



Civil Resolution Tribunal

Date Issued: July 26, 2018

File: ST-2017-004044

and

File: ST-2017-004103

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS 4294 v. Truong and Curlis*, 2018 BCCRT
378

B E T W E E N :

The Owners, Strata Plan BSC 4294

APPLICANT

A N D :

Thai Truong

RESPONDENT

A N D :

Brian Curliss

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Catherine Sullivan

INTRODUCTION

1. The applicant in both disputes, The Owners, Strata Plan BCS 4294 (strata), is a strata corporation consisting of 338 residential strata lots located in four multi-unit buildings and one three story townhouse building located in Pitt Meadows, British Columbia. The strata is represented by the strata president.
2. The respondent in dispute ST-2017-004044, Thai Truong, is the owner of strata lot 167 (SL 167) and the respondent in dispute ST-2017-004103, Brian Curliss, is the owner of Strata Lot 139 (SL 139) in the strata. The respondents are both represented by Mr. Peever, the owner and sole operator of PeeverConn Properties Inc. (PeeverConn).
3. The strata has advanced the same claim against both respondents.
4. The strata says the respondents are renting out their strata units in violation of the strata bylaws and owe unpaid fines and fees. The strata wants an order directing the respondents to cease their business rental activities, an order of compensation for the fines and fees, and reimbursement for expenses and dispute fees.
5. The respondents say the strata has no basis to prohibit them from renting their strata lots. The Rental Disclosure Statement (rental statement) provided to them by the owner developer prior to purchasing their strata lots, permits the rental of SL 167 and SL 139 (units). The strata bylaws have no application to the respondents' rental circumstances and cannot be relied upon to justify the strata's fees or fines.

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 and decide 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. There was extensive documentation submitted by all parties in this dispute. I have read and reviewed all the evidence submitted by the parties. I have only referenced the specific materials and documents that have assisted me to decide the issues.
9. The applicable tribunal rules are those that were in place at the time this dispute was commenced in August 2017.
10. Under tribunal rule 126, in resolving a dispute, the tribunal may make one or more of the following orders:
 - a. Order a party to do or stop doing something, or
 - b. Order a party to pay money and/or
 - c. Order any other terms or conditions the tribunal considers appropriate.

ISSUE

11. The issue in this dispute is whether the respondents' rental of their respective strata lots is a breach of the strata bylaws and if so, what are the appropriate

remedies including whether the strata should be reimbursed for tribunal preparation expenses and for tribunal filing fees.

BACKGROUND AND EVIDENCE

12. In 2011, the owner developer who built the strata filed a Disclosure Statement with the Superintendent of Real Estate for the development of the 338 strata lots. It contained the rental statement that confirmed the property had been rezoned to multiple family residential status and the lots were intended for residential use and could not be used for any other purposes. The rental disclosure statement (Form J) under the *Strata Property Act* (SPA) provided to all potential buyers confirmed the 338 residential strata lots could be rented out until November 1, 2111.
13. In September 2015, the respondent Mr. Truong executed a Joint Venture Agreement with PeeverConn, a real estate investment business located in Abbotsford, British Columbia to finance the purchase and management of SL 139. The parties to the agreement were Mr. Truong, 2 of his family members and Mr. Peever on behalf of PeeverConn. The venture agreement confirmed 1 of the parties would be the Financial Manager to manage the unit to provide long term rental income for the joint venture parties.
14. In October 2015, SL 139 was purchased on the terms set out in the venture agreement and the respondent Mr. Truong was registered in the Land Title Office as the sole owner.
15. In November 2015, the respondent Mr. Curliss purchased SL 167 and was registered in the Land Title office as the sole owner.
16. In January 2016, the respondent Mr. Curliss executed a similar joint venture agreement and a trust document with PeeverConn to finance the purchase of SL 167. The parties to the joint venture were Mr. Curliss, Gill Curliss and Mr. Peever

on behalf of PeeverConn. The parties agreed a Financial Manager would manage the rental of the strata lot unit to provide long term rental income for the parties.

