



Civil Resolution Tribunal

Date Issued: September 29, 2020

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Choi v. The Owners, Strata Plan EPS4044*, 2020 BCCRT 1092

B E T W E E N :

CHUN MAN JAVIN CHOI and CHING TING PINK HUI

APPLICANTS

A N D :

The Owners, Strata Plan EPS4044

RESPONDENT

A N D :

CHUN MAN JAVIN CHOI and CHING TING PINK HUI

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about a short-term accommodation bylaw and related fines in a strata corporation.
2. The applicants Chun Man Javin Choi and Ching Ting Pink Hui, who are son and mother respectively, own strata lot 318 (unit 3603), in the respondent strata corporation The Owners, Strata Plan EPS4044 (strata).
3. Mr. Choi and Ms. Hui say the strata wrongly imposed fines on them for allegedly violating a short-term accommodation bylaw. They seek a refund of \$17,000 in fines, and a CRT order preventing the strata from charging them further fines.
4. The strata says that Mr. Choi and Ms. Hui used their strata lot for short-term accommodation, contrary to the bylaws. The strata says the fines imposed were valid and applicable. The strata asks me to dismiss their dispute.
5. While Ms. Hui admits to posting an AirBnB advertisement for unit 3603, she and Mr. Choi deny allowing short-term accommodations for less than 30 days per booking. In an apparent contradiction, they also say that unit 3603 was only occupied by them and their out-of-town relatives.
6. The strata counterclaims against Mr. Choi and Ms. Hui. The strata seeks an order that they pay \$17,450 in outstanding fines for various bylaw violations, and that they comply with all bylaws in future.
7. Mr. Choi, as primary applicant, represents himself and Ms. Hui. The strata is represented by council president LD.
8. For the reasons given below, I find that Ms. Hui and Mr. Choi must pay the strata \$14,450 in bylaw fines, primarily for breaches of the strata's short-term accommodation bylaw.

JURISDICTION AND PROCEDURE

9. 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.
10. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
11. 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.
12. 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

11. The issues in this dispute are:
 - a. Did Mr. Choi and Ms. Hui breach the strata's bylaws prohibiting short-term accommodation use of their strata lot, or any other bylaws, as alleged?
 - b. What amount of bylaw fines, if any, must they pay to the strata?
 - c. Must Mr. Choi and Ms. Hui pay \$17,450 in fines for bylaw violations?
 - d. Should I order the strata to stop fining Mr. Choi and Ms. Hui in future?
 - e. Should I order Mr. Choi and Ms. Hui to comply with the strata bylaws in future?

EVIDENCE AND ANALYSIS

13. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.

Bylaws

14. The applicable bylaws were filed at the Land Title Office (LTO) on November 7, 2018 subject to amendments on October 31, 2019 and July 22, 2019 that do not impact the matters in issue in this dispute.

November 7, 2018 Bylaws

15. Bylaw 3 (1) provides that an owner, tenant, occupant or visitor must not use a strata lot or common property (CP) in a way that causes a nuisance or hazard, unreasonable noise or unreasonably interferes with the rights of others to use and enjoy the CP or another strata lot.

16. Bylaw 4 requires a tenant to inform the strata of his or her name, on request. Notably, it does not require an owner to provide the strata with a Form K, which is a Notice of Tenant's Responsibilities prescribed by the *Strata Property Regulation*.

17. Bylaw 23 sets a maximum \$200 fine for each bylaw contravention.

18. Bylaw 24 provides that where an activity or lack of activity that constitutes a contravention of a bylaw continues uninterrupted for more than 7 days, a fine may be imposed every 7 days.

19. Bylaw 36 prohibits an owner, tenant or occupant from granting a license to anyone to occupy a strata lot for vacation, travel or temporary accommodation, as a motel, hotel, inn, hostel, bed and breakfast or similar accommodation, for temporary accommodation or vacation rentals including where booked through a short-term accommodation website or app, agency or organization including AirBnB.

