



Civil Resolution Tribunal

Date Issued: May 13, 2024

File: ST-2023-002386

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR45 v. Dexter*, 2024 BCCRT 449

B E T W E E N :

The Owners, Strata Plan VR45

APPLICANT

A N D :

JESSICA DEXTER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. Jessica Dexter (owner) owns strata lot 11 (SL11) in the strata corporation, The Owners, Strata Plan VR45 (strata). The strata says the owner advertised and used SL11 for short-term accommodations, contrary to its bylaws. It seeks an order that the owner pay \$7,000 in fines for 7 bylaw violations between 2018 and 2022. It also

seeks an order that the owner stop advertising or allowing SL11 to be used for short-term accommodations. A strata council member represents the strata.

2. The owner says that once the strata asked her to stop advertising SL11 for short-term accommodations, she did. She further says that the strata did not follow the proper procedures before fining her. I infer the owner argues the fines are invalid as a result. The owner 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). 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.
4. 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 and that an oral hearing is not necessary.
5. 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.
6. 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.

ISSUES

7. The issues in this dispute are:

- a. Must the owner pay the strata \$7,000, or some other amount, in fines for allegedly breaching its bylaw restricting short-term accommodations?
- b. Should I order the owner to stop advertising and using SL11 for short-term accommodations?

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, 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 the evidence and argument that I find necessary to explain my decision. I note the owner did not provide any documentary evidence, despite having the opportunity to do so.

Background

9. The strata was created in 1972 and consists of 41 residential strata lots. The owner purchased SL11 in 2017. The strata says that since 2018, the owner has used or advertised SL11 for short-term accommodations, contrary to its bylaws, at least 7 times. It says the owner must pay \$1,000 for each alleged bylaw contravention, totalling \$7,000.
10. I turn first to the applicable bylaws. On December 21, 2001, the strata filed a complete set of bylaws with the Land Title Office (LTO). In March 2016, the strata amended these bylaws to add bylaw 41(16), restricting owners from granting a license to any person to occupy a strata lot for short-term accommodation, including through Airbnb. At this time, the maximum fine for a breach of bylaw 41(16) was \$200 under bylaw 23(3). In March 2019, the strata filed further bylaw amendments with the LTO. Specifically, the strata filed an amendment that said that the strata's existing bylaw 41(16) "be rescinded and replaced" with bylaw 41(17) which said that any owner found to violate bylaw 41(16) may be subject to a fine of \$1,000 per day.
11. Then on April 13, 2022, the strata repealed and replaced all of its bylaws and filed a complete set of new bylaws with the LTO. The strata has filed subsequent

amendments that I find are not relevant here. The current bylaw 4(7) says, in part, that an owner must not use, permit to be used, advertise, or permit to be advertised a strata lot for temporary lodging, short-term accommodations or vacation rentals of any kind. Bylaw 27(1)(d) says the strata may fine an owner \$1,000 for each contravention of bylaw 4(7).

12. With these bylaws in mind, I turn now to the relevant background facts. On August 8, 2022, the strata sent the owner a letter saying that it had been brought to its attention that the owner, her mother, or both were renting or leasing SL11 through Airbnb in breach of bylaw 4(7). The strata noted that a breach of bylaw 4(7) could be subject to a \$1,000 fine for each contravention and asked for the owner's cooperation in "curbing this practice".
13. Then in a September 21 letter, the strata said that it had identified reviews left on Airbnb by individuals that had stayed at SL11 including in June 2022, May 2022, April 2022, August 2022, July 2021, March 2021, and July 2018. The strata referred to bylaws 4(7) and 27(1), as well as bylaw 28(1) about continuing contraventions, and said that based on the above reviews, it was aware of 7 instances where SL11 was used for short-term accommodations through Airbnb. The strata told the owner she could request a hearing and asked her to provide a response within 20 days, failing which it noted that the strata council may decide to levy fines against her for the alleged contraventions.
14. The owner responded by email on September 23, saying that her home has been occupied by many friends and family members and is not on Airbnb. Then, on November 22, the strata wrote to the owner again, this time saying that it had received a complaint that SL11 was listed for short-term rental on Craigslist and referred her to the listing ID# for the posting. In the letter, the strata again referred to bylaws 4(7), 27, and 28, and informed the owner that she could request a hearing in writing. The strata again asked the owner to provide a response within 20 days, failing which the strata council could decide to assess fines for the bylaw contravention.

