



# Civil Resolution Tribunal

Date Issued: May 1, 2024

File: ST-2023-003196

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 3187 v. Chow*, 2024 BCCRT 414

BETWEEN:

The Owners, Strata Plan LMS 3187

**APPLICANT**

AND:

WENDY CHOW, PATRICIA FONG, and TROY GEBHART

**RESPONDENTS**

---

## REASONS FOR DECISION

---

Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. This is a strata property dispute about rental bylaw fines.
2. The respondents, Wendy Chow, Patricia Fong, and Troy Gebhart, co-own strata lot 47 (SL47) in the applicant strata corporation, The Owners, Strata Plan LMS 3187 (strata). Ms. Chow also owns another strata lot in the strata. She was a strata council

member from about May 2018 through May 2020. Ms. Chow represents the respondents. A strata council member represents the strata.

3. The strata says the respondents rented out SL47 contrary to its rental restriction bylaws between June and November 2022. It seeks payment of \$9,500 in bylaw fines.
4. The respondents disagree they breached the strata's rental restriction bylaws and say the strata approved SL47 as 1 of 12 rental strata lots under its bylaws. I infer the respondents ask that the strata's claims be dismissed.
5. As explained below, I largely find in favour of the strata and order the respondents to pay the strata \$8,500 for bylaw fines plus interest.

## **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). 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.
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. To some extent, the parties each say the other is untruthful. However, these allegations are largely about SL47's status on a rental wait list. As I explain below, I do not need to address the parties' allegations because I find SL47's status on the strata's rental wait list is not relevant or necessary to decide this dispute.

8. 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.
9. In the Dispute Response, Ms. Fong and Mr. Gebhart made identical statements to those of Ms. Chow. In submissions they referred to Ms. Chow's submissions. Therefore, I find they adopted Ms. Chow's position.

### Conflict of Interest

10. In submissions, the strata essentially alleges that Ms. Chow, when she was strata council member, adjusted the wait list for strata lot rentals by inserting SL47 in place of another strata lot owned by her sister. The strata says Ms. Chow was in a conflict of interest when she changed the rental wait list and failed to disclose the conflict contrary to *Strata Property Act* (SPA) section 32. Ms. Chow disagrees and says she was simply correcting an administrative error.
11. I decline to address the strata's conflict of interest allegation because the BC Supreme Court has found the CRT has no authority to deal with the accountability of council members for actions taken while performing their duties, including not disclosing conflicts of interest. See for example, *Williams v The Owners, Strata Plan NW 1340*, 2021 BCSC 2058 at paragraph 66.

## **ISSUES**

12. The issues in this dispute are:
  - a. Did the respondents breach bylaw 38 by renting out SL47 without approval?
  - b. If so, did the strata treat the respondents significantly unfairly?
  - c. Must the respondents pay the strata \$9,500 for bylaw fines, or another amount.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

13. 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

parties' submissions and evidence but refer only to information I find relevant to explain my decision.

14. The strata was created under the *Condominium Act* in 1998 and continues to exist under the SPA. It consists of 117 apartment-style strata lots in 3 low rise buildings.
15. The respondents purchased SL47 on May 25, 2017. They immediately rented it out to Mr. Gebhart's parents who were tenants until May 2022 when they moved out. The respondents then rented out SL47 to unrelated tenants starting on July 1, 2022. On that date, the strata manager wrote to the respondents advising they had rented out SL47 in breach of bylaw 38, which limits the number of rentals to 12. The letter also stated that they failed to obtain the strata council's written permission, contrary to the bylaw. Finally, the letter stated the respondents may be subject to fines of \$500 every 7 days, among other things, and requested they respond to the allegation or request a council hearing within 14 days.
16. The respondents requested a council hearing which was held on July 25, 2022. This is confirmed in strata council meeting minutes.
17. On August 4, 2022, the strata manager wrote to the respondents advising of the strata council's decision to impose \$500 bylaw fines for breaching bylaw 38, including fines on a continuing basis.

***Did the respondents breach bylaw 38 by renting out SL47 without approval?***

18. In July 2022, the SPA included provisions that permitted the strata to restrict the number of residential strata lots that could be rented. Those provisions were generally found in sections 141 through 144. As noted, the law on rental restrictions and prohibitions changed significantly on November 24, 2022. On that date, the SPA was amended to repeal most of section 141 and all of sections 142 through 144 (among others), which largely removed a strata corporation's ability to restrict strata lot rentals.

19. In July 2022, the SPA also set out exemptions to a strata corporation's rental restriction bylaw. In summary, the exemptions were:

- a. There was no restriction on rentals of a strata lot to a family member as defined under the SPA and *Strata Property Regulation*.
- b. A new rental restriction bylaw did not take effect for a period of 1 year from the date the bylaw was passed, or if the strata lot was rented at the time the bylaw was passed, 1 year from the date the tenant ceased to occupy the strata lot,
- c. If a strata lot was designated as a rental strata lot on a Rental Disclosure Statement filed before January 1, 2010, a bylaw that restricted rentals did not apply until the earlier the date the owner developer sold strata lot or the date shown on the Rental Disclosure Statement, and
- d. If the bylaw created hardship for an owner, in which case the owner had to apply to the strata for the exemption.

