



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Gill v. The Owners, Strata Plan EPS4403*, 2020 BCCRT 725

B E T W E E N :

RAPINDER GILL and EKONKAR JOUHAL

APPLICANTS

A N D :

The Owners, Strata Plan EPS4403

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about bylaw and rule violation fines. The applicants, Rapinder Gill and Ekonkar Jouhal, formerly rented a strata lot in the respondent strata corporation, The Owners, Strata Plan EPS 4403 (strata). The strata assessed multiple bylaw and rule fines, mostly for failing to wait for the parkade gate to close.

The strata also assessed fines for entering the parkade without using the key fob and for colliding with the parkade gate.

2. The applicants say these fines were not imposed properly and they dispute the \$2,900 of strata fines imposed during their tenancy. The strata fines have been paid by the owner of the strata lot (owner). The owner is not a party to this dispute.
3. The strata says the fines were imposed properly. The strata also argues that the Civil Resolution Tribunal (CRT) lacks jurisdiction to decide this matter because the applicants are no longer tenants of the strata lot. The strata also argues that the applicants do not have standing to dispute fines assessed against the owner of the strata lot.
4. The applicants are self-represented. The strata is represented by the strata council president.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the 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. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.

7. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. The strata argues that the CRT lacks jurisdiction to decide this dispute because the applicants are no longer tenants of the strata lot. The strata refers to section 189.1(1) of the *Strata Property Act* (SPA), which says that an "owner or tenant" may ask the CRT to resolve a dispute over any strata property matter over which the CRT has jurisdiction. The strata argues that former tenants are not "tenants" for the purposes of section 189.1(1). For the reasons that follow, I disagree.
8. The strata had made a preliminary request to dismiss this dispute for lack of jurisdiction. A preliminary decision was made by a CRT vice chair on February 27, 2020 denying this request. Although this preliminary decision is not binding on me, I also find that the CRT has jurisdiction to hear this dispute.
9. The applicants say, and the strata does not dispute, that their tenancy ended on August 31, 2019. CRT's documents show that the applicants filed their dispute application on January 7, 2020, after their tenancy ended.
10. In the preliminary decision, the vice chair referred to the BC Supreme Court decision in *Downing v. Strata Plan VR2356*, 2019 BCSC 1745. In *Downing*, the court determined that section 189.1 of SPA did not remove the CRT's jurisdiction to decide a dispute filed by a former owner. The vice chair reasoned that the same principle from *Downing* relating to former owners also applies to former tenants. So, the vice chair found that a former tenant is a "tenant" within section 189.1 of SPA. I agree with this reasoning and apply it here.
11. For the above reasons, I find that the applicants are "tenants" within the meaning of section 189.1 of SPA. So, I find that the CRT has jurisdiction to decide this dispute.
12. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.

13. Under section 123 of the CRTA and the CRT rules, 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

14. The issues in this dispute are:
- a. Do the applicants have standing to dispute the bylaw and rule fines?
 - b. If so, did the applicants breach the bylaws and rule by failing to wait for the parkade gate, by entering without using the key fob and by colliding with the parkade gate?
 - c. If the applicants breached the bylaw and rule, did the strata impose the fine in accordance with section 135 of the SPA?

EVIDENCE AND ANALYSIS

15. In a civil dispute such as this, the applicants bears the burden of proof. This means the applicants have to provide evidence to prove their claim on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

Bylaws and rules

16. The strata was created in 2017 and it consists of residential strata lots in 3-storey townhouses and a high-rise building. The strata lot in dispute is in the townhouses structure.
17. Section 119 of the SPA allows strata corporations to govern the use of common property with bylaws. Section 125 of SPA allows strata corporations to govern common property with rules.

18. The strata filed a complete new set of bylaws at the Land Title Office (LTO) on March 25, 2019, which are relevant to this dispute. The strata's bylaws include the following:
 - a. Bylaw 23: The maximum strata fine is \$200 for bylaw violations and \$50 for rule violations
 - b. Bylaw 24: If bylaw or rule is violated continuously for longer than 7 days, the strata may impose a fine every 7 days.
 - c. Bylaw 31(10): Residents must wait for the parkade gate to close.
19. The strata says rule 10 also required residents to wait for the gate to close. The strata says that rule 10 was in effect until the amended bylaws were filed on March 25, 2019. The strata says that rule 10 then became bylaw 31(10). The strata did not provide a copy of the rules.
20. The original strata bylaws filed on August 4, 2017 also said that the maximum fine for rule violations was \$50.
21. The strata issued 28 notices of infractions from August 30, 2018 to May 23, 2019 to the owner. The notices of infractions alleged the following bylaw and rule infractions:
 - a. 25 of the notices allege that the applicants failed to wait for the parkade gate to close.
 - b. 2 of the notices allege that the applicants entered the parkade without using the key fob.
 - c. 1 of the notices allege that the applicants' car collided with the parking gate.
22. The strata's statement of account which shows the following bylaw and rule fines assessed against the owner, totaling \$2,900:
 - a. On March 12, 2019, the strata assessed 14 fines of \$50 each, totaling \$700.

