



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROMPTON REAL ESTATE SERVICES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

The landlord applies for reimbursement for payment of strata fines alleged to have been incurred by the tenants and for an “nsf” charge.

The listed parties attended the hearing, Ms. N. on behalf of the landlord, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

The tenants admit to owing the claimed \$65.00 “nsf” charge.

Issue(s) to be Decided

Are the tenants liable to compensate the landlord for \$2900.00 in strata fines said to have been incurred by tenant conduct?

Background and Evidence

The rental unit is a three bedroom condominium townhouse attached to another townhouse on one side and to a 48 storey “tower” condominium apartment complex on the other. There is a written tenancy agreement. The tenancy started in July 2018 and ended August 31, 2019. The final monthly rent was \$2562.00. The tenants paid and the landlord still holds a \$1250.00 security deposit.

It appears that the tenants have been fined by the strata council for this complex a total of 26 times, largely for incidents relating to the exit and entry of the underground parking lot beneath the “tower.” The fines total \$2900.00. The landlord has paid all of them.

The tenants are entitled to park in the parking lot, but it seems that there is a rule requiring them to stop just after entering or exiting the parkade, so as to permit the automatic gate to completely close behind them. This procedure is a security measure to prevent unwanted or unauthorized persons from passing through the gate into the parking area after a lawful person has driven in or out.

The infraction is contained as Rule #10 in the Rules incorporated in the Bylaws of the strata corporation. Rule #10 states:

10. *For security protection of property, Residents entering or leaving the parking garage must wait until the security gate has fully closed before proceeding. If more than one vehicle is entering or leaving the parking area, it is the responsibility of the driver of the trailing vehicle to wait until the security gate has fully closed before proceeding.*

The landlord is said to have video of the tenants or either of them repeatedly violating Rule #10.

Ms. N. for the landlord testifies that a standard "Form K" was signed by the tenants at the start of the tenancy and a copy of the strata bylaws, including the Rules, were given to the tenants at that time.

She testifies that in December 2018 the tenants started to receive infraction notices from the strata council's agent. She says the strata agent sent the infraction notices to both the landlord and the tenants. She testifies that on receipt of the infraction notice from the strata agent she sent it by email to the tenants along with a reminder that the tenants had two weeks to respond to the strata agent's allegations. She says that with the email she sent instructions for responding to the strata agent's claims.

Ms. N. indicates that as far as she knows the tenants did not challenge the first few infraction notices. The strata imposed \$50.00 fines for a number of infraction and later, \$200.00 fines. She says the tenants went to the strata council in an effort to appeal the fines but council decided to keep the fines in place.

The tenant Ms. G. testifies that she signed a "Form K" at the start of the tenancy but lost it. Later in her testimony she seems to dispute that she had signed such a form or received the strata bylaws at all.

She indicates that February 4, 2019 was the first she had heard of rule infractions. There were three infractions alleged at that time. She refers to an email dated February 4 from the landlord informing the tenants of the infractions. The landlord's email states:

> If you wish to dispute these bylaw infractions, please do so in writing and forward to the undersigned to be passed to the Strata Council for their consideration. Responding to a notice and the actions in question has historically proven to be effective, and we highly recommend that you consider taking the time to do so in this case as well.
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It is not clear whether the tenants did respond to these bylaw infraction notices or not, whether through the landlord or directly with the strata council. What is clear is that on March 12 the strata agent wrote to the landlord informing it of 15 contraventions.

As matters progressed, on May 17 the strata agent reported to the landlord a total of eighteen contraventions and on July 4 a total of 24 contraventions, four of which were “pending.”

The tenant says she spent forty five minutes with the strata council after the March 12 letter. She was not successful in having the fines reversed or reduced.

The tenant raises a number of reasons why she should not be responsible for the fines. She is of the view that the concierge monitoring the parking garage is “targeting” her, that is: picking on her. She is concerned that the video evidence of the tenants’ entry and exit from the garage raises certain privacy concerns. She takes issue with the interpretation of “trailing vehicle” as used in Rule #10 for persons driving into and out of the garage. She indicates that she was stopping her vehicle as required by Rule #10 but just not as close to the gate as the strata would have liked.

She is also of the opinion that she has not been properly represented by the owner/landlord in the dispute with the strata. She feels that if she had had the Form K she would have fared much better with the strata council.

The tenant also raised an issue about visitor parking and how her vehicle was towed when she parked in the visitor parking area when moving.

In response Ms. N. notes the landlord is not a tenant “advocate.” She says the Form K was signed digitally and that the tenants got a pdf copy. She thinks the tenant is confusing a Form K with a “Form B” which entitles someone to see strata council minutes. She says she herself has had numerous conversations with the tenant about stopping at the gate.

