



# Civil Resolution Tribunal

Date Issued: December 28, 2018

File: ST-2017-004237

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR 939 v. Saadatmandi et al*, 2018 BCCRT 921

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

The Owners, Strata Plan VR 939

**APPLICANT**

**A N D :**

Bahram Saadatmandi and Katayoun Saeedi

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Maureen E. Baird, QC

## INTRODUCTION

1. The applicant, The Owners, Strata Plan VR939 (strata) is a strata corporation. The strata is a small building comprised of 8 strata lots, four on each of two floors. The strata wants an order that the owners pay outstanding fines of \$12,000.00 and reimburse it for tribunal fees of \$225.00.

2. The respondents Bahram Saadatmandi and Katayoun Saeedi (owners) say that the fines were wrongfully imposed and should be cancelled.
3. The strata is represented by a member of the strata council (council). The owners are self-represented.

## **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.

## **ISSUE**

8. The sole issue in this dispute is:

- a. Are the fines assessed against the owners' strata lot valid and therefore enforceable?

## **BACKGROUND AND EVIDENCE**

9. I have read all of the evidence and submissions provided, but refer only to the information I find relevant to provide context for my decision.
10. Since October, 2003 the strata's bylaws have prohibited rental of strata lots. The owners do not challenge the validity of the strata rental bylaw.
11. The owners purchased strata lot 2 in late May or early June, 2016. The background to that purchase is relevant to the narrative and so I will discuss it briefly.
12. Mr. Saadatmandi, the primary respondent is a property developer. He was engaged in the development of a property across the street from the subject strata complex. In late 2015 discussions and meetings occurred between Mr. Saadatmandi and various owners in the strata complex about the potential purchase by him or a related company of all of the strata lots in the complex for the purpose of a redevelopment. It appears that most if not all of the owners were interested and prepared to at least find out what they would be offered for their strata lots. The strata complex was built over 30 years ago and there were some concerns about the potential need for expensive repairs in the future.
13. During early 2016 discussions occurred between owners and Mr. Saadatmandi about his purchase of the strata lots. Mr. Saadatmandi was clear that his interest was in acquiring all of the strata lots for the purpose of redevelopment. From an early stage of the discussions with the strata owners it was made clear that Mr. Saadatmandi would require that that rentals be allowed during the period that any development was in the planning or pre-build stage. He was aware of the strata bylaw prohibiting rentals.
14. In March 2016, Mr. Saadatmandi purchased strata lot 8, in the name of Longine Properties Ltd. Strata Lot 1 was purchased also by Longine Properties Ltd in April,

2016. Strata lot 2 was purchased by the owners in May or June 2016. Strata lot 2 is a one bedroom, one bathroom unit of approximately 657 square feet.

15. In April, 2016 Mr. Saadatmandi delivered to the strata documentation that was intended to change the rental bylaw to allow rentals with a request that it be signed. This was not signed.
16. At some time between May 12 and May 16, 2016, Mr. Saadatmandi asked council to add the issue of amending the rental bylaw to the agenda for the Annual General Meeting (AGM) of the strata scheduled for May 25, 2016. At the AGM, the resolution proposed by Mr. Saadatmandi to amend the rental bylaw was discussed. Some owners expressed concerns and in the end no formal vote was taken.
17. A Special General Meeting was held on June 5, 2016 at which time the resolution to amend the rental bylaw was defeated. Three owners voted against the resolution and therefore it did not achieve the required  $\frac{3}{4}$  approval.
18. In early July 2016, strata owners observed what appeared to be a family continually coming and going from strata lot 2. The family consisted of an adult man, 2 adult women, one of whom was pregnant at the time and 2 young boys. On July 11, 2016 strata owners observed a truck in the parking lot and 2 men struggling to move a large couch into the building. That couch was subsequently identified as being in strata lot 2.
19. On July 11, 2016, one of the strata owners approached one of the adult women and asked if she was living in strata lot 2. The woman responded that she was. She described herself as family.
20. The council wrote to Mr. Saadatmandi on July 12, 2016 about the occupancy of strata lot 2. Council told Mr. Saadatmandi that the family in his strata lot must meet the *Strata Property Act* (SPA) definition of “family” in order to be in compliance with the strata rental bylaw. Further, he was advised of the necessity of delivering a Form K within 2 weeks of occupancy. Mr. Saadatmandi was advised the he must

also provide the council with adequate proof of family relationship. In response, Mr. Saadatmandi requested and was provided with the bylaws of the strata.

