



Civil Resolution Tribunal

Date Issued: January 5, 2024

File: ST-2022-010216

Type: Strata

Civil Resolution Tribunal

Indexed as: *Peterson v. The Owners, Strata Plan NES 3039*, 2024 BCCRT 12

B E T W E E N :

THOMAS PETERSON

APPLICANT

A N D :

The Owners, Strata Plan NES 3039

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about bylaw contravention fines.
2. The applicant, Thomas Peterson, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NES 3039 (strata). Mr. Peterson says the strata has unfairly fined him for violating the building scheme after his deck and gazebo

approval requests were unfairly withheld, and says many other owners have similarly violated the building scheme without being fined. Mr. Peterson asks for an order that the strata rescind \$600 in fines.

3. The strata says it has already rescinded a \$200 fine for cutting down a tree without permission. The strata says the 2 remaining \$200 fines for Mr. Peterson's unapproved deck and gazebo are valid.
4. Mr. Peterson is self-represented. The strata is represented by a strata council member.

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.

Request to withdraw submissions

9. After Mr. Peterson provided his final reply submissions, the strata emailed CRT staff asking to withdraw a small portion of its response submissions because they are irrelevant to the current dispute. I agree those submissions are irrelevant, and so they have not impacted my decision.

Fines at issue

10. As noted, the strata says it has already rescinded the \$200 fine for Mr. Peterson cutting down a tree. Mr. Peterson agrees. Therefore, I find the parties have resolved the \$200 tree cutting fine and I will not address it in this decision. With that, I turn to address the 2 remaining \$200 fines for Mr. Peterson's deck and gazebo.

ISSUES

11. The issues in this dispute are:
 - a. Did the strata comply with SPA section 135 before imposing the fines?
 - b. Did the strata act in a significantly unfair manner by imposing the fines?

EVIDENCE AND ANALYSIS

12. As the applicant in this civil proceeding, Mr. Peterson must prove his claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence, but I only refer to what is necessary to explain my decision.

Background

13. On July 13, 2022, the strata sent Mr. Peterson a bylaw contravention letter. In it, the strata said it had been advised in writing that contrary to the strata's bylaws, Mr. Peterson had not applied or received approval to:
 - a. relocate a previously constructed deck onto his strata lot,
 - b. erect a gazebo on his deck, or
 - c. remove a designated tree from his strata lot.
14. The strata did not identify any specific bylaws in the letter. The strata said Mr. Peterson could address the alleged bylaw contraventions in a Zoom meeting on July 18, 2022 at 8pm. The strata also advised it might impose fines for each of the above alleged bylaw contraventions, or require Mr. Peterson to remedy the alleged bylaw contraventions.
15. On July 25, 2022, Mr. Peterson provided the strata with a written response after he was unable to attend the proposed July 18, 2022 Zoom meeting.
16. On August 27, 2022, the strata sent Mr. Peterson a letter advising that it had decided to issue three \$200 fines, as follows:
 - a. \$200 fine for placing and then extending a deck without approval, contrary to section 2.2 of the building scheme and bylaw 4(17),
 - b. \$200 fine for cutting down a tree without approval, contrary to section 5.6 of the building scheme, and
 - c. \$200 fine for erecting a gazebo without approval, contrary to bylaw 4(44).
17. The strata told Mr. Peterson to remove his gazebo by September 6, 2022, or he may be subject to additional fines, and to re-apply for his deck's approval under the building scheme.

Did the strata comply with SPA section 135?

18. SPA section 135 says a strata corporation may not impose a bylaw fine unless, among other things, the strata has given the person it intends to fine the particulars of the complaint in writing and a reasonable opportunity to answer the complaint. SPA section 135(2) says that a strata corporation must, as soon as feasible, give notice in writing of a decision imposing the bylaw fine. Bylaw fines are not valid if a strata corporation does not strictly comply with SPA section 135. See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.
19. Mr. Peterson did not specifically argue that the fines imposed were invalid or that the strata failed to follow the procedural requirements in SPA section 135, before it imposed the fines. Nevertheless, the requirements in SPA section 135 are mandatory preconditions to imposing a valid fine. Further, I find the evidence clearly shows the strata did not comply with SPA section 135. For these reasons, I decided it was unnecessary to seek the parties' submissions on this issue.
20. In *Terry*, the court stated at paragraph 28 (my underlining):

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...
21. The decision in *Terry* is binding on me. The strata's July 13, 2022 bylaw contravention letter did not identify the specific bylaws it alleged Mr. Peterson had contravened. Instead, it only did so when it imposed the fines on August 27, 2022. Therefore, I find the strata did not comply with SPA section 135 before imposing the fines. I find the two August 27, 2022 bylaw fines for Mr. Peterson's unapproved deck and gazebo are invalid on that basis. Given this conclusion, I find it unnecessary to address whether the strata imposing the fines on Mr. Peterson was also significantly unfair.

CRT fees and expenses

22. 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. As Mr. Peterson was successful in this dispute, I find he is entitled to reimbursement of \$225 in paid CRT fees. Neither party claimed any dispute-related expenses.
23. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against the Mr. Peterson.

ORDERS

24. I order that:
- a. The strata immediately reverse \$400 in fines imposed on August 27, 2022, for Mr. Peterson's deck and gazebo, and
 - b. Within 15 days of the date of this order, the strata pay Mr. Peterson \$225 in CRT fees.
25. Mr. Peterson is entitled to post-judgment interest, as applicable.
26. 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.

Leah Volkers, Tribunal Member