



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS 3636 v. Burmy*, 2023 BCCRT 1059

B E T W E E N :

The Owners, Strata Plan BCS 3636

APPLICANT

A N D :

AMRIT PAAL BURMY also known as PAUL BURMY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. Amrit Paal Burmy, who is also known as Paul Burmy, co-owns a strata lot in the strata corporation, The Owners, Strata Plan BCS 3636. The strata asks for an order that the owner pay \$9,400 in accumulated fines it imposed against his former tenant. The strata alleges that the tenant breached the bylaws 75 times. A council member represents the strata.

2. The owner says that the strata never gave the tenant proper notice of the fines. He also denies that his tenant breached the bylaws as often as the strata says. He asks me to dismiss the strata's claims. He is self-represented.

JURISDICTION AND PROCEDURE

3. 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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
4. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
5. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.
6. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the tribunal 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.

ISSUES

7. The issues in this dispute are:
 - a. Did the strata follow the proper process when it imposed the fines against the tenant?
 - b. Did the tenant's conduct breach the strata's bylaws?

BACKGROUND

8. In a civil claim such as this, the strata as the applicant must prove its case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision. I note that the owner provided no documentary evidence despite having the opportunity to do so.
9. The strata consists of 94 commercial and residential strata lots in an 8-floor building. The owner has co-owned his residential strata lot since 2009.
10. The strata has filed numerous bylaw amendments in the Land Title Office over the years. The strata fined the tenant for breaching several bylaws. I summarize the relevant parts of these bylaws as follows:
 - Bylaw 8.1.a says that a tenant must not use a strata lot or common property in a way that causes a nuisance or hazard to another person.
 - Bylaw 8.1.c says that a tenant must not use a strata lot or common property in a way that unreasonably interferes with the rights of other persons to use and enjoy common property.
 - Bylaw 8.1.d says that a tenant must not use a strata lot or common property in a way that is illegal.
 - Bylaw 9 says that a tenant must not damage common property or common assets.
 - Bylaw 16.3 requires tenants to clean up any garbage or litter they drop in common property areas.
 - Bylaw 19.9 requires tenants to keep pets on a leash when in common property areas.
 - Bylaw 45.1 says that the strata expects tenants to treat owners, residents, visitors, and contractors in a respectful and civil manner that is consistent with a diverse and inclusive living and working environment.

- Bylaw 45.2 says that activities including disrespectful and rude comments, bullying, and harassment are harmful to the desired respectful living and working environment.
- Bylaw 45.3 says that the strata will not tolerate disrespectful behaviour towards owners, residents, visitors, and contractors.

11. As mentioned above, the strata claims payment of \$9,400 in fines for the tenant's bylaw contraventions. The strata imposed these fines between August 31, 2021, and February 23, 2022. Most of the fines relate to the tenant's harassment of the strata's building manager, the strata manager, and members of strata council. The tenant disputed some of the allegations at the time, but in this dispute, the owner does not specifically contest any of the allegations. As noted above, the owner did not provide any documentary evidence, such as a statement from the tenant. With that, the strata's allegations about what the tenant did are undisputed. Most of the allegations are undeniable anyway because they are either written communications or conduct captured on video surveillance. For the purposes of this dispute, I accept that the tenant did all the things the strata says they did.

12. The owner raises 2 defences. First, that the strata failed to follow the proper process in imposing the fines. Second, that the tenant's behaviour towards the building manager, strata manager, and other owners did not breach the strata's bylaws.

EVIDENCE AND ANALYSIS

Did the strata follow the proper process when it imposed fines against the tenant?

13. Section 135 of the SPA sets out the procedural requirements a strata corporation must follow before enforcing its bylaws, such as by imposing a fine. Section 135(1) says that a strata cannot fine a tenant unless it has first:

