



Civil Resolution Tribunal

Date Issued: September 25, 2023

File: ST-2022-003240 &
ST-2022-007909

Type: Strata

Civil Resolution Tribunal

Indexed as: *Hamian v. The Owners, Strata Plan NW 92*, 2023 BCCRT 814

B E T W E E N :

BERGE HAMIAN

APPLICANT

A N D :

The Owners, Strata Plan NW 92

RESPONDENT

A N D :

BERGE HAMIAN

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about enforcement of a rental bylaw. It involves 2 linked disputes with the same parties that I find represent a claim and counterclaim,

so I find I can issue a single decision for both disputes.

2. The applicant, Berge Hamian owns strata lot 12 (SL12) in the respondent strata corporation, The Owners, Strata Plan NW 92 (strata). Mr. Hamian is self-represented. A strata council member represents the strata.
3. In dispute ST-2022-003240, Mr. Hamian says he lives in SL12 and rents out 1 of the rooms to a roommate on a long-term basis. He says his roommate rental complies with the strata's bylaws because he lives in SL12 and rents out the room for periods greater than 3 months. Despite Mr. Hamian's understanding, the strata imposed ongoing bylaw fines totaling \$15,200 at the time of his application, stating Mr. Hamian is contravening its bylaws. He says the strata's actions caused him stress and anxiety. Mr. Hamian seeks orders that the strata rescind all rental bylaw fines and pay him \$56,647.80, which he says is fair compensation for the stress and anxiety created by the strata and for time spent on dealing with the issue since October 8, 2021.
4. The strata disagrees. It essentially says Mr. Hamian does not live in SL12 and that his renting out of SL12 contravenes the bylaws for that reason.
5. In the strata's counterclaim, dispute ST-2022-007909, the strata says its bylaws prohibited rentals of all or part of a strata lot, except to family members and in cases of hardship as was permitted under the *Strata Property Act* (SPA), but which do not apply here. It seeks orders that Mr. Hamian pay the outstanding bylaw fines of \$18,200 at the date of filing, plus additional fines imposed at \$500 per week for as long he continued to rent out SL12 or parts of it. The strata also seeks an order that Mr. Hamian cease renting out SL12 and give notice to any current tenants to vacate SL12.
6. As explained below, I find the strata treated Mr. Hamian significantly unfairly and I order it to rescind all bylaw fines. I dismiss Mr. Hamian's claim for compensation and the strata's counterclaim.

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 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.
9. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

ISSUES

10. The issues in these disputes are:
 - a. Did Mr. Hamian contravene the strata's rental bylaws?
 - b. Did the strata treat Mr. Hamian significantly unfairly?
 - c. What amount of bylaw fines, if any, must Mr. Hamian pay the strata?
 - d. Is the strata responsible to pay Mr. Hamian \$56,647.80 for stress and anxiety and for time spent?

BACKGROUND

11. As applicant in a civil proceeding such as this, Mr. Hamian must prove his claims on a balance of probabilities, meaning more likely than not. The strata must prove its counterclaim to the same standard. I have considered all the parties' submissions and evidence but refer only to information I find relevant to explain my decision.
12. The strata is a residential strata corporation of 123 strata lots located in 4 3-storey buildings. It was created in October 1972 and continues to exist under the SPA.
13. Mr. Hamian purchased SL12 in June 2018. SL12 is located on the second floor of the building.
14. The strata has filed several bylaw amendments with the Land Title Office (LTO) since it was formed. On October 31, 2003, the strata repealed and replaced its bylaws except for its rental restriction bylaw (bylaw 38), which only permitted rental of the strata lot owned by the strata and rented to the strata's caretaker. Bylaw 38(6) requires the strata to impose a maximum weekly fine of \$500 for continuing contraventions of bylaw 38. The October 2003 amendments also replaced all *Condominium Act* Part 5 bylaws and all Standard Bylaws under the SPA. On January 21, 2011, the strata amended its bylaws to permit maximum fines of \$200 for bylaw contraventions, other than for bylaw 38, which remained at \$500. On August 12, 2020, the strata added bylaw 3(13). Bylaw 3(13) prohibits owners from using their strata lots for "commercial or professional purposes or activities" including short-term rentals or accommodations of less than 3 months. On March 23, 2021, the strata amended bylaw 38(1) to reduce the maximum number of permitted rentals from 1 to 0, as I understand it had sold the caretaker's strata lot.
15. For clarity, I reproduce the relevant sections of bylaws 3(13) and 38 which I find applicable to this dispute (reproduced as written).

