Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 724 v. Smith et al*, 2018 BCCRT 765

B E T W E E N :

The Owners, Strata Plan LMS 724

APPLICANT

A N D :

David Bruce Smith and Eva Havran-Smith

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. The applicant, The Owners, Strata Plan LMS 724 (strata), is a 3-story residential strata in Langley. The respondents, David Bruce Smith and Eva Havran-Smith, are the owners of strata lot 14.

2. In this dispute, the strata alleges that the respondents are in breach of a bylaw prohibiting rentals. The respondents state that they have a permanent exemption from the rental bylaw.

3. The strata seeks an order that the respondents immediately cease renting the respondents' strata lot and an order that they pay fines totalling $4,500 that the strata has imposed for breaching the bylaw prohibiting rentals.

4. The respondents are self-represented. The strata is represented by the current strata council president.

JURISDICTION AND PROCEDURE

5. 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.

6. 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.

7. 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.

8. 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

9. The issues in this dispute are:

    a. Did the strata grant a permanent exemption to the rental bylaw to the respondents?

    b. If not, did the strata wait too long to enforce the rental bylaw?

BACKGROUND AND EVIDENCE

10. While I have reviewed all of the evidence and submissions, I only refer to what is necessary to give context to and explain my decision.

11. The strata is made up of 22 strata lots. The respondents have owned their strata lot since 1993, when the strata was first built. Initially, there were no restrictions on the number of strata lots that could be rented.

12. On November 20, 2001, the strata passed a resolution in accordance with section 128 of the *Strata Property Act* (SPA) restricting the number of rentals in the strata to zero, effectively prohibiting rentals (rental bylaw). The bylaw amendment was filed with the Land Title Office on January 17, 2002.

13. On June 30, 2003, the respondents and other owners asked for an extension on the application of the rental bylaw because ongoing repairs in the building made it difficult to sell the units. The strata council agreed to the extensions.

14. On July 26, 2004, the strata council sent a letter to the respondents that the extension had expired. The strata gave the respondents a further 6 months to comply with the rental bylaw.

15. On September 22, 2004, the respondents wrote to the strata seeking an exemption from the rental bylaw on the grounds of hardship under section 144 of the SPA. The respondents delivered the letter in person at the strata council meeting held on September 22, 2004. In the letter, the respondents requested a hearing.

16. The parties agree that the respondents did not have a hearing at the September 22, 2004 strata council meeting.

17. In a letter dated September 28, 2004 (decision letter), the strata informed the respondents that they were seeking a definition of the term “hardship” to properly assess their application. Without deciding whether the respondents had made out a case for hardship, the strata stated that they would grant the respondents an exemption from the rental bylaw to January 31, 2006.

18. The respondents state that the decision letter was postmarked October 4, 2004 and received on October 8, 2004.

19. As I will discuss later in this decision, the date that the strata mailed the decision letter is important.

20. The respondents provided a copy of the envelope that they say the decision letter came in as an attachment to the decision letter. There is no postmark on the copy before me, which is poor quality.

21. However, the strata does not dispute that the respondents have an envelope from the strata postmarked October 4, 2004. The strata submits that the envelope could have contained other correspondence from the strata. This submission amounts to little more than speculation. This is not intended as an insult to the current strata council president; the fact is that none of the people who would have first-hand knowledge of the events of September 2004 are still on strata council.

22. The respondents apparently kept the envelopes of all correspondence they received from the strata. Several envelopes are in evidence. I conclude that the respondents are diligent record-keepers. I also note that the respondents have maintained that the decision letter was postmarked October 4, 2004 since this dispute began. I accept on a balance of probabilities that the strata mailed the decision letter by the strata on October 4, 2004.

23. Both parties provided several letters exchanged between the parties and their respective lawyers between 2004 and 2006. The respondents took the position that

the strata had not met its procedural obligations under section 144 of the SPA and had therefore granted a permanent exemption by default. The strata took the position that it had complied with the SPA and that the respondents were only authorized to rent out their strata lot until January 31, 2006. Their positions at that time essentially reflect the positions they each take in this dispute.

24. In September 2006, the respondents sent a letter to the strata refusing any further communication regarding the rental exemption.

25. Between September 2006 and February 2018, there was no communication between the strata and the respondents regarding the rental bylaw. The strata took no steps to enforce the rental bylaw. The strata was aware that the respondents continued to rent out their strata lot.

26. The strata began imposing fines on the respondents on February 21, 2018. As of August 31, 2018, the accrued fines are $8,500. Presumably, the strata has continued to impose fines pending the outcome of this decision.

ANALYSIS

Did the strata grant a permanent exemption to the rental bylaw to the respondents?

27. This aspect of this dispute turns on the proper interpretation of section 144 of the SPA, which sets out the process for an owner to apply for an exemption from a bylaw restricting or prohibiting rentals. Section 144 provides for automatic exemptions if a strata does not follow the proper procedure.

28. Section 144 of the SPA was amended on December 11, 2009. Because the relevant events in this dispute occurred in 2004, the former provisions of the SPA apply. All references to section 144 of the SPA in this dispute are therefore references to section 144 of the SPA as it existed prior to December 11, 2009.

29. Section 144(2) of the SPA stated that an owner may apply for an exemption to a bylaw restricting or prohibiting bylaws. An application must be in writing and must

include the reason the owner thinks they should get an exemption. An owner may request a hearing.

30. Section 144(3) of the SPA required the strata to hold a hearing within 3 weeks of an owner's application, if the owner requested a hearing.

31. Section 144(4) of the SPA stated that the strata must give a written decision to an owner within 1 week of a hearing if there is a hearing or within 2 weeks of the application if the owner did not request a hearing. Section 144(4) of the SPA also stated that if the strata failed to give a written decision within those timeframes, the owner automatically received an exemption.

