



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Lina Lacoursiere v. The Owners, Strata Plan KAS 989*, 2017 BCCRT 64

B E T W E E N :

Lina Lacoursiere

APPLICANT

A N D :

The Owners, Strata Plan KAS 989

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

- 1) The applicant owner Lina Lacoursiere (owner) wants the respondent strata corporation The Owners, Strata Plan KAS 989 (strata) to change the way it is

handling a rental hardship exemption given to another strata lot (Lot). The owner says the strata granted the Lot a hardship exemption improperly. The owner wants the strata to conduct financial reviews of the Lot's owners and to limit their hardship exemption. The owner wants the strata to involve legal counsel in all future hardship exemptions. The owner also says certain strata council members have behaved in a manner unbecoming a council member. The owner wants them to apologize and she also seeks an order that one council member, C, be removed from council.

JURISDICTION AND PROCEDURE

- 2) These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness. The tribunal also recognizes any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
- 3) The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
- 4) The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I heard this dispute through written submissions because I find there are no significant credibility issues or other reasons that might require an oral hearing.
- 5) Under section 48.1 of the Act, in resolving this dispute the tribunal may make one or more of the following orders:
 - a) order a party to do something;

- b) order a party to refrain from doing something;
- c) order a party to pay money.

ISSUES

- 6) These are the issues in this dispute:
 - a. Did the strata improperly handle the hardship exemption for the Lot?
 - b. If the strata did improperly handle the Lot's hardship exemption, what, if anything, should the strata be ordered to do in future about the Lot's hardship exemption? In particular, should the tribunal order:
 - i. A maximum of a 2-month time limit on the Lot's hardship exemption?
 - ii. The strata terminate the Lot's hardship exemption on the grounds that all Lot owners have not proven hardship?
 - iii. The strata council to conduct a financial hardship review at or near the end of a maximum 2-month hardship exemption with the strata's legal counsel present?
 - iv. The strata council to ensure that the strata's legal counsel is present "at all future hardship exemption claims" with the counsel performing "all administrative duties" related to the hardship exemption claim?
 - v. The strata council to keep all owners fully and accurately informed about the Lot's "hardship applications, reviews, and future rental issues".
 - c. Did certain council members behave in a manner "unbecoming" to a strata council member, and if so should the tribunal order:
 - i. That council member C be removed from council?
 - ii. The strata council to apologize to the applicant, her representative, and all strata lot owners?

iii. The strata council members to either attend Condominium Home Owners' Association (CHOA) seminars or subscribe to their newsletters?

d. Is the owner entitled to reimbursement of \$225 in fees she paid the tribunal?

EVIDENCE & SUBMISSIONS

- 7) While I have read all of the materials submitted, I have only set out below the evidence and submissions necessary for this decision.
- 8) In 2014, the owner bought strata lot 31. The Lot's hardship exemption at issue also began in 2014. Based on the evidence provided in support of the applicant's dispute, it appears her concerns stems in part from the fact that she may have been denied rental permission and further that the strata required formal documentation of the owner's daughter L being authorized to be her representative in strata-related matters. While I acknowledge the owner may have these concerns, they are not determinative of what the strata should have done with the Lot or what I must do in making orders in this dispute.
- 9) The applicant owner says the strata did not receive a hardship exemption application or a request for hearing from all 3 of the Lot owners as she says is required, and yet a hardship exemption was granted. The owner also alleges that the strata has refused to conduct a financial hardship review of the Lot in order to determine any ongoing entitlement to the hardship exemption. The owner ultimately wants the strata to revoke the Lot's hardship exemption. Further, the owner alleges "certain members" of the strata council have behaved "in a manner unbecoming to a strata council member".
- 10) The relevant bylaws were filed in 2004, save for bylaw 30(9) that was filed on September 16, 2010, and may be summarized as follows (my bold emphasis added):

- a) *Bylaw 11*: The strata may, by a resolution passed by a majority vote at an annual general meeting (AGM) or special general meeting (SGM), remove one or more council members. After removing a council member, the strata must hold an election at the same AGM or SGM to replace the council member for the remainder of the term.
- b) *Bylaw 17(3) and (4)*: Owners may attend council meetings as observers, upon 48 hours' notice, except no observers may attend any council meetings that deal with rental restriction bylaw exemption hearings under section 144 of the *Strata Property Act* (SPA).
- c) *Bylaw 30(1) and (2)*: Once the maximum of 5 strata lots have been rented, further rentals must not be permitted except as allowed under section 142 (family rentals) or section 144(hardship appeal) of the SPA.
- d) *Bylaw 30(3)*: An owner who wishes to rent a strata lot must apply in writing to the strata council, and if the maximum rentals has been reached applications form a rental waiting list on a first-come, first served basis.
- e) *Bylaw 30(5), (6)*: Before renting a strata lot, an owner must give the tenant a copy of the bylaws and the rules and a Form K under the SPA (Notice of Tenant's Responsibilities), and the owner must provide the strata council with the Form K signed by the tenant within 2 weeks of renting the strata lot. Failure to provide the Form K as required will be cause for a fine as set out in bylaw 23(a) [\$50 for each bylaw contravention].
- f) *Bylaw 30(9)*: **Once an owner is granted permission to rent a strata lot, the strata lot must retain the designation of a "rental strata lot" until it is sold or becomes owner-occupied, and may be re-rented at the discretion of the owner without further application to the strata** under bylaw 30(3), provided bylaw 30(5) and (6) are observed.

