



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Fisher v. The Owners, Strata Plan LMS 3818*, 2025 BCCRT 16

BETWEEN:

MARTIN FISHER

APPLICANT

AND:

THE OWNERS, STRATA PLAN LMS 3818

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Deanna Rivers

INTRODUCTION

1. This dispute is about a bylaw fine for a strata lot's temporary accommodation use.
2. The applicant, Martin Fisher, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 3818 (strata). Mr. Fisher claims the strata improperly assessed bylaw fines for a rental. He asks for an order that the strata cancel the fines

against him related to short-term rentals. He also claims \$20,236.76 in lost revenue for a rental he had to cancel, and \$1,347.94 for an Airbnb cancellation fee.

3. The strata says Mr. Fisher breached the bylaws on 3 occasions, and it properly assessed the bylaw fines. It says it was not responsible for Mr. Fisher cancelling the reservation.
4. Mr. Fisher is self-represented. A 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 the *Civil Resolution Tribunal Act* (CRTA) section 121. 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 hearing's format, 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.
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. The CRT may also ask the parties and witnesses questions and inform itself in any other way it considers appropriate.
8. 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.

Preliminary Issues

Harassment

9. Mr. Fisher alleges the strata harassed him, including being disrespectful and bullying, with respect to the occupancy of his strata lot. A claim for harassment does not fall under the CRT's strata property jurisdiction. Even if it did, there is no recognized tort of harassment in British Columbia.¹ So I decline to address this issue.

Documents

10. Mr. Fisher says that he asked for a copy of any correspondence or complaints received about the use of his strata lot. SPA section 35 requires a strata corporation to keep copies of certain records, including correspondence. This includes emails or letters setting out bylaw violation complaints.² The SPA required the strata to provide those documents in response to Mr. Fisher's request. Privacy considerations, including the *Personal Information Protection Act* (PIPA), do not permit a strata to withhold or edit (including redacting) correspondence requested under SPA section 36.
11. The usual remedy would be to order the disclosure of the records. However, as Mr. Fisher did not request a remedy for not providing these documents, I decline to address this claim in this decision.

Hearing

12. On May 5, 2023, Mr. Fisher requested a hearing by email to the strata manager. That hearing was held on July 17, 2023. SPA section 34.1(2) requires the strata to hold a council meeting to hear an applicant within 4 weeks after the request. The right to a hearing within 4 weeks of a written request is mandatory. However, given Mr. Fisher did not request a remedy for the strata not providing a hearing within the SPA timelines, I have not addressed it further.

ISSUES

13. The issues in this dispute are:

- a. Did Mr. Fisher contravene the bylaw, and if so, what fines must he pay the strata?
- b. Does the strata have to reimburse Mr. Fisher for lost revenue and a cancellation fee?
- c. Did the strata breach SPA section 135?

BACKGROUND

14. As the applicant in a civil proceeding, Mr. Fisher must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' arguments, submissions, and evidence, I only refer to what is necessary to explain my decision.
15. The strata was created in 1999 and is governed by the SPA. It consists of 165 strata lots in a 15 level building. Mr. Fisher's strata lot is on the 13th and 14th levels.
16. Land Title Office documents show the strata filed a complete new set of bylaws on April 2, 2019, which repealed and replaced all its bylaws, including the Standard Bylaws under the SPA. The strata filed bylaw amendments on July 25 and August 6, 2019, June 8, 2022, and June 30, 2023. These bylaws apply to this dispute. I review the relevant bylaws below.

EVIDENCE AND ANALYSIS

Did Mr. Fisher contravene the bylaw?

17. The strata has two bylaws dealing with rentals. Bylaw 43 - Rental of Strata Lots states no residential strata lot shall be rented for a period of less than one (1) month.
18. Bylaw 43.1 - Short-term Accommodation, filed July 25, 2019, states an owner, tenant or occupant must not:
 - a. use or allow their strata lot (or any part of it) to be used for the purposes of providing temporary accommodation for the general public including, but not limited to:

- i. as a vacation rental or as travel accommodation;
- ii. any sort of short-term accommodation arrangement (being an occupancy of less than 30 days),
- iii. as a room rental or other similar arrangement.