32. Section 144(5) permitted the strata to grant an exemption for a limited time, which is what the strata sought to do with the decision letter.

33. The SPA did not specifically grant an automatic exemption if the strata failed to hold a requested hearing. When the legislature amended section 144 of the SPA in 2009, it added an automatic exemption if a strata fails to hold a hearing within 3 weeks of an owner's request. However, section 37(2) of the *Interpretation Act* states that an amendment cannot be construed as a declaration that the previous version of an enactment is different than its amended version. Therefore, the addition of the automatic exemption for failing to hold a timely hearing in the amended version of section 144 of the SPA cannot be used to conclude that previous version of section 144 of the SPA did not contain an automatic exemption.

34. Does the lack of an explicit exemption for failing to hold a hearing mean that a strata could leave an owner in limbo by ignoring a request for a hearing? Section 8 of the *Interpretation Act* states that an enactment must be given a liberal interpretation that best ensures that it attains its goals. The clear goal of section 144 of the SPA is to ensure that owners get a prompt outcome when they apply for an exemption to a rental bylaw, either by the strata making a decision or by default. It would be inconsistent with that purpose if a strata could indefinitely ignore a request for a hearing without consequence.

35. Therefore, I find that section 144(4) of the SPA granted an automatic exemption if a strata did not hold a hearing within the mandated time of 3 weeks from an owners' request. It is undisputed that the strata did not hold a hearing despite the respondents' request.

36. If the above interpretation is wrong, I find that by failing to hold a hearing, the strata was subject to the requirement in section 144(4)(b) to give a decision in writing within 2 weeks after the respondents made the application. I find that the strata treated the respondents' application as if the respondent had not requested a hearing. Having treated it that way, the strata must be subject to the requirement to provide a written decision within 2 weeks of the respondents' application.

37. The respondents led evidence about when they received the decision letter. However, section 61(3) of the SPA states that when a strata mails a document to an owner, the owner is conclusively deemed to receive it 4 days later. The respondents are deemed to have received the decision letter on October 8, 2004, which by coincidence is the day they say they received it.

38. Therefore, the strata did not give its decision in writing to the respondents within 2 weeks of the date the respondents made their application.

39. The deadlines in section 144 of the SPA are strict. In *The Owners, Strata Corporation LMS3442 v. Storozuk*, 2014 BCSC 1507, the strata missed the deadline to provide a written decision by 1 day. The strata had already verbally told the owner the outcome of the hearing, so there was no prejudice to the owner in the delay. In fact, the Court acknowledged that the result may seem unjust. However, the Court found that the Court had no discretion to provide relief when the strata misses a deadline. The Court granted the exemption.

40. The strata makes 2 arguments that it complied with section 144 of the SPA.

41. First, the strata argues that its written response satisfied its obligation to hold a hearing. I disagree.

42. The strata's argument is analogous to the position taken by the strata in *Storozuk*. Essentially, the strata says that there was no point holding a hearing because the strata had already given a written decision to the respondents, granting a time-limited exemption. What would have been the point of a hearing, if the strata had already made its decision? As in *Storozuk*, the strata's position makes some practical sense, but the reasoning in *Storozuk* is binding on me. Practicality does not trump the mandatory terms of section 144 of the SPA. The respondents requested a hearing, and the strata did not hold one.

43. Second, the strata argues that because the respondents expected a hearing on September 22, 2004 and did not propose any alternative dates, the respondents did not expect to have a hearing. I find that the respondents' expectations are irrelevant. The respondents' request for a hearing was clear, and it was the strata's obligation to ensure that a hearing occurred as required under the SPA.

44. I conclude that because the strata failed to hold a hearing within 3 weeks of the respondents' request and because the strata failed to provide a written decision within 2 weeks of the respondents' application, the respondents were granted the exemption they requested in their September 22, 2004 letter.

45. As for the duration of the exemption, the strata argues that the respondents did not explicitly request a permanent exemption from the rental bylaw. The strata therefore does not believe that the respondents should receive a permanent exemption by default. While it is true that the respondents' application does not use the word "permanent" or "indefinite", I fail to see how their application could be interpreted any other way. I find that the respondents applied for a permanent exemption.

46. Accordingly, I find that the respondents are entitled to a permanent exemption from the rental bylaw. The exemption will continue for as long as the respondents, or one of them, owns their strata lot.

47. It follows that the strata must reverse all fines levied against the respondents for any alleged breach of the rental bylaw.

48. The parties each made submissions regarding the effect of the 11 year gap between the last correspondence between the parties regarding the rental bylaw and the strata's steps to enforce it. Because of my conclusion, I need not address these arguments.

49. I dismiss the strata's dispute.

TRIBUNAL FEES AND EXPENSES

50. 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. The respondents have been successful in this dispute but did not pay tribunal fees.

51. However, the respondents claim their legal fees of $998.67.

52. Tribunal rule 132 states that the tribunal will not order reimbursement for legal fees except in extraordinary circumstances. I find that there is nothing extraordinary about this dispute. I dismiss the respondents' claim for reimbursement for legal fees.

53. The respondents did not seek reimbursement for any other dispute-related expenses.

54. Because the strata was not successful, I dismiss its claim for tribunal fees and dispute-related expenses.

55. 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.

DECISION AND ORDERS

56. I order the strata's claims, and therefore its dispute, dismissed.

57. I order the strata to immediately reverse all fines against the respondents' strata lot for breaching the rental bylaw.

58. I order that the respondents are exempt from the rental bylaw for as long as the respondents, or one of them, owns their strata lot.

59. 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.

Eric Regehr, Tribunal Member