



Civil Resolution Tribunal

Date Issued: May 4, 2026

File: ST-2024-006238

Type: Strata

Civil Resolution Tribunal

Indexed as: *Kong v. The Owners, Strata Plan VAS2853*, 2026 BCCRT 699

BETWEEN:

HO MING KONG

APPLICANT

AND:

The Owners, Strata Plan VAS2853

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Nyhuus

INTRODUCTION

1. The applicant, Ho Ming Kong, previously rented a strata lot (unit 302) in the respondent strata corporation, The Owners, Strata Plan VAS2853. During Mr. Kong's tenancy, the strata issued \$3,600 in fines for contravening parking stall bylaws and \$1,000 in fines for unreasonable noise.

2. Mr. Kong says the strata enforced its bylaws in bad faith and contrary to the requirements of the *Strata Property Act* (SPA). He seeks the removal of the fines from unit 302's account. He also asks for an order preventing the strata from fining unit 302 for noise complaints involving jazz music and dance activities before 10 pm. Further, he claims \$4,600 as a "punitive sum" for the hassle and mental stress caused by the strata's actions.
3. The strata says it validly issued the bylaw fines. It also claims \$15,000 for the excessive mental stress caused by Mr. Kong's refusal to obey the bylaws.
4. Mr. Kong represents himself. The strata council president represents the strata.

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). 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.
6. 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. Further, 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.
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.

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.

Issues with claimed relief

Strata's claim for \$15,000

9. In the Dispute Response, the strata says that it seeks \$15,000 as a counterclaim for the excessive mental stress that unit 302's tenants caused the strata council. I note that the strata did not file a counterclaim seeking these damages and did not make arguments about this claim in its submissions. The CRT's process generally requires respondents to file a counterclaim if they are seeking damages or an order. So, I find this claim is not properly before.
10. Further, even if the strata had filed a counterclaim seeking damages for mental stress, I would dismiss it. The strata is a corporation. Because a corporation has no feelings, it cannot suffer an intangible injury like mental distress. See *Northwest Organics, Limited Partnership v. Fandrich*, 2019 BCCA 309, at paragraphs 126 to 128. While a strata council member can, of course, personally suffer mental distress, a council member and a strata corporation are separate legal entities. So, I find the strata cannot bring such a claim on behalf of its council members.

Mr. Kong's request for an order stopping noise fines

11. Mr. Kong seeks an order that the strata stop fining unit 302 for noise complaints related to activities before 10 pm. I dismiss this claim as I find it is moot. A claim is moot when there is no longer a live controversy between the parties. Generally, moot claims will be dismissed. See *Binnarsley v. BCSPCA*, 2016 BCCA 259. Since Mr. Kong no longer lives in unit 302 or the strata, I find there is no ongoing dispute between the parties about future enforcement of the strata's bylaws.

ISSUES

12. The remaining issues in this dispute are:

- a. Did the strata properly issue bylaw fines against Mr. Kong?
- b. If not, is Mr. Kong entitled to punitive damages?

EVIDENCE AND ANALYSIS

13. As the applicant in a civil proceeding like this one, Mr. Kong must prove his claims on a balance of probabilities (meaning more likely than not). Here, Mr. Kong's claim to dismiss the bylaw fines is a consequence of the strata's implementation of bylaw fines. As the party alleging the bylaw infractions, the strata must prove its bylaw fines are valid.
14. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find necessary to explain my decision.

Background

15. The strata was created in 1991 and consists of 11 strata lots in a 4-storey building with underground parking. I infer that unit 302 is strata lot 8, located on the third floor.
16. The strata has filed various bylaw amendments to the SPA's Standard Bylaws. On September 27, 2022, the strata filed new bylaws 33, 35, and 38.5, which are relevant to the fines related to unit 302's parking space:
 - a. Bylaw 33(e) says that items other than motor vehicles must not be stored in parking spaces. Similarly, bylaw 33(f) says that parking spaces must be kept clean and tidy and free of debris and storage items.
 - b. Bylaw 35 says that owners and tenants must not allow any common property to become unsanitary or untidy. It says that rubbish, dust, garbage, boxes, packing cases, and similar refuse must not be thrown, piled, or stored on common property.
 - c. Bylaw 38.5 says that a resident contravening any bylaw shall be subject to a fine of \$100.

