



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Throssell v. The Owners, Strata Plan LMS 2220*, 2024 BCCRT 861

B E T W E E N :

MICHAEL RAYMOND THROSSELL

APPLICANT

A N D :

The Owners, Strata Plan LMS 2220

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. Michael Raymond Throssell formerly owned a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 2220 (strata). Mr. Throssell says the strata unnecessarily charged him for legal fees associated with his alleged breaches of the strata's bylaws. He claims reimbursement of \$15,000 for the legal fees.

2. The strata says that the legal fees were necessary, and that it was entitled to require Mr. Throssell to pay them under its bylaws. The strata asks me to dismiss Mr. Throssell's claims.
3. Mr. Throssell is self-represented. The strata is represented by a strata council member.
4. For the following reasons, I dismiss Mr. Throssell's claims.

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.
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. Considering the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
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.

Additional claims

8. In submissions, Mr. Throssell raises additional claims that were not included in his Dispute Notice. Specifically, Mr. Throssell also asks the strata to reimburse him for moving fees, realtor fees, and lost equity in the sale of his strata lot. Mr. Throssell also argues that the strata's actions aggravated an unspecified disability. Mr.

Throssell did not specify claim amounts for these new claims, and did not provide evidence in support of them.

9. As noted, these claims were not included in Mr. Throssell's Dispute Notice. There is no evidence before me that Mr. Throssell requested to add these claims to the dispute before the tribunal decision process. The purpose of the Dispute Notice is to define the issues and provide fair notice to the respondent of the claims against it. CRT Rule 1.19 says that the CRT will not issue an amended Dispute Notice after the dispute has entered the tribunal decision process except in extraordinary circumstances. I find no extraordinary circumstances exist here to justify adding new claims at this late stage in the CRT's process. So, I decline to address Mr. Throssell's additional claims in this decision.

Evidence and additional submissions

10. I was unable to open several items of Mr. Throssell's evidence. Through CRT staff, I invited Mr. Throssell to resubmit this evidence, which he did. The strata had an opportunity to respond to Mr. Throssell's resubmitted evidence, and did so.
11. In its response to Mr. Throssell's resubmitted evidence, the strata said that Mr. Throssell agreed to pay the legal fees when he sold his strata lot, under a settlement agreement. I asked the strata to provide a copy of this agreement. It did so, but acknowledged that Mr. Throssell had not signed the agreement. So, I find the alleged settlement agreement does not preclude Mr. Throssell from claiming reimbursement of the legal fees.

Jurisdiction

12. In its Dispute Response, the strata says it does not believe that the CRT has jurisdiction to address Mr. Throssell's claims. It also says that legal fees are not payable in any CRT proceeding except in extraordinary circumstances.
13. I infer the strata is referring to CRT Rule 9.5(3), which says that the CRT generally will not order one party to pay any fees a lawyer has charged in the tribunal dispute process. However, as this dispute involves legal fees the strata incurred and

charged to Mr. Throssell before he began this CRT dispute, I find this rule does not apply to Mr. Throssell's claims.

14. The strata does not elaborate on its assertion that Mr. Throssell's claims are beyond the CRT's jurisdiction in its submissions. I find Mr. Throssell's claims are within the CRT's jurisdiction over strata property matters under CRTA section 121.

ISSUE

15. The issue in this dispute is whether the strata must reimburse Mr. Throssell for legal fees it charged to his strata account.

EVIDENCE AND ANALYSIS

16. As the applicant in this civil dispute, Mr. Throssell must prove his claims on a balance of probabilities, meaning more likely than not. I have read all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.
17. As noted, Mr. Throssell formerly owned a strata lot in the strata. I infer from the parties' submissions that Mr. Throssell sold his strata lot at some point before starting this dispute. I agree with previous CRT decisions, including *Gill v. The Owners, Strata Plan EPS 4403*, 2020 BCCRT 725, which confirm that former owners have standing to bring CRT strata disputes. The strata does not argue otherwise.
18. Between May 5 and October 25, 2022, when Mr. Throssell was still an owner, the strata, first through its strata manager and later through its lawyer, wrote to Mr. Throssell alleging multiple strata bylaw breaches. These alleged breaches included several instances of noise and nuisance, unauthorized parking, unauthorized rentals, unauthorized fob usage, an unkempt patio, smoking, and common property damage. The strata did not fine Mr. Throssell for all of the alleged breaches, but did fine him a total of \$1,400 for noise, nuisance, smoking, and property damage.

