



Civil Resolution Tribunal

Date Issued: February 8, 2018

File: ST-2017-00296-A1

Type: Strata

Civil Resolution Tribunal

Indexed as: *K.M. v. The Owners, Strata Plan ABC XXXX*, 2018 BCCRT 29

BETWEEN:

K. M.

APPLICANT

AND:

The Owners, Strata Plan ABC, XXXX

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicant K. M. (owner) owns a strata lot in the respondent strata corporation, The Owners, Strata Plan ABC XXXX (strata). This dispute relates to a rental restriction bylaw adopted by the strata, which the owner says does not restrict her from renting a portion of her strata lot.

2. In the published version of this decision, I have anonymized the parties' names to protect the owner's privacy, due to her submissions on her state of mental health.
3. The owner says she has the right to live in her strata lot with whomever she chooses and seeks the following orders:
 - a. that owner-occupied strata lots cannot be considered rental units and are not subject to the strata's current rental restriction bylaw,
 - b. that any changes in the bylaws should clearly state the strata's intention and include a grandfather clause for existing owners, and
 - c. that she be reimbursed for lost rent and fees paid for this proceeding.
4. The strata says the rental restriction bylaw applies to individuals renting a portion of a strata lot and that the owner must abide by the strata's rental restriction bylaw.
5. The owner is self-represented. The strata is represented by a strata council member.
6. For the reasons that follow, I dismiss the owner's dispute.

JURISDICTION AND PROCEDURE

7. 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, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
8. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

9. 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.
10. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
11. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

ISSUES

12. The issues in this dispute are:
 - a. Is bylaw 44, the strata's rental restriction bylaw, unenforceable given section 121(a) of the SPA?
 - b. If bylaw 44 is enforceable, does the bylaw apply to tenants renting a portion of strata lot, or, must a tenant be renting the entire strata lot to be captured by the rental restriction bylaw?
 - c. If the strata's bylaw does not apply to a tenant renting a portion of a strata lot, is the owner entitled to reimbursement of \$6,000 in lost rent?

BACKGROUND AND EVIDENCE

13. Though I have read all of the evidence provided, I refer only to evidence I find relevant to provide context for my decision.
14. The strata was created in April 1997 and is comprised of 137 residential strata lots.
15. The owner purchased her strata lot on July 28, 2014.

16. The relevant bylaw concerning rentals is bylaw 44 which was filed at the Land Title Office on August 7, 2001, and amended July 13, 2011 and September 22, 2014. At no time was the bylaw's rental limit amended. Bylaw 44.1 limits the number of "strata lots within the strata corporation that may be leased at any one time" to 10% and sets out a procedure the strata must follow to administer the limit. Based on correspondence provided by the strata, the rental limit is established at 14 strata lots.
17. The owner says that she had, since purchasing her strata lot, rented portions of it to various individuals. She says the strata was aware of such arrangements. An email exchange between the owner and the property manager in February and March 2015, in which the property manager requests the owner pay a move in fee because her friend had moved into the owner's strata lot, confirms the strata was aware of at least one prior "roommate".
18. In July 2016, the strata advised the owner it was aware of an "illegal person" residing in her strata lot and requested the person vacate the strata lot immediately, or else the owner would be faced with a bylaw fine of \$500 every 7 days pursuant to bylaw 44. The letter included details of the amended bylaw 44 in force at the time as well as details of other bylaws regarding continuing fines. Based on the evidence, no fines were assessed against the owner for contravening bylaw 44.
19. The owner says that her tenant moved out within 2 days of her receiving the strata's letter, which is undisputed by the strata.
20. In September 2016, the strata's legal counsel wrote to the owner confirming the strata's determination that the owner was in breach of the strata's rental restriction bylaw and that she may be liable for fines and other remedies.
21. The owner attended a strata council meeting on March 13, 2017. On March 17, 2017, through its property manager the strata wrote the owner and advised the 10% rental limitation had been reached, that the owner had been placed on waiting list, and that she would be notified when "her turn [to rent] became available.

