



Civil Resolution Tribunal

Date Issued: October 25, 2024

File: ST-2023-001795

Type: Strata

Civil Resolution Tribunal

Indexed as: *BCFS Residential Rentals Ltd. v. The Owners, Strata Plan EPS1316*,
2024 BCCRT 1072

B E T W E E N :

BCFS RESIDENTIAL RENTALS LTD.

APPLICANT

A N D :

The Owners, Strata Plan EPS1316

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey

INTRODUCTION

1. This strata property dispute is about alleged use of personal information to enforce bylaw complaints and impose fines.
2. The applicant, BCFS Residential Rentals Ltd. (BCFS), owns 2 strata lots (units 209 and 210) in the respondent strata corporation, The Owners, Strata Plan EPS1316

(strata). BCFS is represented by Bayne Vardy, a director. A strata council member represents the strata.

3. BCFS says the strata used closed circuit television (CCTV) recordings to enforce its bylaws and impose fines against its unit 209 tenant, contrary to the *Personal Information Protection Act* (PIPA) and the *Strata Property Act* (SPA). BCFS seeks an order that the strata reimburse it \$400.00 in fines and stop using CCTV recordings to monitor residents and enforce its bylaws.
4. The strata denies it used CCTV recordings contrary to the PIPA or the SPA. It says the bylaw fines it imposed against BCFS are valid. It also says the Civil Resolution Tribunal (CRT) does not have jurisdiction to hear this dispute and that the Office of the Information and Privacy Commissioner (OIPC) is the proper venue. The strata asks that BCFS' claims be dismissed.
5. As explained below, I largely find in favour of BCFS.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the 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. Under CRTA section 10, the CRT must refuse to resolve a claim or dispute that it considers is not within its jurisdiction.
8. 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. I find I am properly able to assess and weigh the documentary evidence and submissions before me. So, the CRT's mandate to provide proportional and speedy dispute resolution outweighs any potential benefit of an oral hearing. I am satisfied

an oral hearing is not necessary in the interests of justice. I therefore decided to hear this dispute through written submissions.

9. 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.

ISSUES

10. The issues in this dispute are:
 - a. Does the CRT have jurisdiction to hear this dispute?
 - b. If so, must the strata reimburse BCFS \$400 for bylaw fines?

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding such as this, the applicant, BCFS, 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.
12. The strata was created in October 2013 under the SPA. It contains 75 residential strata lots in a single building.
13. On October 22, 2013, the strata's owner developer registered some bylaws that differed from the Standard Bylaws with the Land Title Office (LTO). The strata has also made subsequent bylaw amendments. I find the following bylaws are relevant to this dispute.

Bylaws 3(1)(a), (b), and (c) – These bylaws say an owner, tenant, occupant, or visitor must not use a strata lot, common property, or common assets in a way that:

- a. Causes a nuisance or hazard to another person,

- b. Causes unreasonable noise, or
- c. Unreasonably interferes with the rights of other persons to use and enjoy common property, common assets, or another strata lot.

14. The basic facts are not disputed.

15. In March and April 2022, the strata wrote to BCFS about 2 bylaw complaints allegedly concerning its unit 209 tenants. Both letters cite bylaws 3(1)(a), (b), and (c) as the bylaws that the tenant breached. The first was about “loud noise” from “the hallway” in the early hours of December 17, 2021. The strata imposed a \$200 fine on April 27, 2022. According to the complaint form in evidence, the “council” made the complaint. The second complaint was about “dropped food on the floor” in the parkade elevator lobby on March 17, 2022, which is shown in the recording to be a single French fry. The strata imposed another \$200 fine on April 27, 2022. Again, the complaint form in evidence says the “council” made the complaint. Other than the CCTV recordings, there is no supporting evidence, such as witness statements, confirming the 209 tenants alleged conduct.

16. BCFS (and its tenant) disputed the French fry fine in April 2022. BCFS requested further details because the letter’s reference to “dropped food” was unclear. The strata then provided the 2 CCTV recordings in dispute. It was not until after BCFS paid the fines in June 2022 that it discovered the strata relied on the CCTV recordings. I infer BCFS did not discover that the strata relied on the CCTV recordings until September 2022 as that is when BCFS filed its OIPC complaint discussed below.

Does the CRT have jurisdiction to hear this dispute?

17. I find BCFS’ claims generally fall into are 3 categories. The first is that the strata acted contrary to the PIPA by collecting and using personal information captured in CCTV recordings for bylaw enforcement. Although BCFS did not mention specific provisions of the PIPA, I find it relies on a May 11, 2023 letter it received from the OIPC about the collection and use of the CCTV recordings, which I discuss below. The second is that the strata continues to act contrary to the PIPA in its ongoing use

of CCTV recordings to enforce its bylaws. The third is that the strata improperly imposed \$400.00 in bylaw fines against BCFS' 209 tenant.

