



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 1222 v. Ibrahim et al*, 2018 BCCRT 760

B E T W E E N :

The Owners, Strata Plan LMS 1222

APPLICANT

A N D :

Ali Ibrahim and 0928234 B.C. LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. The respondent, Ali Ibrahim (owner), is one of the owners of a strata lot (unit) in the applicant strata corporation, The Owners, Strata Plan LMS 1222 (strata). The respondent, 0928234 B.C. LTD. (corporate respondent), holds a mortgage registered against the owner's property.

2. This dispute involves the rental of the owner's unit, which the strata says is occurring in contravention of the strata's bylaws, and the payment of the associated fines.
3. The applicant is represented by a council member. The owner is self-represented. The corporate respondent is represented by an individual identified as an investor in the corporation.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.
7. 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

8. The issues in this dispute are:
 - a. whether there should be an order that the respondents cease renting the unit;
 - b. whether the respondents should pay the fines imposed by the strata; and
 - c. whether the strata is entitled to the reimbursement of fees and dispute-related expenses.

BACKGROUND AND EVIDENCE

9. It is apparent from the submissions that other issues have arisen between the strata and owner, including amounts charged to the owner by the strata in the past, the payment of a special levy and the use of clubhouse facilities. In addition, the owner has commenced a civil action against the strata in the British Columbia Supreme Court, which appears to include allegations of violations of his human rights. These issues are not before me. I confine my analysis to the issues identified in the Dispute Notice.
10. The owner purchased the unit as a joint owner with a spouse, from whom he has since separated. Issues related to the separation have affected his ability to sell the unit. In addition, the owner experienced a number of personal stressors and reported medical issues. In 2013, the strata granted the owner an exemption to the rental restriction for a 12-month period on the basis of hardship. The strata extended the exemption for a further six months, with the rental period expiring on March 31, 2015. The strata reported that the owner continued to rent the unit until the fall of 2015.
11. Further requests for permission to rent the unit were made and denied. In a hearing on May 17, 2016, the owner was given an opportunity to speak to his request for rental permission on the basis of hardship. This request was denied by the strata in a May 19, 2016 letter, in which the property manager for the strata noted that the owner's spouse had advised the strata that she opposed the rental of the property.

In addition, the owner had not supplied evidence regarding his current medical or financial circumstances, or to show that the unit was at risk of foreclosure.

12. The strata says that the owner continued to rent the unit without approval. It says it has received a number of complaints regarding the tenants in the unit, including about noise and the presence of marijuana smoke. The strata provided photographs of a number of different vehicles (some of which displaying out-of-province licence plates) that were said to have been parked outside of the unit in 2016 and 2017. The strata has assessed fines against the owner which it says have not been paid.
13. The owner requested a hearing about some of the bylaw infractions, but asked that the originally scheduled hearing on June 28, 2016 be adjourned. According to a July 5, 2016 letter, the strata rescheduled the meeting to July 26, 2016, but the owner did not attend the meeting. It would appear that the owner commenced a civil action against the strata corporation around this time.
14. The strata requests that I order the respondents to cease renting the unit and to pay the assessed fines of \$6,025.00, in addition to interest, tribunal fees, and dispute-related expenses. The strata also requested that the owner end his civil claim against the strata corporation. However, I am unable to make any orders in this regard.
15. The owner submits that he should be granted an exemption to the rental restrictions, and provided evidence regarding his personal and financial circumstances to support this position. The owner also submits that it is the corporate respondent who is renting out the unit, and that he should not bear responsibility for the actions of his mortgagor.
16. The corporate respondent submits that it, and not the owner, is renting the property. According to the corporate respondent, the owner has defaulted on his mortgage, and it is exercising its rights pursuant to the mortgage and provided to it by an order issued by the Supreme Court of British Columbia.

17. Neither the owner nor the corporate respondent filed a counterclaim to challenge the strata's decision to deny an exemption to the rental restriction. Accordingly, I decline to consider whether such an exemption should be granted.

