



Civil Resolution Tribunal

Date Issued: July 19, 2018

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Howe-Smith v. The Owners, Strata Plan KAS 1201*, 2018 BCCRT 348

B E T W E E N :

Deborah Howe-Smith

APPLICANT

A N D :

The Owners, Strata Plan KAS 1201

RESPONDENT

A N D :

Deborah Howe-Smith

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Susan MacFarlane

INTRODUCTION

1. The applicant and respondent by counterclaim, Ms. Deborah Howe-Smith (owner) owns a strata lot in the respondent strata corporation The Owners, Strata Plan KAS 1201 (strata), a bare land strata.
2. The owner says that the respondent strata failed to follow proper procedures in approving bylaws. The owner also says that the current strata council has not been properly elected.
3. The strata denies the applicant's claims and makes a counterclaim. The strata says that the owner rents her strata lot in contravention of the bylaws. The strata wants an order permanently barring her from conducting a short-term rental business on her strata lot.
4. The applicant is self-represented. The strata is represented by a council member.
5. For the reasons that follow, I dismiss the owner's claim. I allow the strata's claim. The strata is entitled to an order that the owner must comply with the bylaws.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
9. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. The parties reached an agreement on certain issues prior to this adjudication, and those issues are not before me in this decision.
11. In her submissions, the owner complains of parking issues and issues with the strata providing documents to another owner. These issues have not been brought as claims or counterclaims. They are not part of the owner's claim or the strata's counterclaim. As a result, I find these issues are not before me, and I have not addressed them in my reasons.
12. There are 3 issues in this dispute:
 - a. Were the strata bylaws filed in 2017 properly approved?
 - b. Were the current strata council members properly elected?
 - c. Has the owner complied with the strata bylaws concerning short-term rental of her strata lot? If not, what remedy is available to the strata?

BACKGROUND AND EVIDENCE

13. The strata held an annual general meeting (AGM) on May 31, 2017. The agenda included election of directors and approval of proposed bylaws.
14. Under the *Strata Property Act* (SPA) section 48, subject to the bylaws, a quorum for an AGM is 1/3 of the eligible voters. The bylaws do not establish a different

quorum. There was a quorum at that AGM. Both parties provided minutes showing the 66 strata lots were represented by 27 owners and 3 proxies, for a total of 30 votes. That is 8 more than the minimum for a quorum, but fewer than half the eligible votes.

15. Draft minutes were prepared and circulated shortly after the AGM. Months later, more detailed minutes were prepared and circulated. Both parties adopted the earlier draft minutes as part of their evidence. The owner disapproved of the later more detailed minutes. The owner, however, did not attend that AGM. Where there is a conflict between the earlier draft minutes and the later more detailed minutes, I accept the more detailed description.
16. In particular, I accept these facts concerning the AGM:
 - a. The proposed bylaw package was discussed. Some owners expressed concern that the new bylaws imposed new duties on them. The vote to approve the proposed bylaws was defeated. The revised minutes explain that the vote was 21 in favour and 9 against: 21 of 30 is 70%, not the 75% required to approve bylaws.
 - b. The draft minutes say the strata council members all resigned. The revised minutes clarify that only the president and treasurer offered to resign and not stand for re-election. Their reason was the lack of owner confidence in their ability to be reasonable in applying the bylaws. Later in these reasons I discuss whether there was a resignation and whether the election was proper.
 - c. There was renewed discussion about the bylaw package. Then an owner who held several votes said he had changed his mind. A motion to “revote” was made by a different owner from those who had previously moved and seconded the motion to approve the package. That motion for a revote was seconded. The revised minutes explain that the motion for a revote was carried with 28 in favour and 2 opposed.
 - d. The package was voted on again and approved by 28 of the 30 voters.

- e. A new strata council was elected at that AGM. The revised minutes explain that all 5 outgoing council members offered to serve again. Also, 2 new candidates from the floor stepped forward. All of them were unanimously approved. The 2 new candidates provided signed confirmation that they put their names forward for election at the AGM. Also, 16 owners who were present provided signed confirmation that they voted for the council members at that AGM.
- 17. The strata bylaws in issue (the 2017 bylaws) are compiled in a package that includes older bylaws as well as proposed new bylaws. The older bylaws were the Standard Bylaws with amendments, as filed by the strata in 2008. The proposed new bylaws are underlined. A note at the end of each section says whether new bylaws are proposed for that section. If there are, the note gives reasons for the proposed bylaws. Both parties call this a “welcome package,” as it is given to new owners.
 - 18. The package of 2017 bylaws, including the statements, existing bylaws and proposed bylaws, had been given to new owners at least since 2014. The tribunal was provided with a copy of the same package that had been given in 2014 to the owner’s father-in-law, who is another owner in the strata.
 - 19. After the AGM in 2017, the strata filed the 2017 bylaws in the Land Title Office (LTO) on June 22, 2017. The strata filed exactly what was presented and approved at the AGM. The filed 2017 bylaws still underline the newly proposed bylaws and describe them as “proposed bylaws.”
 - 20. A strata council member also signed and filed Form I with the 2017 bylaws. Form I certifies that the 2017 bylaws were passed in compliance with SPA section 128. SPA section 128 says that $\frac{3}{4}$ of the owners present at a general meeting approve.
 - 21. The 2017 bylaws are said to adopt and amend the SPA Standard Bylaws.
 - 22. A section of the 2017 bylaws concerns “Lease or Rental of the Strata Lot”:

