



Civil Resolution Tribunal

Date Issued: May 1, 2024

File: ST-2022-004797

Type: Strata

Civil Resolution Tribunal

Indexed as: *Xu v. The Owners, Strata Plan EPS5233*, 2024 BCCRT 415

BETWEEN:

GANDONG XU

APPLICANT

AND:

The Owners, Strata Plan EPS5233

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. Gandong Xu challenges a \$200 littering bylaw fine imposed by his strata corporation, The Owners, Strata Plan EPS5233 (strata). Mr. Xu represents himself. A council member represents the strata. I find that the strata did not comply with the *Strata Property Act* (SPA) when it imposed the fine, so it must cancel the fine.

JURISDICTION AND PROCEDURE

2. 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. In resolving dispute, the CRT must apply principles of law and fairness.
3. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconference, or a combination of these. In this dispute, little turns on credibility. Based on the evidence and submissions provided, I am satisfied that I can fairly decide this dispute without an oral hearing.
4. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.
5. 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.
6. CRT documents incorrectly show the strata's name as EPS5233. Based on section 2 of the SPA, the strata's correct legal name is The Owners, Strata Plan EPS5233. Given that the parties operated as if the correct name of the strata was used in their documents and submissions, I have exercised my discretion under CRTA section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the strata's name above.

ISSUE

7. The issue in this dispute in this dispute is whether the strata complied with SPA section 135 when it imposed the \$200 littering bylaw fine in July 2022.

EVIDENCE AND ANALYSIS

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

Background

9. The strata was created in 2018. Mr. Xu owns strata lot 53 on the ninth floor of a 37-floor tower. The strata's bylaws are the SPA's standard bylaws modified by several amendments filed at the Land Title Office.
10. The strata says Mr. Xu throws household garbage from his balcony onto common property below to create problems for the strata and one of its caretakers. This was the subject of a previous CRT decision I wrote, *Xu v. The Owners, Strata Plan EPS5233*, 2022 BCCRT 290. In that dispute, Mr. Xu challenged a \$200 fine the strata imposed on June 2, 2021, for breaching bylaw 3(4), which prohibits damage to common property. I dismissed Mr. Xu's claim.
11. The strata says it has continued to find garbage littered around common property in a similar manner and it believes Mr. Xu is responsible. The strata says it received a complaint about the ongoing littering and wrote to Mr. Xu before deciding to impose a \$200 fine on July 6, 2022. If the strata imposed any other littering fines between June 2021 and July 2022, those fines are not at issue in this dispute.

Did the strata comply with SPA section 135?

12. Section 135 of the SPA sets out the procedural requirements a strata must follow before enforcing its bylaws, including by imposing a fine. Section 135(1) says that a strata cannot fine an owner unless it has first received a complaint, given the owner written details of the complaint, and given the owner a reasonable opportunity to respond to the complaint, including by holding a hearing if the owner requests one. Section 135(2) requires the strata to notify the owner in writing of its decision to impose a fine as soon as feasible.

13. 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).
14. The strata says it complied with section 135. Mr. Xu says the strata denied him the opportunity for a hearing before it imposed the July 6, 2022 fine. He also says the strata breached SPA section 34.1, which establishes deadlines when a person requests a hearing.
15. On June 2, 2022, the strata manager wrote to Mr. Xu about a bylaw contravention complaint. The complaint was that a resident of his strata lot “was found” throwing garbage from the balcony into a common area. The letter said this was a repeat incident. It referred to bylaw 3(4) about damage to common property and bylaw 3(1)(a) which prohibits residents and visitors from causing a nuisance or hazard to another person. The letter advised that Mr. Xu could answer the complaint in writing or request a hearing. It warned Mr. Xu that he could be fined up to \$200 for each bylaw contravention. The letter included several photos of garbage on common property.
16. The same day, Mr. Xu emailed the strata manager to request a hearing.
17. On June 7, 2022, the strata manager asked Mr. Xu to complete a “hearing request form” attached to their email. They also said the next scheduled council meeting was on July 6, 2022, virtually, at 7 pm. They said the “hearing request will be added to the agenda” for that meeting.
18. The July 6, 2022 council meeting was held as scheduled and Mr. Xu did not attend. On July 21, 2022, the strata wrote to Mr. Xu that it had decided to impose a \$200 fine against his account.
19. The strata says Mr. Xu did not respond to the strata manager’s June 7, 2022 email and did not complete a hearing request form. However, Mr. Xu provides a copy of a June 7, 2022 email to the strata manager attaching a completed hearing request form.

