



# Civil Resolution Tribunal

Date Issued: March 15, 2019

File: ST-2018-006291

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan 200 v. Grieve*, 2019 BCCRT 315

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

The Owners, Strata Plan 200

**APPLICANT**

**A N D :**

Sheryl Grieve

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. This dispute involves enforcement of a rental restriction bylaw and related fines.
2. The applicant, The Owners, Strata Plan 200 (strata), is a strata corporation existing under the *Strata Property Act* (SPA). The respondent, Sheryl Grieve (owner) is an

owner in the strata. The strata is represented by a member of its strata council. The owner is self-represented.

3. The strata alleges that the owner rents their strata lot contrary to the strata's rental restriction bylaw. The strata seeks orders that the owner stop renting their strata lot and pay the strata bylaw fines totaling \$15,000.
4. The owner says they occupy their strata lot and denies renting all or part of their strata lot. The owner asks that the tribunal dismiss the strata's claims.
5. For the reasons that follow, I dismiss the strata's claims.

## **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 121 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. Some of the evidence in this dispute amounts to a "she said, she said" scenario as to if the owner's strata lot is rented out. 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 the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and 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 123 of the Act and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

## **ISSUES**

10. The issues in this dispute are:
  - a. Is the owner renting their strata lot contrary to the strata's bylaws?
  - b. Is the strata entitled to bylaw fines of \$15,000?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

11. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
12. In a civil proceeding such as this, the applicant strata must prove its claim on a balance of probabilities.
13. The strata was created in August 1975 and consists of 141 strata lots in 2 buildings located in Victoria, B.C.
14. The strata's bylaws are those registered November 18, 2015, when a complete new set of bylaws was registered at the Land Title Office.
15. I find the bylaws relevant to this dispute are:

Bylaw 3.1(1) that prohibits an owner from renting or leasing a strata lot.

Bylaw 3.2 that prohibits occupancy of a strata lot to an owner's non-family member for extended periods of time set out in the bylaw. The bylaw states the owner is responsible to provide proof of the relationship.

Bylaws 23(c) and 24 that permit the strata to impose a \$500 fine every 7 days for violation of the rental restriction bylaw.

Bylaw 4(2) that requires an owner to provide the strata council with a "fully completed residential registration form in the form attached as Schedule "B" to these bylaws."

Bylaw 4(3) that requires an owner tenant or occupant, on request by the strata, to provide their name and strata lot where they reside.

***Is the owner renting their strata lot contrary to the strata's bylaws?***

16. In February 2016, the owner wrote to the strata and provided a mailing address outside the strata consistent with section 61 of the SPA. The mailing address was that of a property on Rosebank Road (Rosebank property).
17. On October 19, 2017, the strata's lawyer emailed the owner at the address provided by the owner in 2016, stating in part that the strata had received "a number of complaints" that that the owner did not reside in their strata lot and was in breach of bylaws 3.1 and 3.2 by renting it out. The letter stated that the owner was the registered owner of strata lot 6 in the strata plus the Rosebank property, and that the owner "could not be the resident owner at both properties." It acknowledged the owner had previously provided the Rosebank property address as the address used by the owner for "consulting activities" but the Rosebank address was not helpful in determining where the owner was residing.
18. The letter also stated:
  - a. The strata was informed that in August 2018, the owner had made inquiries about the occupation of their strata lot by 2 "room-mates" and had provided no information to the strata on the matter, contrary to the bylaws,

- b. The occupants in the owner's strata lot were the subject of a noise complaint that occurred August 30, 2018 "involving a female occupant of the strata lot, and
  - c. The strata has witnesses whose evidence indicates the owner is not residing in their strata lot because of the witness reports of the owner's "comings and goings". It cites an example of the owner being witnessed arriving in their vehicle to attend strata meetings.
19. The letter also observes that the owner has insisted on exercising strict controls over access to their strata lot by the strata in completing strata repairs that could reasonably been seen as the owner's effort to conceal the rental of their strata lot.
20. Finally, the letter states it constitutes formal notice under section 135 of the SPA that the owner is in breach of bylaws 3.1 and 3.2, the owner is entitled to answer the allegations, including a hearing, and that a response is requested by October 27, 2017, failing which the strata will decide based on the evidence it has.
21. On December 20, 2017, the strata's property manager wrote to the owner following the strata's lawyer's October 19, 2017 letter, reiterating that a complaint had been received that the owner was violating bylaws 3.1 and 3.2, and that the owner was entitled to provide a written response to the complaint or request a hearing within 20 days, failing which the strata may proceed with bylaw enforcement, including fines.
22. On January 4, 2017, the owner emailed the property manager in response to the December 20, 2017 letter stating they did reside in the strata lot and denying that it was rented out. The owner also stated the lawyer's letter was not received by them and asked for the particulars of the complaint in order to respond.
23. On January 5, 2018, the property manager emailed the owner the October 19, 2017 lawyer's letter.
24. On January 17, 2018, the property manager wrote to the owner at the Rosebank property address to notify the owner of the council's decision. The letter

acknowledges receipt of what I infer is the owner's January 5, 2017 email response to the strata's December 20, 2017 letter.