21. On July 20, 2016, a member of council wrote to Mr. Saadatmandi advising him that one of the occupants of strata lot 2 had described himself to her as Mr. Saadatmandi's cousin. Mr. Saadatmandi responded by saying that his son, Sina, was living in the strata lot with his cousins.
22. By letter dated July 26, 2016, the council wrote to Mr. Saadatmandi detailing its concerns. The council had concerns about the occupancy all 3 strata lots owed by Mr. Saadatmandi or his related company. With respect to strata lot 2 which is the only strata lot involved in this dispute, the council noted that it had not received either a Form K or any proof of family relationship as requested. The council described its concerns about security arising from not knowing the identity of occupants nor who possessed keys. The council also detailed complaints from owners about disruptive and inappropriate behaviour by the occupants of strata lot 2 which had been observed by owners.
23. On July 27, 2016, council wrote to Mr. Saadatmandi advising him that it found that the occupancy of strata lot 2 was in contravention of the strata rental restriction bylaw and imposed a fine of \$500.00 as provided by the strata's bylaws for this violation. The letter stated that it required proof in the form of an affidavit that Mr. Saadatmandi's son was living in strata lot 2. Shortly afterward, each of the strata and Mr. Saadatmandi retained legal counsel.
24. On August 9, 2016, legal counsel for the strata wrote a notice letter to legal counsel for the owners relating to a complaint that strata lot 2 was leased contrary to the strata bylaws. The letter advised that council was considering imposing a \$500.00 fine for the bylaw violation. The owners took the position that the strata could not prohibit the owners from renting the strata lot because they had a reasonable expectation that they would be able to rent because, they said, no opposition to rental of units purchased by the owners was voiced by the strata during the negotiations earlier in the year for purchase of various strata lots. The letter also

said that the strata's enforcement of its bylaw was unfair and repeated that strata lot 2 was being occupied "primarily" by Mr. Saadatmandi's son.

25. The strata considered the position of Mr. Saadatmandi. It noted that no one on council had observed a second adult male living in strata lot 2. It imposed the \$500.00 fine on the strata lot and stated that the fine would continue to be imposed every 14 days until the strata was provided with adequate evidence that the bylaw was no longer being contravened.
26. The minutes of the October 2, 2016 council meeting note that the evidence requested from Mr. Saadatmandi proving that his son was occupying strata lot 2 had not been received. There is no evidence that Mr. Saadatmandi ever provided the required evidence to the council. The fines continued.
27. The minutes of the August 27 and 29, 2017 council meeting record that strata lot 2 had been sold and that the disputed fines were being held in trust pending a verdict from this tribunal. It is common ground that no strata fees are outstanding and that the total amount of fines for violation of the strata rental prohibition bylaw is \$12,000.00.
28. The strata provided affidavits from a number of people who either were or had been owners in the complex during the material time period. These affidavits say that because the strata complex is so small that they are easily able to observe the comings and goings of owners or occupants. The affidavits are consistent in stating that no one had seen Mr. Saadatmandi's son enter or exit strata lot 2 during the period that strata lot was occupied. The treasurer of the council said that he did see Mr. Saadatmandi's son when he delivered monthly maintenance cheques but that on such occasions he did not come from or return to strata lot 2. Another owner said that during the relevant time she never saw Mr. Saadatmandi's son in the hallway, at the mailbox or in the parking lot.
29. There was also evidence that there had never been any agreement that Mr. Saadatmandi could rent strata lots purchased during a redevelopment stage. One owner said that at the initial meeting between Mr. Saadatmandi and owners at

which the need for rentals during the development stage was raised, no opposition was raised but also no agreement given. This deponent also states that at a meeting between her and Mr. Saadatmandi on February 5, 2016 the issue of the rental restriction bylaw was raised by him. She deposes that she told him at that time she did not want rentals in the building.

30. Mr. Saadatmandi provided a statement to the tribunal. He described the interactions he had with the owners of this 8 strata lot complex toward purchasing all of the units for the purpose of redevelopment. He says that the owners did not oppose his approach to the rental bylaw at the original meeting in December 2015, which was that the bylaw either be amended or not enforced. He says that only when he was unable to purchase some of the strata lots did the owners complain about his son, Sina, and the enforcement of the rental bylaw. He says that his son was living in strata lot 2. He says that he did not have a lease agreement with anyone for strata lot 2 or collect any rent from tenants.
31. Sina Saadatmandi also provided a statement. He says that he has lived in strata lot 2 from the time that it was purchased by Mr. Saadatmandi and his wife until it was sold. He said that from time to time his cousins who were recent immigrants to Canada stayed with him in the unit. The cousins were his guests, did not lease or rent the strata lot and did not pay rent.
32. A series of BC Hydro statements commencing at October 27, 2016 addressed to Sina Saadatmandi at the address for strata lot 2 were provided as proof that Sina Saadatmandi was living at strata lot 2.
33. No affidavit was provided with the information as requested by the strata.
34. There was no evidence from the persons described as cousins of the owners.

## **POSITION OF THE PARTIES**

35. The strata says that it required proof in the form of an affidavit that strata lot 2 was being occupied by a person who met the definition of "family member" as set out in

the SPA. It never received the required proof of family relationship and therefore the fines imposed for violation of the bylaw prohibiting rentals are valid and enforceable. It also says that the evidence provided by the owners of strata lot 2 are not proof that Sina Saadatmandi was occupying the strata lot. It says that it is not believable that Sina Saadatmandi was living in this one bedroom, one bathroom suite with 2 other adults, 2 children and a newborn baby.