Bylaw 3:

(13) A resident must not use a strata lot, common property or common assets in a way that is for commercial or professional purposes or activities, including but not limited to the following:

- a) short-term rentals,
- b) hotel or hotel-like accommodation,
- c) boarding house,
- d) house "letting",
- e) bed and breakfast, or
- f) other short term accommodations, including granting of a licence to use a strata lot for short term stays.

...

For the purposes of bylaw 3(13) short term rentals or other short term accommodation is defined as any lease, tenancy agreement, agreement to occupy or licence agreement of a strata suite that is for a period of less than three months.

Bylaw 38:

(1) The number of strata lots that may rented within the Strata Plan shall be zero (0). The only exceptions to this are:

- a) Pursuant to section 144 of the Strata Property Act exemptions may be granted on the basis of hardship: and
- b) Exemptions allowed for the following family members;
 - (i) a spouse of an owner;

(ii) a parent or child of an owner; or

(iii) a parent or child of the spouse of an owner.

...

(6) Where an owner leases his strata lot in violation of the bylaw, the strata corporation shall levy against the owner a fine of Five Hundred (\$500.00) Dollars every seven days during the period of the lease.

(7) For the purposes of this bylaw the terms “lease”, “rent”, “rents” and “rental arrangement” shall include any and all forms of tenancy or license relating to the occupancy of a strata lot.

16. I summarize the following facts on which the parties agree.

- a. On March 22, 2021, Mr. Hamian wrote to the strata to advise that a roommate would be occupying a room within SL12. There is also email evidence he provided the strata manager the same information by telephone on that date.
- b. On June 16, 2021, the strata wrote to Mr. Hamian stating that because of the “change in tenancy”, he was required to submit a completed Form K under SPA section 146. Mr. Hamian quickly provided a completed Form K confirming JW as a tenant effective March 31, 2021 (JW Form K).
- c. In September 2021, the strata received a complaint from a resident that an unknown person was attempting to gain access to SL12 by climbing up to the SL12 balcony and that the person claimed they were a tenant of SL12.
- d. On October 8, 2021, the strata wrote 2 separate letters to Mr. Hamian. The first letter acknowledged receipt of the JW Form K and requested confirmation that JW was a direct member of his family as contemplated under SPA section 144 and bylaw 38(1)(b). The letter cited bylaw 38 in its entirety and advised that the strata was considering a \$500 fine every 7 days. The letter also advised Mr. Hamina had 21 days to provide a response failing which the strata would determine if a fine was appropriate.

- e. The second letter dated October 8, 2021 sent to Mr. Hamian from the strata advised of the complaint received about an unknown person trying to gain access to SL12 and stated, among other things, that rental of SL12 to more than 1 person was contrary to bylaw 38, which it again cited in full. The letter also stated the strata was contemplating a \$500 fine every 7 days for violation of bylaw 38 and advised Mr. Hamina had 21 days to provide a response failing which the strata would determine if a fine was appropriate.
- f. Also on October 8, 2021, Mr. Hamian emailed the strata in response to both letters, which the strata acknowledged it received. He explained that JW was not a family member and that he was only renting 1 room within SL12. Mr. Hamian stated he believed the rental to JW was permitted under the bylaws for periods in excess of 3 months, which JW's rental was, and that Mr. Hamian was still residing in SL12. As for the additional renter, Mr. Hamian apologized for the incident and stated they were JW's friend and were no longer staying in SL12.
- g. The strata provided copies of emails. I note in particular a November 18, 2021 email from a strata council member at the time which confirmed a telephone call with Mr. Hamian on October 8, 2021, after he had received the strata's correspondence dated that day. The email confirms the strata council member told Mr. Hamian he could rent out his spare room to a tenant for periods longer than 3 months as long as he was living in SL12 full time with the tenant.
- h. On December 10, 2021, the strata wrote to Mr. Hamian stating it had received a complaint he was renting to a person who is not a family member in contravention of bylaw 38, which it cited. The strata acknowledged the Mr. Hamian had stated the person, whom I infer is JW, was a roommate and that Mr. Hamian was still residing in SL12. The strata requested proof of Mr. Hamin's residency. It also advised that an unregistered occupant appeared to be staying in SL12. I find that reference was to the alleged friend of JW, which Mr. Hamian had already said was not a tenant and was no longer staying in SL12. The letter went on to say that the strata was contemplating a fine of \$500

per week for the “rental contravention” if Mr. Hamian did not respond within 21 days.