15. The owner responded by email the same day denying that SL11 was on Craigslist. The strata then responded by attaching what I infer were screenshots of the listing and the owner again denied that her property was on Craigslist. So, on November 24, the strata manager invited the owner to discuss the issue at the strata council's next meeting scheduled for Monday, November 28. The strata manager asked the owner to let them know if she would attend and said that they would then provide her with the Zoom link for the meeting.
16. No response from the owner is in evidence. In her Dispute Response, the owner says that she told the strata manager that Mondays do not work for her. She says that she was open to meeting on another day, but the strata did not offer any other options. In a December 1 letter, the strata informed the owner that it had met on November 28 and voted to assess a \$1,000 fine for each of the 7 instances the owner used SL11 for short-term accommodations through Airbnb, as outlined in its September 21 letter. The strata asked the owner to pay the \$7,000 in fines within 30 days, which she undisputedly has not done.

Must the owner pay the strata \$7,000 in fines?

17. Although the owner previously denied listing her home on Airbnb or Craigslist, in this dispute, she does not make the same denial. As noted above, in her Dispute Response, the owner says that she stopped advertising her home and took down the listing once the strata asked her to. Given this admission and the evidence before me which includes screenshots of the Airbnb listing, copies of reviews from Airbnb by people who stayed at SL11, and screenshots of the November 2022 Craigslist posting, I am satisfied that the owner did advertise and use SL11 for short-term accommodations, in breach of the current bylaw 4(7) and the prior bylaw 41(16).
18. However, for the reasons that follow, I find only 2 of the fines the strata assessed are valid. As noted above, the owner argues that the strata did not follow the proper processes before fining her. In her Dispute Response, the owner says that the strata can only impose fines for bylaw infractions that took place after it issued its August 8 warning, not before. I disagree. There is nothing in the *Strata Property Act* (SPA) that

says that a strata corporation may only assess fines for bylaw contraventions that take place *after* it has issued a warning.

19. On the contrary, under SPA section 135(1), *before* imposing fines, the strata must receive a complaint, and give 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”. 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).
20. I find the strata’s September 21 letter failed to meet section 135’s requirements for all but 2 of the alleged infractions. I address each alleged contravention in turn.
21. First, as the owner correctly notes, the contravention from July 2018 took place before the strata amended its bylaws to increase the fine from \$200 to \$1,000. Further, in *Terry*, the court said that sufficient particulars for the purposes of SPA section 135 should include an “identified bylaw”. Here, in its September 21 letter, the strata identified and excerpted bylaw 4(7), but this bylaw did not apply until April 2022. It was the prior bylaw 41(16) that applied during July 2018. While both bylaw 4(7) and bylaw 41(16) seek to restrict short-term accommodations, they are not the same bylaw. The strata specifically fined the owner for the July 2018 contravention for breaching 4(7) and made no mention of bylaw 41(16) in its September 21 letter. Under the circumstances, I find the strata failed to adequately identify the bylaw that the owner breached. As a result, I find the particulars the strata gave the owner for the July 2018 contravention did not satisfy SPA section 135(1).
22. Next, when the strata amended its bylaws in March 2019, instead of amending the bylaws to add bylaw 41(17) allowing it to fine owners up to \$1,000 for each contravention of bylaw 41(16), the amendment filed with the LTO noted that the strata was rescinding and replacing bylaw 41(16) with bylaw 41(17). While this may not have been what the strata intended, I find the effect of rescinding bylaw 41(16) was

that between March 2019 and April 12, 2022, there was no bylaw in place that restricted short-term accommodations at the strata.

