



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Loukas et al v. The Owners, Strata Plan BCS 4213 et al*, 2018 BCCRT 493

B E T W E E N :

Fotios Gregory Loukas and Steven Loukas

APPLICANTS

A N D :

The Owners, Strata Plan BCS 4213

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Fotios Gregory Loukas (Gregory Loukas) is the son of the owners of strata lot 122, which is unit 711, a one-bedroom with patio (unit), in the respondent strata, The Owners, Strata Plan BCS 4213 (strata). The applicant Steven Loukas (“Steven Loukas”) is his father, and an owner of the unit. Gregory Loukas was

declared as the unit's tenant when the unit was purchased. This dispute is about short-term rental of the unit.

2. The applicants say that they can continue with short-term rentals of their unit because a bylaw prohibiting short term rentals was not in place when they purchased the unit, nor when they first started using it for that purpose.
3. The applicants say the strata levied fines against them in error. The applicants seek a refund of \$200 for an erroneous bylaw fine they paid and for \$1,800 in fines charged to the unit's account to be reversed. They also seek reimbursement of tribunal fees of \$225.
4. The strata says the applicants have used the unit as an Airbnb property for several months, dating back to March 22, 2017, for periods of less than one month, in contravention of strata bylaws.
5. The applicants are self-represented. The respondent strata appears through a member of its strata council.

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 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

10. The issue in this dispute is whether the applicants are required to pay the fines imposed by the strata for violating the short-term rental bylaw.

EVIDENCE, FINDINGS & ANALYSIS

11. I have read all of the material provided by the parties, but have commented only on evidence and submissions necessary to explain my decision.

Bylaws and *Strata Property Act* (SPA)

12. The strata filed bylaw amendments in 2014. There were no rental bylaws in place at that time.
13. Bylaw 3 provides that an owner or tenant may not use a strata lot in a way that,
 - (a) causes a nuisance to another person,
 - (b) causes unreasonable noise,
 - (c) unreasonably interferes with the rights of other persons to use and enjoy the common property or another strata lot,
 - (d) is illegal or

(e) is contrary for the purpose for which the strata lot is intended by the strata plan.

14. On February 11, 2015, the strata filed bylaw amendments that were passed by a $\frac{3}{4}$ vote at a January 21, 2015 general meeting.
15. The February 11, 2015 amendments included bylaw 37.2 titled "Leasing Requirements", which limits the rental of a strata lot to a period of more than one month. Bylaw 37.2 (b) states that all advertisements or offers to rent a strata lot or portion thereof must "...clearly and prominently state that the minimum rental period is for one month."
16. Bylaw 23 indicates that the strata may fine an owner or tenant a maximum of \$200 for each bylaw contravention. A fine may be imposed every 7 days for a continuing contravention.
17. The SPA specifically addresses rental bylaws.
18. SPA Section 141(1) states that a strata cannot screen tenants or establish screening criteria.
19. Section 141(2) states that a strata may 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** (emphasis added). A rental bylaw must set out the procedure the strata will follow in administering the limit.
20. Section 143 of the SPA states that "a bylaw that prohibits or limits rentals" does not apply to a strata lot until the later of 1 year after an existing tenant has ceased to occupy the strata lot and 1 year after the bylaw is passed.

Use of the Unit – Short-Term Occupancy for Profit

21. On September 19, 2014, the applicants first offered their unit for occupancy on a short-term basis, for a period of two nights.
22. The strata says the applicant was renting the unit for period of less than 30 days from 2015 up until at least July 28, 2017.
23. The strata notes that the City of Vancouver zoning and development bylaw No. 3575 prohibited rentals less than one month in duration.
24. The strata sent bylaw violation warnings letters to the registered owners of the unit on March 23, 2017 and April 10, 2017 (infraction letters) in respect of two separate complaints dated March 22, 2017 and March 29, 2017. The infraction letters informed the owners of a complaint about their unit being used for short term rentals, advertised on “VRBO” for periods of less than one month. They noted the requirement that strata lots may only be rented for a minimum of one month, under bylaw 37(2). No other bylaws were specified in the infraction letters.
25. The March 23, 2017 letter offered the owners the ability to respond to the complaint in writing, within two weeks, or to have an in person hearing. The letter warned that strata council would review the evidence and submissions and make a decision, which could include imposing a fine. The letter provided details of the alleged infraction, which was reported March 22, 2017 regarding unit 711, that the unit was being used “...as a short-term rental unit advertised for a period of less than one (1) month.”
26. The March 23, 2017 letter was copied to the unit’s tenant as well. I find that the March 23, 2017 letter complied with SPA section 135.
27. On March 29, 2017, the strata printed a screen shot of an advertisement for short-term rental of the unit on Airbnb, in which the unit is offered for rent for a two night minimum. The reviews of the unit demonstrate that it had been the subject of short term rental several times by that date.

