



Civil Resolution Tribunal

Date Issued: August 9, 2018

File: ST-2017-007489

Type: Strata

Civil Resolution Tribunal

Indexed as: *Belotte v. The Owners, Strata Plan NW 1878*, 2018 BCCRT 437

B E T W E E N :

Audrey Belotte

APPLICANT

A N D :

The Owners, Strata Plan NW 1878

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicant, Audrey Belotte (owner), co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 187 (strata).

2. This dispute involves the owner's request for a hardship exemption from the strata's rental restriction bylaw.
3. The owner asks for orders that the strata grant her a 3-year exemption from the strata's rental restriction bylaw. She asks that the 3-year period start when a tenant moves into her strata lot. I infer the strata asks that the owner's claim be dismissed.
4. The applicant is self-represented. The strata is represented by a strata council member.
5. For the reasons that follow, I find the owner is exempt from the strata's rental restriction bylaw for the 3-year period starting when her tenant occupies her strata lot.

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, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Is the strata's rental restriction bylaw enforceable?
 - b. Did the strata comply with section 144 of the *Strata Property Act* (SPA) when it denied the owner's request for an exemption of the rental restriction bylaw? If not, is the owner entitled to her requested exemption?

BACKGROUND, EVIDENCE AND ANALYSIS

11. I have read all of the submissions and evidence provided, but refer only to information I find relevant to provide context for my decision.
12. In a civil proceeding such as this, the owner must prove their claim on a balance of probabilities.
13. The strata is an 18-unit residential strata corporation located in White Rock, B.C. created under the *Condominium Act* (CA).
14. The strata's relevant bylaws are those registered on June 15, 1984, which limits the number of strata lots that can be rented to "NIL" and the Standard Bylaws under the SPA, which came into force on January 1, 2002 under *Strata Property Regulation* (regulation) 17.11 (3). Other filed bylaw amendments are not relevant to this dispute.
15. On November 2, 2017, the owner wrote to the strata requesting a 3-year exemption from the rental restriction bylaw based on hardship and requested a hearing with the strata.

16. On December 4, 2017, the strata heard the owner and on December 19, 2017 a letter from the strata council president denying the owner's request was hand delivered to the owner.

Is the strata's rental restriction bylaw enforceable?

17. The strata's rental restriction bylaw effectively prohibits strata lot rentals given the number of permitted rentals stated in the bylaw is "NIL", meaning none. At the time of its passing, the CA, at section 30, permitted strata corporations to limit the number of residential strata lots that may be leased by owners. There were a number of conflicting judgements in the British Columbia Supreme Court on the question of whether the limit could be zero, as I find it is here, or whether the limit must be more than zero. I find this conflict was corrected when the SPA came into force because section 141 (2) (a) of the SPA permits a strata corporation to prohibit rentals.
18. Under regulation 17.11, the filed bylaw for rental restrictions continues to apply to the strata.
19. For these reasons, I find the strata's rental restriction bylaw is enforceable with a limit of zero rentals, effectively prohibiting rentals within the strata, but subject to any exemptions under the SPA.

Did the strata comply with section 144 of the SPA when it denied the owner's request for an exemption of the rental restriction bylaw? If not, is the owner entitled to her requested exemption?

20. Section 144 of the SPA permits an owner to apply to a strata corporation for an exemption from a bylaw that prohibits rentals on the grounds the bylaw causes hardship to the owner. Section 144 sets out very stringent guidelines that must be followed.
21. An owner's application must be in writing, must state the reason the owner thinks an exemption should be made, and must state whether the owner wishes a

hearing. A hearing is defined under regulation 8.2 to mean an opportunity to be heard in person at a council hearing. If requested, the hearing must be held within 4 weeks of the date of the request and a written decision of the strata corporation must be given to the owner making the request within 1 week after the hearing. Section 144 states the exemption is allowed if the strata corporation fails to meet the timelines set out for both holding the hearing and issuing its written decision.

22. Finally, the strata corporation may grant an exemption for a limited time but must not unreasonably refuse to grant an exemption.
23. Here, the owner's November 2, 2017 letter, also signed by her co-owner spouse, requested a hardship exemption for period of 3 years from the date tenants occupied the strata lot. The reasons given for requesting the exemption were set out in the letter along with a request for a hearing.
24. The owner says the November 2, 2017 letter was hand delivered to the strata council President on the same date, which is not disputed by the strata. The owner's requested hearing was held on December 4, 2017, a date that is 32 days or more than 4 weeks after the time set out under section 144(3) of the SPA.
25. Further, it is undisputed that the strata council president's December 18, 2017 letter to the owner denying the owner's exemption request was delivered to the owner on December 19, 2017, a date that is 15 days or more than 1 week after the hearing date as set out in section 144 (4) (a) (i) of the SPA.
26. I find the strata failed to meet both the timeline to hold the owner's requested hearing and the timeline to provide the owner its written decision regarding her exemption request. Based on 144 (4) (a) and (b) of the SPA, the exemption is allowed. My conclusion is supported by the decision of the British Columbia Supreme Court in *The Owners, Strata Plan LMS 3442 v. Storozuk*, 2014 BCSC 1507, where the court found that the strata corporation was 1 day late in providing its written decision to the owner who requested a hardship exemption, and thus the owner's exemption request was allowed.

27. Although not binding on me, I accept the decision reached in *Lina Lacoursiere v. The Owners, Strata Plan KAS 989*, 2017 BCCRT 64 that if a strata corporation fails to respond to an owner's hardship application within the deadlines set out in section 144, the strata corporation lacks the ability to impose a limitation on the term of the hardship rental.
28. Here, however, the owner has requested a 3-year exemption from the rental restriction bylaw to start when her tenant first occupies her strata lot and I so order.
29. The owner must also follow the requirements of section 146 (1) and (2) of the SPA by providing prospective tenants with copy of the strata's current bylaws and rules, and Form K - Notice of Tenant's Responsibilities (Form K), and providing the strata with signed Form K within 2 weeks of renting her strata lot.

DECISION AND ORDERS

30. I order that the owner:
 - a. Is exempt from the strata's rental restriction bylaw and may rent out her strata lot for a 3-year period starting when the owner's tenant first occupies her strata lot, and
 - b. Must follow the requirements of section 146 (1) and (2) of the SPA when renting out her strata lot.
31. Under section 189.4 of the SPA, an owner who brings a tribunal claim against a strata corporation is not required to contribute to the strata corporation's expenses of defending the claim or in any monetary order issued against it. I order the strata ensure that no expenses incurred by the strata in defending the owner's claims are allocated to the owner.
32. 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 to deviate from this general

rule. The owner was successful in her claim and I find she is entitled to reimbursement of \$225 for tribunal fees.

33. The owner is also entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.
34. 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.
35. 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.

J. Garth Cambrey, Vice Chair