stacked in an inaccessible manner, which shows that at times the patio is used for storage.

24. The owner does not particularly dispute the strata's claim about the past condition of her patio. But, she says she has now cleaned it. She provided a photo dated June 9, 2023, showing her patio in what appears to be a clean and tidy condition. The strata says the patio is improved, but the owner is "still not in complete compliance". The strata did not explain this lack of compliance, or provide evidence more recent than the owner's June 2023 photo.
25. Based on the photos provided by the strata, I find the owner was in breach of bylaw 31 from at least June 2021 to February 2023. I find the objects stored on the patio were not in keeping with the balance of the development in terms of design, quality, proportion, and colour. Rather, there were an excessive number of items, and many of them are not maintained in good and tidy condition, as required by bylaw 31. Also, in her submissions, the owner admits to having had "forbidden objects" on the patio, and says she should have taken action sooner.
26. The strata sent several letters to the owner, starting in June 2021, reminding her of bylaw 31, and asking her to comply. The evidence shows she did not comply until spring 2023 at the earliest, which is almost 2 years later. Based on the photos of both the patio and the interior of SL2, I find the strata's concerns about re-cluttering on the patio are reasonable.
27. For these reasons, I find it appropriate to order the owner to keep the patio in a clean, tidy condition, consistent with bylaw 31.

Condition Inside SL2

28. The strata says SL2 is in a hoarded and deteriorated condition, and is hazardous to other strata residents. The strata provided copies of complaints from other residents about odours from SL2, and about a mouse infestation in the building. The strata says SL2 is the original source of the mice.

29. As remedies for these claims, the strata requests an order that the owner permit the fire department to conduct a risk assessment in SL2. It also requests orders that the owner clean and sanitize SL2, and “deal with” the mouse infestation.
30. The strata provided photo and video evidence showing SL2’s interior. The owner says the strata violated her privacy by taking these photos and videos. I understand the owner’s privacy concern. However, bylaw 7 says that with 48 hours’ written notice, an owner must permit a person authorized by the strata to enter a strata lot and inspect common property, common assets, and parts of the strata lot the strata must maintain, repair, or insure. There is nothing in the SPA (*Strata Property Act*) or bylaws that prevents the strata from documenting its inspection with photos or video. As noted above, the CRT has broad authority to accept all relevant evidence, so even if the evidence breached privacy legislation, I would admit it in any event due to its relevance. So, I admit the strata’s evidence, and rely on it. I find the photos and videos show that SL2 is in poor condition. It is crowded with items, and there are stains on the walls, ceiling, and floors. At least one photo shows mouse excrement on the floor, and another shows significant mould on the window and blinds.
31. The owner does not say SL2 is in good condition. Rather, she acknowledges a need to “restore my home to a clean state.” She objects to intervention by the fire department. However, I find it is reasonable in the circumstances for the strata to engage professionals to make recommendations about what work is needed inside SL2 to eliminate any hazards, including odours and rodents.
32. For these reasons, I order that the owner must, with 48 hours’ written notice, permit the strata to bring fire department officials and/or pest control specialists inside SL2 to assess its condition and make recommendations about how to remediate it. I order that the owner must follow these recommendations within 30 days of receiving them in writing. I also order that the owner must restore SL2 to a clean and sanitary condition within 30 days of this order.

Bylaw Fines

33. The strata requests an order that the owner pay an unspecified amount in bylaw fines. In its dispute application and submissions, the strata did not specifically say what the bylaw fines were for. However, the owner's statement of account shows the strata began imposing \$200 fines on March 2, 2020, for "mess on patio violation". The strata continued imposing these fines, mostly on a weekly basis, until August 4, 2022. On August 10, 2022, the strata then reversed 9 of the "mess on patio" fines, and on the same date imposed 9 \$200 fines for "letter about odour", and 9 \$200 fines for "letter about deck". The strata then continued to impose a \$200 fine for "odour" and a \$200 fine for "deck" on a weekly basis until May 2023.
34. The strata provided copies of its letters to the owner about the fines. Based on the content of these letters, I find the strata's fines are invalid because they did not meet the requirements set out in SPA section 135.
35. The owners did not argue the strata did not comply with SPA section 135 requirements. However, I find I must decide whether the strata met those requirements to determine the validity of any bylaw fines the strata imposed. Before doing so, I considered seeking submissions from the parties on section 135. Procedural fairness generally requires that parties be made aware of the issues a decision-maker is considering and be given a fair opportunity to be heard on material issues: see *Williams v. British Columbia (Civil Resolution Tribunal)*, 2023 BCSC 239. What is required to ensure the principles of procedural fairness are met in any particular situation varies according to the context: see *Nova-BioRubber Green Technologies Inc. v. Investment Agricultural Foundation British Columbia*, 2022 BCCA 247.
36. Here, I decided not to seek additional submissions. The requirements of SPA section 135 are mandatory preconditions to a valid fine. The section's provisions are not complex, and the requirements are straightforward (see *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449 at paragraph 27). Also, parties to CRT disputes are instructed to provide all relevant evidence, which in this case would include all strata letters warning about potential fines.