20. The language of Bylaw 36 prohibits granting a licence to any one to occupy a strata lot through any website "designed for booking short term accommodations, temporary

accommodations or vacation rentals”, including AirBnB. I therefore find that the wording prohibits licensing the use of a strata lot through AirBnB and the like, regardless of the duration for which the license is given. Put differently, vacation accommodation use, whether for less or more than 30 days’ duration, is prohibited under these Bylaws.

21. Bylaw 36(2) says that “Notwithstanding the Strata Corporation may fine an owner a maximum of \$1,000 for the contravention...” This appears to be a typographical omission where the strata meant to include “Notwithstanding Bylaw 23” in the text of Bylaw 36. I find that Bylaw 36(2) is sufficiently clear and sets a maximum \$1,000 fine per contravention of Bylaw 36.

SPA section 135

22. Section 135(1) of the SPA says a strata cannot impose a fine against a person for a bylaw contravention unless it has

- a. received a complaint about the contravention,
- b. given the owner the particulars of the complaint in writing, and
- c. given the owner a reasonable opportunity to respond to the complaint (including a hearing if requested).

22. SPA section 135(2) requires the strata to give notice in writing of a decision to fine a person for a bylaw contravention, as soon as feasible.

23. SPA section 135(3) says that once the strata had complied with the procedural steps outlined above, the strata may impose fines or penalties for a continuing contravention without further compliance with those steps.

24. The strata must strictly follow the SPA section 135 requirements before fines can be imposed: *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.

Background Facts

23. Unless I specify otherwise below, where the strata notified Mr. Choi and Ms. Hui of a complaint via letter, I find that it did so in compliance with section 135(1) of the SPA including by offering a reasonable opportunity to respond and for a hearing, if requested.

Strata Correspondence with Mr. Choi and Ms. Hui

24. The strata wrote to Mr. Choi and Ms. Hui about bylaw issues as follows:

- i. January 9, 2018 – for placing garbage in the lobby bins rather than in the designated garbage area, contravening Rule 4 requiring all rubbish be placed in bins on parking level 1. Having received no response, on March 16, 2018, the strata imposed a \$50 fine for improper waste disposal.
- ii. March 7, 2018 - a resident of unit 3603 had been observed tampering with the main building door to prevent it from closing, on March 3, 2018.
- iii. March 8, 2018 - on March 1, 2018, there had been an altercation in the building lobby between residents of unit 3603, where a male was witnessed causing physical harm to a female resident or visitor. The strata later imposed a \$50 fine for this incident.
- iv. March 28, 2018 - report of loud music and shouting emanating from unit 3603 on March 17, 2018 at 7:50 p.m.
- v. March 29, 2018 - report of loud music and yelling emanating from unit 3603 on February 9, 2018 from 11pm-1am. The strata later levied a \$50 fine for this incident.
- vi. March 29, 2018 - report of several guests in the unit, making loud noise and spilling beer outside the elevator. The strata later levied a \$50 fine for this incident.
- vii. April 30, 2018 - a complaint regarding liquid garbage being left in the elevator by a unit 3603 resident on April 21, 2018. The letter attached a

surveillance photograph of a man, in the strata building elevator, carrying a garbage bag that had leaked liquid onto the elevator floor. The strata later levied a \$50 fine for this incident.