17. Bylaw 3(1) is relevant to the fines related to noise. It says that an owner, tenant, or visitor must not use a strata lot in a way that causes a nuisance or unreasonable noise.
18. A Form K in evidence shows that Mr. Kong and his roommate, MC, began renting unit 302 in September 2019. Mr. Kong says he moved out of unit 302 around September 2024. MC continues to live in the unit.

Did the strata properly issue the bylaw fines against Mr. Kong?

19. During his tenancy, the strata fined Mr. Kong \$3,600 for storing various items within unit 302's assigned parking space. It also fined him \$1,000 for breaching the strata's noise and nuisance bylaws. Since Mr. Kong asks for an order that the strata remove the fines from unit 302's account, I infer that he has not paid the fines.
20. The strata provided many photographs that show that Mr. Kong used unit 302's parking space to store various items including boxes, exercise equipment, a water jug, and what appears to be recycling and garbage. Mr. Kong does not deny that he used the parking stall for storage. Instead, he argues the strata selectively and arbitrarily enforced its bylaws, breached basic procedural fairness, and overreacted to the bylaw violations. He argues the strata acted maliciously and punitively. He says he tried to resolve the issue in good faith and the strata did not.
21. I am not persuaded by Mr. Kong's argument that the strata should not have enforced its bylaws against him. I find the strata responded to legitimate complaints that he was obviously breaching the bylaws by storing items other than a motor vehicle in his parking stall. While Mr. Kong says others used their parking stall in this way, the strata has provided evidence that it sent similar notices to other owners and tenants requesting that they remove stored items from their stalls. So, I find the strata has proved it did not enforce its parking stall bylaws unevenly or arbitrarily.

22. I also find that Mr. Kong and MC's dance classes and jazz band practices likely constituted a nuisance to their neighbours and a breach of the strata's nuisance bylaws.
23. In the strata context, nuisance is a substantial, non-trivial, and unreasonable interference with an owner's use and enjoyment of their property (see *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502). The test of whether noise is unreasonable is objective and is measured with reference to a reasonable person occupying the premises (see *Sauve v. McKeage et al.*, 2006 BCSC 781). The test for nuisance depends on several factors, such as its nature, severity, duration, and frequency (see *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64).
24. The strata has provided numerous videos of the noise, which include the sounds of a jazz band and dancing. It has provided pictures of people carrying large instruments into the strata building and audio recordings of unit 302's guests saying they are attending dance or band practice. Noise logs in evidence show that the tenants used unit 302 for this purpose regularly, on Monday and Thursday evenings.
25. Mr. Kong argues that these events were a reasonable use of unit 302. He says the sessions always ended by 10 pm. He says he only invited experienced dancers who know how to tread lightly as opposed to beginners who are more prone to stomping.
26. I find the evidence shows that his guests' dancing skills made little difference to his neighbours below. The resident of the unit below Mr. Kong's, unit 202, says the ceiling shook when he held jazz practice and that the sound was inescapable. Other witnesses who attended unit 202 provided similar statements in support of this view.
27. I find a reasonable person would not consider an apartment in a 4-storey residential building to be an appropriate place for band and dance practices. I find the strata has proved that the jazz band and dance practices likely caused a nuisance to the unit below his. So, I find the strata appropriately decided to enforce its bylaws against this activity.

28. I find that Mr. Kong flagrantly disregarded both the strata's bylaws and the strata council's good faith requests that he comply with them. I find the evidence does not show that the strata unfairly enforced its bylaws against only Mr. Kong or that its enforcement was driven by personal malice.
29. However, I agree with Mr. Kong that the strata failed to follow the SPA's strict procedural requirements for fining tenants. For this reason, I find the bylaw fines cannot stand.
30. Section 135 of the SPA sets out the procedural requirements that a strata corporation must follow before enforcing a bylaw or rule infraction. It says that the strata cannot impose a fine unless it has:
- a. Received a complaint,
 - b. Given the tenant the details of the complaint, in writing, and
 - c. Given the tenant a reasonable opportunity to answer the complaint, including a hearing if requested.
31. Further, SPA section 135(2) says that the strata must, as soon as feasible, give the tenant notice in writing of a decision on imposing a fine. SPA section 135(3) says that once a strata has complied with this process, it may impose a fine for a continuing contravention without repeating the process.
32. These procedural requirements are strict, with no leeway. See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, and *The Owners, Strata Plan NW 307 v. Desaulniers*, 2019 BCCA 343.