- i. Mr. Hamian responded on December 10, 2021 stating JW had moved out, he had a new roommate, and he would provide a new Form K, which the evidence shows he did. Mr. Hamian also said that providing proof he resides in SL12 was difficult and a violation of his rights and privacy. He asked the strata to provide details of bylaws that required he provide proof of residency.
- j. On January 31, 2022, the strata wrote Mr. Hamian to advise it had imposed a \$500 fine pursuant to its December 10, 2021 letter and requested payment of the fine. The letter also asked Mr. Hamian to “immediately provide proof of occupancy/vacancy” failing which the strata would issue recurring fines of \$500 every 7 days for continuing contravention.
- k. On the same day, Mr. Hamian requested to appear at the next strata council meeting to “appeal this completely unjust fine”. At the strata manager’s request, Mr. Hamian confirmed he was requesting a council hearing in a February 7, 2022 email. A council hearing was undisputedly held on March 14, 2022. No details of the hearing are before me.
- l. On March 31, 2022, Mr. Hamian emailed the strata manager to find out if the strata had rescinded the \$500 fine. The strata manager responded that Mr. Hamian did not request a decision of the strata council at the hearing and asked for details of Mr. Hamian’s request which he provided.
- m. On April 22, 2022, the strata manager emailed Mr. Hamian stating the strata “will not be rescinding the fines, as [it has] evidence... that you are in violation of the rental bylaws, per... previous correspondence to you, that you do not live in the complex with your roommate etc....”
- n. In an email dated May 31, 2022, the same strata council member who advised Mr. Hamian he could rent out his strata lot as long as he lived in it confirmed with the strata that they spoke with Mr. Hamian again on May 9, 2022. In the

email, the individual notes they were no longer a strata council member but restated the same advice they had given in October 2021.

- o. Further emails were exchanged in April and May 2022 about conduct at the March 14, 2022 council hearing that I find are not relevant here. However, on May 3, 2022, Mr. Hamian requested an “appeal” of the strata’s decision along with the strata’s reason for why the fine was warranted. In response, the strata manager emailed Mr. Hamian on May 4, 2022 essentially saying Mr. Hamian had not been present at the building and refused to provide evidence that he is living in SL12 “which is the basis” for the strata council’s conclusion to impose fines.
- p. On June 24 2022, the strata again wrote to Mr. Hamian. It advised of further complaints involving another change in tenancy for SL12 and that a new Form K had not been received by the strata. The relevant parts of the letter cited bylaws 3(13) and 38 in full, as well as bylaw 25 that permits fines to be imposed every 7 days for continuing bylaw contraventions. Interestingly, the letter states the strata was considering imposing a \$200 fine “for each bylaw contravention”, even though bylaw 38 permits a fine of \$500 if Mr. Hamian failed to respond with 21 days.
- q. The evidence shows Mr. Hamian provided a new Form K by June 14, 2022, and on July 5, 2022, asserted he had resided in SL12 since he purchased it in June 2018.
- r. On August 5, 2022, the strata wrote to Mr. Hamian and demanded payment of \$14,000 for “outstanding charges” owing on his account.
- s. A statement of account dated February 28, 2023 shows an outstanding balance on Mr. Hamian’s strata lot account of \$22,500. This includes \$500 in move in and out fees, which are not part of this dispute. Based on this statement, I find the strata imposed \$22,000 in fines against Mr. Hamian for contravening bylaw 38 at a rate of \$500 every 7 days from December 10, 2021 to November 28, 2022.

EVIDENCE AND ANALYSIS

Did Mr. Hamian contravene the strata's rental bylaws?