19. Bylaw 43.1 then goes on to add “clarifications” to the general prohibitions. There is an apparent typo that makes one of the clarifications ambiguous, but since none of the clarifications are relevant, however interpreted, I have not set them out here. Notably, neither party relied on them in its interpretation of the bylaw.

20. While I find that these are the bylaws that apply, to the extent that bylaws 43 and bylaw 43.1 specifically restrict rentals, they are unenforceable. This is because on November 24, 2022, the SPA was amended to include section 141 which states that the strata must not restrict the rental of a strata lot. Similarly, SPA section 121(1)(c) provides that a bylaw is not enforceable to the extent that it contravenes the SPA or prohibits or restricts the right of an owner to freely lease their strata lot.

21. However, under SPA section 119(2), a strata may have bylaws that regulate the use of residential strata lots. In *Semmler*,³ the Supreme Court of BC found that a person may occupy a strata lot under a tenancy agreement or a licence agreement. A tenant rents a strata lot and receives an interest in the property including exclusive possession of the premises. A licensee is a person other than the owner or tenant that occupies a strata lot, and is an occupant but not a tenant, and so the provisions of the SPA that apply to tenants do not apply to licensees.

22. So, to the extent that bylaw 43.1 applies to a licence agreement and not to a tenancy agreement, I find the bylaw regulates the use of the strata lot and SPA section 141 does not prohibit it.

23. In a May 5, 2023 email, the strata said it did not deny that Mr. Fisher rented for longer than 30 days, but that Mr. Fisher could not rent his strata lot to the general public, and Airbnb is available to the general public. In submissions the strata says it used the word “rent” in error, but I find nothing turns on this. The evidence supports that

each occupancy of Mr. Fisher's strata lot was more than 30 days. So, I find that the specific prohibition on accommodations less than 30 days in bylaw 43.1(a)(ii) does not apply.

Temporary accommodation for the general public

24. The next question is whether Mr. Fisher allowed his strata lot to be used for the purposes of providing temporary accommodation for the general public in contravention of bylaw 43.1(a). As noted above, the strata communicated to Mr. Fisher that the general public clause in the bylaw was the reason for the contravention.
25. So, I consider who is the "general public." The bylaws do not define the phrase and it is somewhat ambiguous. While general public is often used in court decisions, it is rarely defined. The Supreme Court of BC has found the general public is the "man on the street"⁴ and considered the words "general public access" to mean the unrestricted entry to all members of the population.⁵ The Cambridge Dictionary defines the general public as "ordinary people, especially all the people who are not members of a particular organization or who do not have any special type of knowledge" and the Merriam-Webster Dictionary says "all the people of an area, country, etc."⁶ The Provincial Court of BC has found that "public" is broader than "general public."⁷ Previous CRT decisions differentiate the general public from residents of the strata.⁸
26. Based on the above, I find that for bylaw 43.1, the term general public means members of the population who are not residents of the strata lot. The parking bylaw defines resident to mean owners, tenants, or occupants. By extension, I find bylaw 43.1(a) restricts all temporary accommodation of non-residents. To give a purpose to the term general public, the bylaws need to identify the persons who are not members of the general population. Unfortunately, the bylaws do not define who is included as an occupant. The SPA says an occupant is a person that resides in a strata lot that is not an owner or tenant, which is not helpful to this determination.

