



Civil Resolution Tribunal

Date Issued: July 17, 2024

Files: ST-2023-001536 and
ST-CC-2023-006991

Type: Strata

Civil Resolution Tribunal

Indexed as: *Gong v. The Owners, Strata Plan EPS3952*, 2024 BCCRT 691

B E T W E E N :

RENMEI GONG

APPLICANT

A N D :

The Owners, Strata Plan EPS3952

RESPONDENT

A N D :

RENMEI GONG

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. These two linked disputes are about payment of bylaw fines and fees. They consist of a claim and a counterclaim between the same parties, so I have issued one decision for both disputes.
2. Renmei Gong owns strata lot 43 in the strata corporation, The Owners, Strata Plan EPS3952 (strata). Ms. Gong disputes \$18,000 in bylaw fines the strata imposed in connection with SL43 allegedly being used as short-term accommodation (STA). Ms. Gong values her claim at \$18,000 and asks for this amount, but it is undisputed that she has not paid the fines. From the submissions and evidence, I find Ms. Gong seeks an order that the strata cancel the \$18,000 in STA-related fines, and remove the fines from her strata lot account.
3. The strata says the fines are valid, and counterclaims for \$20,094.34. This includes \$18,000 for the STA-related fines, and \$2,094.34 for other bylaw fines and unpaid fees.
4. Ms. Gong is self-represented. A strata council member represents the strata.

JURISDICTION AND PROCEDURE

5. These are the Civil Resolution Tribunal's (CRT) formal written reasons. 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 I am properly able to assess and weigh the documentary evidence and submissions before me. Though Ms. Gong indicated she has difficulty reading and

writing, I was able to clearly understand her arguments and evidence, and neither party requested an oral hearing. So, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find 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 it considers relevant, necessary, and appropriate, even where the information would not be admissible in court.
8. The strata objects to a statement Ms. Gong included in evidence in ST-2023-001536, and says I should not consider it. Ms. Gong did not make initial written submissions in ST-2023-001536, but her statement appears to stand in place of a written submission. The basis for the strata's objection is unclear, since it does not say Ms. Gong is attempting to get around the CRT's character limit for written submissions, or gain any other unfair advantage by including her submissions as documentary evidence. I find there is nothing procedurally unfair about allowing Ms. Gong's statement, and I find allowing it is in line with the CRT's mandate that includes flexibility. In any case, Ms. Gong included the statement's text in her reply submissions in ST-CC-2023-006991, and I have considered the information submitted by the parties collectively in both disputes in coming to my decision. So, I find Ms. Gong's statement is admissible.
9. 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

10. The issues in this dispute are:
 - a. Must the strata cancel the \$18,000 in STA-related bylaw fines it imposed on Ms. Gong, and remove the fines from her strata lot account?

- b. Must Ms. Gong pay the strata \$20,094.34 for the STA-related and other bylaw fines, and unpaid fees?

EVIDENCE AND ANALYSIS

11. As the applicant in this civil proceeding, Ms. Gong must prove her claims on a balance of probabilities (meaning more likely than not). The strata must prove its counterclaim to the same standard. I have read all the parties' submissions and evidence, but refer only to information I find necessary to explain my decision.
12. The strata was created in 2017 under the *Strata Property Act* (SPA). The strata replaced the SPA's standard bylaws with a new set of bylaws in November 2018. It amended its new bylaws three times after that. Some of those amendments are relevant to this dispute. I discuss all the applicable bylaws below.

Background

13. The strata says between September 2021 and August 2022, Ms. Gong used SL43 as an STA, contrary to its bylaws. So, the strata imposed fines totalling \$18,000 against her. The strata also says Ms. Gong violated other bylaws, failed to pay her strata fees causing a non-sufficient funds (NSF) charge, and failed to pay a Change in Occupancy fee. So, it imposed additional fines, and charged the applicable fees to Ms. Gong's strata lot account. These total \$2,094.34. The strata says Ms. Gong refused to pay the \$20,094.34 she owes for the fines and fees.
14. It is undisputed that starting in June 2021, Ms. Gong allowed RW to live in SL43. I infer Ms. Gong lived elsewhere. Due to their job, RW had to move out, and Ms. Gong says RW rented SL43 to their friend, S, who moved in in February 2022. Following a break-in to SL43 in April 2022, Ms. Gong says S moved out. It is unclear who occupied SL43 after that.
15. SPA section 130(1) says a strata corporation may fine an owner if they, their visitor, or an occupant (if the owner does not rent the strata lot to a tenant) violates a bylaw or rule. Section 130(2) says the strata corporation may fine a tenant, their visitor, or

an occupant (if the tenant does not sublet the strata lot to a subtenant) for the same reason. Here, the legal relationship between Ms. Gong and SL43's occupants is unclear. Ms. Gong says RW was her friend, and the strata says Ms. Gong was RW's aunt. There is no evidence, such as a tenancy agreement, that RW was renting SL43 from Ms. Gong, rather than simply being allowed to stay there, which the evidence suggests. So, I find RW was not a tenant. For the same reason, I find S was not Ms. Gong's tenant. I also find S could not be RW's subtenant, since RW was not a tenant. In these circumstances, I find both RW and S were occupants of SL43. So, I find the strata correctly fined Ms. Gong, rather than RW or S, in connection with the alleged bylaw violations.