20. I discuss which exemptions apply here, after I discuss the strata's bylaws.

21. The strata filed a consolidated set of bylaws with the Land Title Office (LTO) on August 18, 2016. I find these bylaws apply to this dispute. The August 18, 2016 bylaws include bylaws 25 and 38. Bylaw 25 allows the strata to fine for continuous bylaw breaches every 7 days. Bylaw 38 is about strata lot rentals and lease arrangements. Based on the overall evidence and submissions, I find bylaw 38 was in force by July 16, 2010, at the latest. I summarize the relevant portions of bylaw 38 as follows:

- (1) The maximum number of strata lots that may rented is 12.
- (2) An owner must apply in writing to the strata council before renting their strata lot.
- (3) If the maximum permitted number of rentals (excluding exempt strata lots under the SPA) has been reached, the strata must refuse its permission, notify the owner within 1 week of the application, and place the strata lot owner on a wait list.

- (4) If the maximum permitted number of rentals (excluding exempted strata lots) has not been reached the strata council must grant permission and notify the owner.
- (9) An owner who rents their strata lot contrary to the bylaw is subject to a \$500 fine.
22. LTO documents show subsection (11) was added to bylaw 38 on June 29, 2016. It prohibits owners on the wait list from renting or attempting to rent their strata lot without the strata council's permission.
23. What about the SPA exemptions noted above? During the time Mr. Gebhart's parents rented SL47, the family exemption applied. There was no need for the respondents to get the strata's permission to rent out SL47 in those circumstances and the evidence shows the strata was aware of the rental circumstances.
24. Given my finding that bylaw 38 was in force by July 2010, the 1-year grace period to enforce the bylaw did not apply. Also, it is clear that SL47 was not rented when the respondents purchased SL47, so the 1-year grace period after an existing tenant moved out also did not apply.
25. As for the owner developer's Rental Disclosure Statement, in submissions, the parties essentially agree that SL47 was not exempt under this provision.
26. Finally, the respondents did not seek a hardship exemption, so that exemption does not apply.
27. Based on this, the respondents were not exempt from bylaw 38 in July 2022 when they rented out SL47 to unrelated tenants.
28. I turn now to bylaw 38. A plain reading of bylaws 38(2) and 38(11) says the respondents needed to apply to the strata in writing before renting out SL47. There is no evidence the respondents made any such application. Rather, the respondents believed SL47 was at the top of the wait list, so they proceeded to rent it out without seeking the strata council's permission.

29. While the majority of the submissions relate to where SL47 stood on the rental wait list, I find the wait list did not govern whether an owner could rent out their strata lot. The most the wait list did was track when an owner could apply to the strata to rent out their strata lot.
30. To the extent the respondents argue the strata approved rental of SL47 at the time they allege it was added to the wait list I disagree. If there was approval given by the strata, I find it was only to add the strata lot to wait list.
31. For these reasons, I find the respondents rented out SL47 in July 2022 contrary to bylaw 38.

***Did the strata treat the respondents significantly unfairly?***

32. The respondents say the strata council was biased and prejudged them, suggesting the strata council had already decided the respondents breached bylaw 38 when they held the council hearing. They also say there was a similar bylaw breach involving another strata lot which the strata did not pursue. I find these allegations amount to a claim of significantly unfair treatment by the strata.
33. The CRT has authority to make orders remedying a significantly unfair act or decision by a strata corporation under CRTA section 123(2). 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.
34. The courts and the CRT have considered the meaning of “significantly unfair” and have largely followed the interpretation adopted by the BC Court of Appeal in *Reid v. Strata Plan LMS 2503*, 2003 BCCA 128. In *Reid*, the court said that actions are “significantly unfair” when they are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable.
35. While it might be true that the strata believed the respondents breached the bylaws when they held the council hearing, that does not mean the respondents were treated significantly unfairly. In fact, the July 1, 2022 council letter was clear that the strata believed the respondents breached bylaw 38. It was up to the respondents to

persuade the strata council at the hearing that it was wrong, but they were unable to do that, and the strata began imposing fines.

36. As for the respondents' assertion the strata did not pursue a similar claim against another strata lot owner, they refer to the May 23, 2023 strata council meeting minutes. The minutes refer to 2 CRT disputes. They say that 1 CRT claim was in facilitation and 1 was "tabled pending results" from the first dispute. In submissions, the strata says an equal amount of fines were imposed against both strata lots that ended on the same date. Neither party provided more information that this. I find the information provided by the parties is insufficient for me to conclude the strata treated the respondents significantly unfairly. I dismiss this aspect of the respondents' claim.