- viii. November 21, 2018 - unit 3603 ad been advertised through AirBnB on November 15, 2018.
- ix. November 25, 2019 - unit 3603 was being used as a short-term rental. The letter includes a link to the AirBnB advertisements.
- x. November 27, 2018 - unit 3603 had been advertised on AirBnB on November 21, 2018.
- xi. December 3, 2018 - unit 3603 had been advertised on AirBnB on November 29, 2018.
- xii. January 2, 2019 - unit 3603 had been advertised on AirBnB from December 2018 to “present”.
- xiii. January 29, 2019 - imposing 2-\$1,000 fines for violating the short-term accommodation bylaw as laid out in its November 21 and 27, 2018 letters.
- xiv. February 11, 2019 - unit 3603 had been advertised on AirBnB on January 29, 2019, and February 2, 8 and 15, 2019.
- xv. February 27, 2019 - unit 3603 was the subject of a noise complaint from February 16, 2019 at 1:20 a.m. The strata provided an email report showing that another resident reported the noise coming from unit 3603 and its balcony.
- xvi. May 30, 2019 - rental activity at unit 3603. The strata requested a Form K if there was a tenancy in the suite and asked for a response by June 13, 2019. Later, on July 29, 2019, the strata imposed a \$50 fine for this infraction.
- xvii. July 27, 2019 - unit 3603 had been advertised on AirBnB on July 14, 2019, 2019.

- xviii. August 7, 2019 - a complaint that unit 3603 was being used as a short-term rental through AirBnB on August 2, 2019.
- xix. August 15, 2019 - a reoccurring complaint that unit 3603 was being used as a short-term rental through AirBnB, on August 10, 2019.
- xx. September 12, 2019 - applying a \$1,000 fine against them for the short-term rental violation reference in their August 15, 2019 letter.
- xxi. September 13, 2019 - explaining that strata council was applying a \$200 fine for the May 30, 2019 Form K issue.
- xxii. By separate letters of the same date, the strata applied a further 2-\$1,000 fines for the short-term accommodation use described in its August 7, 2019 and November 27, 2019 letters.
- xxiii. October 2, 2019 - a complaint of noise emanating from unit 3603 on September 28, 2019 at 1:59 a.m.
- xxiv. October 10, 2019 - reoccurring complaint that unit 3603 was being used as a short-term rental through AirBnB, in this instance on October 9, 2019.
- xxv. October 22, 2019 - unit 3603 being used as a short-term rental through AirBnB, as observed on October 19, 2019.
- xxvi. October 30, 2019 - referencing a report of October 28, 2019 in which a female owner, who I infer was Ms. Hui, became locked out and admitted, in the course of gaining access from the building manager, that the unit was being used as an AirBnB.
- xxvii. October 31, 2019 - an AirBnB guest in unit 3603 blocking the elevator door for an extended period, causing it to break down.
- xxviii. November 1, 2019 - imposing a \$1,000 fine for the short-term rental infraction referenced in its October 10, 2019 letter.

- xxix. November 25, 2019 - short-term rental use of unit 3603 on November 15 and 24, 2019.
- xxx. December 2, 2019 - Ms. Hui attended a hearing before strata council to ask that the fines against unit 3603 be waived.
- xxxi. December 3, 2019 - that strata council would continue to enforce the short-term rental bylaw violations in respect of unit 3603. The strata noted its decision not to waive any of the fines levied against unit 3603 to that date.
- xxxii. December 9, 2019 - to levy 5-\$1000 fines for short-term rental bylaw violations referred to in its January 2 and February 11, 2019 correspondence.
- xxxiii. December 11, 2019 - imposing 2-\$200 fines for Form K violations, and via a separate letter of the same date, two further \$1,000 fines for short-term rental bylaw violations referenced in correspondence dated October 22, 2019 and October 31, 2019 respectively.
- xxxiv. December 13, 2019 - imposing a \$200 fine for an “elevator use” violation.
- xxxv. January 30, 2020 - imposing 2-\$1000 fines for short term accommodation bylaw violations referred to in their November 15 and 24, 2019 letters.
- xxxvi. January 30, 2020 - imposing a \$200 fine in follow up to their December 13, 2019 correspondence about an “unpaid fee violation”. Because no section 135 letter for this infraction was provided, I find that this fine is not valid.
- xxxvii. February 13, 2020 - advising of rental activity in unit 3603 for which they had not submitted a Form K.
- xxxviii. March 30, 2020 - imposing a \$200 fine for a missing Form K.