- a. Bylaw 1 in this section is underlined. It says that the strata lot must only be used as a single-family private dwelling. No one, apart from parents or children of owners or their spouses, may pay to occupy any part of the strata lot.
- b. Bylaw 2 in this section is not underlined and was previously in force. It says that owners who want to lease or rent their strata lots must apply to the strata for permission.
- c. Bylaw 3 in this section is underlined. It says that an owner who rents or leases a strata lot in contravention of these bylaws may face fines of up to \$200 per week.
- d. A paragraph in this section gives reasons for these bylaws. It says that the community is and was always intended to be single-family residences. Multi-family residences are not allowed. Limiting households is necessary due to the capacity of the septic system.

23. Another section of the 2017 bylaws concerns “Use of Strata Lot”:

- a. Bylaw 1 in this section is not underlined. It says that a strata lot owner, tenant or visitor must not use a strata lot in a way that is, among other things, contrary to the purpose for which the strata lot is intended.

24. Another section of the 2017 bylaws concerns “Carrying on a Trade or Business on the Strata Lot”:

- a. Bylaw 1 in this section is underlined. It says that a strata owner must not use the strata lot for a trade or business. An owner cannot operate a boarding house, care facility, or public resort.
- b. Bylaw 2 in this section is not underlined. It says that an owner who wants to carry on a business in the strata lot must apply to the strata for permission.
- c. Bylaw 3 in this section is underlined. It says that an owner who operates a trade or business in the strata lot may be fined up to \$100 per week.

- d. A paragraph in this section gives reasons for these bylaws. It says that the intent of these bylaws is to prevent owners from operating rental accommodation businesses. Operating a resort would be incompatible with the strata's goal of maintaining a single-family residential community. It could also invite rowdiness and increase risk to the septic system.
25. Another section of the 2017 bylaws concerns "Powers and Duties of Strata Corporation":
- a. Bylaw 4 in this section says the strata may impose a maximum fine of \$50 for a bylaw contravention.
 - b. Bylaw 5 says the strata may impose this fine every 7 days in the case of a continuing contravention.
26. In September of 2017 a strata council member saw a listing on Airbnb offering the owner's strata lot for short-term rental. The listing showed photos from the owner's strata lot and listed the owner's spouse as the operator. The property listing dated back to 2014. There were also reviews posted from former Airbnb customers who had stayed at the property.
27. On September 8, 2017 the strata wrote to the owner and her spouse saying that the offer to rent violated the bylaws. The strata cited several violations of the newly approved bylaws concerning "Carrying on a Trade or Business on the Strata Lot." The strata told the owner that, under bylaw 2, she must ask strata for permission to carry on the business. The strata asked the owner and her spouse to cease their rental business. The strata advised that if they did not cease then the strata would impose fines for bylaw violations. The strata also gave information should they want to dispute the strata's claim.
28. On September 21, 2017 the owner sent an e-mail to the strata demanding the name of the person who had complained about her rentals. She insisted that she must have this person's name before she could attend a strata council hearing to refute the complaint.

29. The strata replied saying that she had not asked for permission to operate short-term rentals. They said they refused permission to other owners who asked to operate short-term rental businesses in their strata lots. The strata asked the owner to confirm that she would stop the rental business and provide a letter confirming that she had ceased. The strata said that their alternative would be to impose fines for bylaw contravention.
30. An undated letter from the owner's spouse Mr. Howe-Smith in September 2017 responds to a letter from Strata dated September 14, 2017. The owner's spouse makes several statements:
- a. Airbnb is not a business or a public resort. He says the Howe-Smiths have contacted Airbnb who is offering legal help to the Howe-Smiths.
 - b. At the time of this letter the Howe-Smiths had not listed their property on Airbnb for 8 days.
 - c. The Howe-Smiths do not recognize the strata's authority as regards their property. He says the strata's authority extends only to common property. He writes, "Thinking that strata has the right to approve or disapprove ones lively hood in our own residence is laughable."