***Must the respondents pay the strata \$9,500 for bylaw fines, or another amount?***

37. I turn now to the amount of fines. As noted, bylaw 38(9) allows the strata to impose a \$500 fine. In July 2022, *Strata Property Regulation* section 7(1)(b) permitted the strata to charge a strata lot a maximum fine of \$500 "for each contravention of the [rental restriction] bylaw". Therefore, I find the strata's bylaw 38(9) complied with the *Strata Property Regulation*.
38. For the strata to be successful, it must prove it properly followed SPA section 135.
39. SPA section 135 sets out procedural requirements the strata must follow before imposing bylaw fines. Under SPA section 135(1), before imposing fines, the strata must have received a complaint, and 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". Under section 135(3), the strata may assess continuing fines without further notice. If a strata corporation fails to strictly follow these procedural requirements, the bylaw fines can be found to be 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.



40. I find the strata's July 1, 2022 letter to the respondents complied with section 135(1). While it does not mention the strata received a complaint, from the overall evidence and submissions, I find it likely that a strata council member made a verbal complaint, which complies with section 135(1). See *The Owners, Strata Plan NW3075 v. Stevens*, 2018 BCPC 2, at paragraph 52.
41. A council hearing was held on July 25, 2022. The strata wrote to the respondents 10 days later on August 4, 2022. The respondents argue the strata's response does not comply with SPA section 34.1, which requires the strata to hold a council hearing within 4 weeks of an owner's request, and to provide a decision within 1 week. A copy of the respondents' hearing request is not before me. However, the respondents submit they requested a hearing to obtain "information and supporting documents related to the removal of [SL47] from the approved rental list", which I have found is not relevant to this dispute. So, even if the strata did not provide a response to their request within 1 week, I find that would not affect the outcome of this dispute.
42. Although it is unclear from the submissions and evidence, I find it is more likely than not that the parties discussed the strata's July 1, 2022 letter about the alleged bylaw 38 contraventions at the July 25, 2022 hearing. Therefore, I have also considered the strata's obligation to provide a decision about bylaw fines as soon as feasible under SPA section 135(2). The SPA does not define the phrase "as soon as feasible", but I find 10 days is a reasonable time which meets the requirement of section 135(2). See my decision in *Stuart-Weir v. The Owners, Strata Plan LMS 908*, 2022 BCCRT 683 at paragraph 42 and 43, where I consider the meaning of the phrase.
43. I turn now to the amount of fines. The parties agree the total fines imposed against SL47 equal \$9,500. Neither party provided a breakdown of that total, nor a copy of a SL47 account statement showing the dates the fines were imposed. Given the respondents did not argue the amount was wrong, I find they accept the calculated amount. However, I find they must pay the strata a lesser amount.
44. The August 4, 2022 letter imposed 2 \$500 fines, one for contravening bylaw 38(1) and another for contravening bylaw 38(2). The letter stated the fine for breaching bylaw 38(1) was a continuing weekly fine. There are 15 weeks between August 4 and

November 22, 2022, when the strata was no longer able to impose fines due to the change in legislation. Therefore, I calculate the maximum amount of fines to be \$8,500 (\$1,000 for August 4, 2022, plus \$7,500 (15 weeks at \$500 per week)). I order the respondents to pay the strata this amount.

## **CRT FEES, EXPENSES, AND INTEREST**

45. 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 strata was the successful party and paid CRT fees of \$225. I order the respondents to pay the strata this amount.

46. Neither party claimed dispute-related expenses, so I order none.

47. The *Court Order Interest Act* (COIA) applies to the CRT. The COIA treats “general damages” and “special damages” differently. Special damages are specific, measurable past losses that arise from the particular circumstances of a dispute. General damages are losses that are presumed to flow from every wrongful act, or losses that cannot be calculated with precision. See *William P. Crooks Consultants Ltd v. Cantree Plywood Corp.*, 1985 CanLII 434 (BC SC) and *Couchman v. Furbaby Rescues Society*, 2022 BCCRT 1269.

48. I find the unpaid fines are special damages arising from a single cause of action. Under COIA section 1, I find the pre-judgement interest on the first \$1,000 fines imposed August 4, 2022 must start on that date. Interest on continuing fines must be calculated from the end of the 6-month period after the cause of action arose. I calculate pre-judgement interest to be \$523.43.

49. Under section 189.4 of the SPA, the strata may not charge any dispute-related expenses against the respondents.

## **DECISION AND ORDERS**

50. I order that, within 30 days of this decision, the respondents pay the strata \$9,248.43, broken down as follows:

- a. \$8,500.00 for bylaw fines,
- b. \$225.00 for CRT fees,
- c. \$523.43 for pre-judgement interest under the COIA,

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

52. This is a validated decision and order. 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