Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

THE OWNERS, STRATA PLAN LMS 2486

APPLICANT

A N D :

STEPHANIE HILTON

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Jeffrey Drozdiak

INTRODUCTION

1. This strata property dispute is about bylaw fines and late fees.

2. The respondent, Stephanie Hilton, owns strata lot 140 (SL140) in the applicant strata corporation, The Owners, Strata Plan LMS 2486. The strata alleges Ms.

Hilton breached various bylaws and did not pay her strata fees on time. It claims $1,350, which includes $1,200 in fines and $150 for late fees.

3. Ms. Hilton denies breaching the bylaws. She argues the strata acted significantly unfairly and targeted her with fines. She also argues that the strata manager lost her cheque for strata fees.

4. The strata is represented by the strata council president. Ms. Hilton represents herself.

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). 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.

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. The parties call into question the credibility, or truthfulness, of the other's evidence. Under the circumstances, I find that I am properly able to assess and weigh the evidence and submissions before me without an oral hearing. In *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the court recognized that oral hearings are not always needed where credibility is in issue. Neither party requested an oral hearing. The claim is also for a relatively small amount. So, bearing in mind the CRT's mandate for 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, whether or not the information would be admissible in court.

PRELIMINARY ISSUES

Additional Claims

8. In the Dispute Notice, the strata claimed $1,150 for bylaw fines and late fees. However, in its submissions, the strata included another bylaw fine and increased its claim to $1,350. Ms. Hilton had the opportunity to address the additional fine in her submissions. So, I find it would be procedurally fair to consider it. Given the CRT's mandate to be flexible and informal, and recognize the ongoing relationship between the parties, I have addressed the increased claim amount in my decision below.

9. In its reply submissions, the strata also raises a $158.55 claim for printing and photocopying. It says it incurred these costs when it provided Ms. Hilton with a records request under *Strata Property Act* (SPA) section 36. I find it would be procedurally unfair to consider this claim. The strata only raises this claim in final reply and Ms. Hilton did not get a chance to sufficiently respond to it. The strata also did not provide any documentary evidence, such as an invoice, to support its claim. So, to the extent that this is a dispute-related expense, I find the claim unproven. For both these reasons, I do not order Ms. Hilton to pay the strata's claim for printing and photocopying.

Settlement Discussions

10. In her submissions, Ms. Hilton refers to the parties' settlement discussions, which the strata objects to. CRT rule 1.11 says that parties cannot disclose settlement discussions made during the tribunal process unless all parties agree. Given the strata's objection, I have not considered these discussions in my decision.

Ms. Hilton's Allegations

11. Ms. Hilton provided witness statements and submissions about alleged issues she and other owners have had with the strata in the past. These bare allegations focus on how the strata enforced its bylaws against other owners and how council members breached the strata's code of conduct. I find this evidence is not relevant

to the issue I must decide in this dispute, namely did Ms. Hilton breach specific bylaws on specific dates. Since Ms. Hilton did not file a counterclaim, the only issue before me is whether she must pay the fines and late fees.

12. To the extent Ms. Hilton relies on this evidence to support her significant unfairness argument, I place no weight on the various witness statements. I say this because they are not supported by any documentary evidence, such as the strata's correspondence with the other owners. For these reasons, I do not discuss most of Ms. Hilton's evidence and submissions in my decision.

13. Ms. Hilton also alleges the strata defamed her character and reputation. CRTA section 119 says the CRT does not have jurisdiction to consider defamation claims. So, I have not made any findings about these allegations.

ISSUE

14. The remaining issue in this dispute is whether Ms. Hilton must pay bylaw fines and late fees of $1,350, or some other amount, to the strata.

STRATA BACKGROUND

15. The strata was created in July 1996. The strata has blocks of townhomes and includes 175 residential strata lots. From the strata plan, SL140 is a two-storey townhome in Block 31.

16. The strata filed a complete set of its bylaws with the Land Title Office on March 24, 2009, which I find are the relevant bylaws for this dispute. These bylaws confirm that the Standard Bylaws under the SPA do not apply. From 2018 to 2021, the strata filed various bylaw amendments. After reviewing these filings, I find the various amendments are not relevant to this dispute.