11) Section 144 of the *Strata Property Act* (SPA) states (my bold emphasis added):

- (1) **An owner** may apply to the strata corporation for an exemption from a bylaw that prohibits or limits rentals on the grounds that the bylaw **causes hardship to the owner**.
 - (2) The application must be in writing and must state
 - (a) the reason the owner thinks an exemption should be made, and
 - (b) whether the owner wishes a hearing.
 - (3) **If the owner wishes a hearing**, the strata corporation **must hear the owner or the owner's agent** within 4 weeks after the date the application is given to the strata corporation.
 - (4) **An exemption is allowed if**
 - (a) the strata corporation does not give its decision in writing to the owner,
 - (i) if a hearing is held, within one week after the hearing, or
 - (ii) if no hearing is requested, within 2 weeks after the application is given to the strata corporation, or
 - (b) **the owner requests a hearing under subsection (2) (b) and the strata corporation does not hold a hearing within 4 weeks after the date the application is given to the strata corporation.**
 - (5) An exemption granted by the strata corporation may be for a limited time.
 - (6) The strata corporation must not unreasonably refuse to grant an exemption.
- 12) I turn then to the relevant chronology below.
- 13) On January 26, 2014, 1 of the 3 Lot owners (Lot owner) wrote the strata asking that the Lot be given a hardship exemption so that the Lot could be rented. In that application, the Lot owner requested a hearing to present their reasons for hardship, if the application were not readily accepted. In the Lot owner's letter, the stated hardship was that the Lot owners could not occupy the Lot themselves, and so it either must be sold or rented and that to sell at that time would result in a significant financial loss.

- 14) Given section 144(4)(b) of the SPA, the strata needed to hold the hearing by February 23, 2014, which is 4 weeks after the Lot owner's January 26, 2014 request.
- 15) On February 4, 2014, the strata denied the Lot owner's request for hardship pending the receipt of financial information. There was no reference to a hearing in this letter. On February 19, 2014, the Lot owner wrote the strata asking for a reason why such information was required and a definition of the hardship criteria. The strata did not respond to this letter. No hearing was held as requested by the Lot owner.
- 16) On February 26, 2014, the Lot owner expressly wrote on behalf of all Lot owners and noted that the requested hearing was not provided within 4 weeks. The Lot owner wrote that as such their Lot legally qualified for an exemption under the SPA and they would begin renting the property immediately. In March 2014, the Lot owner advised the Lot was rented.

ANALYSIS

- 17) At the outset, I note that if a hardship exemption is allowed because a strata corporation does not respond in a timely manner to an application, then the exempt strata lot does not count for the purposes of determining whether a rental limit has been reached. This is consistent with the strata's bylaw 30. In other words, the Lot's hardship exemption has the status of an exempt lot, rather than as a 'regular rental lot', as perhaps suggested in some of the underlying correspondence. Nothing turns on this distinction for the purposes of this dispute, as the relevant point is that the Lot owners remain entitled to rent the Lot, as discussed below.
- 18) The strata freely acknowledges that an inadvertent error led to the strata's failure to hold the requested hearing within the 4- week timeframe specified under section 144 of the SPA. I accept this explanation. The applicant bears the burden of proof

in this dispute and there is simply insufficient evidence before me that would suggest this error reflects a pattern of incompetence or improper conduct.