ANALYSIS

Rental of the Unit

18. Section 141 of the *Strata Property Act* (SPA) provides that a strata corporation may adopt a bylaw that prohibits the rental of residential strata lots or limits the number of residential strata lots that may be rented.

19. The owner's previous exemption to the rental restrictions expired on March 31, 2015. The unauthorized rentals that form the subject of dispute are said to have commenced in April of 2016 and continued into 2018. Two versions of the strata's bylaws apply to this time frame.

20. In 2001, the strata amended its bylaws. Pertinent to this dispute is Section 2, Use of Property. Bylaw 2.3 provides that a strata lot shall not be used for commercial or professional purposes. Bylaw 2.4 sets out that a strata lot shall be used exclusively as a private dwelling home, and bylaw 2.5 states that the strata lot shall not be used as a motel or hotel accommodation. Fines of \$200 are associated with the breach of these bylaws.

21. The 2001 bylaws also contain, at bylaw 32, restrictions on rentals. Bylaw 32.1 prohibits the rental of strata lots. Bylaw 32.5 provides that only a strata lot for which the strata has issued a lease permit may be leased. Bylaw 32.9 states that any owner who leases a strata lot without a lease permit or continues to lease a strata lot after the cancellation of a lease permit, will be liable to pay a fine of \$500 for each contravention of the bylaw.

22. On April 24, 2018, the strata approved a new set of bylaws. Bylaw 44.1 states that no strata lots may be rented. According to bylaw 44.4, when an owner rents a strata lot in contravention of bylaw 44.1, the owner will be subject to a fine of \$500. Bylaw

45.2 sets out that a strata lot must not be used for short-term accommodation purposes.

23. Bylaw 4 addresses the use of property, and provides at 4.3 that a resident must not use the strata lot except as a private dwelling home. Fines are set out in bylaw 25, which states that the strata corporation may fine an owner or tenant up to \$200 for each contravention of a bylaw. Bylaw 26 provides that a fine may be imposed every 7 days if an activity or lack of activity that constitutes a contravention of a bylaw continues, without interruption, for longer than 7 days.
24. Bylaw 4.4. allows for a result to apply for an exemption from bylaw 4.3 on the basis of hardship. Further, bylaw 48.1 allows the strata to grant an exemption from the operation of a bylaw or rule in order to accommodate a disability.
25. No matter which version of the bylaws was in effect, the owner required permission from the strata in order to rent out his unit, and it would not have been permissible for the unit to be rented as a short-term rental. There is no dispute that the unit has been rented without the strata's permission and evidence suggests that at least some of the tenancies were short-term in nature.
26. Through its property manager, the strata has issued bylaw infraction letters to the owner on the following dates: April 8, 2016; June 9, 2016; June 22, 2016; July 5, 2016; July 6, 2016; July 20, 2016; August 22, 2016; August 26, 2016; September 14, 2016; October 18, 2016; January 11, 2017; April 12, 2017; April 25, 2017; May 9, 2017; May 30, 2017; June 23, 2017; March 23, 2018; May 10, 2018; and May 24, 2018. Each of the allegations is supported by written particulars, and offered the owner the opportunity to respond to in writing or request a hearing.
27. The owner does not dispute that the unit was being rented as alleged by the strata on any of the dates listed in the above infraction notices. The owner and the corporate respondent admit that the unit has been rented by the corporate respondent. In a July 27, 2018 letter to the strata's property manager, the corporate respondent indicated that, since March of 2018 when a listing was removed from a

short-term rental site, “the occupant of the property is a reputable family comprised of a couple and a young child”.