17. The conflict in this dispute centers on the rental of SL 167 and SL 139 from 2015 to the present. Mr. Peever was and is the Financial Manager for both units. The respondent owners have played no role in the rental arrangements and neither has ever resided in the units.
18. Mr. Peever has marketed and listed the units for rent through the “Super Suites - Platinum Standard Rental Accommodations” (Super Suites) business website. PeeverConn owns or part owns many properties offered for rent through the Super Suites website. Super Suites is described as a leading provider of quality furnished short term rental accommodation throughout BC, Alberta and Manitoba. Super Suites is affiliated with other industry real estate and corporate housing provider groups that market temporary luxury rental accommodations. Mr. Peever has also offered the units on other rental websites including a listing for unit SL 167 on Craigslist under the “Temporary Housing” category.
19. The tenancy records submitted by Mr. Peever show that from 2015 to 2018, there have been 6 tenants in SL 167 and 8 tenants in SL 139. Aside from the first tenant who rented SL 167 for only 8 days, all other rentals have been for 30 or more days.
20. The strata submitted evidence of problems with the rental of the units. The nuisance issues included dog waste on balconies and noise and security concerns. Some owners complained about strangers in the parking and other secure areas who said they were renting the respondents’ units but the strata had no records for them or any identifying information. There were concerns about cleaners using strata issued fobs to access the building to clean the respondents’ units. The strata says the respondents have failed to provide a Form K for their renters either on time, or at all as required under section 146 of the SPA. Many of the Form K’s submitted into evidence were incomplete and did not contain the information required by the SPA and bylaws including the names of the occupants, phone and email contact information, and/or the car license plate and registration details.

21. The strata disputes the accuracy of the respondents' tenancy records and says that other renters have stayed in both units. It says 2 commercial rental businesses have rented the units and in turn have rented out the units to their clients.
22. Over time, the strata became aware that Mr. Peever was marketing and renting the respondents' units on the Super Suites website and the units were advertised as corporate temporary rental accommodations. The parties agree the units have been rented to employees temporarily relocated because of jobs or employees looking for permanent local housing (and an employer may pay the rental costs) or insurance claimants who have temporarily vacated their home residences (and the insurance company pays for the rental).
23. In February 2017 the strata requested the respondents attend a hearing in March 2017 to address concerns about the short-term rentals of the units being a violation of the bylaws. Mr. Peever represented the respondents at the meeting. The strata later sent a letter stating the strata council had determined the respondents' current use of their units violated the bylaws.
24. The strata says the respondents have also failed to pay the move-in and move-out fee for any of the renters in SL 167 and SL 139 as required by bylaws. The strata says the respondent Truong owes \$575.00 for non-payment of move-in and move-out fees for SL 139. The strata says the respondent Curliss owes \$475.00 for non-payment of move-in and move-out fees for SL 167.
25. Counsel acting for PeeverConn wrote to the strata in June 2017 stating the respondents were not in breach of the bylaws and challenged the strata's intention to fine the respondents.
26. The strata filed its dispute with the tribunal against the respondent Truong on August 11, 2017 and against the respondent Curliss on August 14, 2017.

POSITION OF THE PARTIES

27. The dispute between the parties focuses on 2 issues.

28. The strata says the most important issue is the allegation the respondents are offering their units for temporary short-term rentals through a commercial rental business in violation of the strata's bylaws. The strata seeks an order directing the respondents to cease offering the units for rent as "Platinum Standard Super Suites".
29. The second issue relates to the fees and fines the strata says are owed by the respondents for breaches of the bylaw requirements.
30. Mr. Peever says the respondents have provided all documentation required for their tenants and have promptly responded to any concerns or tenant problems. They say any nuisance issues were promptly resolved. They dispute the strata's characterization of their rentals and say they are landlords operating under the *Residential Tenancy Act* and are not in violation of the strata bylaws. They argue they are protected from the application of any rental restriction by-law language by the owner developer's rental disclosure statement that the units can be rented out until 2111.

BYLAWS

31. The strata filed the original bylaws in the Land Title Office on December 1, 2011 with amendments filed on April 7, 2016 and on March 23, 2017 (March 2017 bylaws) and on March 7, 2018 (March 2018 bylaws). The strata submits the March 2018 bylaws are the appropriate ones as the respondents' contravention of the bylaws has continued to the present date.
32. I find the March 2017 bylaws are the relevant bylaws. The tribunal claims against the respondents were filed in August 2017. At that time, the March 2017 bylaws were in place and are therefore the applicable bylaws.
33. The strata alleges the respondents have breached bylaws 3.1(e) and 3.2 (m)(1) and bylaw 12. The strata says Rule 3.1 also applies to this dispute. I have

reproduced the relevant bylaw sections below and have underlined the language changes made in the 2017 bylaws.

34. **Bylaw 12.0** requires a landlord to give a prospective tenant a copy of the current bylaws and rules and a copy of the tenants' responsibilities in Form K which must be returned in a completed form to the strata within 2 weeks of the rental.