Analysis

The matter of the tenants' vehicle being towed from this property's visitor parking area is not a matter related to this application and so I make no determination about it.

The tenant cites a number of issues to raise concerns about the strata council levying the fines that it did. For example, it appears that while the maximum fine for a rule breach is \$50.00, the strata started levying \$200.00 fines.

However, the application before me is by the landlord seeking recovery of the fines charged against it as owner of the townhouse for conduct attributed to the tenants. While the tenants may have a valid dispute against the strata council, the strata council is not a party to this proceeding. It cannot submit evidence or respond to evidence. A dispute between the tenant and the strata council cannot be determined or adjudged in this forum. For example, no order could be made cancelling or altering any of the fines levied by the strata council.

Regarding the issue of the Form K, s. 146 of the *Strata Property Act*, S.B.C. 1998, c. 43, provides

Landlord to give bylaws, rules and Notice of Tenant's Responsibilities to tenant

146 (1) Before a landlord rents all or part of a residential strata lot, the landlord must give the prospective tenant

- (a) the current bylaws and rules, and
- (b) a Notice of Tenant's Responsibilities in the prescribed form.

(2) Within 2 weeks of renting all or part of a residential strata lot, the landlord must give the strata corporation a copy of the notice signed by the tenant.

(3) If a landlord fails to comply with subsection (1) or (2), the tenant

- (a) is still bound by the bylaws and rules, but
- (b) may, within 90 days of learning of the landlord's failure to comply, end the tenancy agreement without penalty by giving notice to the landlord.

(4) If a tenant ends a tenancy agreement under subsection (3), the landlord must pay the tenant's reasonable moving expenses to a maximum of one month's rent.

The notice prescribed under. 146(1)(b) is the "Form K" notice as follows:

Form K
Notice of Tenant's Responsibilities

(Section 146)

Re: Strata Lot[strata lot number as shown on strata plan] of Strata Plan
.....[the registration number of the strata plan]

Street Address of Strata Lot
.....
Name(s) of tenant(s)
.....
Tenancy commencing[month day, year].

IMPORTANT NOTICE TO TENANTS:

- 1 Under the *Strata Property Act*, a tenant in a strata corporation **must** comply with the bylaws and rules of the strata corporation that are in force from time to time (current bylaws and rules attached).
- 2 The current bylaws and rules may be changed by the strata corporation, and if they are changed, the tenant **must** comply with the changed bylaws and rules.
- 3 If a tenant or occupant of the strata lot, or a person visiting the tenant or admitted by the tenant for any reason, contravenes a bylaw or rule, the tenant is responsible and may be subject to penalties, including fines, denial of access to recreational facilities, and if the strata corporation incurs costs for remedying a contravention, payment of those costs.

At the bottom of the Form K is an area for the landlord and the tenants to sign.

I consider it highly unlikely that the tenants did not sign a Form K notice at the start of the tenancy. The landlord is a professional management company whose standard practice would be to obtain the tenants' signature on Form K and provide a copy of the strata bylaws. The landlord is required by law to provide a Form K signed by the tenants to the strata within two weeks after the start of the tenancy. I find it most likely, that the tenants in this matter did sign a Form K and did receive a copy of the bylaws at the start of this tenancy.

In any event, s. 146(3), above, makes it clear that the tenants were still bound by the bylaws and rules whether a Form K was signed or not and whether the landlord provided the tenants with a copy of the bylaws or not.

The documentary evidence, particularly the landlord's email of February 4, 2019 corroborates Ms. N.'s testimony that when the landlord was notified of a bylaw/rule infraction by the tenants the landlord passed that notification on to the tenants in a timely manner. In my view, it was all the landlord was reasonably required to do in these circumstances. It then fell to the tenants to deal directly with the strata council and pursue any defence to the allegations and to pay any resulting fine.

The owner of this townhouse has become responsible for the fines levied as a result of the tenants conduct and has paid the fines. The owner's agent, the landlord, is entitled to recover that payment, a total of \$2900.00

Conclusion

The landlord's application is allowed. It is entitled to a monetary award of \$2900.00 for strata fines incurred by the tenants plus \$65.00 for an "nsf" charge plus recovery of the \$100.00 filing fee for this application.

I authorize the landlord to retain the \$1250.00 security deposit in reduction of the amount awarded. The landlord will have a monetary order against the tenants for the remainder of \$1815.00.

The tenants are free to pursue any remedy against the strata corporation, council or strata agent. In the event that any fine is cancelled or reduced, the landlord will be responsible for forwarding to the tenants any refund it may receive and the tenants are free to apply should the landlord fail to do so.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 29, 2019

Residential Tenancy Branch