



# Civil Resolution Tribunal

Date Issued: November 1, 2018

File: ST-2018-000063

Type: Strata

Civil Resolution Tribunal

Indexed as: *Gordon v. The Owners, Strata Plan LMS 2405*, 2018 BCCRT 674

**B E T W E E N :**

Peter Gordon

**APPLICANT**

**A N D :**

The Owners, Strata Plan LMS 2405

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Kate Campbell

## **INTRODUCTION**

1. The applicant, Peter Gordon (owner) owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 2405<sup>1</sup> (strata).
2. The owner says the strata failed to respond to his application for a hardship exemption to the strata's rental restriction bylaw. He seeks to have his application approved, and also seeks an order that all related bylaw violation fines be removed from his strata lot account.
3. The strata says the owner has been renting out his strata lot in contravention of the rental restriction bylaw since May 1, 2016, and did not request a hardship exemption until October 23, 2017, as part of a settlement proposal related to an ongoing BC Supreme Court action. The strata also says the owner failed to provide sufficient information to support a hardship application, so the request was denied.
4. The owner is self-represented. The strata is represented by the strata council president.
5. For the reasons set out below, I find that the owner was not entitled to a hardship exemption to the strata's rental restriction bylaw. I also find the owner is not entitled to an order removing the resulting bylaw violation 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

---

<sup>1</sup> The Dispute Notice identified the respondent as "Strata Corporation LOT 7 of Strata Plan LMS 2405, STRATA". However, subsequent documents from both parties named the respondent as The Owners, Strata Plan LMS 2405. I have therefore amended the style of cause accordingly.

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. Some of the evidence in this dispute amounts to a “he said, he said” scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal’s mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal’s process and found that oral hearings are not necessarily required where credibility is in issue.
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 issues in this dispute are:
  - a. Is the owner entitled to a hardship exemption to the strata’s rental restriction bylaw, under section 144 of the *Strata Property Act* (SPA)?

- b. Is the owner entitled to an order removing rental bylaw violation fines from his strata lot account?

## **BACKGROUND FACTS**

11. I have read all of the evidence provided, but refer only to evidence I find relevant to provide context for my decision.
12. The strata has a bylaw restricting rentals. It says that only 6 strata lots may be rented out at any one time, and that any owner wishing to lease a strata lot must apply in writing to the strata council for permission before entering into a tenancy agreement. The bylaw says that if 6 or more strata lots are being leased at the time of the application, the strata council must refuse permission and place the owner on a waiting list based on the date of the application.
13. Background facts relevant to this dispute are set out in a May 2, 2017 chambers decision of the BC Supreme Court, *Peter Lockhart Gordon v. Strata Plan LMS 2405, Strata Lot 7, Unit 101*, Docket S17527. In that decision, Justice Grauer found that the owner leased his strata lot to tenants beginning May 1, 2016. Justice Grauer noted that in a May 17, 2016 letter to the property manager, the owner admitted that he had not obtained permission from the strata council for this rental.
14. On May 27, 2016, the property manager, at the direction of the strata council, wrote a letter stating that the owner was in contravention of the bylaws, and was subject to a \$500 fine. The letter said the fine would be waived and the owner had 90 days to end the tenancy, or else the fine would be imposed.
15. The owner did not end the tenancy. The strata council offered to hold a hearing on the matter, but the owner did not attend. The strata then began charging fines. The owner took the matter to the BC Supreme Court, resulting in the decision cited above. He argued that the bylaws were unenforceable, that the bylaw fines exceeded the limits in the SPA, and that the strata council had not followed the requirements in section 135 of the SPA for imposing fines. Justice Grauer disagreed with these submissions, and also found that the strata corporation had not been

significantly unfair to him. However, Justice Grauer found that one of the strata council members who voted on the council's October 25, 2016 decision to impose fines on the owner had an interest in the matter under consideration that could give rise to a conflict, and should therefore have abstained from voting. Justice Grauer ordered that the strata's October 25, 2016 decision be set aside, and all fines accruing to the date of the court's decision be cancelled. Justice Grauer said the matter should be remitted to the strata council for a new decision.

16. Justice Grauer wrote as follows in paragraph 30 of his decision:

I also point out what I mentioned during argument, that the obvious solution seems to me for Mr. Gordon to apply for exemption on a hardship basis until the end of his current lease, given that he is locked into a tenancy that he entered into in good faith, believing that he was authorized to do so, and that the fines that will accumulate if reimposed will constitute an obvious hardship.

17. The court's decision was issued on May 2, 2017. On May 30, 2017, the strata council held a hearing on the issue of whether the owner contravened the rental restriction bylaw. The owner attended the hearing. The property manager issued a May 30, 2017 letter on behalf of the strata council stating that the rental bylaw was still being contravened. The letter said a bylaw infraction fine of \$500 would be levied every 7 days, starting on June 1, 2017, as long as the strata lot was rented.