The strata says the strata manager never received this email. I recognize that digital copies of emails can be convincingly faked. However, I am not persuaded that Mr. Xu has done so here. The strata does not say how it knows that the strata manager did not receive the June 7, 2022 email. There is no direct evidence from the strata manager, such as a written statement explaining how they monitor and retain incoming emails or confirming that they checked the appropriate folders and cannot find a copy of the email. The strata does not say why the strata manager could not provide this evidence. On balance, I find Mr. Xu emailed the strata manager on June 7 with a completed hearing request form.

20. The strata says whether the strata manager received the June 7, 2022 email and hearing request from is immaterial. It argues that because the July 6, 2022 council meeting proceeded as scheduled, Mr. Xu had the opportunity to be heard but simply failed to take advantage of it.
21. I disagree. The July 6, 2022 strata council meeting minutes confirm that the meeting was held electronically. The first section of the minutes, and I infer the meeting itself, was devoted to hearings. The strata held 2 hearings with other owners about possible bylaw contraventions. A third hearing was scheduled but the owner did not attend. These owners are identified by their strata lot number. None of them are Mr. Xu's strata lot 53.
22. Another section in the minutes is "Bylaw Violation Report". Under that section, strata council approved fines for SL53, among several others. There is no indication of how the strata council decided to apply the fine or what information it considered.
23. Based on the minutes, I find that the strata never scheduled a hearing for Mr. Xu at the July 6, 2022 council meeting. If it had done so, there would have been notes in the minutes that he did not attend his scheduled hearing, like there were about the other owner who did not attend. As well, there is no evidence that the strata ever provided Mr. Xu with instructions on how to attend the electronic meeting, such as a time to call in and a telephone number or videoconferencing link. This means there was no way for Mr. Xu to attend the hearing even if he wanted to.

24. Whether the strata manager failed to confirm the hearing and provide meeting details because they did not receive Mr. Xu's hearing request form or for some other reason does not matter. The SPA and the strata's bylaws do not require an owner to complete any form to be granted a hearing. SPA section 34.1 only says the request must be in writing and must state the reason for the request. Mr. Xu's request met those requirements.
25. Additionally, I find the strata manager's June 7 email was confusing. It said the "hearing *request* will be added to the agenda" (emphasis added). It did not say that the hearing would be held during the council meeting. The word "request" suggests that council still needed to deliberate on whether the hearing would be granted. I have no evidence about how Mr. Xu interpreted this email, but this may be why Mr. Xu did not seek out more information about how to participate in the July 6 council meeting. Ultimately, however, it was incumbent upon the strata manager to provide the meeting details to allow Mr. Xu to participate in a hearing.
26. My conclusions are that Mr. Xu requested a hearing, the strata did not schedule a hearing, and the strata did not hold a hearing. By imposing the \$200 fine without holding a hearing after Mr. Xu requested one, the strata contravened SPA section 135(1). I also find the strata breached SPA sections 34.1(2) by failing to schedule the hearing within 4 weeks of Mr. Xu's request. So, I find the \$200 fine the strata imposed is invalid and must be cancelled. I order the strata to remove from Mr. Xu's strata lot account the \$200 fine referenced in its July 21, 2022, letter.
27. Neither party paid any CRT fees and neither party claims any expenses, so I make no other orders.
28. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mr. Xu.

ORDER

29. Within 14 days, I order the strata to remove the \$200 bylaw contravention fine referenced in its July 21, 2022, letter from Mr. Xu's strata lot account.

30. This is a validated decision and order. 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.

Micah Carmody, Tribunal Member