



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Utendale v. The Owners, Strata Plan NW307*, 2024 BCCRT 1219

B E T W E E N :

DARRELL KEVIN UTENDALE and PATRICIA ROSE UTENDALE

APPLICANTS

A N D :

The Owners, Strata Plan NW307

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. Darrell and Patricia Utendale own and live in a strata lot in the strata corporation The Owners, Strata Plan NW307. The strata fined them \$200 and made them remove a decorative windchime and hanging lights from their balcony. The Utendales disagree that they breached any bylaws by hanging either item. They ask for an order allowing them to rehang the items. They also ask for \$500 for the fine, interest, expenses, their

time, mental anguish, suffering, and stress. Mr. Utendale represents himself and Mrs. Utendale.

2. The strata maintains that both items breached the bylaws in force at the time. They also say that new bylaws passed since this dispute started have made it clear that the items are not allowed. They ask me to dismiss the Utendales claims. A council member represents the strata.

JURISDICTION AND PROCEDURE

3. The Civil Resolution Tribunal (CRT) has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act (CRTA)*. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended. These are the CRT's formal written reasons.
4. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. This dispute turns on the interpretation of bylaws. There are no credibility issues. I therefore decided to hear this dispute through written submissions.
5. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.
6. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the tribunal 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. Did the Utendales breach any bylaws by hanging the windchime and patio lights?

- b. Did the strata follow the proper process before it fined the Utendales?
- c. Are the Utendales entitled to rehang the items?
- d. Are the Utendales entitled to any compensation?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the Utendales as the applicants must prove their claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. The strata consists of 39 residential strata lots in a single apartment building. The Utendales own strata lot 32. All the strata lots have a balcony or patio. Strata lot 32 is on the top floor and has a larger balcony than most other strata lots. The strata's balconies and patios are all common property.
10. On January 18, 2017, the strata filed a complete set of bylaws in the Land Title Office. Bylaw 5 required owners to obtain the strata's written approval before altering a strata lot. Bylaw 6 required owners to obtain the strata's written approval before altering common property. Bylaw 3.10(p) prohibited owners from placing "any items on any deck, patio or the balcony except free-standing, self-contained planter boxes, summer furniture and accessories" and from installing "any hanging plants or baskets or other hanging items outside of a balcony railing line". The parties incorrectly refer to this as bylaw 3.10(q). I will call it bylaw 3.10(p) to reflect the filed bylaws.
11. On January 1, 2023, the strata filed a new bylaw 3.12, which said "Christmas lights shall be permitted between November 25th and January 15th only and shall not be attached to the building's structure, or in a manner so as to damage the building structure. Lights for religious or ethnic celebrations shall be permitted for up to one Month before the event and 2 weeks after the event".
12. The strata manager wrote to the Utendales on June 27, 2023, informing them that it had received a complaint about their balcony items. The strata manager said both the

windchime and lights violated bylaws 3.10(p), 5 and 6. The strata manager said the Utendales had a right to respond to the complaints. The strata manager did not mention the possibility of fines. Instead, the strata manager said that if the Utendales did not comply, the strata would make a “decision on this matter as it considers appropriate”.

13. The Utendales disputed they breached the bylaws. They relied on the part of bylaw 3.10(p) that restricts the prohibition on hanging items to “outside of a balcony railing line”. They interpreted this to mean that any hanging item was allowed within the railing line, which the windchime was. They also disputed breaching bylaw 5 because they did not alter their strata lot, which I find is obviously correct because the balcony is common property. Finally, they disputed breaching bylaw 6 because they denied altering anything because they “usually” used pre-existing hooks and holes to hang things. They did not say whether they used a pre-existing hook or hole to hang the windchime.
14. As for the patio lights, the only photo in evidence appears to be from the street. The Utendales did not provide their own photos, which would show more detail. I infer from what I can see in the photo that the Utendales erected two poles near the far edge of their balcony and strung patio lights between the poles, just inside their balcony’s railing. They considered these lights “hanging items” that were allowed because they were inside their balcony’s railing.
15. At an August 3, 2023 strata council meeting, the council held a hearing for the Utendales. According to the minutes, the Utendales refused to remove the disputed items. So, after the hearing, the council voted to impose a \$200 fine. The strata manager notified the Utendales of this decision in an August 9, 2023 letter. After receiving this decision, the Utendales took the items down and started this CRT dispute. The strata did not impose any more fines.
16. The strata provided the Utendales strata lot account ledger as of October 3, 2023. At that point, the Utendales had not paid the fine. Neither party says whether they have paid it since.