17. Ms. Hilton argues that the strata does not have any bylaws. She says the strata repealed the bylaws at its May 25, 2023 annual general meeting (AGM), and it did

not pass new ones. In support, she provided the May 25, 2023 AGM meeting minutes.

18. First, I find the AGM meeting minutes do not show that the strata repealed its bylaws. The strata held a vote to replace its bylaws, and the owners voted against it. Despite Ms. Hilton's assertion, this vote did not mean that the strata repealed its bylaws in the process. The strata voted on a resolution to repeal "and" replace the bylaws, and both actions did not pass.

19. Second, I find Ms. Hilton's other evidence does not show that the strata has no bylaws. Ms. Hilton provided a message from the strata manager where they wrote that the strata repealed its "rules" in advance of the bylaw vote. I find the strata manager is not referring to the strata's bylaws.

EVIDENCE AND ANALYSIS

20. In a civil proceeding like this one, the strata, as the applicant, must prove its claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

How Much Must Ms. Hilton Pay for the Fines and Late Fees?

21. The strata alleges that Ms. Hilton breached the strata's bylaws 6 times. These alleged breaches include knocking on a council member's door, having a dog loose on common property (twice), screaming obscenities, not picking up dog feces on the common property, and leaving a basketball hoop at the edge of the driveway. The strata fined Ms. Hilton $200 for each breach, totaling $1,200. The strata also alleges Ms. Hilton did not pay her strata fees on time and claims $150 for late fees.

Knocking on a Council Member's Door

22. On January 14, 2023, Ms. Hilton knocked on a council member's door to discuss an issue with booking the strata's clubhouse. The strata alleges Ms. Hilton's actions

breached bylaws 3.1(a) and 3.1(c). These bylaws say an owner will not cause a nuisance or interfere with another owner's use and enjoyment of their strata lot.

23. On January 16, 2023, the strata manager wrote to Ms. Hilton about the interaction. In the letter, the strata manager cited bylaws 3.1(a) and 3.1(c), and warned Ms. Hilton about a $200 fine. During a January 25, 2023 council meeting, the strata council voted to fine Ms. Hilton $200.

24. For the following reasons, I find the strata did not follow the procedural requirements set out in SPA section 135 before fining Ms. Hilton.

25. SPA section 135 says that a strata corporation cannot require an owner to pay a fine unless the strata:

    a. Gives the owner details of the complaint, in writing,

    b. Provides the owner with a reasonable opportunity to respond to the complaint, including by holding a hearing if requested, and

    c. As soon as feasible, give notice in writing to the owner that the strata has decided to fine them.

26. The SPA section 135 procedural requirements are strict, with no leeway. If the strata corporation does not follow them, I can find that the resulting fines are invalid. See *Terry v. The Owners, Strata Plan NW 308*, BCCA 449, and *The Owners, Strata Plan NW 307 v. Desaulniers*, 2019 BCCA 343.

27. During the interaction, the strata says that Ms. Hilton intimidated and harassed the council member. The strata provided a statement from the current strata council president describing these allegedly disruptive events. Based on this evidence, I find the alleged harassment and intimidation were the reason for the bylaw fine. However, the strata manager's January 16 letter does not mention intimidation and harassment. Instead, the strata manager wrote that owners should not approach council members for "non-emergency issues". Given this, I find the strata manager did not clearly detail the particulars of the complaint in writing.

28. Without accurately detailing the complaint, I find Ms. Hilton did not have the ability to properly respond. There is also no evidence before me that owners knew in advance that they would be fined for approaching council members for non-emergency issues.

29. Further, in the January 16 letter, the strata manager wrote that Ms. Hilton had 20 days to respond to the allegations. However, the evidence shows that the strata manager did not email the letter until January 22. This was only 3 days before the strata council voted to fine Ms. Hilton. I find the strata did not give Ms. Hilton a reasonable amount of time to respond before fining her.