27. Even given this ambiguity, Mr. Fisher did not argue the persons staying in the strata lot would usually be accepted as occupants in a strata context, such as children or spouses of owners or tenants. So, I accept they were members of the general public. I refer to them in this decision as occupants for convenience, without finding that they were occupants of the strata lot pursuant to the bylaws or the SPA.
28. I find this means that if Mr. Fisher used his strata lot for temporary accommodation, it did not matter the platform or other method used to locate the occupant.
29. So, I must next consider the meaning of “temporary accommodation.” As this is different wording than used in bylaw 43.1(a)(ii), where “short-term accommodation” is defined as being less than 30 days, I find it was intended to have a meaning that is limited by the accommodation’s use, and just its duration.
30. In *Eustace*,⁹ the CRT found that short-term accommodations (STAs) may be, but are not necessarily, temporary accommodation. Temporary accommodation is a broader term than STA, in that all STAs are temporary, but not all temporary accommodation is short-term. For example, a person may require temporary accommodation while renovating a home or taking a temporary employment position, which may be for a longer duration than 30 days.
31. The strata’s bylaws do not define temporary accommodation. The *Strata Property Regulation* section 7.1(1) mentions temporary accommodation but does not define it. Temporary accommodation is linked to vacation and travel accommodation in that section.
32. The Cambridge Dictionary and the Merriam-Webster Dictionary¹⁰ define temporary as not lasting or needed for very long, lasting for a short period, or lasting for a limited time. The BC Court of Appeal in *Kamloops (City) v. Northland Properties*¹¹ considered the meaning of “short-term,” and found that there was no “hard and fast line” when transient use becomes residential use. The CRT considered *Northland* in *The Owners, Strata Plan LMS 4498 v. Mac Phee-Manning et al.*¹² Although that dispute considered whether the rental of a strata lot was illegal as being a non-residential use of the property, the discussion concerning the definition of transient is compelling.

The tribunal member considered such factors as whether the occupant was living out of a suitcase or bringing all of their belongings, whether they established roots in the community or acted as a visitor, and whether the person was employed in the area. Given the common element above, I find a temporary accommodation for the purposes of bylaw 43.1 means the person is transient, and does not intend the strata lot's occupation to be permanent or continuing. The length of the agreement is only one factor in determining the use of the strata lot, although it is a significant one.

33. As Mr. Fisher has not argued that the occupants intended to be permanent or continuing, I find they were transient, and therefore was a use of the strata lot for temporary accommodation.

Was the occupancy a licence agreement or a tenancy agreement?

34. However, this does not end the matter. While the *Residential Tenancy Act* generally does not apply to accommodation occupied where it is arranged through a STA platform such as Airbnb, it will apply if the accommodation is rented under a tenancy agreement. So, as noted above, I find it is not the platform itself, but the nature of the occupation that differentiates between a licencing arrangement and a tenancy agreement.

35. Mr. Fisher says that he uses Airbnb as it provides other services such as secure payment processing, property and tenant insurance, accounting, and tax filing documents. While *Mac Phee-Manning* considered that travel or vacation rental platforms such as Airbnb are intended to assist people to find temporary and transient accommodation, it does not necessarily follow that those platforms cannot also be used for rental accommodation. Airbnb, and other rental platforms, also have monthly and long-term rental options, which Airbnb defines as a stay of 28 days or more. Other platforms have other definitions.

36. Given the above, I find that the phrase temporary accommodation could apply to either a licence agreement or a tenancy agreement. So, I must next determine whether Mr. Fisher's strata lot was occupied under a licence, which the bylaw

prohibited, or under a tenancy agreement. As noted, if there was a tenancy agreement, the strata cannot prohibit the rental under SPA section 141.

37. Some factors to be considered in determining if accommodation is a licence or an agreement include the terms of contract or agreement, whether the agreement is for a set term or ongoing, whether the occupant has exclusive occupation of the strata lot, whether the strata lot is the primary or permanent residence of the occupant, and the length of the occupancy. No factor is determinative. I note that some factors overlap with my consideration of the definition of temporary accommodation.
38. Mr. Fisher says each of his rentals signed a RTB tenancy agreement. However, he did not provide a copy of those agreements in evidence, so the terms of the agreements are not known. Mr. Fisher also did not provide a copy of the Airbnb terms and conditions for long-term rentals. The documents Mr. Fisher provided show that each of his rentals was for a set term, between 31 and 41 days. This is a relatively short time for a tenancy agreement and suggests the strata lot was not the primary or permanent residence of the occupant, supporting a licence agreement. The occupant had exclusive occupation of the strata lot, which supports a tenancy agreement. Mr. Fisher provided no evidence of the occupants' reason for needing the accommodation, or their employment, or activities while in the community. The strata provided partial copies of the Airbnb online reviews, but these did not provide information about the agreement or the other factors necessary to determine the purpose of the occupants' stay.
39. Given the above, I find that Mr. Fisher has not proved he had a tenancy agreement with the temporary occupants of his strata lot. So, I find the occupants were under a licence agreement. Given this, I find Mr. Fisher breached bylaw 43.1 when he allowed use of his strata lot for temporary accommodation from October 20 to November 30, 2021, and from January 18 to February 18, 2022.
40. I note that while both parties refer to a third occupation of the strata lot, I cannot determine from the evidence when the third occupation occurred. In one email Mr. Fisher confirms the 2021 rental, says a second one was cancelled, and a third one