22. On March 20, 2017, the strata again wrote the owner and advised her request to rent had been approved as the number of “units rented out [were] below the limit of 14.” The letter set out the procedure and requirements for renting under bylaw 44 and reminded the owner that if the tenant was to leave, the owner would again need to request permission to rent her strata lot.
23. The owner’s doctor, Dr. Norman Dang, stated in a June 27, 2017 letter that the owner has “more optimal mental health with companionship offered by a roommate.”

POSITION OF THE PARTIES

24. The owner says bylaw 44 is unenforceable under section 121 of the *Strata Property Act* (SPA), as it infringes on her right to live with whomever she chooses contrary to the freedom of association set out in the *Canadian Charter of Rights and Freedoms* (Charter). She also says by restricting who she can live with is discrimination based on family status under the *British Columbia Human Rights Code* and that her mental health benefits from having someone else in her home.
25. Further, the owner says bylaw 44 does not restrict her from renting portions of her strata lot and requests an order that the bylaw should clearly state the strata’s intention and include a grandfather clause for existing owners.
26. The owner further requests that I order the strata to pay \$6,000 for lost rental income and reimburse her \$225 for tribunal fees paid.
27. The strata says that bylaw 44 is enforceable, applies to rentals of portions of a strata lot, and that it is not responsible for the consequences of enforcing its bylaws nor is it responsible to reimburse the owner for lost rent or tribunal fees paid.

ANALYSIS

Is bylaw 44, the strata's rental restriction bylaw, unenforceable pursuant to section 121(1) of the SPA?

28. Section 121 of the SPA says, among other things, that a bylaw is not enforceable to the extent that it contravenes the SPA, the regulations, the *Human Rights Code* or any other enactment or law. It also says that a bylaw that prohibits or restricts the right of an owner of a strata lot to freely sell, lease, mortgage or otherwise dispose of the strata lot or an interest in the strata lot does not apply to a bylaw under section 141 of the SPA that prohibits or limits rentals.
29. The owner argues that the Charter upholds her freedom of association which she says includes her right to choose who she lives with.
30. The Charter applies to government and does not apply to a strata corporation. When interpreting a statute, if a provision is ambiguous, as a decision-maker I may consider Charter values after all other statutory interpretation methods have been exhausted. I see no reason to consider Charter values given the circumstances before me.
31. The owner also argues that bylaw 44 is contrary to the *British Columbia Human Rights Code* (Code) in that she is being denied the ability to live with somebody beyond a parent, child or marriage-like relationship and is therefore being discriminated against based on her family status.
32. Under section 3.8 of the Act, the tribunal does not have jurisdiction to determine if a bylaw contravenes the Code but does have discretion to apply the Code. My comments on applying the Code to how bylaw 44 is being applied to the owner follow.
33. One of the purposes of the Code set out in section 3 is to prevent discrimination based on conduct under various sections of the legislation. Although not clearly identified in her submissions, I infer the owner is claiming discrimination under section 8 of the Code. Section 8 of the Code provides, in part, that unless there is

a bona fide and reasonable justification, a person must not, because of family status, discriminate against another person regarding any accommodation, service, or facility customarily available to the public. Also, a person must not deny another person any of these things. Here, I find the strata has not denied the owner accommodation nor do I find it has conducted itself in a manner contrary to Code.