28. The strata received an undated written response, which the evidence shows was provided before April 25, 2017, from Steven Loukas that said that the unit was being occupied by Gregory Loukas, and was not listed with any "RR&B for rental".
29. On April 10, 2017 a second letter was sent to the unit owners and tenant regarding an infraction described as the unit "being used as a short-term rental unit advertised on AirBnb, for a period of less than one (1) month." Again the owners and tenant were offered an opportunity to be heard in writing or request a hearing, within two weeks of the letter. I find that the April 10, 2017 letter complied with SPA section 135.
30. On May 8, 2017 the strata wrote to Steven Loukas and his spouse Mary Loukas, co-owners of the unit, and provided a copy of an advertisement showing that the unit was being offered for short-term rental on Airbnb.
31. On May 30, 2017, strata council held a meeting and decided that the owners had violated Bylaw 37(2)(a) and imposed a fine of \$200.00.
32. On June 5, 2017, the strata wrote to the owners informing them of the decision and imposing the \$200 fine upon them for violating Bylaw 37(2)(a) which prohibits rentals of less than one month. This fine was imposed for the bylaw violation reported March 29, 2017. I find that the June 5, 2017 letter complies with SPA section 135(2) which requires a written decision be provided to the owner and tenant.
33. On June 6, 2017, the strata wrote to the owners informing them of the decision and imposing the \$200 fine upon them for violating Bylaw 37(2)(a) which prohibits rentals of less than one month. I find that the June 6, 2017 letter complies with SPA section. 135(2) which requires a written decision. This fine was imposed for the bylaw violation reported on March 22, 2017.
34. On June 19, 2017, Gregory Loukas wrote an email to the property managers providing some response to the two infraction letters. His email specified:

(a) the unit was never listed on VRBO;

- (b) the unit had been rented for 2-3 months at a time, as he was working out of town;
 - (c) he was responsible for offering the unit for short-term rental on Airbnb; and
 - (d) he would adjust the advertisement to show a minimum 30 day rental, by the end of the day.
35. On June 20, 2017 the property manager received an email from another strata resident saying she had observed over seven different vehicles from different provinces/states parking in the space allocated to the unit.
 36. On July 28, 2017, the property manager emailed Gregory Loukas and said they could put his matter on the agenda for the next strata council meeting. After some communication about scheduling the meeting, Gregory Loukas wrote back later saying he would waive the right to a hearing and proceed before the tribunal.
 37. On July 28, 2017, a screen shot was taken showing the unit on Airbnb, with a note from Gregory Loukas saying the unit was no longer available because he would be moving back in, and that if it became available again in future, there would be a 30 day minimum stay.
 38. On August 17, 2017, the strata council prepared an agenda for a meeting at which the dispute about short-term rentals of Unit 711 was discussed, including council reviewing Gregory Loukas' email response of June 19, 2017 and the March 29, 2017 Airbnb advertisement screen shot.
 39. A strata lot account statement for the period of February 1, 2017 to July 15, 2017 shows bylaw fine charges of \$200 on each of June 12, June 19, June 26, July 3 and July 10, 2017, for a total of \$1,000.
 40. Weekly bylaw fines of \$200 per week continued to be applied in July and August.
 41. From June 12, 2017 to August 28, 2017, fines of \$200.00 per week were imposed to a total of \$2,400.00.

42. The applicant argues that the unit should be grandfathered to permit short-term rentals despite the bylaw against them, because the unit was purchased before Bylaw 37 was adopted and because pet restriction bylaws are grandfathered.
43. In *HighStreet Accommodations Ltd. v. The Owners, Strata Plan BCS2478*, 2017 BCSC 1039 (HighStreet) the Court found that section 143 protection did not apply to a non-tenant hospitality management and corporate housing company who benefitted financially from contracting to provide furnished short-term accommodation, where that accommodation had other owners or tenants.
44. I find that Bylaw 37 is a rental bylaw that is valid under SPA section 141(2). The applicants must comply with it.
45. I also find that the Airbnb guests were not tenants of the unit. The tenant, Gregory Loukas, was offering the unit to vacation occupants, through a contract with him. He profited from those contracts. The situation is different from HighStreet because Gregory Loukas is the unit's tenant.
46. The applicants rely on SPA section 143 to avoid the application of Bylaw 37.2.
47. Bylaw 37.2 is a rental bylaw. It is not drafted as a use bylaw which may govern the short term use of the unit, including its use by vacation occupants. Gregory Loukas did not rent the unit for less than 30 days, he offered it for vacation use. Therefore, I must order all of the contested fines reversed, because the evidence establishes that the section 135 letters all referred to Bylaw 37.2 only. By operation of SPA section 143, Bylaw 37.2 it will not apply until 1 year after Gregory Loukas leaves. In any event, Bylaw 37.2 restricts rentals, and these short-term occupancies for profit are not rentals.
48. Based on the same analysis, the \$200 fine that was paid by the owners must be refunded immediately, as there was no violation of Bylaw 37.2.
49. Having said that, the evidence establishes that Gregory Loukas used the unit for an illegal purpose, contrary to Bylaw 3. Under what was then City of Vancouver zoning and development bylaw 3575, no person was permitted to use a dwelling

unit for a period of less than one month, unless the unit was part of a hotel or bed and breakfast accommodation. Bylaw 3575 was in effect during March 2017, when Gregory Loukas had short-term occupants in the unit for less than 30 days at a time.

50. Nothing in this decision restricts the respondent from adopting a short term use bylaw restricting vacation or other uses of a strata lot or enforcing its bylaw 3 should a complaint be received.

DECISION AND ORDERS

51. I order that:

- a. any fines imposed on the applicants for violation of Bylaw 37.2 be reversed immediately;
- b. the strata refund the \$200 fine paid by the owners plus prejudgement interest of \$1.99, to the applicant Steven Loukas, within 7 days of this decision; and
- c. the respondent strata pay the applicants for tribunal fees of \$225.00, since the applicants have been successful here.

52. The applicants are entitled to post-judgement interest under the *Court Order Interest Act* as applicable.

53. 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 respondent to ensure that no part of the amount ordered to be paid by the respondent, or any other expenses incurred by the respondent in defending this claim, are allocated to the applicant owner, Steven Loukas.

54. 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.

55. 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.

Julie K. Gibson, Tribunal Member