



Civil Resolution Tribunal

Date Issued: April 16, 2019

File: ST-2018-003449

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 4498 v. Mac Phee-Manning et al*, 2019
BCCRT 463

B E T W E E N :

The Owners, Strata Plan LMS 4498

APPLICANT

A N D :

Susane Mac Phee-Manning and Mark Manning

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This is a dispute about short-term vacation rentals and natural gas expenses. The respondents are the owners of a strata lot in the applicant strata corporation, The Owners, Strata Plan LMS 4498 (strata). The strata wants the respondents to stop

renting out their strata lot as a vacation rental. The strata also wants an adjustment to how the strata divides its shared natural gas costs.

2. The respondents say that they have stopped renting their unit out as a vacation rental. The respondents also say that the natural gas expenses are appropriately divided on the basis of unit entitlement as part of the owners' strata fees.
3. The strata is represented by a member of strata council. The respondents are represented by Mark Manning.

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 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.
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. The applicable tribunal rules are those that were in place at the time this dispute was commenced.

8. 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, 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. Do the bylaws prohibit the respondents from renting out their strata lot as a short-term vacation rental? If so, what remedy is appropriate?
 - b. Is the way the strata divides its natural gas costs significantly unfair? If so, what remedy if appropriate?

BACKGROUND AND EVIDENCE

10. In a civil claim such as this, the strata must prove its case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
11. The strata is comprised of 3 strata lots in in North Vancouver. The respondents' strata lot (Unit A) is in one building and the other 2 strata lots share a second building. The respondents do not live in their strata lot. The other 2 owners (resident owners) do. Unit A has an upper suite and a lower suite.
12. The strata has not filed any bylaw amendments with the Land Title Office, so the Standard Bylaws under the *Strata Property Act* (SPA) apply to the strata.
13. Bylaw 3(1)(d) says that an owner must not use a strata lot in a way that is illegal. Bylaw 3(1)(e) says that an owner must not use a strata lot in a way that is contrary to the purpose for which the strata lot is intended to be used on the strata plan. The strata says that both of these bylaws apply to prohibit short-term rentals of Unit A.
14. Like many small strata corporations, the strata does not have a history of strict compliance with the procedures in the SPA and bylaws.

15. The strata shares a single natural gas account, which is paid as part of the owners' strata fees, based on unit entitlement. Each strata lot has a gas fireplace. Unit A also has a gas furnace, oven and stove. The respondents pay 42% of the total strata fees because it is a larger strata lot.
16. The strata provided a summary of 2 years of natural gas bills. The natural gas usage charges for the summer months, when the resident owners are presumably using little or no heat, are between \$35 and \$55 per month, plus tax, while the usage charges in the winter can be as high as \$275 per month, plus tax. The strata estimates that, on average, the resident owners "subsidize" Unit A's natural gas use by \$40 per month.
17. The respondents began renting out Unit A as a short-term rental in August 2015. The respondents used Airbnb to find guests. There is no evidence about whether they advertised Unit A as a vacation rental on any other platform.
18. In July 2016, the City of North Vancouver circulated a bulletin clarifying the application of the City's zoning regulations relating to short-term rentals. In residentially zoned properties, such as Unit A, City Bylaw No. 6700 (zoning bylaw) prohibits short-term rentals of units that are otherwise unoccupied by permanent residents.
19. On January 12, 2018, the resident owners began raising concerns about the respondents' short-term rental business.
20. On February 7, 2018, the owners met and discussed the impact of short-term renters on the resident owners. In response to some of the resident owners' concerns, the respondents agreed to stop allowing dogs. The strata says that the respondents did not follow through on this commitment.
21. On February 21, 2018, one of the resident owners asserted that the respondents were breaching both the zoning bylaw and the strata's bylaws by having short-term renters. The respondents said that they did not want long-term rentals, primarily

because they perceived residential tenancy law in British Columbia to be too favourable to tenants.

22. Despite that preference, the respondents noted that they were currently renting the upper suite to long-term tenants that they did not find through Airbnb. The respondents offered to stop renting the lower suite of Unit A as a short-term rental, because that is the suite that shares a common patio area with the resident owners. They would continue renting the upper suite as a vacation rental during the summer. On March 12, 2018, they clarified that their offer would take effect in September 2018. The resident owners rejected this proposal.
23. On April 9, 2018, one of the resident owners filed a complaint with the City.
24. On April 17, 2018, the strata's insurer informed the strata that they were not covered for damages arising from short-term rentals.
25. The strata's lawyer sent a letter to the respondents on April 26, 2018. The strata alleged that the respondents were in breach of bylaws 3(1)(d) and 3(1)(e) and demanded that the respondents cancel all short-term rental bookings.
26. The strata held a meeting on June 7, 2018. The resident owners raised concerns about the use of Unit A as a short-term rental, including noise, garbage, confrontations with guests, and insurance coverage issues. The owners also discussed the allocation of natural gas expenses. The owners were not able to agree to any resolutions of the issues raised.
27. On July 5, 2018, the respondents and the resident owners met with a City official. One of the resident owners in attendance says that the City gave the respondents until July 31, 2018 to stop short-term rentals. There is no evidence that the City has made any enforcement decisions about Unit A.
28. The respondents say that they have amended their Airbnb listing to provide for a minimum rental period of 28 days.