34. In particular, based on the owner's evidence and Dr. Dang's letter, I am not satisfied that the owner has a disability that would not permit her to reside in her strata lot without a roommate. Dr. Dang does not describe a condition that rises to the level of a disability within the meaning of the Code. He simply states that the owner has "more optimal mental health with companionship offered by a roommate." He does not state a mental health disability exists if she does not have a roommate. I therefore put little weight on the owner's assertion that she is in a better state of mental health when she has a roommate.
35. I find the strata is simply enforcing its bylaw by limiting the number of rentals under bylaw 44 as permitted by the SPA, which it must do under section 26 of the SPA.
36. Arguments were presented with respect to leading case law concerning the enforcement of rental restriction bylaws. The owner relies on *Carnahan v. The Owners, Strata Plan LMS 522*, 2014 BCSC 2375 arguing that the strata must establish a process in its bylaws for administering the rental limit that is clear and logical and not ambiguous or arbitrary. She requests I order changes in the bylaw that clearly state the strata's intention with respect to enforcing the limitation and include a "grandfather clause" for existing owners.
37. The strata correctly notes that the BC Court of Appeal overturned the *Carnahan* decision in *Mathews v. The Owners, Strata Plan VR 90*, 2016 BCCA 345, which remains the leading case about administering rental limits. To the extent the owner argues that bylaw 44 is contrary to the conclusion reached in *Mathews*, I disagree. As a result, I see no reason to amend bylaw 44 as requested by the owner.

38. Based on the foregoing, I find the strata's bylaw 44 is enforceable under section 121 of the SPA.

If bylaw 44 is enforceable, does the bylaw apply to tenants renting a portion of strata lot, or, must a tenant be renting the entire strata lot to be captured by the rental restriction bylaw?

39. For the reasons that follow, I find bylaw 44 applies to tenants renting a portion of a strata lot.

40. The owner acknowledges that the SPA defines a tenant as "a person who rents all or part of the strata lot." One of the owner's main arguments is that bylaw 44 refers to the rental of "a strata lot" and not to the rental of "part of a strata lot."

41. The owner does not believe the rental sections of the SPA or bylaw 44 were written with an owner renting part of their strata lot in mind. She says the intent of the SPA is to ensure that multiple tenants renting an entire strata lot are all responsible and protected by the SPA and bylaws where only one tenant has signed the tenancy agreement. I disagree.

42. Part 8 (sections 139 through 148) of the SPA addresses rentals within strata corporations. Part 8 does not distinguish between tenants renting a portion of an owner-occupied strata lot and tenants renting an entire strata lot. I find no such distinction exists to support the owner's position. Based on a plain reading of Part 8 and the SPA's definition of tenant, I find the SPA must be interpreted to apply equally to a tenant renting part of a strata lot or a tenant(s) renting an entire strata lot.

43. Further, as noted by the strata, the preamble of the strata's bylaws includes the statement, "unless otherwise stated, all terms have the meanings prescribed in the [SPA]." Therefore, I agree with the strata that a tenant renting a portion of the strata lot is considered a tenant under its bylaws and must be included when counting the number of strata lots that are rented for purposes of bylaw 44.

44. Additionally, there are certain express exemptions contained within the SPA, such as for family or hardship that do not apply here.
45. The owner also argues that the strata has not been consistent in their application of bylaw 44, given it specifically knew about 2 prior roommates that the strata permitted to reside in her strata lot. She also states that she is aware of other owners with roommates in the complex. Although the strata suggests that previous rentals were either granted in error or without the strata's approval, it is up to the owner to prove, on the balance of probabilities, that the previous rentals or other strata lots owners with roommates are contrary to bylaw 44. Based on the evidence before me, there is nothing to suggest that the strata has been inconsistent in their application of bylaw 44. It could be that the rentals referenced by the owner were within the rental restriction limits at the time.
46. For these reasons, I find bylaw 44 applies to tenants renting a portion of the strata lot in which the strata lot owner resides.

If bylaw 44 does not apply to a tenant renting a portion of a strata lot, is the owner entitled to reimbursement of lost rent of \$6,000?

47. Having found bylaw 44 applies to a tenant renting a portion of a strata lot, it is not necessary for me to consider if the owner is entitled to lost rent.
48. I dismiss the owners claim with respect to lost rent.

DECISION AND ORDERS

49. I order that the owner's dispute is dismissed.
50. I further order the public version of this decision anonymize all parties to protect the privacy and identity of the applicant.
51. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. I see no reason in

this case to deviate from the general rule. The strata has been the successful party but did not paid tribunal fees or claim dispute-related expenses. Accordingly, I make no order regarding tribunal fees or expenses.

52. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

J. Garth Cambrey, Vice Chair