36. The strata also says that the evidence does not support any reasonable expectation by the owners that the rental prohibition bylaw would be waived, not enforced or amended. Similarly, it says that the evidence does not support the owner's position that the owners were treated significantly unfairly.
37. The owners say that the evidence of the strata about the family living in strata lot 2 should not be accepted. They say that their son, Sina, was the occupant of the strata lot and that he meets the definition of family member set out in section 142 of the SPA. They admit that cousins of the family stayed in strata lot 2 from time to time. They say that these people were cousins of the family and as such were guests not paying rent and therefore they cannot be characterized as tenants.
38. Further, the owners say that their interactions with various owners in late 2015 and early 2016 created a reasonable expectation that the rental prohibition bylaw would either be amended to permit rentals or not enforced and therefore the fines that have been imposed cannot be enforced.
39. The owners also say that the bylaws have not been enforced consistently. They refer to the pet bylaw which prohibits pets and to the fact that one strata owner had a number of cats in their suite when visited by Mr. Saadatmandi. The owners also say that the strata failed to comply with the SPA by failing to repair and maintain the common property in a reasonable manner or at all resulting in various building components failing.



## ANALYSIS

### ***Are the fines assessed against the owners' strata lot valid and therefore enforceable?***

40. Section 142 of the SPA provides for limits to rental restriction bylaws for family members of the owner. A strata lot that is rented by the owner to a "family member" as defined in section 8(1) of the *Strata Property Regulation* is excluded from the operation of a rental restriction bylaw. It is not disputed that a son of the owners would qualify as a family member. Therefore, if strata lot 2 was rented to or occupied by the son of the owners and if the other occupants were his guests, it would not be a violation of the strata's rental prohibition bylaw and no fines could be levied or enforced for violation of the bylaw.
41. The Continuing Legal Education BC Strata Property Practice Manual describes section 142 of the SPA as an exemption from the rental restriction bylaw. I agree with this characterization.
42. The owners seek to rely on the family member exemption to invalidate the fines levied against strata lot 2. In order to rely on this exemption, the strata advised the owners of its requirement for proof that the exemption applied. It required an affidavit proving the family status of the person that the owners said was occupying the strata lot. I find that this was a reasonable requirement. I find the strata had both a right and a responsibility to ensure that the family member exemption was being properly applied. This is not something that is within the power of the strata to know. The information necessary to prove the exemption is within the power of the owners to provide. The owners chose not to provide the information that was required by the strata to support the exemption the owners said applied to the occupancy of strata lot 2.
43. It is the responsibility of a person seeking to apply or use an exemption to prove that the exemption applies. In this case, although the owners assert that their son was living in strata lot 2, they did not provide the necessary and reasonable proof. For this reason, I find that the strata was entitled to impose the fines that it did against strata lot 2.

***Are there any defences that would invalidate the fines for violation of the strata rental prohibition bylaw?***

44. The owners say that they had a reasonable expectation that the strata rental prohibition bylaw would be amended or not enforced against them. I find that this view is not supported on the evidence. The owners themselves say that on February 4, 2016 “[One owner] advised that some owners had agreed to change the rental bylaw to allow rentals. [The owner] assured that such a change to the bylaws would not be a problem.” Mr. Saadatmandi is a property developer. He was aware of the strata rental prohibition bylaw from the outset of his negotiations with owners. The ability to rent the strata lots that he was trying to purchase was clearly important to his plan for the redevelopment of this property. I do not accept that the word of 1 of 8 owners was a sufficient basis for Mr. Saadatmandi to form a reasonable expectation that the rental bylaw would be amended or waived. Mr. Saadatmandi’s expectation is also inconsistent with the affidavit of another owner who states that on February 5, 2016, only 1 day later, she told Mr. Saadatmandi that she did not want rentals in the building. Therefore, I find there is no factual basis supporting the expectation Mr. Saadatmandi asserts.
45. Having found that there is no basis in the evidence to support the reasonable expectation that the owners assert, I do not find it necessary to determine whether any reasonable expectation was violated by action by the strata that was significantly unfair.
46. I conclude that the \$12,000.00 of fines imposed by the strata are valid and enforceable. I order the owners to pay \$12,000.00 to the strata. Given this amount has been paid into trust pending this decision, I order the strata is entitled to receive the trust funds in payment of the disputed fines.

**TRIBUNAL FEES AND EXPENSES**

47. 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 with respect to tribunal fees. The strata was the successful party in this dispute and I therefore order the owners to reimburse the strata for tribunal fees of \$225.00. The strata withdrew its request for reimbursement of legal fees.

48. The strata did not request pre-judgment interest on the outstanding fines. I have also not been made aware of any interest arrangements with the trust agreement. I have therefore not made any interest award.
49. As the owners no longer own strata lot 2 the provisions in section 189.4 of the SPA have no application.

## **DECISION AND ORDERS**

50. I order the owners to pay to the strata the sum of \$12,225.00 within 30 days of the date of this decision. This amount is comprised of the \$12,000.00 in outstanding fines and \$225.00 in reimbursement of tribunal fees. The strata is entitled to receive the trust funds in payment of the \$12,225.00 with any shortfall being paid by the owners within the 30 days.
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.

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Maureen E. Baird, QC,  
Tribunal Member