18. On October 23, 2017, the owner wrote to the strata council. He attached a copy of Justice Grauer's decision, and said that the judge suggested that "our difficulty should be resolved by an application being made to put into place the hardship provisions of the Act". The owner said he entered into the lease in good faith, and that he is locked into the lease. He said he had not made a hardship application before because it could be controversial, and because both sides had become locked into their respective positions. The owner enclosed a draft resolution agreement, which said that in order to resolve the litigation between the parties, the

current tenants of the strata lot would be determined to be “hardship tenants” and would be permitted to remain until the lease ended.

19. In an October 24, 2017 letter, the strata’s lawyer said that in order to settle, the strata would require payment of some fines for the duration of the existing lease, and payment of some court costs ordered by Justice Grauer. The letter said it appeared that the owner’s October 23, 2017 letter was not a hardship application under section 144 of the SPA. The lawyer said that if she was wrong about that, the owner should clarify.
20. In an October 26, 2017 letter to the owner, the strata property manager, wrote that the strata corporation rejected the owner’s October 23, 2017 settlement proposal. The letter also acknowledged receipt of the owner’s “hardship letter”, and said the owner needed to send a request for a hardship exemption with information as to why he was in a hardship.
21. The owner sent another letter requesting a hardship exemption, which said he did not require a hearing. This letter is dated October 23, 2017, but I find that date is incorrect because in the text of the letter the owner says he was away (past tense) from November 7, 2017 until November 26, 2017. Also, the strata says the letter was received on November 27, 2017. I therefore find that the correct date of the letter is November 27, 2017.
22. The strata’s property manager sent a letter to the owner on November 27, 2017. The property manager said the owner’s hardship application was denied because he had not provided information on why he was in a position of hardship (such as financials or loss of work), and he did not indicate the length of the requested hardship exemption. The property manager said that any hardship application based on bylaw contravention fines would be denied, and would also require settlement of outstanding fines.

## **FINDINGS AND REASONS**

23. The owner submits that the strata council failed to respond to his hardship applications within the mandatory period set out in section 144(4) of the SPA, so he is entitled to a hardship exemption.
24. 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. An owner's application for a hardship exemption 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 before the strata council.
25. The owner's evidence is somewhat unclear about when he applied for hardship exemptions. In his November 27, 2017 letter, he said he applied for a hardship exemption sometime prior to October 23, 2017. He did not say when that application was submitted, or provide a copy of it. However, in his June 18, 2018 affidavit, the owner said he first applied for a hardship exemption on October 23, 2017. Based on the affidavit, because no copy of such an application was provided in evidence, and because none of the other correspondence mentions an earlier hardship application, I find there was no hardship application before October 23, 2017.
26. Having reviewed the owner's October 23, 2017 letter, I find it does meet the requirements in section 144(2) of the SPA. Specifically, the letter does not state whether the owner wished to have a hearing. This is a mandatory part of any hardship application, and since the owner did not include it, I find he did not submit a valid hardship application on October 23, 2017.
27. The owner provided the tribunal with a copy of an October 31, 2017 letter which states his reasons in support of a hardship exemption. The strata says it never received a copy of this letter, and disputes that it was sent. The owner has not responded to that submission, and did not provide evidence about when or how the letter was sent, or confirmation of receipt.

28. The owner's subsequent correspondence does not support the conclusion that the owner sent the October 31, 2017 letter to the strata. His letters of November 27, 2017 and December 15, 2017 discuss his October 23, 2017 letter and the chronology of correspondence, but do not mention the October 31, 2017 letter. Also, the strata provided a copy of a signed factum prepared by the owner, dated February 6, 2018. In that factum, the owner says that he applied for a hardship exemption in an October 23, 2017 letter, and then sent another letter applying for a hardship exemption on November 27, 2017. The owner did not mention any intervening hardship application, such as a letter dated October 31, 2017. For that reason, and the lack of evidence proving the letter was sent or received, I find the owner did not apply for a hardship exemption on October 31, 2017.
29. I find that the owner did apply for a hardship exemption on November 27, 2017, through the incorrectly dated letter described in paragraph 21 above. I find that the November 27, 2017 letter meets the requirements of section 144(2), as it says he did not require a hearing, and mentioned some reasons for requesting a hardship exemption.
30. Section 144(4)(a)(ii) of the SPA says that where no hearing is requested, the strata corporation must give its decision on a hardship exemption application in writing within 2 weeks after the application is provided. If this does not occur, the hardship exemption is allowed by default.
31. The owner says that the strata failed to respond to his hardship application, or alternatively that the matter was not decided by the full strata council, so his hardship application was effectively approved by default under section 144(4)(a)(ii).
32. As set out above, I find that the owner's first hardship exemption application was sent on November 27, 2017. The strata's property manager responded with a November 27, 2017 letter stating that the owner's hardship application had been denied by the strata council because he had not provided information on why he was in a position of hardship (such as financials or loss of work), and he did not indicate the length of the requested hardship exemption.