17. At the time of this dispute, the SPA included provisions that permitted the strata to prohibit or restrict residential strata lot rentals with some exceptions. Those provisions were generally found in sections 142 through 144. I do not see a need to address them in detail as I find none of the provisions or exceptions apply to this dispute. I note that the law on rental restrictions and prohibitions changed significantly on November 24, 2022. On that date, the SPA was amended to repeal sections 142 through 144 (among others), which removed the ability for a strata corporation to prohibit residential strata lot rentals in any manner.
18. A plain reading of bylaw 38 clearly shows the strata prohibited owners from renting out their strata lots at the time of this dispute. I have considered if the bylaw also prohibited the rental of part of strata lot and I find that it does. I say this because the SPA defines a tenant as “a person who rents all or part of a strata lot”. Also, Part 8 of the SPA (sections 139 through 148) addressed rentals within strata corporations and did not distinguish between tenants renting a portion of an owner-occupied strata lot and tenants renting an entire strata lot. Based on a plain reading of Part 8 and the SPA's definition of tenant, I find the SPA provisions in force at the time of this dispute applied equally to a tenant renting part of a strata lot or a tenant(s) renting an entire strata lot.
19. The ability for a strata corporation to restrict short-term accommodations, such as through AirBnB and VRBO, which is distinct from a rental, continued after November 24, 2022. See *Highstreet Accommodations Ltd. V. The Owners, Strata Plan BCS2478*, 2017 BCSC 1039 affirmed 2019 BCCA 64.
20. I find bylaw 3(13) is intended to prohibit owners from using their strata lots for commercial or professional purposes. While bylaw 3(13) largely identifies a variety of short-term accommodation uses, it also includes short-term rentals of less than 30 days. However, even though the strata raised bylaw 3(13) in some its correspondence exchanged with Mr. Hamian, I find it did not allege that Mr. Hamian licenced his strata lot for short-term accommodation or otherwise argue Mr. Hamian

was using SL12 for commercial purposes. Rather, the strata's allegations and arguments focus on Mr. Hamian's rental of SL12 commencing in March 2021. Further, the statements of account provided in evidence show that all of the fines imposed against Mr. Hamian are for contravention of bylaw 38. Therefore, I make no finding about whether Mr. Hamian contravened bylaw 3(13).

21. As I have noted, all strata lot rentals were prohibited under bylaw 38 without restriction and for any length of time. Further, bylaw 38(7) appears to also restrict licencing of strata lots. All this to say that while bylaws 3(13) and 38(1) and (7) appear to overlap, I find it clear that at the time of this dispute, Mr. Hamian was prohibited from renting out SL12 to non-family members, whether or not he resided in the strata lot. That he did rent out part of his strata lot to one or more unrelated individuals, which he admits, means he contravened bylaw 38(1).
22. However, from the facts I have described above and the evidence before me, the strata did not tell Mr. Hamian that he was prohibited from renting out SL12. Rather, the main focus of the strata's allegations and letters, and the reason it eventually fined Mr. Hamian in December 2021, was because he did not prove to the strata that he lived in SL12.
23. I acknowledge that in its counterclaim submissions, the strata argues that Mr. Hamian was simply not permitted to rent part or all of SL12. However, this argument does not change the facts or the strata's earlier position that Mr. Hamian must live in SL12 to be permitted to have a tenant under the bylaws. It is the strata's position during its enforcement of bylaw 38 that must be taken into consideration.

Did the strata treat Mr. Hamian significantly unfairly?

24. I do not know how the strata came to interpret the bylaws to mean that Mr. Hamian could rent out SL12 or a room in it, if he continued to reside in the strata lot, but that is clearly what happened. As noted, the strata provided copies of emails that show a strata council member advised Mr. Hamian of the residency requirement, and I find he relied on those statements. The strata's correspondence also confirmed that the residency requirement was also the strata's understanding.

25. So, although the parties did not argue significant unfairness, I find I must consider if the strata treated Mr. Hamian significantly unfairly by misinterpreting its bylaws and imposing fines against him when Mr. Hamian was unable to persuade it that he occupied SL12 along with his tenants. For the reasons that follow, I find the strata did treat Mr. Hamian significantly unfairly.
26. 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 SPA section 164, which allows the BC Supreme Court to make orders remedying significantly unfair acts or decisions. The Court recently confirmed that the legal test for significant unfairness is the same for CRT disputes and court actions. See *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113.
27. As discussed in *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, strata corporations must often utilize discretion in making decisions which affect various owners or tenants. Following *Reid*, this means for the Court (or CRT) to intervene, a strata corporation must act in a significantly unfair manner, resulting in something more than mere prejudice or trifling unfairness.
28. The basis of a significant unfairness claim is that a strata corporation must have acted in a way that was “burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable.” See *Reid, Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.
29. In *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, the BC Court of Appeal established a reasonable expectations test, restated in *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164 at paragraph 28 as follows:
- a. What is or was the expectation of the affected owner or tenant?
 - b. Was that expectation on the part of the owner or tenant objectively reasonable?
 - c. If so, was that expectation violated by an action that was significantly unfair?
30. Here, the dispute started in March 2021 when Mr. Hamian wrote to the strata advising