- b. On May 7, 2019, the strata assessed 5 fines of \$200 each, totaling \$1,000.
- c. On June 6, 2019, the strata assessed 4 fines of \$200 each, totaling \$800.
- d. On July 4, 2019, the strata assessed 2 fines of \$200 each, totaling \$400.

Do the applicants have standing to dispute the strata fines?

- 23. The legal term “standing” in the context of the CRT, means the right of an applicant to bring a dispute for resolution by the CRT.
- 24. For the reasons set forth below, I find that the applicants do not have standing to bring this dispute.
- 25. Section 130 of the SPA says, in part, a strata corporation can issue a fine for a bylaw violation by a tenant, or a tenant’s guest, against the tenant. Section 131 of the SPA says a strata corporation can collect a fine assessed against the owner from the tenant or the owner. If the fine is collected from the owner, then the tenant owes the owner reimbursement.
- 26. In this matter, the strata says the owner paid the strata fines. This is supported by the strata’s statement of account which shows that the owner paid the strata \$2,900 on July 31, 2019.
- 27. The applicants have provided conflicting statements about the payment of the fines. They say the fines were paid by both themselves and the owner. The applicants did not provide any details of the amounts or dates of their alleged fine payments. They also did not provide any proof of payment. Further, the applicants’ submission also says that the owner paid the \$2,900 of fines to the strata.
- 28. I find the strata’s explanation of the fine payments to be more persuasive than the applicants’ because the strata’s version is supported by the strata’s statement of account. I find the applicants’ version less reliable because it is inconsistent, and it is not supported by documentary evidence. For the above reasons, I find that all of the bylaw and rule fines were paid by the owner.

29. Also, the strata documents indicate that each bylaw and rule fine was issued against the owner and not the applicants. The strata addressed each notice of infractions and each of their decisions imposing the bylaw and rule fines to the owner, with copies sent to the the applicants. Based on the evidence provided, I find that the strata issued the bylaw and rule fines against the owner and not the applicants.
30. The strata referred to my CRT decision in *Africh v. The Owners, Strata Plan EPS3495*, 2020 BCCRT 415. That matter also involved a tenant disputing bylaw fines imposed against the owner of the strata lot. In *Africh*, I found that, since the strata issued the bylaw fine to the owner and the owner paid the fines, the tenant did not have a sufficient interest in the alleged bylaw infraction to dispute the bylaw fine. Although this decision is not binding in this matter, I find the reasoning in *Africh* applicable here.
31. The remedy the applicants request is also problematic. The applicants have not provided any evidence showing they paid any portion of the strata fines to the owner. he applicants could receive a windfall if the strata is ordered to reimburse fines that the applicants did not pay.
32. The applicants say they are obligated to pay the strata fines to the owner based on a Residential Tenancy Branch (RTB) order. They say the owner filed an RTB dispute after their tenancies ended and the RTB ordered the applicants to pay the \$2,900 of strata fines to the owner. However, I am not satisfied that this tenancy dispute between the applicants and the owner is within the CRT's strata property jurisdiction in section 121 of the CRTA. So, I decline to make any findings relating to the RTB dispute.
33. For the above reasons, I found that the applicants do not have standing to dispute the bylaw and rule fines imposed against the owner in this matter and I dismiss this dispute.
34. Because of my finding, I will not analyze whether the applicants breached the bylaw and rule or whether the strata properly imposed the bylaw and rule fines.

TRIBUNAL FEES AND EXPENSES

35. In accordance with the Act and the CRT's rules, as the applicants were unsuccessful, I find they are not entitled to any reimbursement of CRT fees or expenses.

ORDERS

36. I dismiss the applicants' claim, and this dispute.

Richard McAndrew, Tribunal Member