- 19) In particular, it is not disputed that generally speaking the strata would do a financial review before granting a hardship exemption. Here, the strata did ask for financial records but the Lot was then allowed to be rented because of the strata's error in failing to hold the requested hearing. I find that there is no evidence to support a conclusion that the strata improperly favored the Lot as compared to other strata lot owners. That the error occurred does not establish that the strata acted with any improper motive.
- 20) The owner argues that section 144 of the SPA refers to the ability of "an owner" applying for a hardship exemption. Here, the owner submits that only one Lot owner wrote to the strata without sufficient documentation of his acting on behalf of the other 2 Lot owners and insufficient proof that all 3 Lot owners would endure hardship.
- 21) I find nothing turns on the fact that the other 2 Lot owners did not also write to the strata. I agree with the strata that the SPA does not state that all owners on title must apply. Further, section 144 of the SPA contemplates that an owner may have an agent, and it is clear from the correspondence that the one Lot owner acted as agent for the other 2 Lot owners. Next, if there is a concern that the other 2 Lot owners' position was unfairly presented, that is a concern for them to raise, not the applicant owner. None of the Lot owners are parties to this dispute. Based on the evidence before me and for the purposes of this decision, in his communications with the strata I accept that the one Lot owner represented the interests of all Lot owners.
- 22) In any event, a hardship exemption that has been granted necessarily affects the entire Lot. The absence of the other Lot owners writing directly to the strata does not practically change anything at this point, given the exemption was granted as a result of the failure to hold a hearing. Similarly, nothing turns on precisely when the

Lot owners took ownership of the Lot and whether there is any discrepancy about related dates in the underlying correspondence.

- 23) The owner complains that the strata has not told the Lot owners that their hardship exemption may be subject to periodic reviews, as is required for other strata lots with a hardship exemption. I find the strata is correct in their position, for the reasons given by the strata's legal counsel, as set out in correspondence detailed below.
- 24) On August 26, 2016, the strata's property manager wrote the strata's legal counsel, requesting advice about the Lot's hardship exemption that was applied for on January 26, 2014. The property manager noted a hearing had not been granted within the time allotted in the SPA resulting in the owner being permitted to rent under hardship without imposed restrictions for review. The strata asked for advice as to whether it could request a financial review to determine if the owner qualifies for hardship, and if so what period of time may be allowed.
- 25) On August 29, 2016, the strata's legal counsel replied and said that if the strata failed to respond to the owner's hardship application within the SPA's deadlines, there was a "deemed right to rent" and the strata lacked an ability to impose a limitation on the term of the hardship rental and cannot request a financial review. The lawyer recommended that when granting hardship exemptions generally, the strata should impose a time limit as per section 144(5) of the SPA, as upon expiry of the permitted rental term the strata can ask for confirmation that the hardship continues. The letter concludes, "Otherwise, the strata's hands are tied".
- 26) On November 2, 2016, the strata's legal counsel wrote the owner's daughter L. The lawyer explained due to the strata's inadvertence in failing to hold a hearing, the Lot was given a hardship exemption and the Lot's rental may continue indefinitely and the strata cannot later review the circumstances for financial review. Legal counsel wrote that the correspondence setting out the reasons for the Lot's hardship contained personal information and would not be disclosed.

- 27) The owner relies upon section 144(5) of the SPA that states an exemption may be for a limited time, which is a discretionary provision. The owner is generally correct in saying that a strata corporation has the authority to apply a time limit on exemptions. However, the strata's bylaw 30(9) reflects the strata's choice to not limit the exemption to a particular time but instead to remove it only when the strata lot is sold or becomes owner-occupied. More significantly, having failed to grant the hearing within the relevant timeframe, the strata lost the opportunity to impose on the Lot a schedule for future financial reviews, as noted by the strata's legal counsel.
- 28) The owner also states, in what appears to be a quote from an unidentified source, "allowing an exemption to continue indefinitely, without a review, defeats the intent of s.144 and may lead to abuse of the exemption". As noted by the strata's legal counsel, this may be true and is the reason why the strata may generally limit hardship exemptions and having regular financial reviews. However, again, as the strata failed to have the requested hearing, under section 144(4) there is no ability to later review the hardship exemption granted to the Lot.
- 29) In summary, the strata's delay in responding to the Lot owner's request for a hearing was fatal to the strata's ability to limit the rental of the Lot (see *Strata Corp. LMS 3442 v. Storozuk*, 2014 BCSC 1507). As set out in the Continuing Legal Education Society's *BC Strata Property Practice Manual* (my bold emphasis added):
- If a strata corporation fails to respond to an owner's hardship application within the deadlines set out in s. 144, giving rise to a deemed right to rent on the part of the owner, **the strata corporation lacks any ability to impose a limitation on the term of the hardship rental.**
- 30) I find the Lot has a hardship exemption and is a rental strata lot until either the Lot is sold or it becomes owner-occupied, in accordance with bylaw 30. Like any other hardship exemption, the Lot does not count towards the strata's maximum number of rentals, which is currently 5 rentals under the strata's bylaws. I dismiss the

owner's claims for a 2-month limitation on the Lot's hardship exemption and for financial reviews of the Lot.