he was renting a room in SL12. I find Mr. Hamian had an objectively reasonable expectation that the strata would properly enforce its bylaws as required under SPA section 26.

31. Rather than informing Mr. Hamian that his rental to a non-family member was contrary to the bylaws, the strata permitted the rental and asked for a Form K, which Mr. Hamian provided. Mr. Hamian continued to address the strata's ongoing enquiries and provided the strata with requested information for 2 further tenant changes. At no time did the strata address the fact that rental of part or all of SL12 was contrary to its bylaws. The reason the strata imposed a \$500 bylaw in January 2022 was because Mr. Hamian did not convince it that he resided in SL12. This is evident from the strata manager's May 4, 2022 email where they said the basis for the strata's January 31, 2022 fine was because Mr. Hamian had not been present at the building.
32. The strata imposed the fine even though Mr. Hamian immediately responded to the strata's December 10, 2021 letter asking the strata to inform him what bylaw required proof of residency, which the strata did not provide.
33. I find that the strata fined Mr. Hamian because he did not provide proof of residency, something the bylaws did not require. In doing so, I find the strata's conduct was harsh, wrongful, and unjust, and thus met the definition of significant unfairness established by the Courts. Therefore, I order the strata to rescind all bylaw fines imposed against Mr. Hamian for contravening the strata's rental bylaw 38.
34. As I mentioned earlier, the SPA was amended on November 24, 2022 to allow owners to rent their strata lot. Therefore, I decline to order Mr. Hamian to cease renting out SL12 as requested by the strata, because the SPA no longer permits rental restrictions or prohibitions. Any bylaws purporting to do so are invalid under section 121 because since November 24, 2022, they contravene the SPA.

Is the strata responsible to pay Mr. Hamian \$56,647.80?

35. Mr. Hamian says the strata has caused him much stress and anxiety by pursuing what he argued were valid rentals under the bylaws and for time spent in dealing with the issue. He says the damages amount claimed of \$56,647.80 is based on his

regular wage of \$171.66 per day. Mr. Hamian did not provide a breakdown of his claimed amount for his stress claim and time spent, proof of his regular wage rate, or any other supporting evidence to substantiate his claim.

36. As for Mr. Hamian's stress claim, I agree with the reasoning in the non-binding but persuasive CRT decision *Eggberry v. Horn et al*, 2018 BCCRT 224, which says that for a claim for stress or mental distress to be successful there must be medical evidence supporting the stress or mental distress. Given Mr. Hamian did not provide any medical evidence, I dismiss Mr. Hamian's stress claim.
37. I also dismiss his claim for time spent under CRT 9.5(5) that says the CRT will not order a party to pay another party compensation for time spent dealing with the CRT proceeding except in extraordinary circumstances. I find there are no extraordinary circumstances present here.

CRT FEES AND EXPENSES

38. 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. I find Mr. Hamian was partially successful in his dispute, so I order the strata to reimburse him ½ of the \$225.00 he paid in CRT fees, or \$112.50. The strata was not successful in its counterclaim, so I make no order for reimbursement of the CRT fees it paid.
39. Neither party claimed dispute-related expenses, so I order none.
40. Under section 189.4 of the SPA, the strata may not charge any dispute-related expenses against Mr. Hamian.

ORDERS

41. I order the strata to:
 - a. Immediately remove all fines related to the rental of SL12 between January 31, 2022 and the date of this decision from Mr. Hamian's strata lot account, and

- b. Within 2 weeks of the date of this decision, pay Mr. Hamian \$112.50 for CRT fees.
42. Mr. Hamian's remaining claims are dismissed.
43. The strata's counterclaim is dismissed.
44. Mr. Hamian is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.
45. 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.

J. Garth Cambrey, Vice Chair