- Received a complaint,

- Given the owner, landlord, and tenant the details of the complaint, in writing, and
 - Given the tenant a reasonable opportunity to respond to the complaint, including by holding a hearing if necessary.
14. Section 135(2) requires the strata to notify the owner, landlord, and tenant in writing of its decision to impose a fine as soon as feasible.
 15. These procedural requirements are strict, with no leeway. If the strata does not perfectly comply with section 135, any resulting 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.
 16. The strata imposed fines in 8 separate letters sent between August 30, 2021, and February 23, 2022. Contrary to the owner's submission, these fines total \$9,400, not \$9,347.
 17. I will address the last of these letters first because it contains an obvious and fatal flaw, which the strata acknowledges in its reply submissions. This letter imposed fines based on a January 19, 2022 letter the strata manager emailed to the tenant and owner. That letter described 4 complaints and gave the tenant an opportunity to respond. At its next strata council meeting, the council voted to fine the tenant \$200 for each of the complaints, for a total of \$800. The strata then sent its February 23, 2022 decision letter to the owner. However, the strata never sent notice of its decision to the tenant. The strata therefore did not comply with section 135(2). For that reason, I dismiss the strata's claim for these fines.
 18. The other 7 letters all imposed fines using the same procedural process as the February 23, 2022 fines, except that the strata correctly notified the tenant of the fines at the end of the process. In each instance, the strata sent the tenant and owner a letter detailing the complaints and the applicable bylaws. However, the owner argues that the letters did not give proper notice because they listed the applicable bylaws and the complaints separately without cross referencing them. For example, the

strata manager's September 15, 2021 letter listed 12 complaints about the tenant's behaviour. Then, the letter referred to bylaws 8.1.a, 8.1.c, 8.1.d, 9, 16.4, 19.1, 19.6, and 45. The letter did not explicitly say which bylaw applied to each individual complaint.

19. Section 135(1)(e) of the SPA requires the strata to give "particulars" of the complaint. The SPA does not define what "particulars" are. In *Terry*, the Court of Appeal said that notice must identify the applicable bylaw or rule and include enough detail so that the tenant or owner can meaningfully respond.
20. I conclude that the strata's approach complied with section 135 because a reader would find it obvious which bylaw or bylaws applied to each complaint. For example, the September 15 letter included complaints about an unleashed dog, which bylaw 16.4 prohibits. There is no other cited bylaw that could possibly apply. The same goes for the allegations about verbally harassing the building manager and bylaws 8 and 45. The owner does not say how a failure to cross reference the bylaws to the complaints would have prevented the tenant from meaningfully responding. The tenant's emails to the strata show they clearly understood the nature of the complaints.
21. The owner also argues that some of the strata's decision letters failed to say how large of a fine the strata imposed for each bylaw contravention. The owner says this mattered because the strata imposed different fine amounts for different bylaw breaches. For example, a November 2, 2021 decision letter said that the strata had imposed 4 \$200 fines and 4 \$50 fines for breaching bylaw 8, without saying which specific breaches attracted the higher amount. The owners says the letters therefore lacked sufficient clarity and the fines should be dismissed on that basis.
22. Section 135(2) does not say what needs to be in a decision letter. It just says that the strata must notify the tenant and owner of its decision to impose fines. The strata told the tenant how much it had fined them and for which bylaw breaches. This is enough detail to satisfy the strata's obligation under section 135(2). If the tenant wanted more detail for whatever reason, they could have asked for it.

23. In summary, the strata complied with section 135 in imposing \$8,600 of the \$9,400 in claimed fines.

Did the tenant's conduct breach the strata's bylaws?

24. The strata fined the tenant for the following conduct:

- vandalizing common property,
- throwing garbage onto the floor of the common property lobby,
- wiping discharge from the tenant's dog's eye and smearing it on the elevator wall,
- spitting on a common property wall,
- failing to keep the tenant's dog on a leash while on common property,
- verbally accosting the building manger,
- physically threatening the building manager, and
- writing harassing and abusive emails, text messages, and social media posts to or about the building manager, strata manager, and strata council members.

25. Other than the procedural concerns addressed above, the owner does not take issue with the fines for the first 5 items on the above list. Given my conclusions about process, those fines are valid.

26. The owner argues that the rest of the tenant's conduct did not breach the strata's bylaws. The strata explicitly relies only on bylaw 8.1, not bylaw 45, so I will focus my analysis on bylaw 8.1.

27. The owner disputes that the tenant's abusive, threatening, and harassing conduct breached bylaw 8.1 because none of it involves the "use" of a strata lot or common

property. The owner describes the tenant's conduct as their "personal action" that is unrelated to their use of common property or their strata lot.