30. Taken together, I find the strata did not follow the SPA section 135 procedural requirements before imposing a fine, and the $200 fine is not valid.

January 4, 2023 Incident

31. On January 4, 2023, the strata alleges Ms. Hilton (1) let her dog loose on the common property, (2) did not clean up dog feces, and (3) loudly screamed obscenities for 15 minutes.

32. On January 11, 2023, the strata manager wrote to Ms. Hilton about the incident. The strata manager cited bylaws 3.1(a), 3.1(b), 3.1(c), and 4.3(c). Bylaw 3.1(c) says an owner will not make unreasonable noise, while bylaw 4.3(c) says an owner will not have a dog on the common property without a leash. The strata manager warned Ms. Hilton about a $200 fine for each bylaw contravention and gave her the opportunity to respond or request a hearing. During a February 22, 2023 council meeting, the strata voted to fine Ms. Hilton $600 for all 3 actions. On March 1, 2023, the strata manager wrote to Ms. Hilton about the strata's decision to fine her.

33. From the evidence before me, I find the strata followed the SPA section 135 procedural requirements when fining Ms. Hilton for this incident. However, for the following reasons, I find the strata acted significantly unfairly by fining Ms. Hilton 3 times for the same incident.

34. The CRT has authority to make orders remedying a significantly unfair act or decision by a strata corporation under CRTA section 123(2). The court has the same authority under SPA section 164, and the same legal test applies. See *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113.

35. In *Kunzler v. The Owners, Strata Plan EPS* 1433, 2021 BCCA 173, the court confirmed the legal test for significant unfairness. Significantly unfair actions are those that are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust, or inequitable. The use of the word "significant" means that the impugned conduct must go beyond mere prejudice or trifling unfairness. In applying the significant unfairness test, the owner's objectively reasonable expectations are a relevant factor, but are not determinative.

36. The strata has a duty to enforce its bylaws. However, in *Abdoh v. Owners of Strata Plan KAS 2003*, 2013 BCSC 817, affirmed 2014 BCCA 270, the court wrote that how vigorously the strata enforces a breach must be "tempered with prudence and good faith". In *Kok v. Strata Plan Lms 463 (Owners)*, 1999 CanLII 6382 (BC SC), the court also noted that the imposition of fines does not serve to correct, remedy, or cure violations of the bylaws. Instead, their purpose is to discourage violations of the bylaws. Some CRT decisions have relied on *Kok* to reduce the aggregate bylaw fines an owner is required to pay. See for example *Liang v. The Owners, Strata Plan LMS 2195*, 2024 BCCRT 1244.

37. In the circumstances, I find Ms. Hilton had an objectively reasonable expectation that the strata would only fine an owner once per incident. Bylaw 30(1) also says $200 is the maximum amount for a bylaw contravention. I find the strata's actions to fine Ms. Hilton the maximum amount 3 times for one incident were burdensome, harsh, and significantly unfair.

38. To remedy this significant unfairness, I find the strata is only entitled to fine Ms. Hilton a maximum of $200 for the January 4, 2023 incident. In her submissions, Ms. Hilton essentially admits that her dog was loose on common property. However, she denies leaving dog feces on common property and screaming obscenities. Given

this, I find Ms. Hilton must pay a $200 fine to the strata for the January 4, 2023 incident.

Leaving a Basketball Hoop at the Edge of the Driveway

39. On August 8, 2023, the strata manager wrote to Ms. Hilton about her basketball hoop overhanging onto the road. The strata manager noted that the basketball hoop was a safety hazard and asked Ms. Hilton to move it against her strata lot when her children were not using it. The strata manager sent the letter after a June 26, 2023 meeting where the strata council had discussed the safety issue with basketball hoops in the strata. Ms. Hilton immediately responded to the strata manager, refusing to move her basketball hoop.

40. On August 11, 2023, the strata manager sent another letter to Ms. Hilton about the basketball hoop. In the letter, the strata manager cited bylaws 3.1(a) and 40(1). Bylaw 40(1) says no person will place any article on the common property, which in any way represents a safety hazard to any other person using the common property. I note that the strata plan shows Ms. Hilton's driveway is common property. The strata manager warned Ms. Hilton about a $200 fine and gave her the opportunity to respond or request a hearing.