35. **Bylaw 3.1** provides

"An owner, resident or visitor must not use a strata lot, the common property or common assets in a way that:

.... e. is contrary to the purpose of residential housing for which the strata or common property is intended as shown expressly or by necessary implication on or by the strata plan."

36. **Bylaw 3.2** states

"To ensure the security of the strata corporation and owners and residents, an owner, resident, tenant, occupant or visitor shall not...

m (1). allow a strata lot or portion of a strata lot to be used for business purposes including any short-term accommodation (purposes) which includes, without limitation, (such as) AirBnB and similar operations, bed-and-breakfast, hotel, lodging house, home exchange, time-share and vacation rental (or similar short-term rental arrangements). "

37. Rule 3.1 requires that an administrative fee must be paid to the strata each time and prior to a tenant moving in or out of a strata unit.

ANALYSIS

Are the respondents in breach of the strata bylaws, and if so, what are the appropriate remedies?

Business Rental Use

38. As with any civil claim such as this, the burden is on the strata to prove its claim on a balance of probabilities.
39. The strata alleges the respondents' marketing of SL 139 and SL 167 as Super Suites and offering them for rent on a commercial website is a violation of bylaw 3.1(e) which prohibits an owner from using their strata lot in a way contrary to the purpose of residential housing and a breach of bylaw 3.2(m)(1) which prohibits an owner from allowing their strata lot to be used for business purposes including any short-term temporary accommodation.
40. The respondents say they are renting out their units for a residential use and not a business purpose and are complying with bylaw 3.1(e). The respondents submitted several *Residential Tenancy Act* tenancy lease agreements the landlord PeeverConn executed with some tenants. The respondents say the lease agreements prove the tenants are not temporary occupants as they have exclusive occupation of the units which meets the test to establish a residential housing purpose.
41. The respondents rely on certain provisions in the SPA in support of their defence to this claim. Section 141(1) of the SPA states that a strata cannot screen rental tenants or establish any screening criteria. Section 141(2) provides that a strata can only restrict the rental of a strata lot by a bylaw that prohibits the rental of residential strata lots or limits the number or percentage of rentable strata lots and/or the period of time for which strata lots may be rented.
42. The respondents say the strata's actions in applying bylaw 3.2(m)(1) to their rental circumstances contravenes section 141(1) because it has the effect of regulating their landlord tenant relationships. Because their tenants execute residential tenancy leases, they say their rental arrangements fall outside the scope of bylaw 3.2(m)(1). They say the tenancy lease grants exclusive possession rights their tenants, that distinguishes them from licence rental operations such as Air BnB

and hotels. Their leases grant full occupancy rights versus the licensed rental operations that grant only temporary non-exclusive occupation rights (the activity the strata wants to prohibit).

43. Section 143(2) of the SPA states that any bylaw prohibiting or limiting rentals does not apply until the rental period in the developer's rental disclosure statement has expired. In this case, that date is November 1, 2111. Mr. Peever says bylaw 3.2(m)(1) is therefore not valid because it is an improper attempt to prohibit or limit rentals before that date.
44. The preamble in bylaw 3.2 was amended in 2017 to include the words "to ensure the security of the strata". I find the language in bylaw 3.2 and in particular bylaw 3.2(m)(1) was amended at the February 2017 general meeting for the clear purpose of stopping and preventing strata owners from renting out their units for a business purpose on a commercial short-term temporary accommodation basis and to prevent the many security and nuisance problems associated with the respondents' rental of SL 139 and SL 167. The evidence shows issues with fobs, noise complaints, no Form K information or incomplete Form K records, dog waste problems, security concerns about strangers connected to the units and a conflict with access for fire safety inspections.
45. It is undisputed the respondents and PeeverConn established a business relationship to purchase SL 139 and SL 167 to generate the best return on rental income from the units. Mr. Peever marketed the units commercially as Super Suites on a commercial rental website. The units are fully furnished 2-bedroom 2-bathroom suites and include biweekly housekeeping services. The tenancy agreements show that tenants pay a daily rental rate that ranges from \$105 to \$135 per night. The rate includes internet, cable, heat, lights, toiletries, linens, beverages, secured parking, access to a fitness centre, and many other hotel-like amenities. The Super Suites website acknowledges the temporary nature of the rental accommodation; at Super Suites, a renter will enjoy a feeling of a comfortable and functional "home away from home". The evidence shows the units have been rented by tenants who need temporary accommodation while they are

away from or transitioning their homes for various reasons. At all times, Mr. Peever and PeeverConn as the joint venture business partner have exercised full responsibility for the management of and all rental details for the units.