Must the strata cancel the \$18,000 in STA-related bylaw fines it imposed on Ms. Gong, and remove the fines from her strata lot account?

16. I summarize bylaw 1.3.25 of the November 2018 bylaws as follows:

- a. STAs (defined as rentals of less than 30 days) are prohibited.
- b. An owner, tenant or occupant must not allow a strata lot to be used as an STA in exchange for any remuneration. Specifically, they must not
 - i. Allow a strata lot to be used as a vacation or travel accommodation, such as AirBnB, or
 - ii. Advertise, market, promote or license any strata lot as vacation or travel accommodation, such as AirBnB.
 - iii. If an owner, tenant or occupant violates the bylaws restricting STA, the strata will impose a fine of up to \$1,000 a day. This is also set out in bylaw 4.1.2 concerning maximum fines.

17. Ms. Gong makes several arguments about why the strata improperly fined her for using SL43 as an STA, and should cancel the fines. First, she says it is unfair that the strata did not email her any of the communications it issued about potential fines. Next, she denies SL43 was used as an STA, and says the evidence the strata relied

on is flawed. Finally, she says the fines are punitive, and she cannot afford to pay them.

18. SPA sections 61(1)(b)(iv) and (vii) say a strata corporation must give a person any required notice or other document by mailing it to the strata lot address or emailing it to an email address provided for the purpose of receiving such information, if the person has not provided an address outside the strata plan. A mailed or emailed notice or document is deemed received four days after it has been sent. All the STA bylaw violation notices and decision letters in evidence indicate they were mailed to SL43, and emailed. The email address is different to the one Ms. Gong used to communicate with the CRT in this dispute. However, there is no evidence Ms. Gong gave the strata any email address other than the one it used, or a mailing address other than SL43's mailing address. I find the strata provided effective notice of all bylaw violation notices and decision letters regardless of whether Ms. Gong actually received them.
19. Next, did the strata follow the correct procedures to fine Ms. Gong for using SL43 as an STA?
20. SPA section 135 sets out the requirements a strata corporation must follow before enforcing its bylaws, including imposing a fine. Section 135(1) says a strata corporation 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 chance to respond, including by holding a hearing if the owner requests one. The SPA does not specify the form in which notice of a complaint must be given. However, in *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, the court found notice that a strata is considering imposing a fine must include an identified bylaw or rule, warn of the possibility of fines, and provide sufficient detail of the nature of the complaint. Section 135(2) requires the strata corporation to notify the owner in writing of its decision to impose a fine, as soon as feasible. These procedural requirements are strict, with no leeway. If the strata corporation fails to comply with them, the bylaw fines can be found invalid (see *Terry*, and *The Owners, Strata Plan NW 307 v. Desaulniers*, 2019 BCCA 343).

21. The strata first notified Ms. Gong of an alleged violation of bylaw 1.3.25 on October 8, 2021. I find the letter did not meet the section 135(1) requirements. While the letter referred to several incidents of alleged STA use, it did not indicate the strata intended to impose multiple fines. I find this is an important piece of information Ms. Gong required to reasonably respond, as the difference between one \$1,000 fine and four \$1,000 fines (which is what the strata ultimately imposed) is substantial.
22. I also find the strata failed to meet the section 135(2) requirement. The strata manager wrote to Ms. Gong on January 21, 2022 advising her of the strata's decision to impose fines of \$4,000. That letter said the decision had been made at a "recent" strata council meeting, without specifying the meeting's date. Extracts of strata council meeting minutes suggest the meeting was held on November 22, 2021. Based on this, I find the strata's January 21, 2022 letter advising of a decision was not "as soon as feasible". So, I find the STA bylaw fines of \$4,000 the strata imposed are invalid.
23. On May 6, 2022, the strata sent Ms. Gong another violation letter about bylaw 1.3.25. It said the strata council had decided to impose fines of \$4,000 for using SL43 as an STA, and a \$1,000 fine for advertising it as such. Again, I find the letter did not meet the section 135(1) requirements. Since the letter said the strata council had already decided to impose the fines, I find Ms. Gong was not offered a reasonable opportunity to answer the complaint, even though the letter referred to being able to request a hearing. The court was clear in *Terry* that a strata corporation must strictly comply with section 135 **before** imposing a fine. That is, as a first step, the strata corporation must give notice of the alleged violation and provide the chance to respond, and once it has done that, it may impose a fine as a second step. The CRT has consistently held that allowing an owner to have a hearing after imposing a fine does not comply with section 135 (see, for example, *Horvath v. The Owners, Strata Plan 1773*, 2022 BCCRT 852 and *The Owners, Strata Plan ABC XXX v. Z.O.K.*, 2020 BCCRT 1359). While previous CRT decisions are not binding on me, I agree with this approach, and apply it here. I find the STA bylaw fines of \$5,000 the strata imposed are invalid.