19. Mr. Throssell does not claim a refund of these fines and does not dispute that the strata followed the proper process under section 135 of the *Strata Property Act* (SPA). So, I find it unnecessary to provide further details of each of the fines here.
20. The strata also charged Mr. Throssell for legal fees it says it incurred to address his repeated bylaw breaches. The strata's bylaw 24(4) says, in part, that any legal expenses the strata incurs to enforce its bylaws must be paid by the owner responsible for the contravention. Mr. Throssell undisputedly paid the fines and legal fees when he sold his strata lot.
21. As noted, Mr. Throssell claims \$15,000 for reimbursement of the legal fees. He provided a statement of his strata lot account in evidence, which shows that the strata charged him legal fees of \$10,236.01 between July 2022 and February 2023. The strata also charged interest on the overdue balances, but because Mr. Throssell's account statements include other charges, it is not clear precisely how much interest Mr. Throssell paid on the legal fee charges. However, I find nothing turns on the precise interest amount, given my decision to dismiss Mr. Throssell's claims.
22. Mr. Throssell makes several arguments about why he believes he should not have had to pay for the strata's legal fees. First, he says generally that the bylaw fines issued against him were "erroneous". Second, he says that the strata incurred the legal fees unnecessarily. Third, he says that the strata acted maliciously in an attempt to force him to sell his strata lot.

Bylaw breaches

23. I begin with Mr. Throssell's argument that the bylaw fines were "erroneous". In *The Owners, Strata Plan LMS 2269 v. Tilley*, 2022 BCCRT 318, a CRT vice chair found that it would be unreasonable and significantly unfair for a strata corporation to collect legal fees against an owner for bylaw enforcement if the alleged bylaw breaches were unproven and not admitted. Although prior CRT decisions are not binding on me, I agree with this reasoning.

24. However, as noted, because Mr. Throssell is the applicant in this proceeding, he bears the burden of proving his claims. For the following reasons, I find Mr. Throssell has not proven that the strata improperly fined him.
25. Mr. Throssell says that he has a witness who will dispute the details of the alleged incidents. However, he did not provide a statement from this witness.
26. In submissions, Mr. Throssell only disputes three specific alleged breaches. First, he says that one complaint, that his radio was too loud, was untrue because he does not own a radio. Second, he says that a complaint about people eating pizza on his patio in the early morning hours was untrue. Third, he disputes an allegation that he had a guest sleeping on his patio, and suggests this may have been a “vagrant”.
27. There is no evidence before me that the strata issued fines against Mr. Throssell for any of these alleged incidents. Further, and notably, Mr. Throssell does not particularly dispute the other numerous other alleged bylaw breaches described above. I find Mr. Throssell has not proven that the strata’s bylaw fines against him were improperly issued.

Necessity of legal fees

28. Mr. Throssell says that the strata did not need to incur legal fees to address the alleged bylaw breaches. In contrast, the strata says that it had no choice but to engage a lawyer to address Mr. Throssell’s behaviour. It says Mr. Throssell ignored its repeated verbal and written warnings, did not address his many bylaw violations, and refused to pay legitimate bylaw fines.
29. Mr. Throssell says the strata did not give him any “leeway”, and did not issue the minimum bylaw fine first as a warning. The strata says, and the letters and statements in evidence confirm, that the strata did not fine Mr. Throssell for all of his alleged bylaw breaches. Bylaw 24(1) permits the strata to fine owners and tenants “up to” \$200 for each bylaw contravention. Nothing in the strata’s bylaws or the SPA

requires the strata to issue a lower fine for a first contravention. Further, Mr. Throssell does not argue that lower fines would have changed his behaviour.

30. The strata says that it did not take lightly the decision to engage a lawyer, and that doing so was necessary considering Mr. Throssell's repeated bylaw breaches. The strata notes that some of these incidents involved RCMP and SWAT attendance at Mr. Throssell's strata lot, which Mr. Throssell does not dispute. Overall, given the volume and severity of bylaw complaints, I find it was reasonable for the strata to engage its lawyer to correspond with Mr. Throssell about the alleged bylaw breaches.
31. Mr. Throssell also says the strata's legal fees were "exorbitant". The strata says that the legal fees were reasonable in the circumstances, and that it regularly provided Mr. Throssell with an updated statement of account, so he was aware of the increasing costs. Mr. Throssell does not dispute this, and I find it is supported by the strata's letters and account statements in evidence. Overall, I find Mr. Throssell has not proven that the strata's legal fees were unnecessary or unreasonable in the circumstances.

Alleged discrimination and malicious actions

32. Finally, Mr. Throssell says that the strata charged the legal fees to his strata lot in an attempt to force him to move. He suggests that the strata's actions were discriminatory, and says that the strata council president made derogatory and homophobic comments to him. The strata denies this, and says that it was unaware of Mr. Throssell's sexual orientation until reading his submissions.
33. Mr. Throssell says that he has a witness to the alleged derogatory comments. However, again, he has not provided a witness statement. So, I find Mr. Throssell's allegation that the strata attempted to force him out of his strata lot because of his sexual orientation is unproven.

34. In summary, I find Mr. Throssell has not established that the strata improperly charged him for its legal fees. So, I dismiss Mr. Throssell's claim for reimbursement of the legal fees.

CRT FEES AND EXPENSES

35. 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. Throssell was unsuccessful, I dismiss his claim for CRT fees. The strata was successful, but did not pay CRT fees. Neither party claimed dispute-related expenses.

ORDER

36. I dismiss Mr. Throssell's claims and this dispute.

Alison Wake, Tribunal Member