



Civil Resolution Tribunal

Date Issued: November 15, 2024

File: ST-2023-002691

Type: Strata

Civil Resolution Tribunal

Indexed as: *Pirvu v. The Owners, Strata Plan LMS 1631*, 2024 BCCRT 1159

BETWEEN:

FLORENTIN PIRVU

APPLICANT

AND:

The Owners, Strata Plan LMS 1631

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Maria Montgomery

INTRODUCTION

1. This strata dispute is about fines related to noise complaints. The applicant, Florentin Pirvu, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 1631. Mr. Pirvu disputes fines imposed by the strata corporation under its nuisance bylaw as invalid. They seek the return of \$1,800 in paid fines and the reversal of \$2,200 in unpaid fines. Mr. Pirvu asks that the strata

conduct an investigation and hold a hearing before imposing noise related fines in the future.

2. The strata says it sent warning letters and held a hearing as required. I infer it asks that I dismiss this dispute.
3. Mr. Pirvu is self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

4. 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.
5. 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. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
6. 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.
7. 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.
8. In this dispute, the strata provided no written submissions, though it had an opportunity to do so.

9. Mr. Pirvu provided some evidence after the CRT deadline which the strata had an opportunity to review and respond to. The strata did not object to the late evidence. Consistent with the CRT's mandate that includes flexibility, I find there is no actual prejudice in allowing the late evidence. I accept the late evidence as I find it relevant.
10. The strata provided evidence about alleged bylaw violations unrelated to noise. As the Dispute Notice says Mr. Pirvu is only disputing fines related to noise, I have not considered any evidence about other bylaw violations.
11. In the amended Dispute Notice, Mr. Pirvu asks for the reversal of \$2,200 in fines. The strata later imposed another \$800 in noise related fines. I find it is not procedurally unfair to include the additional \$800 in fines in this dispute imposed on April 10, 2024, as the strata included these fines in its evidence.

ISSUES

12. The issues in this dispute are:
 - a. Did the strata breach the *Strata Property Act* (SPA) section 135 by imposing fines for noise?
 - b. Did the strata treat Mr. Pirvu significantly unfairly?
 - c. If yes to either of the above, what remedies are appropriate?

EVIDENCE AND ANALYSIS

13. In a civil claim such as this, the strata as the applicant must prove its case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
14. The strata was created in 1994 and consists of 132 strata lots in one apartment building. Mr. Pirvu bought his strata lot in 2018 and began renting it to the current tenants in 2021.

15. The strata repealed and replaced its bylaws in 2021. Bylaw 3(1) says that a tenant must not use a strata lot 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 the common property, common assets or another strata lot.

Did the strata breach the SPA section 135 by imposing fines for noise?

16. Mr. Pirvu says that the strata violated section 135 of the SPA by imposing fines without an investigation and without providing him an opportunity to respond. He also says that the strata treated each alleged bylaw violation as a continuing bylaw contravention when it should have treated each complaint as separate.

17. It is undisputed that the strata imposed \$4,800 in fines and Mr. Pirvu has paid \$1,800.

18. Mr. Pirvu received the first letter from the strata about noise complaints on November 18, 2021. This letter said the strata received a complaint of daily, intermittent noise from shouting, loud music, dragging or dropping items and heavy footsteps during the month of September. In the letter, the strata said it might impose a \$200 fine. The strata asked Mr. Pirvu to respond within 14 days. Mr. Pirvu responded by email on November 28 saying that they disagreed with the noise complaint. They provided a detailed response from the tenant. There is no evidence that the strata reviewed or responded to that email.

19. On December 22, 2021, the strata informed Mr. Pirvu of its decision to impose a \$200 fine for the September noise complaint. It also informed Mr. Pirvu of a new noise complaint in the early morning hours of December 17. Mr. Pirvu was not invited to respond to that complaint.

20. The strata sent Mr. Pirvu a letter on October 19, 2022, about a complaint of loud banging at 4am. The strata invited Mr. Pirvu to respond within 14 days and warned that the strata may impose a fine.

21. At the strata council meeting on February 8, 2023, the strata council reviewed several complaints that Mr. Pirvu's strata lot and the strata lot directly below were both banging on the ceiling/floor. The strata sent 4 letters on February 10 and one more on February 22, each fining both strata lots \$200. The strata provided Mr. Pirvu a hearing on February 27.
22. The strata imposed 2 additional \$200 fines on Mr. Pirvu's strata lot for banging in September 2023. Mr. Pirvu responded by email saying that their tenant had video evidence that the banging was coming from another strata lot. There is no evidence that the strata reviewed or responded to this email.
23. On November 24, 2023, the strata sent 4 letters to Mr. Pirvu about noise complaints from October 21 and 3 more in November. The strata imposed a \$200 fine for each complaint and sent 3 more letters on November 30, each imposing \$200 fines. One of these letters repeated the previous complaint about October 21.
24. In 2024, the strata sent another 4 letters similar to those above imposing 9 more \$200 fines. Mr. Pirvu says his tenant was not at home or was asleep during some of the times the unreasonable noises were alleged to have occurred.
25. The strata says that it followed the SPA's requirements by providing warning letters and a hearing. For the reasons that follow, I disagree.
26. Under SPA section 135(1), before imposing bylaw fines or requiring a person to pay the costs of remedying a contravention, the strata must have received a complaint, given 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".
27. Under section 135(3), the strata may impose fines for continuing bylaw contraventions once it complies with the procedural requirements in sections 135(1) and (2). However, in *Strata Plan VR 2000 v. Grabarczyk*,¹ the court considered noise complaints and found that instances of nuisance are each individual bylaw

contraventions rather than continuing bylaw contraventions, even if they take place every day. This means that for each breach of a noise bylaw, the strata must provide a separate notice under SPA section 135.