41. During a September 21, 2023 meeting, the strata council voted to fine Ms. Hilton $200 for breaching the bylaws. On October 4, 2023, the strata manager wrote to Ms. Hilton about the strata's decision to fine her. Based on the evidence before me, I find the strata followed SPA section 135 before fining Ms. Hilton.

42. Ms. Hilton argues that the strata's bylaws do not stop an owner from having a basketball hoop. I disagree with this characterization. I find the strata is not fining Ms. Hilton for having a basketball hoop. Instead, the strata is fining Ms. Hilton because her basketball hoop overhung onto the road and posed a safety hazard. For the following reasons, I find bylaw 40(1) allowed the strata to do this.

43. In *The Owners, Strata Plan BCS 3407 v. Emmerton*, 2024 BCCA 354, the BC Court of Appeal noted that bylaws are to be given their plain and ordinary meaning. The

context of the words in issue must also be considered. In *Strata Plan VIS4663 v. Little*, 2001 BCCA 337, the BC Court of Appeal warned against highly technical and literal interpretations of strata bylaws. Instead, the court held that strata bylaws should be interpreted purposively, so that they accomplish the community's goals.

44. The Merriam-Webster dictionary defines "hazard" as a source of danger, while "safety" as the condition of being safe from hurt, injury, or loss. Taken together, I find bylaw 40(1) is meant to ensure any article on common property does not pose a danger that could cause injury or loss. By using the phrase, "which in any way represents a safety hazard", I also find the bylaw gives the strata broad discretion when determining a safety hazard.

45. The June 26, 2023 council meeting minutes note that high clearance vehicles had become snagged on basketball hoops in the past. Given this, I accept that unattended basketball hoops overhanging onto the road could be a safety hazard. The strata provided a September 22, 2023 picture, which I find shows Ms. Hilton's basketball hoop hanging over the curb at the end of the driveway. This was over a month after the strata sent 2 letters about the issue. Ms. Hilton does not challenge this evidence. So, I accept this picture accurately shows where Ms. Hilton was storing her basketball hoop. Given this, I find Ms. Hilton's basketball hoop could pose a safety hazard, and she breached bylaw 40(1).

46. Ms. Hilton also argues other owners have basketball hoops overhanging onto the road. I infer she argues it was significantly unfair for the strata to only fine her. Ms. Hilton, like other owners, had a reasonable expectation that the bylaws would be consistently enforced within the parameters of the SPA. This would include an expectation that the strata would not impose any fines in a discriminatory or unfairly prejudicial manner. See *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 238.

47. The strata says it also warned other owners about the potential safety hazard. The June 26 meeting minutes note that the strata council decided to ask 3 owners to store their basketball hoops against their garages. Ms. Hilton did not provide any

evidence to show that the other 2 owners continued to leave their basketball hoops at the end of their driveways after receiving a warning.

48. Instead, Ms. Hilton provided 3 undated pictures that she says were taken "last week". One picture shows an owner storing their basketball hoop against the garage, which is allowed. The other 2 pictures are of the same basketball hoop overhanging onto the road. I find this one incident 1.5 years after the fact does not prove that the strata unfairly enforced its bylaws in a discriminatory or prejudicial manner. There is also no evidence before me that Ms. Hilton provided these pictures to the strata, or the strata knew about this alleged bylaw violation and failed to act on it.

49. Overall, I find Ms. Hilton continued to breach bylaw 40(1) after the strata warned her that her overhanging basketball hoop was a safety hazard. Since the strata followed the SPA section 135 procedural requirements, I find the $200 bylaw fine is valid and Ms. Hilton must pay it.

Having a Dog Loose on Common Property

50. On March 15, 2024, the strata says Ms. Hilton's dog got loose on the common property. Ms. Hilton does not deny this. On April 10, 2024, the strata manager wrote to Ms. Hilton about this incident and cited bylaw 4.3(c). The strata manager warned Ms. Hilton about a $200 fine and gave her the opportunity to respond or request a hearing. After receiving the letter, Ms. Hilton responded that this was an accident and asked the strata "to be more neighbourly".

