



Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

Sandra Armitage and Dennis Armitage

APPLICANTS

A N D :

The Owners, Strata Plan PGS 204

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about whether the applicants should be permitted to rent their strata lot.

2. The applicants, Sandra and Dennis Armitage, own a strata lot (unit 216) in the respondent strata corporation, the Owners, Strata Plan PGS 204 (strata). The strata contains 18 units, most of which are owned by people over eighty.
3. In 2010, the bylaws allowed for 3 strata lots to be rented. Unit 216 was among the 3 approved rentals at that time.
4. In September 2015, the bylaws were amended to prohibit rentals.
5. The applicants say that, in 2015, the strata president gave them a verbal assurance that unit 216 would be “grandfathered in” under the rental prohibition bylaw, which they understood to mean that they would be able to continue to rent it until it sold.
6. The applicants provided email evidence that they requested that the 2015 bylaw change be made only if they could continue renting. There is documentary evidence that the strata president told them, before the bylaw change, that it was his opinion that unit 216 would probably be grandfathered until it could be sold.
7. That condition was not placed on the bylaw change.
8. On September 12, 2015, the strata council wrote to the applicants advising them that they could continue to rent their unit for the length of their presently existing tenancy only, subject to applying to strata council for consent to continue renting the unit at the time.
9. While I accept that the applicants had conversations with the strata president about trying to ensure their ongoing permission to rent, I do not find that they were given any guarantee of such permission.
10. The strata council permitted the applicants to continue renting to their then tenant, pursuant to a lease agreement set to end in September 2018.
11. The tenant moved out before the end of the fixed term lease, for personal reasons, ending the tenancy in October 2016.

12. At that stage, the applicants asked the strata for permission to continue to rent unit 216, to a different tenant.
13. At an Annual General Meeting (AGM) on November 27, 2016, which was attended by the applicants, the residents voted against continuing to permit the rental of unit 216, 13-4. The minutes of that meeting state that “Council cannot make the Decision, must be voted on by the Unit Owners.” That note about procedure is incorrect, for reasons explained below.
14. The AGM minutes append a document prepared by the strata president which says that when a renter moves out, and a rental prohibition bylaw has been adopted, the owner has one year to either move in, allow a family member to move in, or rent the unit for one year.
15. The applicants concede, in their submissions, that at the 2016 AGM they were informed that they could rent their unit for one year until November 2017, or move into the unit themselves, have a parent or child over 55 years old move in, leave the unit empty or sell the unit.
16. Based on the evidence, I find that the applicants were informed that they could continue to rent unit 216 for one year after the end of the tenancy in effect when the rental restriction bylaw was introduced, plus one additional month, in this case until the end of November 2017.
17. The applicants chose to attempt to sell unit 216. After offering unit 216 for sale for 7 months, on July 19, 2017 they wrote to the strata council to apply for an exemption from the rental restriction bylaw.
18. A hearing was held. On August 16, 2017, strata council wrote to the applicants noting that the “council thoroughly discussed and debated” the request. The council decided to deny the exemption because (a) their situation was not one of extreme hardship, given that the unit had been on the market for 8 months, and (2) the council did not want to disregard owners’ vote at the 2016 AGM.

19. In the August 16, 2017 letter, the strata told the owners that they permitted to rent their unit until the end of December 2017.
20. The strata council suggested that if the unit had not sold by then, the applicants should bring the issue forward at the 2017 AGM for “all owners to debate”.
21. The applicants did so by bringing a motion at the December 3, 2017 AGM, and again the request to rent the unit was defeated, 9-7.
22. The applicants say the strata has been unreasonable in refusing to grant them a hardship exemption. They ask for an order requiring the respondent to allow them to rent the unit until it is sold.
23. The applicants also seek an order against the strata for reimbursement for “lost rental income” of \$1,500 a month, from the date of their Dispute Notice to present, compensation for realtors’ fees of \$11,000 and tribunal fees of \$125.
24. The respondent says the bylaws no longer permit rentals, and that the applicants did not present evidence that it was an extreme hardship if they were unable to rent. The respondent asks that I dismiss the claim.
25. The applicants are self-represented. The respondent is represented by a member of its strata council.

JURISDICTION AND PROCEDURE

26. 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.

27. 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.
28. 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.
29. 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

30. The central issue is whether the strata bylaws prohibit the applicants from renting their unit and, if so, whether they have established a hardship that would allow an exemption so that they could continue to rent their unit.

EVIDENCE AND ANALYSIS

31. A strata may adopt a rental prohibition bylaw for residential units. If a new rental prohibition bylaw is adopted, it will not apply to a strata lot until (a) one year after

an existing tenancy expires or (b) one year after the new bylaw is passed, whichever is later (Section 143 of the *Strata Property Act* (SPA)).