POSITION OF THE PARTIES

31. The owner makes 2 claims:
- a. She says that the 2017 bylaws were not properly documented or approved by the owners.
 - b. She also says that the current strata council was not properly elected.
32. The owner asks that I make these orders:
- a. That the 2017 bylaws filed at the LTO be declared void and unenforceable.
 - b. That a new election of strata council be held.

33. The owner also wants the strata to pay her tribunal costs of \$225.00.
34. The strata asks that I dismiss the owner's claim. The strata argues that the current bylaws were properly approved and filed. The strata says that council was properly elected. The strata says the owner only complained about procedures after the strata started pursuing her for bylaw violations for her short-term rental business.
35. The strata also makes a counterclaim:
- a. The strata says the owner contravened the bylaws by renting her strata lot and has failed to remedy the contravention.
 - b. The strata also says the owner has failed to provide written acknowledgement that her use of the strata lot for short-term rentals has permanently ceased.
36. The strata, in its counterclaim, asks for an order:
- a. That the applicant permanently be barred from using her strata lot for a short-term rental business.
37. The strata also wants the owner to pay tribunal costs of \$125.00.
38. The owner's response to the strata's counterclaim is that rentals are allowed in the strata. She says there are no limits on short-term rentals or the number of strata lots that may be rented.

ANALYSIS

Were the Strata Bylaws Properly Approved?

39. At the 2017 AGM the owners considered the 2017 bylaws. The vote to approve the 2017 bylaws was defeated, at first. Then the owners reconsidered and voted again at the same meeting. The 2017 bylaws were then approved by more than $\frac{3}{4}$ of the owners present.

40. In *Loveys v. The Owners, Strata Plan NW204*, 2008 BCSC 1924 a motion to assess a special levy needed a $\frac{3}{4}$ vote to pass. It was defeated. Then, at the same meeting, some of the owners changed their minds. One who had voted against the special levy made a motion to reconsider the motion. The motion to reconsider was approved, and then the motion for the special levy passed. The BC Supreme Court said that the reconsideration process that was followed, including 2 votes taken on the same issue at the same meeting, was valid.
41. Then in *The Owners, Strata Plan NW 971 v. Daniels*, 2010 BCCA 584, a motion at a special general meeting needed a $\frac{3}{4}$ vote to pass. It was defeated. The strata decided to adjourn the meeting and reconvene in a week's time, to reconsider the same motion. The BC Court of Appeal considered whether this process was valid. The Court of Appeal found that the SPA was silent on the issue of a revote or reconsideration. Therefore, strata council could create a process to give effect to the will of the majority, so long as it was not unfair to the minority.
42. The SPA is still silent on the issue of reconsideration. I find that the SPA does not prohibit a reconsideration or re-vote, and that the reconsideration vote was valid. In reaching this conclusion, I rely on the court's decision in *Loveys*, given the same process to re-vote on the bylaws was followed here. The bylaws were approved as presented.
43. Section 51 of the SPA says that if a matter that requires a $\frac{3}{4}$ vote is approved at a meeting by fewer than half the total eligible voters, the strata must wait for 1 week before implementing the resolution. This week gives owners time to ask strata to reconsider the approval at a special general meeting. This process protects minority owners.
44. The 2017 bylaws were approved on May 31, 2017 and were not filed in the LTO until June 22, 3 weeks later. There is no evidence to suggest any owners brought concerns with the re-vote to the strata's attention within the week following the vote. I find that the strata complied with SPA section 51.

45. In summary, I find that the 2017 bylaws were approved as they were presented at the May 31, 2017 AGM. They were presented as including “proposed” bylaws. They were filed in exactly that same form at the LTO in June 2017.
46. I will discuss bylaw compliance after discussing the election of council members.

Were Current Strata Council Members Properly Elected?

47. The owner says that the 2017 AGM was improper. She says the new council was appointed, not elected. She also points, among other things, to the supposed resignation of council.
48. The legal test for whether a person resigned is an objective one. The BC Court of Appeal says that there must be a clear statement, or clear conduct showing an intention to resign (*Danroth v. Farrow Holdings Ltd.*, 2005 BCCA 593).
49. The earlier draft version of the AGM minutes says the entire strata council resigned following defeat of the bylaws. The later revised minutes clarify that only 2 of the 5 council members offered to resign. The owner did not attend the AGM. For a report of what happened, I prefer the version in the revised minutes.
50. Further, even if tempers flared and people talked of resigning, the BC Supreme Court has recognized that strata council members are volunteers. Mistakes will be made. Within reason, the conduct of council is allowed some latitude. See *Hill v. The Owners, Strata Plan KAS 510*, 2016 BCSC 1753.
51. According to both versions, someone continued to maintain order. Someone continued taking minutes. At the close of the meeting a new council was elected that consisted of all 5 members who had been the council at the start of the meeting, and 2 new members from the floor.
52. The revised AGM minutes say all council members were voted in unanimously. Candidates who stood for election and 16 owners who voted for council at that AGM have all provided signed confirmation that there was an election.