Response from Ms. Hui

25. The only substantive written response to the strata’s considerable correspondence was on April 9, 2019, when Ms. Hui responded to the earlier complaints by email

saying that they had “stopped doing short term rental” and asking that the fines be withdrawn. Ms. Hui wrote that a friend of hers was living in the unit now. Ms. Hui also wrote that there was no one in unit 3603 when the noise complaints were observed.

Other Background Evidence regarding the Alleged Bylaw Violations

26. On December 20, 2019, past strata council president DO visited a “Home to Go” website and took a series of screen shots that she says prove that unit 3603 was being offered for short-term rental through at that site. However, the photographed listing is for a 3-bedroom 2-bathroom suite, with no specified address. According to the real estate listing filed in evidence for unit 3603, it is only a 1-bedroom 1-bathroom unit. I comment on this discrepancy further in my analysis below.

27. WT, former concierge and present building manager in the strata, provided a statement that he recorded an incident involving individuals who were renting unit 3603 as short-term accommodation. The group caused damage to common property gardening and landscaping on February 9, 2018.

28. WT also observed the suite owner handing keys to individuals who appeared to be renting the room as short-term accommodation on March 10, 2018.

29. On March 16, 2018, WT created a record of several noise complaints that were related to unit 3603. He investigated and concluded the noise was coming from unit 3603.

30. On October 16, 2018, WT created a record of several noise complaints that were related to unit 3603. When WT visited the unit, the occupants confirmed they rented the unit through a short-term accommodation website.

31. On August 8, 2019, WT approached individuals in the building who appeared to look lost and confused. The individuals told WT they were occupying unit 3603 through a short-term accommodation arrangement.

32. CS, the strata council treasurer, provided a statement that she received several reports of unit 3603 being used as short-term accommodation, and had reviewed an AirBnB advertisement of unit 3603 offering it for this purpose.

Did Mr. Choi and Ms. Hui allow short-term accommodation in unit 3603, contrary to Bylaw 36?

33. Based on the whole of the evidence, I find that Mr. Choi and Ms. Hui were using unit 3603 for short-term accommodation contrary to Bylaw 36 during the period when the strata imposed the fines that are the subject of this dispute.

34. As I mentioned above, whether a short-term accommodation was 30 days or more does not excuse that accommodation use prohibition in Bylaw 36.

35. I am mindful of the Court's finding in *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 208, that the proper time for the owner to have raised their defences was immediately after the strata notified them about the alleged bylaw infractions. Here, Ms. Hui provided a very brief, late reply to only some of the complaints. Ms. Hui also took the opportunity to appear before strata council in person. Having reviewed the response materials, I find that neither Ms. Hui nor Mr. Choi successfully rebutted the strata's considerable evidence demonstrating repeated bylaw violations.

36. I reach my conclusion that unit 3603 was being used for short-term accommodation because:

- a. In her Response to the strata's counterclaim, Ms. Hui admits that she advertised unit 3603 on AirBnB.
- b. On April 9, 2019, Ms. Hui made a written admission to the strata that unit 3603 had been used for short-term accommodation up to that point.
- c. In October 2019, I have found that Ms. Hui again admitted that unit 3603 was being used for short-term accommodation.
- d. WT provided uncontested evidence that several different groups of people told him they were staying in unit 3603 as a short-term accommodation at different times.