Parking stall bylaw contraventions

33. In 2022, the strata sent at least 4 letters or emails to unit 302's owners (Mr. Kong's landlords) about the improper use of the parking stall. I infer the owners forwarded the notices to Mr. Kong, as he responded to the strata manager, disputing the warnings. It seems the strata did not follow through on enforcing the bylaws any further at this time. Mr. Kong did not remove the items from the parking stall.

34. On June 16, 2023, the strata manager sent a “final warning notice” to the owners about using the parking stall for storage. The letter cites bylaws 33 and 35 and requests that the owners remove the items by June 23. The letter warns that failure to remove the items by June 23 would result in a \$100 fine imposed every 7 days.
35. Sometime in the summer of 2023, Mr. Kong requested a hearing with council, which happened on September 19, 2023. At the hearing, Mr. Kong requested that the strata rescind the warning letters. He argued that the strata was not enforcing its bylaws universally and that the municipality’s fire bylaws do not prohibit storing incidental items in a parking garage.
36. After the hearing, the strata sent Mr. Kong a letter. The strata explained that it found Mr. Kong to be in violation of bylaws 33 and 35. It requested that he remove the items from his parking stall. It wrote that failure to comply would result in fines of \$100 and that a fine may be imposed every 7 days. Mr. Kong did not remove the items from the parking stall.
37. However, based on the evidence before me, I find the strata did not take further steps to fine Mr. Kong or otherwise enforce its bylaws until March 2024.
38. The strata provided unit 302’s account statement that shows the account’s balance from January 1 to March 25, 2024. The statement shows that the strata charged strata fees each month, which the owner paid the same day. Then, on March 5, the strata applied a \$3,600 charge. The note for this charge says, “Parking Violation [June 23, 2024 to March 5, 2024].” I find that “June 23, 2024” is likely supposed to say June 23, 2023, given that the strata’s June 16, 2023 letter provided a June 23, 2023 deadline for removing items from the parking stall.
39. I infer that unit 302’s owner checked her strata account around this time and discovered that the strata had levied a \$3,600 fine against it. On March 25, the owner emailed the strata manager to request more information about the parking violation incident. She wrote, “I am unclear as to why this payment is suddenly required.” The strata manager responded that the strata council instructed him to levy fines due to the parking stall storage bylaw violations.

40. I find this shows that the strata retroactively fined Mr. Kong \$3,600 for the parking violation on March 5, 2024. The strata likely fined this amount by charging \$100 for each of the 36 weeks between June 23, 2023, and March 5, 2024.
41. The strata's correspondence to Mr. Kong and the owners about the bylaw contraventions said that it may impose a fine. The difficulty for the strata is that it did not provide Mr. Kong notice in writing that it was in fact fining him for the bylaw contravention. Previous CRT decisions have found that SPA section 135(2) requires the strata to give notice of a decision on imposing a fine as soon as feasible, and that it is not enough for the strata to provide notice that it "may" impose a fine. See, for instance, *Tantillo v. The Owners, Strata Plan NW 317*, 2018 BCCRT 54 at paragraphs 23 to 26. I agree with this reasoning.
42. I find the evidence shows that the strata likely decided to fine Mr. Kong in March 2024 and to make the fines retroactive to the final warning that it provided to the owner (not Mr. Kong) 36 weeks earlier. The SPA does not allow for this. While the strata was likely entitled to begin issuing fines after Mr. Kong's hearing in September 2023, it had to provide Mr. Kong notice of the first fine as soon as feasible after deciding to impose it. Only then could the strata continue to fine Mr. Kong on a weekly basis for a continuing contravention.
43. For this reason, I find the strata did not have authority to fine him \$3,600 all at once for the parking stall bylaw infractions. I order the strata to remove these fines from unit 302's account.