46. I find the rental disclosure statement in combination with the application of section 143(2) of the SPA to mean the strata can't pass a bylaw that would prevent an owner from renting out their unit for a residential purpose until 2111. I do not find however, that either the SPA or the rental statement prohibits the strata from changing the bylaws to restrict owners from the short term temporary rental use of their units for a business purpose.
47. All of these listed prohibited examples in bylaw 3.2(m)(1) are commercial rental activities that generate a frequent turnover of strangers and have the potential to negatively impact the strata community and to compromise security. I do not find these restrictions as an infringement on the right granted by the rental statement to the purchasers and owners "to rent out" their strata lots. Owners can rent out their units but they cannot rent out their units for a business purpose on a short term temporary accommodation basis. They are restricted to rental uses that are residential and provide a more permanent as opposed to a temporary short-term accommodation connection to the strata.
48. I do not accept the respondents' argument that their rental business arrangements for the units fall outside the ambit of Bylaw 3.2 because they execute residential tenancy leases and their tenants are therefore not temporary occupants. I do not find the completion of a lease transforms what is, in essence, a commercial short-term rental use of the unit to a residential purpose as required by the bylaws. I find it is necessary to go behind the lease paperwork to determine the real substance of the rental use for the purposes of the SPA and the bylaws.
49. The respondents draw a distinction between their commercial rental activities and the activities of the temporary rental housing businesses listed in bylaw 3.2(m) such as Air BnB and hotels which are licensed operations. In substance, I find the

respondents are renting out their units to provide what is an essentially a hotel-like temporary rental accommodation service.

50. I base my finding on the evidence of the many hotel-like short term rental accommodation details such as the nightly rental rate, the commercial marketing of the units as fully furnished Super Suites, the housekeeping services, the beverages, the toiletries, linens and other personal amenities, no requirement for a damage deposit, and the fact that the tenants are renting the units because they are temporarily needing a “a home away from home”. The Craigslist ad for SL 167 posted under the “temporary accommodation” category lists a \$135 per night rental rate. The conclusion I reach based on all these factors is that the respondents use the units for business rental purposes to provide short term accommodation services.
51. I find the respondents’ rental use of the units is not a true residential use of the units. The renters are “residing” in the units but they are living there on a short term temporary accommodation basis pursuant to the unit being used for a business rental purpose. They do not have the full possession connection that distinguishes a temporary from a permanent housing possession connection.
52. The respondent says a broad definition of the definition of “residence” should be applied to the facts of this case. They referenced the British Columbia Court of Appeal in *Strata Plan NW 499 v. Louis Estate*, 2009 BCCA 54. The issue was whether the appellant was residing at the strata when an age restriction bylaw was passed. The court found the appellant had 2 residences. The facts showed the appellant was living with his mother at the strata corporation and also had a second residence at a hospital. Despite living in 2 places, the court found that he was a resident at the strata corporation on the date the bylaw was passed. The facts are distinguishable from those in the case before me. However, I take some guidance from the court’s list of relevant factors. Questions such as who pays the strata fees and whether the occupation of the unit has a greater or lesser degree of permanence or is closer to the transience of a tourist could be additional

considerations in determining whether rental accommodation is short term or long term and whether temporary versus permanent housing.

53. I find the strata has proven its claim that bylaw 3.2 is a valid and legal reflection of the strata's authority to make decisions in the best interests of all owners. I find the language changes in bylaw 3.2(m) reflect a prohibition on the owner's use of the strata lots as anything other than a strictly residential use.
54. I have concluded the bylaws are not in conflict with the right given to owners in the rental statement to rent out their units until 2111. I find the fact that Mr. Peever executes residential tenancy leases with the tenants does not transform what is in essence a commercial short-term temporary rental use arrangement. The strata acted to prohibit the short-term business accommodation rental exercise of the "right to rent" as that use is not consistent with the residential use only restriction in the rental statement and in bylaw 3.1. The units can be rented out only on a primary residential use basis, and not for a primarily short-term accommodation business basis.
55. For all these reasons, I find the strata has proven its claim against both respondents that they are renting out their units in breach of bylaw 3.1(e) and bylaw 3.2(m)(1).