53. I find that the strata council in place at the close of the 2017 AGM was validly elected.

Has the Owner Complied with the Bylaws?

54. The 2017 bylaws are part of a package that includes bylaws and general statements about the nature and concerns of the strata community. Some of the bylaws are underlined and described as “proposed” bylaws. Other bylaws are not underlined and are the same bylaws that were filed in 2008.
55. This same package was filed in the LTO. It includes the general statements, underlining, and description of the underlined bylaws as “proposed” bylaws.
56. I have found those 2017 bylaws were validly passed at the AGM in May 2017. Enforcement is a separate question.
57. The owner says, and I agree, that the 2017 bylaws include what are merely “ideas for bylaws.” I find that the strata cannot enforce what it continues to call “proposed” bylaws. Some of the bylaws in the 2017 bylaws are not presently enforceable.
58. The package of 2017 bylaws, including the proposed bylaws, was well known to the owner and the strata community. This package had been given to new owners at least since 2014. The owner knew the 2017 bylaws had been passed at the May 31, 2017 AGM.
59. I have considered whether the proposed bylaws became enforceable when they were passed. I considered the decision of the BC Court of Appeal in *Strata Plan VIS4663 v. Little*, 2001 BCCA 337. In that case bylaws were enforceable after they had been approved, even though they had not yet been filed. The BC Court of Appeal said that bylaws must be interpreted purposively, so that they accomplish the community’s goals.
60. The difference here is that these 2017 bylaws as filed included merely “proposed” bylaws. The strata has continued describing some of them as “proposed” bylaws.

61. As a matter of plain language and ordinary meaning, a bylaw described as a “proposed” bylaw is not final. I cannot agree with the strata that they can enforce bylaws they continue to present and describe as “proposed” bylaws.
62. The 2017 bylaws, as approved and filed in the LTO, include bylaws that were already in force and that had been filed in 2008. Those bylaws from 2008 are copied in the package of 2017 bylaws where they are not underlined or described as “proposed” bylaws. They are currently enforceable.
63. These bylaws are relevant to this dispute and are currently enforceable:
- a. In “Lease or Rental of the Strata Lot,” bylaw 2 says an owner must ask the strata for permission before leasing or renting a strata lot.
 - b. In “Carrying on a Trade or Business on the Strata Lot,” bylaw 2 says an owner must ask the strata for permission to carry on a business on the strata lot.
64. These bylaw requirements for permission are enforceable. The SPA section 133 says that the strata may do what is reasonably necessary to remedy a bylaw contravention.
65. I have found that the strata bylaws requiring owners to obtain strata approval for rentals, and for business use of the strata lot, are enforceable. The owner and her spouse have admitted offering their strata lot for short-term rentals. Strata has told them that this violates the bylaws. The owner and her spouse do not accept strata’s authority to restrict their livelihood, and find it “laughable.” I find that this is an appropriate situation for an order enforcing the bylaws.
66. For comparison I rely on the decision of this tribunal in *The Owners, Strata Plan VR812 v. Yu*, 2017 BCCRT 82. Although I am not bound by other decisions of the tribunal, I consider that decision to be helpful and applicable. In that decision the tribunal ordered the owner to comply with the bylaws and cease operating an Airbnb or similar short-term rental business in the strata lot.

67. I find the strata is entitled to enforce its bylaws. The owner must cease violating the bylaws by conducting business and offering rentals without strata permission. The owner must deliver a letter to the strata confirming that she and her spouse have ceased renting the strata lot or operating a business in the strata lot.
68. I also suggest to the strata that they seek professional advice with respect to their bylaws.

DECISION AND ORDERS

69. I order that:
- a. The owner's claim is dismissed.
 - b. The owner must immediately comply with the strata's bylaws.
 - c. Within 30 days of the date of this order the owner must deliver a letter to the strata confirming that the owner has ceased renting the strata lot or using the strata lot for a business, and will not do so again without obtaining permission of the strata in compliance with the bylaws.
70. 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 dispute-related expenses. I see no reason in this case to deviate from the general rule. I find that the strata is the more successful party and I therefore order the owner Deborah Howe-Smith to reimburse the strata The Owners, Strata Plan KAS1201 for tribunal fees of \$125.
71. Under section 189.4 of the SPA, an owner who brings a tribunal claim against a strata corporation is not required to contribute to any monetary order issued against the strata corporation or to any expenses the strata corporation incurs in defending the claim. I order the strata to ensure that no expenses incurred in defending this claim are allocated to the applicant owner.
72. The strata is entitled to post-judgment interest, as applicable.

73. 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.
74. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial 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 Provincial Court of British Columbia.

Susan MacFarlane, Tribunal Member