Noise and nuisance bylaw contraventions

44. I find the strata must also waive the noise nuisance bylaw contravention fines for similar procedural errors.
45. On May 7, 2024, the strata sent a letter to the owners about the tenants' band and dance practices and its position that they are a contravention of bylaw 3(1). The strata informed the owners that continuing the band and dance practices may result in a bylaw fine.

46. I note that the strata did not address this letter to the tenants. I infer that the owners forwarded the letter to Mr. Kong and MC. The strata says that it scheduled a hearing with MC for May 23, but that she failed to attend.
47. On June 4, 2024, the strata sent another letter, this time addressed to both the “owners and tenant”. The letter says that the tenant continues to violate bylaw 3(1) on a regular basis. It says the strata council has approved bylaw violation fines totaling \$1,000, charged to “the tenant”. It reported receiving noise complaints on 10 specific dates between March 16 and June 3.
48. The problem with this set of fines is that the strata essentially treated the noise as a continuing contravention. In *The Owners v. Grabarczyk*, 2006 BCSC 1960, the BC Supreme Court found that ongoing but discrete noise complaints are not allegations of continuous contraventions, but rather allegations of repeat contraventions. So, I find the 10 noise violations cited in the strata’s letter were not continuous contraventions. This means that the strata was required to follow section 135’s strict requirements for *each* noise complaint.
49. SPA section 135 required the strata to provide a reasonable opportunity to respond to each complaint before it imposed a fine. In practice, this requires a 2-letter process for each bylaw contravention. The first letter must give the tenants the details of each complaint. Only after giving the tenants a reasonable opportunity to respond, and considering the tenants’ response if they gave one, can the strata send a second letter imposing a fine. See *Horvath v. The Owners, Strata Plan 1773*, 2022 BCCRT 852.
50. Here, the strata attempted to condense this 2-letter process into a single letter. The May 7 letter did not count as proper notice because the specific complaints that the strata fined the tenants for had not happened yet. By providing the tenants a single letter detailing the complaints and issuing the fine, the strata failed to give Mr. Kong and MC an opportunity to respond to the 10 specific noise complaints from March to June 2024.

51. For this reason, I find the strata did not comply with SPA section 135's strict requirements when it fined the tenants \$1,000 for noise complaints. So, I order the strata to remove these fines from unit 302's account.
52. I note that the strata provided evidence that it fined MC for noise bylaw infractions on later occasions. However, I find these fines are not properly before me since MC is not a party to this dispute and the bylaw infractions happened after Mr. Kong's tenancy.

Punitive damages

53. I turn to Mr. Kong's claim for punitive damages. He argues that he should be awarded \$4,600 as a punitive sum for the hassle and mental stress he endured dealing with the strata's bylaw enforcement efforts.
54. In *Honda Canada Inc. v. Keays*, 2008 SCC 39, the Supreme Court of Canada said that punitive damages should only be awarded in exceptional cases to compensate for extremely harsh or malicious conduct.
55. Here, I find the strata acted in good faith to try to enforce legitimate bylaw contraventions. I note that it can be difficult for volunteer strata councils to follow SPA section 135's strict requirements. I find nothing harsh or malicious about the strata's conduct. So, I dismiss Mr. Kong's claim for punitive damages.

CRT FEES AND EXPENSES

56. 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. Mr. Kong was successful, so I order the strata to reimburse him \$225 in CRT fees. Mr. Kong did not claim any dispute-related expenses.

ORDERS

57. I order the strata to:

- a. Immediately remove the \$3,600 in bylaw fines from unit 302's strata account for the parking stall violations, and
 - b. Immediately remove the \$1,000 in bylaw fines from unit 302's strata account for noise violations, and
 - c. Within 30 days of the date of this decision, pay Mr. Kong \$225 for CRT fees.
58. Mr. Kong is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
59. I dismiss Mr. Kong's remaining claims.
60. 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 that it is filed in.

Peter Nyhuus, Tribunal Member