Remedies

56. Because the strata was successful in establishing the respondents have breached the strata bylaws, I must now consider the issue of remedies.
57. The strata fined the respondents for their failures to submit Form Ks and for a number of other issues including an oil stain, dog waste, fire inspection and a noise complaint. It appears in the reply submissions the strata has withdrawn its claim for all the fines as it acknowledges there is not sufficient evidence to prove its compliance with section 135 of the SPA.
58. The strata seeks an order against the respondents for the non-payment of the move-in and move-out administrative fee for the tenants who have resided in SL

139 and SL 167 since 2015. The outstanding claimed fees include a total amount of \$575.00 for SL 167 and \$475.00 for SL 139 (as amended and confirmed by the strata in its final reply to the tribunal).

59. I have reviewed the documentation submitted by the strata for SL 167 to prove its claim that the fees are owing and remain unpaid. I have found the materials do not assist me to determine if the fees are warranted and remain unpaid. The chart includes a column of numbers under a heading entitled "Moving Fee" next to another column with a heading entitled "Charge to Account". It is unclear whether the numbers confirm that a fee remains outstanding or that the fee has been paid as it was charged and already deducted from an account. The last column has a heading entitled "Notes" and includes the names of some occupants but also includes an entry that says "occupants coming/going" next to the number 100. In addition, the total amount claimed at the bottom of the chart for SL 167 for move-in and move-out fees is \$375 yet the strata's claim is \$575.00. The document contains too many confusing details and I am unable to follow the meaning of the information.
60. The same confusion and lack of specificity exists in the strata records submitted to prove the claim that move-in and the move-out fees are owing and remain unpaid for SL 139. The total amount claimed at the bottom of the chart for SL 139 for move-in and move-out fees is \$650.00 yet the strata's claim is \$475.00.
61. I find the strata's evidence does not assist me to decide whether fees are owed by the respondents and remain outstanding. I find the strata has not proven a financial loss for the respondents' breach of strata rule 3.1. I dismiss this portion of the strata's remedy claim against the respondents for outstanding move-in and move-out fees.

Reimbursement of tribunal fees and dispute-related expenses

62. The strata was substantially successful in this dispute. 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 related to the dispute resolution process. I see no reason to deviate from that general rule. I find the strata is entitled to reimbursement for the \$350 tribunal fee which includes 2 \$125 filing fees for the claim against each respondent and a \$100 fee for the request for proceeding to adjudication jointly.

63. The strata submitted an invoice claim for expenses from Profile Properties in the amount of \$984.38 for time spent by 4 employees preparing the documentary records. The respondents say the strata should not be awarded its claim for expenses. Tribunal rule 132 provides that except in extraordinary cases, the tribunal will not order one party to pay another party any fees charged by a lawyer or another representative in the tribunal dispute process.
64. The strata characterizes its expenses as “incurred by the need to complete the time-consuming task of compiling the various threads of correspondence and information needed to mount this voluminous case” and says the costs are not a regular part of the strata manager’s duties under the strata’s agency agreement. It is unclear from my review of the evidence whether the strata paid the invoice. Second, I find there is not sufficient detail in the invoice to explain the claim for 6 hours of phone calls or the 6.5 hours of time claimed to prepare 7 letters. For these reasons, I have concluded that this case is not one that meets the test for extraordinary circumstances to justify a departure from the general rule that generally the tribunal does not order reimbursement for fees charged by representatives.

DECISION AND ORDERS

65. I order the respondents to comply with the strata’s bylaws.
66. I order that the respondents must, without limitation, comply with bylaws 3.1(e) and 3.2(m)(1).

67. I order that the respondents must immediately remove SL 167 and SL 139 from the Super Suites website.
68. Within 30 days of the date of this Order, I order the respondent Truong to reimburse the strata for \$175.00 tribunal fees as follows:
 - (a) \$125.00 in reimbursement for the strata's tribunal fees and
 - (b) \$50.00 in reimbursement for half of the \$100.00 fee for the strata request for proceeding to adjudication jointly against both respondents.
69. Within 30 days of the date of this Order, I order the respondent Curliss to reimburse the strata for \$175.00 tribunal fees as follows:
 - (a) \$125.00 in reimbursement for the strata's tribunal fees and
 - (b) \$50.00 in reimbursement for half of the \$100.00 fee for the strata request for proceeding to adjudication jointly against both respondents.
70. The strata's claim for reimbursement of dispute-related expenses is denied.
71. I dismiss the strata's claim for move-in and move-out fees against the respondents.
72. 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.
73. 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 Strata 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.

Catherine Sullivan, Tribunal Member