24. Next, the strata wrote to Ms. Gong on June 2, 2022. Again, the letter said the strata council had decided to impose fines of \$2,000 for using SL43 as an STA, and a \$1,000 fine for advertising it as such, contrary to bylaw 1.3.25. So, again, I find it did not meet the section 135(1) requirements, and the STA bylaw fines of \$3,000 the strata imposed are invalid.
25. I note Ms. Gong's representative RW asked for a hearing, and was granted one on June 13. The evidence shows that on June 13, the strata council decided to impose the fines. However, it also shows the strata manager did not advise Ms. Gong of that decision in writing until September 13. I find this was not "as soon as feasible", contrary to section 135(2). So, even if the strata had complied with the section 135(1) requirements, I would have found it breached section 135(2).
26. Finally, also in its September 13, 2022 letter, the strata notified Ms. Gong it intended to impose fines of \$5,000 for using SL43 as an STA, and a \$1,000 fine for advertising it as such, contrary to bylaw 1.3.25. I find this letter met the SPA section 135(1) requirements. After some back and forth, the strata held a hearing with Ms. Gong's representative, RW, on January 16, 2023. Following the hearing, the strata decided to impose the fines. It notified Ms. Gong of its decision in writing on January 19, 2023. So, I find the strata also met the section 135(2) requirement.
27. Ms. Gong says the strata's decision was based on flawed evidence. Specifically, she says screenshots of the AirBnB listings the strata relied on showed different host names and different photos of the property. She also says the screenshots of reviews did not identify the property address or mention a different address, and referred to property specifications that did not reflect SL43. Ms. Gong says this shows either "scammers" used her photos to advertise their own properties, or the reviews were fake.
28. The strata disagrees. It notes that none of the reviewers complained that the photos did not match the property they stayed in, and it is undisputed that the photos were of SL43. I find this argument persuasive. In addition, Ms. Gong did not provide evidence of SL43's specifications, such as an MLS listing, to show the reviewers'

comments were about another property. I find she could easily have done so, as it is undisputed SL43 was listed for sale twice during the summer of 2022. There is also no evidence Ms. Gong attempted to contact AirBnB to establish whether the postings or reviews were fake, which she suggested could be done. As the person alleging the evidence was fake, Ms. Gong bears the burden of proving that. I find she has not done so here.

29. Based on all of this, I find the strata reasonably concluded SL43 was used as an STA on the dates noted in the reviews attached to the September 13, 2022 bylaw violation letter, and fined Ms. Gong accordingly. There is no evidence the fines were punitive, and I find the amount was in accordance with regulation 7.1(c) of the *Strata Property Regulation*. I note that an inability to pay does not relieve a person of their obligation to pay if they are ordered to do so.
30. In summary, I find the strata improperly imposed fines of \$12,000 in connection with using SL43 as an STA. I order the strata to cancel these fines, and remove them from SL43's strata lot account. I also find the strata followed the proper bylaw enforcement procedure regarding the remaining STA-related fines of \$6,000, and reasonably concluded bylaw 1.3.25 was breached. So, I dismiss this part of Ms. Gong's claim.

Must Ms. Gong pay the strata \$20,094.34 for the STA-related and other bylaw fines and unpaid fees?

31. Given my conclusion above, it follows that the strata has proven its entitlement to fines of \$6,000 for using SL43 as an STA and advertising it as such. I order Ms. Gong to pay the strata \$6,000 for these fines. I dismiss the strata's claim for \$12,000 for the remaining STA-related fines, for the reasons above.
32. This leaves the strata's claim for \$2,094.34 for other bylaw fines and fees.
33. In April 2022, the strata fined Ms. Gong \$100 (2 x \$50 each) for failing to pay a \$250 Change of Occupancy fee, as required by bylaw 1.27(e), and for failing to give the strata a copy of S's signed Form K (Notice of Tenant's Responsibilities), as required by bylaw 1.3.25(d). I find the strata met the section 135 requirements before issuing the fines. Ms. Gong does not dispute the alleged violations, or say she told the strata

S was not her tenant, so I find the strata properly took enforcement action. I order Ms. Gong to pay the strata \$350 for the Change of Occupancy fee and the related fines.