was a friend staying. The strata's May 5, 2023 email says that 3 people left reviews on Airbnb shows that there were 3 rentals. I find whether there were 2 or 3 rentals does not matter given my decision about SPA section 135 below.

Conclusion

41. As set out above, for there to be a breach of bylaw 43.1, there must be two proven elements: first, the use must be temporary, and second, that the occupancy is a licence and not a lease or rental.
42. I have found above that the use was temporary, and that Mr. Fisher has not proved the occupancy was a lease or rental. So, I find the strata was entitled to fine Mr. Fisher for the bylaw breaches, provided it followed the SPA when assessing fines.

Lost income and cancellation fee

43. Mr. Fisher claims he cancelled a booking for May 10 to August 19, 2023, totalling 101 nights, because of the strata's actions claiming he breached the bylaws. He provided a screenshot showing the cancellation fee and a screenshot of a booking, without any details other than the amounts. He did not provide any evidence that would allow me to determine if that occupancy was temporary, or if it was a rental or lease. So, I find Mr. Fisher has not proved that the booking would be a tenancy agreement and not a licence agreement.
44. I dismiss this claim.

Did the strata breach SPA section 135?

45. SPA section 135 sets out process the strata must follow before imposing a bylaw contravention fine. Under SPA section 135(1), before imposing fines, the strata must receive a complaint, give the owner written details of the complaint, and give the owner a reasonable opportunity to respond to the complaint, including a hearing if the owner requests one.
46. In *Terry v. The Owners, Strata Plan NW 309*,¹³ the court found that section 135 requires a strata to identify the bylaw, warn of the possibility of fines, and provide

sufficient detail of the nature of the complaint to bring to the attention of the owner the contravention at issue. These procedural requirements are strict, with no leeway. If the strata corporation fails to comply with them, the bylaw fines may be invalid.

47. The strata's May 5, 2023, email says that the strata had evidence of at least 3 persons renting Mr. Fisher's strata lot on Airbnb as they left reviews. The strata says it complied with SPA section 135(1) in the bylaw contravention letters sent to Mr. Fisher.
48. On November 16, 2022, the strata sent a letter to Mr. Fisher that he had breached bylaw 43.1. The letter says the breach occurred on October 24, 2022, and reproduces the bylaw. The strata provided a redacted email dated October 24, 2022, complaining that there were 3 strata lots in the strata listed on Airbnb. I find the strata received a complaint and identified the bylaw.
49. The letter also warned Mr. Fisher could be fined. In the details it states the strata lot is "posted and being used for short-term lease rental through Airbnb." However, as noted above, Mr. Fisher's use of the strata was greater than the 30-day short-term accommodation arrangement set out in Bylaw 43.1(1)(a)(ii). The letter does not say, other than by a reproduction of the entire bylaw, that the bylaw breach was specifically for providing temporary accommodation for the general public. Mr. Fisher's response focused on the definition of short-term as set out in the description in the letter, and that his property was used for long-term rentals only.
50. The purpose of the SPA section 135 requirements is to give Mr. Fisher sufficient information about his alleged bylaw contravention to understand what the strata accused him of doing. I find the November 16, 2022 letter did not do this. The letter did not tell Mr. Fisher that he was alleged to have breached the temporary accommodation for the general public clause in the bylaw. Even after Mr. Fisher questioned the short-term accommodation issue, the strata did not bring the contravention specifics to his attention until May 5, 2023, after the fine was imposed.
51. However, the strata did not fine Mr. Fisher for this breach, but issued a warning for the bylaw contravention, subject to his unit not being rented out as temporary

accommodation to the general public. So, although I find the strata breached the requirements of SPA section 135, there was no repercussion to Mr. Fisher.