28. The BC Court of Appeal has found that strict compliance with SPA section 135 is required before a strata corporation can impose bylaw fines. The court also determined that bylaw fines may be found to be invalid if the strata does not follow the procedural requirements set out in section 135.²
29. As noted above, section 135(1) requires that the strata provide the owner with written particulars of the complaint and a reasonable opportunity to answer the complaint before imposing a fine. I find that for all but 2 of the alleged bylaw violations, the strata did not give Mr. Pirvu this opportunity before imposing the fine. With the exception of the complaints relating to September 2021 and September 30, 2022, the strata informed Mr. Pirvu of the complaint and imposed the fine at the same time.
30. I considered whether the hearing held on February 27, 2023, cured the procedural breaches of section 135(1) as provided for in *Cheung v. The Strata Plan VR1902*.³ However, in that decision the court held that a procedural breach of section 135(1) can be cured by the strata if it reverses a fine and provides new notice documents. Here, although the strata provided a hearing, it did not at any point reverse the fines or provide new notice documents. So, I find the hearing did not cure the procedural deficiencies.
31. I find the strata failed to strictly comply with SPA section 135(1) before it imposed 22 fines, and the fines are invalid. I order the strata to cancel all fines it issued to Mr. Pirvu in response to noise complaints other than the fines for September 2021 and September 30, 2022. I address these fines further below.

Did the strata treat Mr. Pirvu significantly unfairly?

32. Mr. Pirvu argues that the strata treated them significantly unfairly in imposing the bylaws because it imposed fines in a biased manner and it imposed two fines for a

complaint about October 21, 2023. As I have found the fines issued for October 21 invalid, there is no need for me to address them further.

33. The courts have held that a strata corporation may investigate bylaw contravention complaints as its council sees fit, so long as it complies with the principles of procedural fairness and is not significantly unfair to any person appearing before the council.⁴ The court has found that significantly unfair actions are those that are burdensome, harsh, wrongful, lacking probity or fair dealing, done in bad faith, unjust or equitable.⁵
34. For the below reasons, I find that the strata's response to the complaints was not reasonable and was significantly unfair to Mr. Pirvu.
35. The strata provided videos of music and voices heard from the hallway outside Mr. Pirvu's strata lot and from another location, which I infer is the strata lot directly below. The videos and photos sometimes show decibel readings. The dates of some of the videos and photos correspond to some complaints the strata received. I accept that the video evidence suggests the strata may have had reason to enforce its bylaws in response to some of the complaints.
36. The problem here is that the strata does not explain how it investigated the complaints. There is no evidence that the strata conducted sound testing or other objective assessments or hired a professional to conduct noise level testing. There is also no evidence that the strata ever attended Mr. Pirvu's strata lot or the strata lot below to gain more information on the noise complaints. As the evidence indicates there were many complaints of music volume, it may have been reasonable to have the tenant play music while strata council members were in attendance to determine a reasonable volume. Further, there is no indication that the strata reviewed or considered Mr. Pirvu's responses to the complaints, reviewed the evidence they provided or responded to Mr. Pirvu's requests for information relating to the complaints. So, I find the strata acted significantly unfairly by failing to take reasonable steps to objectively investigate the noise complaints.

What remedies are appropriate?

37. The CRT can make an order to remedy significantly unfair actions or decisions by a strata under section 123(2) of the CRTA. Here, I have found only 2 of the 24 fines imposed by the strata to be valid. Because the strata acted significantly unfairly, I find the appropriate remedy is to order the strata to remove the remaining fines from Mr. Pirvu's account as well. So, I order the strata to reverse the remaining fines imposed up to April 10, 2024. I also order the strata to return the \$1,800 paid by Mr. Pirvu to date.
38. Given the above, there is no need for me to address Mr. Pirvu's argument that the fines are not valid because they were not approved at a council meeting.
39. I decline to order the strata to cease violating the SPA in the future. It is already legally obligated to comply with SPA requirements, so it would be meaningless and redundant for me to order it to do so.

CRT FEES AND INTEREST

40. Under section 49 of the CRTA 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. Here, Mr. Pirvu was successful. So, I find they are entitled to \$225 in CRT fees. Neither party claims dispute-related expenses.
41. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Pirvu is entitled to prejudgment interest on the \$1,800 from the date of payment to the strata to the date of this decision. This equals \$164.13.
42. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Pirvu.

ORDERS

43. I order that within 30 days of the date of this decision, the strata pay Mr. Pirvu a total of \$2,189.13 broken down as follows:
 - a. \$1,800 in debt,

- b. \$225 in CRT fees, and
 - c. \$164.139 in pre-judgment interest under the *Court Order Interest Act*.
44. I also order the strata to remove \$2,800 in unpaid fines from Mr. Pirvu's strata lot account between November 24, 2023, and April 10, 2024, and provide him an updated statement of account.
45. Mr. Pirvu is also entitled to post-judgment interest under the COIA.
46. 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.

Maria Montgomery, Tribunal Member

¹ 2006 BCSC 1960.

² see *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.

³ 2004 BCSC 1750.

⁴ *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148.

⁵ *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126.