- 31) I turn then to the owner's other claimed remedies. I have found above that the strata's error in failing to hold the required hearing for the Lot's hardship exemption request was an isolated and inadvertent error. The burden of proof rests with the applicant in this dispute. I find she has not established that it is necessary for the strata to go to the expense of having its legal counsel handle all future hardship exemptions. For the same reasons, I dismiss the owner's claims that the strata should be ordered to attend CHOA seminars or subscribe to CHOA newsletters, and here I note the strata's position that it is not a CHOA member. While such membership may be beneficial to the strata, I am not going to order it.
- 32) I will next address the owner's request that the strata keep all owners fully and accurately informed of the Lot's hardship applications, reviews and future rental issues. I have set out above my reasons dismissing the owner's claims for limitations on the Lot's hardship exemption and for financial review. I note bylaw 17 indicates some confidentiality is intended with respect to hardship exemptions, in that no observers are permitted during a council meeting that serves as a hearing for a hardship exemption.
- 33) The strata's response to this claim is that if there are any reviews as to the hardship status of the Lot or any other unit, the matter will be reported in the appropriate council meeting minute. To that end, the strata notes that since August 2016 the council has included summaries of current rentals and units on the wait list in the council meeting minutes, which the applicant owner receives. I note the owner complains that the strata inserted false information about the Lot in council meeting minutes, such as referring to it as being on the rental wait list. I do not consider any such error to be so significant that it warrants an order against the strata or a finding that the strata intentionally engaged in "deliberate misinformation" as alleged by the owner. Further, that the strata may have historically not published information about hardship exemptions is not sufficient

evidence upon which I could conclude the strata knew or ought to have known it was acting improperly. Overall, I am satisfied that the strata's current approach is reasonable and appropriate. I decline to make any particular order as requested by the owner.

- 34) Next, the owner has made a number of allegations that C displayed, on several occasions and unprovoked: loud vocal profanities, violent body gestures, bullying and uttering threats. The owner also alleges C purposefully lied, intimidated, belittled, harassed and launched personal insults. The specific evidence provided primarily relates to the owner's and her daughter L's attendance at a July 4, 2016 council meeting. In addition to the conduct alleged against C, the owner says at that council meeting, another council member CC "shamed, mocked, intimidated and humiliated" L repeatedly. The owner complains the other council members condone C's behaviour by remaining silent and re-electing her as president.
- 35) The strata appears to deny these allegations, but notes that because the complaint was added only during the tribunal process rather than having been made to the strata at the time, the strata had not investigated the matter. To that end, the strata notes the owner never filed a complaint with the council about this alleged misconduct nor was a hearing requested. The strata notes that no complaints have been received from other owners alleging any similar situations. The tribunal did not require a council hearing as described in section 189.1 of the SPA because the dispute notice indicated that a council hearing had already been held, namely the one in July 2016.
- 36) The owner also alleges that CC hindered the owner's access to information by requesting that her daughter L obtain a notarized letter. I find that the applicant has not established that it was unreasonable or unfair for the strata to have required a notarized letter authorizing L to act on the owner's behalf, based on the evidence before me.
- 37) In the circumstances before me, I have insufficient evidence to warrant the removal of council member C or to order that any council members should make

any apologies, for reasons that follow. I place some weight on the fact that the owner only first raised her concerns about C's and CC's conduct after the tribunal proceeding had commenced at least 2 months after the July 2016 meeting. The owner's evidence in the underlying emails and notes simply do not support the relatively extreme descriptions set out in the owner's submissions to the tribunal. I accept that in these circumstances the strata had never investigated the issue of council members behaving in an unbecoming manner, although it would have been prudent for the strata to do so given the ongoing tribunal proceeding.

- 38) That said, for the purposes of this decision I will here assume C and CC did act on July 4, 2016 as alleged by the owner, which essentially involved some swearing at L and a suggestion that perhaps the strata could "get rid of" another relative of the owner in the building, which in context appears to refer to an eviction or blocking a rental. I find that the owner did not provide sufficient facts or detail of alleged improper conduct by C and/or CC at other times.
- 39) Even having accepted that the alleged behaviour of July 4, 2016 occurred, I cannot conclude that the alleged July 4, 2016 conduct would warrant my ordering the removal of C as a council member. Certainly, all parties are expected to act with civility and respect. However, a relatively isolated and frustrated outburst during or immediately following what appears to have been a heated meeting is not a sufficient basis for me to make such an extreme order as removal from council. Significantly more evidence would have been required. Council membership is part of the strata's democratic organization. Given the evidence before me I consider such membership is best left to the owners as a whole to decide, as provided for in the strata's bylaw 11.
- 40) As for the requested apologies, the only named council members relevant to this issue are C and CC. Even if the underlying facts were proven, I do not consider a forced apology to be productive or helpful, and I decline to order one from any council member including C and CC.

41) The owner was not successful in this dispute. I dismiss her claim for reimbursement of \$225 in fees she paid to the tribunal.

DECISION AND ORDER

42) I dismiss the applicant's dispute.

Shelley Lopez, Tribunal Member