34. Similarly, in September 2022, the strata fined Ms. Gong \$200 for failing to provide proof of HVAC servicing. Ms. Gong does not deny she failed to allow the strata's contractor access to SL43 to perform HVAC servicing under bylaw 1.7.3., or say she provided proof she arranged her own servicing, as required by bylaw 1.7.4. I also find the strata met the section 135 requirements before issuing this fine. So, I order Ms. Gong to pay \$200.
35. For the next two alleged bylaw infractions, I find the strata did not meet the section 135 requirements.
36. On April 20, 2022, the strata fined Ms. Gong \$200 for smoking-related bylaw violations. The letter referred to complaints about the smell of marijuana smoke originating from SL43 on March 29, March 30, and March 31, contrary to the strata's nuisance (1.3.1(a)), odour (1.3.1(b)), use and enjoyment (1.3.1(c)), and smoking prohibition (1.3.5 and 1.3.6) bylaws. The letter also referred an earlier warning letter of February 14, 2022. However, the February 14 letter only mentioned complaints received during the month of February 2022. In *The Owners v. Grabarczyk*, 2006 BCSC 1960, the court said incidents of nuisance are not continuing contraventions when observed on different dates. Instead, they are distinct violations for which a fine may only be imposed if the section 135 requirements are met in each instance.
37. Here, the strata imposed a fine for the March incidents on April 20, before giving Ms. Gong the chance to respond, although the letter did mention requesting a hearing. But, for the reasons described above, I find this was insufficient to meet the section 135(1) requirements, since the fine had already been imposed. So, I dismiss this part of the strata's claim.
38. On November 2, 2022, the strata warned Ms. Gong she had failed to grant its contractor access to SL43 to service the dryer exhaust vent, as required by bylaw 1.7.3. The letter advised Ms. Gong to provide proof of servicing at her own expense under bylaw 1.7.4, within 14 days. If she failed to provide proof of servicing, the strata

would fine her \$200, and apply chargebacks to service the vent to her strata lot account. The letter did not mention requesting a hearing, though it provided an email address to which Ms. Gong could send any inquiries. Still, the strata ledger in evidence shows the strata applied the fine on November 1, 2022, before the date of the warning letter. So, I find Ms. Gong did not have a reasonable opportunity to answer the complaint under section 135(1)(e). I dismiss this part of the strata's claim.

39. Finally, on August 19, 2022, the strata sent Ms. Gong a letter about \$1,144.34 in outstanding fees - \$1,119.34 for strata fees, and \$25 for an NSF charge. The letter mentioned bylaw 1.1.1, which says an owner must pay strata fees on or before the first day of the month, and bylaw 1.1.2, which says if an owner fails to pay on time, the strata can issue a \$200 late payment fine from the second month onward. The strata did not issue a fine. Instead, it applied the NSF charge to Ms. Gong's strata lot account. While Ms. Gong does not dispute either the strata fees or the NSF charge, the strata does not have a bylaw that allows it to recover an NSF charge from an owner. Since there is no valid and enforceable bylaw that creates the debt for the NSF charge, I dismiss the strata's \$25 claim for it. I order Ms. Gong to pay \$1,119.34 for her unpaid strata fees.

CRT FEES, EXPENSES AND INTEREST

40. 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. I find the parties had divided success, so I make no order for reimbursement of CRT fees. Neither party claimed any dispute-related expenses.
41. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to prejudgment interest on the \$7,669.34 monetary award from the date each fine or fee was applied to SL43's strata lot account, to the date of this decision:
- a. From September 28, 2022 for the \$6,000 STA-related fines, and for the \$200 HVAC-servicing fine,
 - b. From May 6, 2022 for the \$250 Change in Occupancy fee,

- c. From June 17, 2022 for the \$100 move in-related fines, and
- d. From August 1, 2022 for the \$1,119.34 in strata fees.

This equals \$614.30.

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

ORDERS

- 43. From the date of this order, I order the strata to cancel \$12,000 in fines it imposed on Ms. Gong in connection with using SL43 as an STA, and remove those fines from SL43's strata lot account.
- 44. Within 30 days of the date of this order, I order that Ms. Gong pay the strata \$8,283.64, broken down as follows:
 - a. \$7,669.34 in debt, for bylaw fines and unpaid fees, and
 - b. \$614.30 in pre-judgment interest under the COIA.
- 45. I dismiss the balance of Ms. Gong's claims and the strata's counterclaim.
- 46. The strata is also entitled to post-judgment interest under the COIA.

47. 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.

Megan Stewart, Tribunal Member