- e. CS received several complaints from other strata residents that unit 3603 was being used for short-term accommodation.
- f. Ms. Hui did not respond to most of the short-term accommodation complaints.
- g. Ms. Hui appeared before strata council but did not prove her assertions that unit 3603 was being used as long-term accommodation for a friend, such as through a tenancy. For example, neither she nor Mr. Choi provided witness statements, Form Ks or tenancy agreements, either in this proceeding or before strata council, to demonstrate unit 3603 was being rented to long-term tenants.
- h. Ms. Hui and Mr. Choi attempted to prove that unit 3603 was not used as short-term accommodation while they were having open houses in it. However, their evidence is an undated text message indicating that open houses were being scheduled. I find that having an open house does not preclude use of a strata lot for short-term accommodation.
- i. The strata provided several photographs showing non-resident groups of people, other than Mr. Hui and Ms. Choi, in the elevator and in some instances entering unit 3603, which Mr. Hui and Mr. Choi did not dispute.
- j. The strata provided a link to an AirBnB advertisement for unit 3603, though not the text of the advertisement itself.
- k. The repeated noise and nuisance complaints for unit 3603 are consistent with high turnover of different guests in the suite.

37. I qualify my conclusion above in that I do not accept the evidence of DO, past strata council president, who cited the Home To GO advertisement for a 3 bedroom, 2 bathroom suite. Because unit 3603 is a 1-bedroom, 1-bathroom unit, I find that the Home To Go December 20, 2019 advertisement was not offering unit 3603 for rent.

38. Given my findings about DO's evidence, I find the strata must reverse one of the \$1,000 fines it imposed for violating Bylaw 36. I will discuss how this impacts the amounts that Mr. Choi and Ms. Hui must pay, below.

What amount of bylaw fines must Mr. Choi and Ms. Hui pay the strata?

a. Fines for Bylaw 36 Violations

39. Section 132 of the SPA permits the strata to impose a different maximum fine amount for different bylaws. The maximum amount of a fine must not exceed the maximums set out in the regulations. Section 7.1(1)(c) of the *Strata Property Regulation* sets out a maximum \$1,000 bylaw fine per contravention of a bylaw that prohibits or limits the use of a residential strata lot for remuneration as vacation, travel or temporary accommodation. I find that Bylaw 36 is this type of bylaw.

40. While Bylaw 23 and Bylaw 36 set out different maximum fine amounts, I find that this is permitted by the SPA section 132.

41. Based on the correspondence provided, I find that the strata complied with the SPA section 135(1) and (2) in imposing 15-\$1,000 in fines on Mr. Choi and Ms. Hui for violating Bylaw 36 regarding short term rentals.

42. However, I find that the strata must remove one of these \$1,000 fines because it relied on DO's incorrect evidence to establish the violation.

43. I find that this gives a total of \$14,000 in fines payable by Mr. Choi and Ms. Hui for violating Bylaw 36.

b. Fines for Failing to Provide a Form K

44. Turning to the strata's counterclaim, I will first address the fines imposed for failing to provide Form Ks regarding tenancy. The strata imposed 4-\$200 fines and 1-\$50 fine for these violations. Bylaw 4 only provides that a tenant must give their name, if requested by the strata. The Bylaws do not include an obligation that an owner to provide a Form K.

45. While the SPA section 146(2) obliges a landlord to provide a Form K to the strata within 2 weeks of a new tenancy, this strata did not include the Form K requirement within its Bylaws for the purpose of imposing fines.

46. Section 130 of SPA says that a strata may fine an owner “if a bylaw or rule is contravened” by the owner, visitor or occupant. The SPA does not provide a power to fine in the absence of a bylaw or rule violation.

47. To the extent that the strata was asking for Form Ks regarding tenants, my analysis above applies. However, if the strata was asking for Form Ks in relation to AirBnB guests, a Form K is unnecessary because the use is not a rental. The courts have held this type of use is a license to use the strata lot as short-term accommodation: see *HighStreet Accommodations Ltd. v. The Owners, Strata Plan BCS2478*, 2019 BCCA 64

48. Therefore, I set aside these \$850 in fines because there was no proven bylaw violation.

c. Bylaw 3 Violation Fines

49. I find that there were 5-\$50 fines for violations of Bylaw 3, which the strata proved through photographs and complaint reports, and which Mr. Choi and Ms. Hui did not contest. In imposing these fines I find that the strata complied with sections 135(1) and (2). Therefore, I order Mr. Choi and Ms. Hui to pay a further \$250 in fines.