23. So, I find the strata is not entitled to any fines for the March 2021 and July 2021 contraventions noted in its September 21 letter as bylaw 4(7) was not yet in force, and bylaw 41(16) had been rescinded. The strata's September 21 also mistakenly referred to an August 2022 review but the evidence shows it was actually from August 2021. So, I find the strata is not entitled to any fines relating to this contravention since the strata not only failed to adequately identify the correct date for the contravention, but there was also no bylaw in place restricting short-term accommodations when the August 2021 contravention occurred.
24. This leaves the contraventions from April 2022, May 2022, and June 2022. I find the May and June 2022 reviews were likely written shortly after the individuals leaving the review stayed at SL11, which I find was likely after bylaw 4(7) came into effect. So, I find the owner breached bylaw 4(7) by allowing short-term accommodations in May and June 2022. However, I cannot find the same for the April 2022 review. There is no evidence before me showing exactly when the April 2022 review was written, or what dates the individual who wrote the April 2022 review stayed at SL11. So, given that bylaw 4(7) came into effect mid-way through April, I find the strata has not proven that this stay occurred after bylaw 4(7) came into effect.
25. In conclusion, I find the strata has proved that it properly gave notice and particulars of the May and June 2022 contraventions to the owner in its September 21 letter. I find it also gave the owner an adequate opportunity to respond to the complaint, including to request a hearing. While the owner says that she was not available to attend the November 28 council meeting, she does not say, nor does the evidence show, that she requested a hearing or that she asked the strata to set the meeting for a different date so that she could attend. Under the circumstances, I find the strata satisfied SPA section 135(1)'s requirements for the May and June 2022 contraventions.

26. Further, while it is somewhat unclear why the strata did not decide to fine the owner for the contraventions set out in its September 21 letter prior to November 28, I find it was not unreasonable for the strata to wait to decide whether to fine the owner, especially given the owner's prior denial and the strata discovering the Craigslist posting in November. I find the strata also gave the owner notice of its decision made on November 28 to assess fines for the May and June 2022 contraventions as soon as feasible (on December 1), satisfying SPA section 135(2). So, I find the strata met SPA section 135's procedural requirements for the May and June 2022 contraventions, and properly assessed fines for these violations. As a result, I order the owner to pay the strata \$2,000 in fines for contravening bylaw 4(7) in May and June 2022.
27. As noted, the strata also seeks an order that the owner stop advertising and using SL11 for short-term accommodations. The owner says that she took down her listings after the strata told her to. However, the evidence shows reviews on SL11's Airbnb page from as late as July 2023, suggesting that the owner was still using SL11 for short-term accommodations after the strata started this dispute, and may still be advertising or using SL11 for short-term accommodations. Given this, I find it appropriate to order the owner to comply with bylaw 4(7) and stop advertising or using SL11 for short-term accommodations.

CRT FEES, EXPENSES AND INTEREST

28. 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 the strata was partly successful, I find it is entitled to \$112.50 for half its paid CRT fees. Neither party claims any dispute-related expenses, so I award none.
29. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to pre-judgment interest on the \$2,000 in fines from December 1, 2022, the date it informed the owner about the fines, to the date of this decision. This equals \$135.11.

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

ORDERS

31. I order that:

- a. Within 30 days of this decision, the owner must pay the strata \$2,000 in bylaw fines, \$135.11 in pre-judgment interest under the COIA, and \$112.50 in CRT fees, together totalling \$2,247.61.
- b. The owner immediately comply with bylaw 4(7) and stop advertising or using SL11 for short-term accommodations.

32. The strata is also entitled to post-judgment interest under the COIA.

33. I dismiss the strata's remaining claims.

34. 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.

Nav Shukla, Tribunal Member