28. The owner makes the same arguments about the tenant's in-person conduct and digital communications, but there is a clear distinction between the two. I disagree with the owner about the tenant's in-person interactions with the building manager. These incidents all took place on common property, namely, in the strata's lobby, hallways, and elevator. The tenant was "using" those common property areas to come and go from their strata lot. The tenant's abusive conduct towards the building manager was part of that use. The tenant's actions unreasonably interfered with the building manager's right to use common property by creating an unsafe work environment for them. In short, the tenant breached bylaw 8.1.c when they harassed, intimidated, and verbally abused the building manager within the strata building.
29. Based on my review of the bylaw contravention and decision letters, the above bylaw breaches account for \$5,400 of the remaining \$8,600 in fines.
30. The last \$3,200 in fines are for the tenant's emails, texts, and social media posts. The tenant sent many emails to the strata manager. In them, the tenant repeatedly accused the strata manager of being racist and sexist. The tenant also threatened legal proceedings and a social media campaign against the strata and the strata manager. To that end, the tenant "doxed" strata council members by posting to social media their personal contact information and places of employment alongside allegations that they are all racists. The tenant contacted at least one employer directly to accuse them of employing a racist. The tenant also texted the building manager calling them a white supremacist.
31. The tenant's allegations were based on their perception that the strata council had failed to investigate the tenant's complaints about the building manager. The tenant had alleged that the building manager called the tenant racist slurs, had harassed a female resident, and had stolen residents' underwear. The strata repeatedly asked the tenant to provide evidence to support the allegations, which the tenant repeatedly said they had but would not disclose. The strata remained open to reconsidering its

decision if the tenant provided their evidence, but the tenant never did. So, the tenant's allegations were ultimately unfounded, and the tenant had no rational basis to accuse anyone involved with racist or sexist motives.

32. The owner argues that bylaw 8.1 does not apply to the tenant's digital communications because they do not involve the "use" of a strata lot or common property. In response, the strata argues that the overall purpose of bylaw 8.1 is to facilitate harmonious living. With that purpose in mind, the strata says it is reasonable to adopt a broad definition of "use" to capture digital communications about strata matters. The strata refers to a previous CRT dispute, *The Owners, Strata Plan LMS4355 v. Vorias*, 2022 BCCRT 745. There, the tribunal member concluded that an owner loudly banging on walls and loudly using profane language constituted a nuisance.
33. On this point, I agree with the owner. In saying this, I have no doubt that the tenant's conduct interfered with the strata council members' ability to manage the strata and feel safe in their homes. The conduct may also have jeopardized the strata's relationship with its strata manager and building manager. However, I do not consider sending emails and posting to social media to be part of the "use" of a strata lot, even if the tenant was home when they composed them. Digital communication is inherently mobile and unconnected to any specific location. In other words, the tenant's digital harassment was unrelated to the physical space of the strata. This is different than the situation in *Vorias*, where the nuisance was directly related to the owner's conduct within her strata lot. My conclusion is also consistent with another CRT decision, *The Owners, Strata Plan LMS 2461 v. Luo*, 2020 BCCRT 1264, which the BC Supreme Court upheld on judicial review in *The Owners, Strata Plan LMS 2461 v. Wong*, 2022 BCSC 1222. For this reason, I dismiss the strata's claim for the remaining \$3,200 in fines.
34. Section 131(1) of the SPA allows a strata corporation to collect a tenant's fines from an owner. On that basis, the owner is responsible for \$5,400 in proven fines. I order him to pay that amount.

35. I note that despite referring to bylaw 45 in its bylaw complaint letters, the strata never fined the tenant for violating bylaw 45. Instead, the decision letters all say that the fines were for bylaw 8.1 breaches. In its submissions, the strata makes clear that it does not claim any fines for violating bylaw 45 in this dispute. In that context, it would be procedurally unfair for me to order the owner to pay fines for breaching bylaw 45. That said, the tenant's harassing emails, texts, and social media posts all clearly breached that bylaw. I would have allowed all the fines the strata imposed against the tenant if the strata had fined the tenant for breaching bylaw 45.

TRIBUNAL FEES, EXPENSES, AND INTEREST

36. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The strata was partially successful, so it is entitled to reimbursement of half of its \$225 in CRT fees, which is \$112.50. The strata did not claim any dispute-related expenses.

37. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to pre-judgement interest on the fines from the date each fine to the date of this decision. This equals \$296.11.

38. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

DECISION AND ORDERS

39. Within 30 days of this decision, I order the owner to pay the strata a total of \$5,808.61, broken down as follows:

- a. \$5,400 in bylaw fines,
- b. \$296.11 in prejudgment interest, and
- c. \$112.50 in CRT fees.

40. The strata is also entitled to post-judgment interest under the COIA, as applicable.

41. I dismiss the strata's remaining claims.

42. 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.

Eric Regehr, Vice Chair