50. I also find that the uncontested December 13, 2019 \$200 fine for the elevator use violation is valid.

d. Analysis re: Evidence of Additional Fines

51. I have considered that the strata’s counterclaim is for \$17,450 in fines, which exceeds the \$14,450 I have found owing. The strata-produced ledger shows bylaw fine amounts totalling \$17,450, but without corresponding correspondence to demonstrate that section 135 requirements have been met in some instances. I find that the ledger alone is insufficient evidence that the fines were properly imposed. However, as

discussed above, I have found that the strata properly imposed \$14,450 in bylaw fines, based on the correspondence in evidence.

Prospective Orders

52. The strata asks for injunctive relief to direct Mr. Choi and Ms. Hui to comply with the Bylaws in future. Mr. Choi and Ms. Hui ask for an order that the strata not fine them in future.

53. I decline to grant either of these orders, because the CRT does not generally grant prospective orders, meaning orders about things that have yet to happen: see for example *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379, paragraph 55. In addition, bylaw compliance and fines are already governed by the SPA and its Bylaws, making these types of orders an unnecessary repetition of existing obligations.

Remaining Issues

54. In submissions, Ms. Hui and Mr. Choi referred to an “unreasonable lien” they say the strata imposed on unit 3603. Based on their Dispute Notice, which only engages the issue of fines, I find that the question of liens or other charges is not before me to decide.

55. In submissions, Ms. Hui and Mr. Choi also briefly raised a concern that the strata had been significantly unfair to them in applying these fines.

56. The British Columbia Court of Appeal has considered the language of section 164 of the SPA in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44. The test established in *Dollan* was confirmed in *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164, and can be stated as follows:

- a. What is or was the expectation of the affected owner?
- b. Was that expectation on the part of the owner objectively reasonable?
- c. If so, was that expectation violated by an action that was significantly unfair?

57. In *Kunzler v. the Owners, Strata Plan EPS 1433*, 2020 BCSC 576, the Court determined that the reasonable expectations portion of the *Dollan* test may not be appropriate in all circumstances. However, the Court held it may apply when a strata council is exercising discretionary authority. Because here the strata council was exercising discretionary authority in whether and when to fine Ms. Hui and Mr. Choi, I will consider the reasonableness of the owners' expectations.

58. I find that an expectation that no fines would be issued in a strata where the Bylaws clearly prohibit short-term accommodation use is not objectively reasonable. Therefore, I reject the submission that the strata was significantly unfair toward Ms. Hui and Mr. Choi in fining them as it did.

CRT FEES, EXPENSES AND INTEREST

59. Under section 49 of the CRTA, 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 see no reason in this case not to follow that general rule. Success was divided between the parties, and so I make no order for tribunal fees and dispute-related expenses.

60. I would have dismissed Mr. Choi and Ms. Hui's claims for \$128.99 in "printer expenses" and a "\$500 legal consultation fee" in any event, as neither of these expenses were proven, such as through receipts.

61. I also find this is a typical dispute over short-term accommodation bylaw issues under the SPA. I find no evidence proving extraordinary circumstances that would entitle a party to legal fees under CRT rule 9.5(3)(b).

62. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to pre-judgement interest on the \$14,450 from January 30, 2020, the date the most recent fine was imposed to the date of this decision. This equals \$188.36.

63. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners.

ORDERS

64. I order that, within 30 days of this decision, Mr. Choi and Ms. Hui must pay the strata a total of \$14,638.36, made up of:

- a. \$14,450 in bylaw fines, and
- b. \$188.36 in prejudgment interest under the COIA.

65. The strata is also entitled to post-judgement interest under the COIA.

66. I dismiss the remaining claims and counterclaims.

67. 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.

Julie K. Gibson, Tribunal Member