32. In this case, the applicants had a tenant until that tenancy agreement ended in October 2016. Under SPA section 143, they were permitted to rent the unit until October 2017, one year after the end of the tenancy in place when the rental prohibition bylaw was adopted.
33. The evidence establishes that the strata permitted the owners to rent their unit until the end of December 2017. I find that the strata followed SPA section 143 by allowing rentals for at least one year after expiry of the applicants' existing tenancy.
34. After that, the strata was not obliged to allow the applicants to rent their unit, unless the applicants could demonstrate hardship under SPA section 144.
35. Section 144 of the SPA provides that an owner may apply for an exemption for a bylaw limiting rentals on the grounds of hardship to the owner. A strata may not "unreasonably refuse" such an exemption.
36. Under SPA section 27(2)(b)(v) the owners are not permitted to direct or restrict the action of the strata council if this would interfere with the strata council's discretion to decide, based on the facts, whether an owner should be granted a hardship exemption under SPA section 144.
37. I find that the November 2016 AGM decision to disallow the request for rental of unit 216 was reached through an improper process, because the decision was not considered or issued through strata council. It was only considered at an AGM. SPA requires hardship exemption applications to be decided by strata council. While I find that a strata council can consider an AGM vote as part of their decision-making process, they cannot be restricted by it.
38. Having said that, I find that strata council would have made the same decision, were the application for exemption properly before it in November 2016. That is, there was no evidence of hardship, and so an exemption would have been refused. Because the November 2016 AGM was held during the period when the

strata continued to permit the applicants to rent their unit, and because the applicants were informed and understood that they had the option to rent their unit until the end of November 2017 and later until the end of December 2017 through a subsequent decision of strata council, I find that there has been no prejudice to them resulting from the improper process used.

39. I find that the strata council appropriately considered the applicants' July 2017 request for a hardship exemption under section 144, because although they referred to the owners' debate and vote from the 2016 AGM, it was only one factor in their decision and did not restrict the strata council from granting a hardship exemption if one had been warranted.
40. The question of hardship is particular to the facts of each dispute. The hardship need not be extreme or undue, since SPA does not use those modifiers. While the strata council used the words "extreme hardship" in its August 16, 2017 letter denying the applicants' request for an exemption, I will review the evidence against the legal test for hardship.
41. Inability to sell a strata lot and devaluation while attempting to sell are not grounds, in themselves, establishing hardship. (see *Von Schottenstein v. Strata Plan 730* (1985), 64 B.C.L.R. 376 (S.C.) and *Als v. Strata Corp. NW 1067*, 2002 BCSC 134).
42. In *Als*, the court listed relevant factors to consider on a hardship claim for exemption from a rental bylaw, also described in Continuing Legal Education BC's Strata Property Manual, as follows:
 - (a) inability to obtain insurance for the vacant unit;
 - (b) prohibitive property management costs;
 - (c) a substantial decrease in sale value during the ban on rentals, and the strata lot value being "all or substantially all" of the owner's assets; and
 - (d) hardship caused specifically to the owner.

43. As I interpret the *A/s* criteria, where an owner applies for a hardship exemption, alleging a decrease in sale value, they must also include a financial reporting of their asset position. Without this disclosure, the strata council would not be equipped to fairly assess the application.
44. On the issue of hardship, the applicants provided evidence that
 - (i) they could not sell their property largely due to interested parties being unable to sell their existing homes; and
 - (ii) they continue to pay utilities, strata fees, insurance and property taxes (of about \$950/month) without being able to offset those expenses through rental income.
45. The strata says that unit 216 is not the applicants' primary residence. They also indicated that the applicants rented unit 216 for six years, taking in about \$100,000 in rental income. The applicants did not address these issues in their evidence or submissions.
46. Turning to the *A/s* criteria for hardship, I find that the applicants have not established hardship on a balance of probabilities. They are still able to obtain insurance for their unit, and ongoing property related expenses are modest when considering the unit's value.
47. The applicants provided scant information about their financial position. The evidence available suggests the unit is a secondary property asset for them. While they demonstrated some inconvenience associated with paying ongoing expenses for a property they have been unable to sell for their asking price, the situation falls short of establishing hardship. There is no evidence of a substantial decrease in sale value making up "all or substantially all" of the owner's assets.

DECISION AND ORDER

48. For the reasons given above, I find that the strata acted reasonably in declining the applicants' request for an exemption. It follows that the claims for loss rental income and realtors fees are also dismissed.
49. The applicants' dispute is dismissed.
50. The respondent did not pay tribunal fees, and therefore I make no order for fees or expenses.

Julie K. Gibson, Tribunal Member