28. The corporate respondent has explained that it is asserting its right to assignment of rents contained in the mortgage. It says that this position is supported by a series of orders from the Supreme Court of British Columbia.
29. I have reviewed two orders entered on November 18, 2011 and November 30, 2011. These orders dealt with an application for approval of sale of the unit; the corporate respondent is not a party to that action. The orders do not include any terms regarding the application of the strata’s bylaws.
30. A third order entered on February 17, 2012 dealt with refinancing, and allowed that a mortgage in favour of the corporate respondent be registered against the owner’s unit. However, as with the previous orders, the Court did not make an order regarding the strata’s bylaws.
31. I am not satisfied that the evidence supports the assertion that the mortgage or any court order would permit the corporate respondent to supersede any of the strata’s bylaws.
32. Further, I am not satisfied that the evidence establishes that it is the corporate respondent alone who is responsible for the ongoing rental of the unit. The strata provided a copy of an advertisement from a short-term rental website that shows the unit as being available to rent for a minimum stay of 2 nights. Although the advertisement is not dated, it contains two reviews from tenants from November 2015 and February 2016. The host of the unit is identified as “BC Investment”, and correspondence submitted by the corporate respondent indicates that it also does business under the name of “BC Investment & Realty”. One tenant review identified the host as “Ali”, which is the owner’s first name. The “Your Host” section of the advertisement states that the unit “was our family home and have great memories associated with this property”. This is suggestive of the owner’s involvement with the listing and is not consistent with the evidence of the corporate respondent that it alone is renting the property.

33. Whatever the relationship between the owner and the corporate respondent may be, I am satisfied that the owner is involved to some extent with the rental of the unit. I am also satisfied that the unit has been rented without the necessary authorizations from the strata. At least some of these rentals have been short-term in nature. I find that the respondents' conduct contravenes both the bylaws regarding rentals and the use of the strata lot.
34. The strata is entitled to an order that the respondents comply with the strata's bylaws.

Payment of Fines

35. Section 129 of the SPA allows a strata corporation to impose fines in order to enforce a bylaw or a rule. Further, section 130 provides that a strata corporation may fine an owner if a bylaw or rule is contravened by the owner, a person who is visiting the owner or was admitted to the premises by the owner for social, business or family reasons or any other reason, and an occupant, if the strata lot is not rented by the owner to a tenant.
36. Section 135 of the SPA explains that a strata corporation must not impose a fine against a person against a contravention of a bylaw or rule unless the strata corporation has received a complaint about the contravention, given the owner the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner. Once a strata corporation has complied with this section in contravention of a bylaw or rule, it may impose a fine or other penalty for a continuing contravention of that bylaw without further compliance with this section of the SPA.
37. As discussed above, the 2011 and 2018 versions of the bylaws provide for \$200 fines for contraventions of the bylaws regarding the use of property and \$500 for contraventions of the rental bylaws. The bylaws do not contemplate the assessment of fines against a party who is not an owner or a tenant.

38. As noted above, the parties acknowledge that the unit is being rented out. Neither the corporate respondent nor the owner disputed the accuracy of the contraventions identified or the fines assessed by the strata (which amounted to \$6,025.00 as of September 9, 2017). Instead, the owner says that he cannot be held responsible for the actions of his mortgagor, and should not bear the financial consequences. However, as noted above, I have determined that the owner is involved, at least to some extent, with the rental of the property.
39. In accordance with the applicable 2011 and 2018 bylaws, the owner is responsible for the fines claimed by the strata in the Dispute Notice which, as of September 9, 2017, amounted to \$6,025, plus pre-judgment interest under the *Court Order Interest Act* (COIA).

TRIBUNAL FEES AND EXPENSES

40. 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 in this case to deviate from the general rule. I therefore order the respondents to reimburse the strata for tribunal fees of \$225.00 and dispute-related expenses of \$342.30, for a total of \$567.30.
41. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner, unless the tribunal orders otherwise.

ORDER

42. I order that:
- a. the respondents immediately comply with the strata's bylaws and cease renting or allowing the strata lot to be rented using a short-term rental site or in any other way that is contrary to the strata's bylaws.

- b. within 30 days of the date of this order, the owner must pay the strata the amount of \$6,109.20, which includes fines of \$6,025.00 and pre-judgment interest of \$84.20.
 - c. within 30 days of the date of this order, the respondents must pay the strata the amount of \$567.30, which includes tribunal fees of \$225.00 and expenses of \$342.30.
43. The strata is also entitled to post judgement interest under the COIA.
44. 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.
45. 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.

Lynn Scrivener, Tribunal Member