52. On March 14, 2023, the strata sent another letter to Mr. Fisher that he had breached bylaw 43.1. This letter is identical to the November 16, 2022 letter, except it states the complaint was made on March 13, 2023. The strata did not provide evidence of the March 13, 2023 complaint.
53. Again, Mr. Fisher's response to the strata focused on his not having any short-term rentals. For the same reasons as set out above for the November 16, 2022 letter, I find the strata is in breach of SPA section 135.
54. The strata's April 28, 2023 letter imposed a \$3,000 fine for breach of the bylaws. In the details it notes that the strata lot was "posted and being used for short-term lease rental through Airbnb." It again quotes bylaw 43.1 which states the Strata Council has ability to fine the owner up to \$1,000 per occurrence. It does not state what 3 occurrences Mr. Fisher the fine applies to.
55. In a July 18, 2023 email to Mr. Fisher, the strata asked why he did not file a Form K for each of the rentals, and that it had received only one Form K. While this was after the strata imposed the fine, it supports that the reason for the fine was unclear as a Form K is only needed for a rental agreement.
56. In any event, given my finding that the strata did not meet the requirements of SPA section 135 in the letter, I find the \$3,000 fines the strata imposed on April 28, 2023, are not valid and must be removed from Mr. Fisher's strata lot account.

CRT FEES AND EXPENSES

57. 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 each party was partly successful. Mr. Fisher paid \$225 in CRT Fees. The strata did not pay CRT fees. So, I order the strata to reimburse Mr. Fisher for half his paid fees, totalling \$112.50.

58. Neither party claimed dispute-related expenses.

59. The strata may not charge any dispute-related expenses against Mr. Fisher under SPA section 189.4.

ORDERS

60. I order that the strata:

- a. Immediately remove the \$3,000 in bylaw fines charged against Mr. Fisher's strata lot on April 28, 2023, and
- b. Pay Mr. Fisher \$112.50 for CRT fees.

61. I dismiss Mr. Fisher's remaining claims.

62. This is a validated decision and order. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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.

Deanna Rivers, Tribunal Member

¹ *Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473 at paragraph 61.

² *Raitt v. The Owners, Strata Plan LMS 1087*, 2022 BCCRT 279.

³ *Semmler v. Strata Plan NEW 3039*, 2018 BCSC 2064.

⁴ *De Araujo v. Read*, 2001 BCSC 1883 paragraph 2.

⁵ *Nadeau v. Okanagan Urban Youth & Cultural Assn.*, 2013 BCSC 55.

⁶ 'General public' (2024) *Cambridge Dictionary*,

<https://dictionary.cambridge.org/dictionary/english/general-public> (Accessed December 17, 2024), and

"The general public." *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/the%20general%20public> (Accessed December 17, 2024).

⁷ *R. v. R.*, 2012 BCPC 3.

⁸ For example, *Melnyk v. The Owners, Strata Plan LMS 4379*, 2024 BCCRT 291, *Stewart v. The Owners, Strata Plan NW 1370*, 2023 BCCRT 229, *Lescisin v. The Owners, Strata Plan VR2402*, 2022 BCCRT 980, *Tyler v. The Owners, Strata Plan KAS 1542*, 2024 BCCRT 1251.

⁹ *Eustace v. The Owners, Strata Plan EPS7085*, 2023 BCCRT 844. Also see *Hamian v. The Owners, Strata Plan NW 92*, 2023 BCCRT 814.

¹⁰ 'Temporary' (2024) *Cambridge Dictionary*, <https://dictionary.cambridge.org/dictionary/english/general-public> (Accessed December 18, 2024), and "temporary" *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/the%20general%20public> (Accessed December 18, 2024).

¹¹ *Kamloops (City) v. Northland Properties Ltd.*, 2000 BCCA 344.

¹² 2019 BCCRT 463.

¹³ 2016 BCCA 449 at paragraphs 27 and 28, and also *The Owners, Strata Plan NW 307 v. Desaulniers*, 2019 BCCA 343.