25. The January 17, 2018 letter states the facts outlined in the "October 12, 2017" letter were not disputed by the owner, that the strata had found the owner was in violation of its bylaws, and \$500 fines every 7 days would be imposed commencing January 22, 2017 for as long as the strata lot was being rented out. Although the reference to an October 12, 2017 date might have been to the October 19, 2017 lawyer's letter, the owner clearly disputed the strata's allegations in their January 4, 2017 email, contrary to the property manager's statement.
26. On February 9, 2017, the owner emailed the property manager in response to the January 17, 2017 letter. The owner objected to the imposition of fines, and claimed the strata did not follow section 135 of the SPA because the strata did not provide the written particulars of the complaint, which I infer the owner considers to be the letters of complaint, and therefore was not provided with an opportunity to respond to the complaint.
27. I do not find it necessary to address the parties' submissions on the owner's address outside the strata as it is clear from the evidence that the owner received all relevant correspondence prior to fines being imposed.
28. For the following reasons, I find the strata has not proved the owner is renting their strata lot, largely because the strata has not taken reasonable steps to investigate and confirm the complaints it received.
29. The October 19, 2017 lawyer's letter sets out why the strata believes the owner is renting out their strata lot and, in my view, does not contain any objective evidence to support the strata's position. I accept that the strata received a complaint that the owner was renting out their strata lot and confirm, despite the owner's submissions to the contrary, the complaint does not need to be in writing.
30. However, the strata claims the owner cannot be a resident owner at 2 property addresses. The owner says the BC Court of Appeal found otherwise in "*The*

*Owners*”, *Strata Plan NW 409 v. Louis*, 2009 BCCA 54 and I agree. In *Louis*, the court considered the definition of the word “reside” for the purposes of an age bylaw and found that it is not uncommon for a person to have 2 permanent residences, citing various case law. The court found at paragraph 29, that “for a person to reside at a place does not require the place to be that person’s exclusive or primary abode.” Applying *Louis* to the evidence before me, I find that simply because the owner as another residence, doesn’t mean that they do not reside at the strata lot.

31. Further, by its own admission, the strata states in the October 19, 2017 letter that Rosebank address provided by the owner as a mailing address outside the strata, does not determine where the owner is residing. However, the strata appears to conclude the owner is residing at the Rosebank property because they provided that address as a mailing address outside the strata under section 61(1) of the SPA. I note that section 61(1) does not require the owner to reside outside the strata in order to provide an outside mailing address.
32. The strata also claims the owner made enquiries in August 2019 about “room-mates” and that it was informed some type of arrangements were made for the owner to have “room-mates”. Just because the owner made enquires about “room-mates” doe not mean the owner’s strata lot is rented out.
33. Occupancy of the owner’s strata lot on its own does not prove strata lot is rented out. While the owner admits their strata lot was occupied, there is no evidence as to whether the owner’s strata lot was occupied by persons other than family members or for periods contrary to bylaw 3.2. The strata asserts the owner is in violation of bylaw 3.2 but does not state the nature of the violation. That is, whether the owner’s strata lot was occupied by non-family members for periods more than those permitted under the bylaw, whether the persons occupying the owner’s strata lot are non-family members, or whether the owner has failed to provide proof of their relationship to the occupants. For example, the strata has not requested the owner provide a completed residency form under bylaw 4(2) which might establish if bylaw 3.2 has been violated.

34. I find the strata's claim that a noise bylaw complaint involving a female occupant of the owner's strata lot also does not prove the rental status of the strata lot. The strata did not identify the occupant and did not submit evidence to suggest the female occupant was not the owner.
35. The strata also did not submit any evidence as to its witnesses' claims, such as written statements. In any event, just because the owner is witnessed walking from their vehicle to attend strata meetings does not mean they do not reside in the strata lot.
36. Finally, I do not find that the owner's access requests for their strata lot are related to residency of the strata lot. If the owner is not accommodating to the strata when it requests access to their strata lot, that does not mean they are renting out their strata lot.
37. For all of these reasons, I find the strata's circumstantial evidence has not met the burden to prove the owner is renting their strata lot contrary to the strata bylaws.
38. I therefore decline to order the owner stop renting their strata lot contrary to the bylaws.

***Is the strata entitled to bylaw fines of \$15,000?***

39. Given my conclusion, I find the strata is not entitled to bylaw fines totalling \$15,000.

**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 find the respondent owner is the successful party, but they did not pay tribunal fees or claim dispute related-expenses. Accordingly, I make no order in this regard.



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.

## **ORDER**

42. I order the strata's claims and this dispute dismissed.

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J. Garth Cambrey, Vice Chair