18. The strata makes a blanket argument that it uses its CCTV cameras in accordance with its privacy policy bylaw. It does not argue any specific provisions of the PIPA.
19. The PIPA governs how private organizations, including strata corporations, can collect, use, and disclose an individual's personal information. Generally speaking, organizations must be authorized to collect, use, and disclose personal information with prior notice and either express or implied consent. PIPA section 36(2)(e) states the OIPC has jurisdiction over whether personal information has been collected, used, or disclosed by an organization in contravention of the PIPA. Section 52 of PIPA grants the OIPC power to make certain orders. Section 52(3) says that the OIPC may order an organization to stop collecting, using, or disclosing personal information. Based on these provisions, the CRT has consistently found the CRT does not have jurisdiction to determine if a privacy breach occurred under the PIPA and I accept this reasoning. See for example, *Vanga v. The Owners, Strata Plan LMS1872*, 2024 BCCRT 975, and *Lipton v. The Owners, Strata Plan VIS 4673*, 2024 BCCRT 535.
20. However, in the May 11, 2023 letter from the OIPC to BCFS and its tenants (OIPC letter), the OIPC found that the strata used the CCTV recordings at issue here contrary to the PIPA to enforce its bylaws. Given the OIPC's exclusive jurisdiction, I accept its finding and rely on it below.
21. I turn now to BCFS' requested order that the strata stop using CCTV to monitor residents and enforce its bylaws. The May 2023 OIPC letter discusses the strata's use of video surveillance and its proposed privacy policy bylaw. While the OIPC found the strata's use of the recordings in this dispute were contrary to the PIPA, I do not find the OIPC determined whether the proposed bylaw met with the PIPA requirements. I say this because the bylaw had not yet been put to the strata owners for a vote and could have changed from what the OIPC reviewed. However, since the OIPC has exclusive jurisdiction to order an organization to stop collecting, using, or disclosing personal information, I refuse to resolve this part of BCFS' claim

under CRTA section 10.

22. As for whether BCFS' request to have the fines repaid is governed by the PIPA, I find it is not. As mentioned above, section 121 of the CRTA gives the CRT jurisdiction over claims "in respect of" the SPA or a strata's bylaws. I find that claims about whether a strata corporation properly imposed bylaw fines is well within the CRT's jurisdiction. The OIPC has no authority to order a strata corporation to reverse fines.

Must the strata reimburse BCFS \$400 for bylaw fines?

23. Under SPA sections 4 and 26, the elected strata council must exercise the powers and perform the duties of the strata. In doing so, it must act reasonably. See *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32, at paragraph 237.
24. In *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148, the Supreme Court stated that the SPA allows strata corporations to deal with complaints for bylaw violations as it sees fit, as long as it complies with the principles of procedural fairness and its actions are not significantly unfair to any person who appears before it (paragraph 52). So, the relevant question is whether the strata's use of information collected contrary to the PIPA was significantly unfair. I find that it was.
25. The CRT has authority to make orders remedying a significantly unfair act or decision by a strata corporation under section 123(2) of the CRTA. 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.
26. As discussed in *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, in order for the CRT to intervene, a strata corporation must act in a significantly unfair manner, resulting in something more than mere prejudice or trifling unfairness.
27. The basis of a significant unfairness claim is that a strata corporation must have acted in a way that was "burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable." See *Reid, Dollan v. The Owners*,

Strata Plan BCS 1589, 2012 BCCA 44, and Kunzler v. The Owners, Strata Plan EPS 1433, 2021 BCCA 173.

28. As noted, the OIPC letter clearly found the strata was not authorized to collect the tenants' personal information on its video surveillance system for the alleged 2022 bylaw infractions. Given the OIPC's expertise, I put considerable weight on its finding and note the strata did not object despite being informed by the OIPC. I also reviewed the recordings for both the noise and French fry complaints and find it would not have been possible for the strata to identify the 209 tenants without the recordings, since there is no other supporting evidence about who was responsible for the noise and French fry, other the council complaints. I find that it was significantly unfair for the strata to rely on the video recordings because that use contravened the PIPA.
29. Finally, the strata submits it followed its privacy bylaw 39. However, I find that could not have been possible given the bylaw was filed with the LTO on February 26, 2024, which was well after the strata imposed the fines in April 2022.
30. I order the strata to reimburse BCFS \$400.00 for bylaw fines within 15 days of the date of this decision.
31. Given my conclusion, I need not address BCFS' arguments about the SPA.

CRT FEES, EXPENSES, AND INTEREST

32. 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 BCFS was the most successful party. It paid \$225.00 CRT fees, so I order the strata to reimburse BCFS \$225.00 for CRT fees.
33. BCFS also claimed \$10.50 for its registered mail expense to serve the strata. However, the submitted receipt does not show any amount nor does it show the name of the party served. Without this information, I decline to order dispute-related expenses.

34. The *Court Order Interest Act* (COIA) applies to the CRT. I find BCFS is entitled to pre-judgement interest on the \$400.00 bylaw fines from June 23, 2022, the date it paid the fines, to the date of this decision. This equals \$38.99.
35. Under SPA section 189.4, the strata may not charge any dispute-related expenses against BCFS.

DECISION AND ORDER

36. I refuse to resolve BCFS' request that the strata stop using CCTVs to monitor residents and enforce its bylaws.
37. Within 15 days of the date of this decision, I order the strata to pay BCFS a total of \$663.99, broken down as follows:
 - a. \$400.00 for bylaw fines,
 - b. \$38.99 for pre-judgement interest under the COIA, and
 - c. \$225.00 for CRT fees.
38. BCFS is entitled to post-judgement interest under the COIA, as applicable.
39. BCFS' remaining claims are dismissed.
40. 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 in which it is filed.

J. Garth Cambrey, Tribunal Member