37. The correspondence in evidence shows that the strata wrote to the owner on March 2, 2020. The letter cited bylaw 31, and said if the owner did not remove the stored items from the patio by March 16, 2020, the strata might impose a \$200 fine, and might hire a professional to clean the patio at the owner's expense. However, the statement of account shows that the strata imposed the first \$200 fine on March 2, 2020.
38. SPA section 135(1) says that before fining an owner for a bylaw contravention, the strata must give the owner written particulars of the complaint and a reasonable opportunity to respond to it. SPA section 135(2) says the strata must, as soon as feasible, give the owner written notice of its decision to impose a fine.
39. Based on the correspondence cited above, I find the strata did not follow SPA section 135. The strata imposed the fine on the same day it sent the letter, which means the owner did not have an opportunity to respond, and the strata did not give written notice of its decision to impose the fine.
40. Strict compliance with SPA section 135 is required before a strata corporation can impose fines, and fines are invalid if the section 135 procedural requirements set out in section 135 are not followed: see *Terry*. Further, continuing fines under SPA section 135(3) are invalid if the strata does not initially follow section 135(1): see *Dimitrov v. Summit Square Strata Corp.*, 2006 BCSC 967, at paragraph 33.
41. For these reasons, I find the March 2, 2020 fine, and all the subsequent fines for "mess on patio" are invalid.
42. I also find the fines for "odour" and "deck" are invalid, as the strata did not follow SPA section 135 requirements before imposing these fines.
43. As explained above, on August 10, 2022, the strata imposed 18 separate \$200 fines, for "letter about odour" and "letter about deck".
44. The first "letter about odour" in evidence is dated June 15, 2022. The letter says there is an odour emanating from SL2, and cites relevant bylaws. The letter says that if the

owner does not respond within 14 days, the strata council would make a “decision on this matter as it considers appropriate.” The letter does not mention bylaw fines.

45. Then, on August 3, 2022, the strata wrote to the owner, stating that the odour problem and the patio storage problem had not been addressed. The letter again cited bylaws, and said the council had voted to impose a \$200 fine for the patio storage violation, and a \$200 fine for the odour violation. The letter also cited the bylaw about weekly fines for continuing contraventions.
46. I find that this correspondence does not meet the SPA section 135 requirements because the strata’s letters did not mention the possibility of fines before the council voted to impose fines: see *Terry* at para. 28. Since the owner was not warned about potential fines, I find she did not have a reasonable opportunity to respond. Based on the case law cited above, I find that all the fines for “deck” and “odour” are therefore invalid. I dismiss the strata’s claim for payment of bylaw fines.

CRT FEES AND EXPENSES

47. The strata was partially successful in this dispute. So, under the CRTA and the CRT’s rules I find it is entitled to reimbursement of half its CRT fees, which equals \$112.50. Neither party claimed dispute-related expenses, so I order none.
48. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the owner.

ORDERS

49. I order that:
 - a. The owner must keep the limited common property patio attached to SL2 in a clean, tidy condition, consistent with bylaw 31.
 - b. The owner must, with 48 hours’ written notice, permit the strata to bring fire department officials and/or pest control specialists inside SL2 to assess its

- condition and make recommendations about how to remediate it. The owner must follow these recommendations within 30 days of receiving them in writing.
- c. The owner must restore SL2 to a clean and sanitary condition within 30 days of this order.
 - d. Within 30 days of this decision, the owner must reimburse the strata \$112.50 for CRT fees.
50. I dismiss the strata's remaining claims.
51. The strata is entitled to postjudgment interest under the *Court Order Interest Act*, as applicable.
52. 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, Tribunal Member