51. During an April 29, 2024 meeting, the strata voted to fine Ms. Hilton $200 for breaching bylaw 4.3(c). On May 21, 2024, the strata manager wrote to Ms. Hilton about the strata's decision to fine her. Based on the evidence before me, I find Ms. Hilton had a reasonable opportunity to respond to the strata's letter, and the strata followed the SPA section 135 procedural requirements.

52. Ms. Hilton says she did not purposely breach the bylaw, and it was an accident. I infer she argues it would be significantly unfair to fine her for an accident. In *Sze*

Holding Inc., the BC Supreme Court held that a strata council has discretion whether to enforce its bylaws in certain circumstances. However, that discretion is limited, particularly in circumstances where other owners have a reasonable expectation that the bylaws will be consistently enforced.

53. Here, Ms. Hilton admits that her dogs have gotten out on "occasions". Given this, I infer Ms. Hilton's dogs have gotten loose on more than one occasion. So, I find it would be significantly unfair to other owners if the strata did not enforce the bylaws and allowed Ms. Hilton to continue breaching them. I find the $200 bylaw fine is valid and Ms. Hilton must pay it.

Fine Summary

54. In summary, I find Ms. Hilton must pay $600 in fines. So, I order Ms. Hilton to pay the strata that amount. I dismiss the strata's remaining claim for $600 in fines.

The Late Fees

55. Finally, I address the late fees. The strata did not provide any details about these fees. The strata's only evidence is a transaction statement for Ms. Hilton's strata lot account. The statement shows the strata gave Ms. Hilton a $50 invoice on March 20, 2023, for "31-60 fee", and a $100 invoice on April 25, 2023, for "61-90 fee". The strata does not explain why it provided these invoices, or how it calculated these numbers. The strata also does not say which bylaw it relies on to charge late fees.

56. From Ms. Hilton's submissions, I infer the late fees are from her January 2023 strata fees. Ms. Hilton argues she gave the strata manager a cheque, but they never cashed it.

57. I do not need to address Ms. Hilton's argument because I find the strata does not have authority to charge late fees on outstanding strata fees. Bylaw 1(2) says the owner will be charged $60 per month for late strata payments. However, SPA section 107 says a strata can only charge a maximum interest rate on late strata fees. *Strata Property Regulation* section 6.8 says this rate cannot exceed 10% per

annum. I find bylaw 1(2) far exceeds this amount. Since SPA section 121 says a bylaw is not enforceable if it contravenes the SPA, I find bylaw 1(2) is not enforceable. So, I dismiss the strata's $150 claim for late fees.

CRT FEES AND DISPUTE RELATED EXPENSES

58. The *Court Order Interest Act* applies to the CRT. In the Dispute Notice, the strata explicitly chose not to claim interest, understanding that it could not claim this amount later. So, I order none.

59. 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 the strata was only partially successful in its claims, I find it is entitled to reimbursement of $112.50, which is half its paid CRT fees.

60. The strata claims $787.50 in dispute-related expenses to have its strata manager access, review, and organize evidence, which it says took 10 hours. It argues this expense was necessary to prepare its claim.

61. CRT rule 9.5(5) says that, except in extraordinary circumstances, the CRT will not order compensation for time spent dealing with the tribunal process. I find that CRT rule 9.5(5) applies to the strata manager's fees. I am not persuaded that there are any extraordinary circumstances in this dispute which justify awarding the strata reimbursement of the strata manager's fees. So, I dismiss the strata's claim for dispute-related expenses.

62. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses to Ms. Hilton.

ORDERS

63. Within 15 days of the date of this decision, I order Ms. Hilton to pay the strata $712.50, which includes $600 in fines and $112.50 for CRT fees.

64. The strata is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

65. I dismiss the strata's claim for dispute-related expenses.

66. 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.

Jeffrey Drozdiak, Tribunal Member