33. I find that this letter from the property manager constitutes a decision in writing from the strata corporation within the 2 weeks required under section 144(4)(a)(ii). The letter says the property manager is communicating the strata council's decision. I find that the property manager was writing on behalf of the strata corporation, so the letter meets the requirements of section 144(4). While the owner says the matter should have been discussed at a strata council meeting, that is not a requirement in the Act since the owner did not request a hearing.
34. In *Als v. The Owners, Strata Corporation NW 1067*, 2002 BCSC 134, the BC Supreme Court set out useful guidelines for assessing an application for a hardship exemption under the SPA. The Court said that whether an owner is suffering hardship within the meaning of s. 144 will depend on the particular facts of each application. The burden of proving hardship lies with the applicant, and what may be "hardship" to one owner may not be hardship to another. The court adopted the *Shorter Oxford English Dictionary* definition of "hardship", meaning "hardness of fate or circumstance; severe toil or suffering; extreme privation".
35. The owner says that his hardship application should have been decided at a strata council meeting. However, I find that based on the circumstances of this case, such a meeting was not necessary. The strata says the response in the November 27, 2017 letter had the full authority of the strata council and accurately reflected its decision to deny the hardship exemption application because the owner had not provided information on why he was applying for a hardship exemption, such as financial or income information. In his October 26, 2017 letter, the property manager said that if the owner wanted to apply for a hardship exemption, he had to provide information about why he was in a hardship. The owner's November 27, 2017 letter does not contain any such information. For these reasons, I find it was reasonable in the circumstances for the strata council to convey its decision through a November 27, 2017 letter, particularly since it had no new information about the owner's claimed hardship to consider.
36. I find that the owner did not provide the strata council, or this tribunal, sufficient evidence to support his hardship exemption. He did not provide any financial

information explaining why it was necessary for him to rent out his strata lot, in the context of his overall financial situation.

37. Based on the evidence before me, I find the owner did not meet the burden of proving hardness of fate or circumstance, severe toil or suffering, or extreme privation. While the fines imposed by the strata were high, the owner provided no contextual information about how much rent he was collecting, or about his overall financial assets. As stated in paragraph 23 of *A/s*, the expense of a strata lot for a very rich owner would not create hardship but the expense without corresponding rental income might create hardship for an owner of modest means.
38. Also, while the owner said his tenants had a lease, he did not provide any evidence about why he could not terminate the lease, or how much that termination would cost. I note that under section 144(1) of the SPA, the question to be answered is whether the strata's rental restriction bylaw causes a hardship to the owner. The owner effectively says that the bylaw is a hardship because of the ongoing lease with his tenants, but he has not provided any evidence about the terms of that lease, or whether he has attempted to negotiate different terms with the tenants.
39. The owner also says that another owner was renting out a strata lot as a short term rental, which supports his entitlement to a hardship exemption. I do not agree. First, there is no evidence before me about the short term rental. Moreover, the test for a hardship exemption is based solely on the applicant owner's circumstances, and not the actions of other owners.
40. Finally, I note that Justice Grauer's comments about the hardship exemption were *obiter dicta*, and are not binding on the strata or this tribunal. Moreover, the owner has not explained why he did not even raise the matter of a hardship exemption with the strata for almost 6 months after hearing Justice Grauer's oral reasons. This failure to act while fines accrued does not support the conclusion that the owner considered the fines themselves to be a hardship.
41. For all of these reasons, I find the owner was not entitled to a hardship exemption to the strata's rental restriction bylaw.

### ***Bylaw Violation Fines***

42. The strata imposed fines of \$22,000 on the owner for breaching the rental restriction bylaw. Since this dispute began, the owner sold his strata lot, so the \$22,000 is currently held in trust pending this decision.
43. The owner seeks an order removing the fines from the strata lot account. I find he is not entitled to that order. First, I find the strata met the requirements set out in section 135 of the SPA before imposing the fines. The owner has not submitted otherwise.
44. Second, the fines began to accrue on June 1, 2017, and he did not apply for a hardship exemption until November 27, 2017. Therefore all fines before that date were legitimately incurred.
45. Third, as explained above, I find that the owner was not entitled to a hardship exemption. Therefore, he was subject to and liable for fines for the ongoing rental of his strata lot.
46. Although the strata did not file a counterclaim, for the purposes of clarity and finality I order that the bylaw infraction fines levied against the owner be paid out of the funds held in trust.
47. The owner's claims are dismissed.

### ***Summary***

48. The owner's claims are dismissed. He was not entitled to a hardship exemption to the strata's rental restriction bylaw, and he is not entitled to an order removing bylaw infraction fines from his strata lot account.
49. 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. As the owner was not successful in this dispute, I find he is not entitled to reimbursement.

## DECISION AND ORDERS

50. I order that the bylaw infraction fines levied against the owner be paid out of the funds held in trust.
51. 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.
52. 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.

---

Kate Campbell, Tribunal Member