17. At the January 29, 2024 annual general meeting, the owners approved a complete new set of bylaws that repealed the old ones. They were filed on February 6, 2024. The new bylaw 3(2)(d) prohibits owners from attaching “decorations, brackets or any similar item to the exterior of a building using screws, nails or any type of fastener”. Bylaw 3(5) lists the items that are allowed to be placed on the balconies as “patio furniture, a reasonable number of decorative accessories (provided they are not affixed or attached to the building, including a railing), and potted plants”. The bylaw about Christmas lights and other “holiday or celebration lights” are substantively the same, but are now bylaws 3(2)(b) and (c).
18. As noted, the Utendales ask for a decision about whether their windchime breached the old bylaws. I find it unnecessary to decide this question. As explained below, I find that the strata must cancel the fine because it failed to follow the correct procedure. I also find below that the Utendales would not be entitled to compensation even if the windchime did not breach the bylaw. So, there is no practical benefit to me interpreting bylaw 3(1)(p).
19. I turn next to why the fine must be cancelled. Section 135 of the *Strata Property Act* (SPA) sets out the procedural requirements a strata corporation must follow when enforcing bylaws. Under section 135(1), the strata 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 requested.
20. In *Terry v. The Owners, Strata Plan NW 308*, 2016 BCCA 449, the court clarified that the notice requirements in SPA section 135 include an obligation to inform the owner that the strata is contemplating a fine.
21. As noted above, the strata did not warn the Utendales of the possibility of a fine. While it may seem like a minor point, the requirements under SPA section 135 are strict and mandatory. Because the strata failed to warn of the possibility of fines before fining the Utendales, the fine must be cancelled. I order the strata to do so. I note that the CRT has cancelled fines for identical language in a strata manager’s bylaw

contravention letters at least three times: *Cardenas v. The Owners, Strata Plan NWR. 2247*, 2021 BCCRT 1134, *The Owners, Strata Plan EPS3454 v. Prior*, 2021 BCCRT 704, and *The Owners, Strata Plan NW307*, 2023 BCCRT 767.

22. I did not ask for submissions about section 135, and the parties did not raise it. Generally, procedural fairness requires parties to have an opportunity to make submissions about issues that decide their dispute. I chose not to seek submissions here because section 135 is mandatory and the reasoning in *Terry* is binding on me. The strata's failure here is obvious from the evidence before me, so seeking further submissions would pointlessly delay resolution of this dispute. The CRT's mandate favours speed and efficiency. Another part of the CRT's mandate is to provide proportional dispute resolution, and the amount at stake is only \$200.
23. Next, I will address the Utendales claim for an order allowing them to rehang the items. They made this claim before the strata amended its bylaws. Neither party provided any submissions about the application of the new bylaws to the potential rehang of the windchime. This may be because it is obvious that the new bylaws prohibit the windchime, at least as it was previously hung. So, I decline to order the strata to permit the Utendales to rehang the windchime. This does not mean that the bylaws necessarily prohibit all windchimes. The bylaws' prohibitions are specific, and it is possible that a resident could have a bylaw-compliant windchime.
24. As for the patio lights, the Utendales have rehung them, but without attaching them to anything. They now hang between two patio umbrellas. The strata says that they are still prohibited under the strata's bylaws because of bylaw 3(2)(c). The Utendales dispute this, and I agree with the Utendales. The strata describes the lights as "party lights", which is not a phrase in bylaw 3(2)(c). I find that the lights are the common decorative style of patio lights that have nothing to do with a particular "holiday" or "celebration", which is what bylaw 3(2)(c) is about. I find the current configuration of the patio lights complies with bylaw 3(2)(c). I order the strata not to enforce bylaw 3(2)(c) against the Utendales for the patio lights as they are currently hung. The strata did not mention 3(5) in its submissions, presumably because it recognizes that the patio lights fit comfortably within the definition of "decorative accessories".

25. This leaves the Utendales' \$500 claim. Part of the claim is for mental anguish, suffering, and stress. I appreciate that the Utendales enjoyed their windchime. However, even if the strata was wrong about bylaw 3.10(p), I find that living without a windchime is not a serious enough hardship to cause compensable harm.
26. The rest of the \$500 claim is for expenses, interest and time spent on this dispute.
27. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The Utendales were mostly successful, so I find they are entitled to reimbursement of their \$225 in CRT fees. Despite mentioning a claim for expenses, the Utendales did not actually claim any.
28. As for interest, the *Court Order Interest Act* applies to the CRT. However, there is no evidence the Utendales ever paid the \$200 fine I cancelled. So, I find they have not proven an entitlement to interest.
29. Finally, the Utendales claim compensation for their time. CRT rule 9.5(5) says that the CRT will only order compensation for a party's time spent on a CRT dispute in extraordinary circumstances. There was nothing extraordinary about this dispute, so I decline to order any compensation.
30. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against the Utendales.

DECISION AND ORDERS

31. I order that the strata:
 - a. Immediately cancel the August 9, 2023 \$200 fine against the Utendales for hanging the windchime and patio lights,
 - b. Refrain from enforcing bylaw 3(2)(c) against the Utendales for their patio lights as they are currently configured, and
 - c. Within 14 days of this decision, pay the Utendales \$225 in CRT fees.

32. The Utendales are entitled to post judgement interest under the *Court Order Interest Act*, as applicable.
33. I dismiss the Utendales 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.

Eric Regehr, Vice Chair