POSITIONS OF THE PARTIES

29. The strata argues that:

- a. The respondents will not stop renting as an Airbnb, so the strata requires a specific bylaw prohibiting short-term rentals.
- b. It is unfair that the resident owners are subsidizing the respondents' natural gas costs.

30. The strata asks that I make the following orders:

- a. The respondents immediately stop renting out Unit A as a short-term vacation rental.
- b. The strata's bylaws be amended to prohibit short-term vacation rentals.
- c. The respondents reimburse the strata \$1,200 for 2 years of natural gas costs.
- d. The respondents install a separate natural gas meter to measure Unit A's consumption separately from the other 2 units, at the respondents' expense.

31. The respondents argue that:

- a. They have already stopped offering Unit A as a vacation rental.
- b. The strata has been paying for all of the natural gas the strata uses since they bought in 2003, before the resident owners bought their units.
- c. They pay higher strata fees, which accounts for any additional natural gas they use compared to the other owners.

32. The respondents request that I dismiss the strata's claims.

ANALYSIS

Do the bylaws prohibit the respondents from renting out their strata lot as a short-term vacation rental? If so, what remedy is appropriate?

33. As mentioned above, the strata argues that the respondents breached 2 bylaws when they rented Unit A as a short-term vacation rental. I will address them each in turn.

Bylaw 3(1)(d) – illegal use

34. The strata argues that short-term rentals breach the zoning bylaw and are therefore illegal.

35. The zoning bylaw defines “residential use” as “providing for the accommodation and home life of a person or persons”.

36. The BC Supreme Court considered an identical provision in a zoning bylaw in the context of vacation rentals in *Nanaimo (Regional District) v. Saccomani*, 2018 BCSC 752. In that case, the Nanaimo Regional District sought an order prohibiting vacation rentals. The owners did not live in the home at issue and rented it out for periods of 3 to 8 nights to tourists. The Regional District argued that renting the home out to tourists was not a “residential use” under the zoning bylaw.

37. The Court found that the use of the words “home life” suggested that the residential use must be “non-transient”. The Court found that tourists are incompatible with the purpose of residential zoning bylaws, which exist to protect the residential nature of a neighbourhood. The Court found that its interpretation reflects the reality that short-term visitors do not share the same goals or interests as the residents of a neighbourhood. I find that the Court’s comments apply with additional force when applied to this dispute, in which the vacationers live in close quarters with and share common property with the resident owners in the context of a small strata corporation.

38. The Court also relied on *Kamloops (City) v. Northland Properties Ltd.*, 2000 BCCA 344, in which the Court of Appeal stated that residential zoning exists to permit

occupation by persons “who normally reside there” at the exclusion of “tourists, travellers, and other persons who require only temporary lodging”.

39. In *Saccomani*, the Court concluded that vacation rentals were not permitted under the zoning bylaw. That reasoning is binding on me. For the purposes of determining whether the respondents have breached the strata’s bylaws, I find that renting Unit A as a vacation rental is an illegal use.
40. The next question is how to determine whether a renter is using Unit A as a “residential use”, which is permitted, or a short-term rental, which is not.
41. The respondents do not dispute that their previous rentals were contrary to the zoning bylaw but say that now that they have put a minimum rental period of 28 days, they are no longer engaging in short-term rentals.
42. The respondents do not explain how they arrived at 28 days. The zoning bylaw does not specify a minimum number of days that a person must live in a dwelling to be considered residential as opposed to transient.
43. The Court in *Northland Properties* considered an appeal of an injunction that the owner of an apartment building stop renting out units as “overnight or short-term lodgings”. Among other things, the owner sought clarification about how long “short-term lodgings” were. The Court concluded that there was no “hard and fast line” when a transient use becomes a residential use. The Court noted that a tourist may stay somewhere for several weeks, while a person may have a secondary residence and only stay there occasionally. The Court found that a number of factors will determine whether a person is staying somewhere as a resident:
 - a. Does the person live out of a suitcase or bring all of their belongings?
 - b. Does the person establish roots or connections in the local community or act as a visitor?
 - c. Is the person employed permanently or semi-permanently in the area?

44. In *Northland Properties*, the City took the position that the owner had to rent out its units on a month-to-month basis. The Court considered that a reasonable line for the City to draw.
45. Services such as Airbnb did not exist when the Court of Appeal decided *Northland Properties*. I would add that the way the respondents seek out renters is also a relevant factor in determining whether a renter intends to use Unit A as a “residential use”. I find that a person seeking a home will not seek it out on Airbnb or similar vacation rental sites. I find that sites such as Airbnb are intended to assist people to find temporary and transient accommodation.
46. Based on the above factors, I conclude that the respondents’ renters who book accommodation through Airbnb or other vacation rental sites are not intending to use the suites as accommodation and home life, as required by the zoning bylaw. I note that my conclusion is consistent with the respondents’ February 23, 2018, email, in which they confirmed that they did not want to become landlords to long-term residents because of the state of residential tenancy law.
47. I order that the respondents must stop renting Unit A or any portion of it as a vacation rental, including but not limited to bookings through Airbnb and similar online vacation rental platforms, for as long as the zoning bylaw prohibits vacation rentals in Unit A. The above order will take effect immediately unless the respondents have a renter in either suite who has already commenced a rental on the date of this decision, in which case the above order will take effect when the current renter’s rental has ended.
48. I acknowledge that my order will likely require the respondents to cancel bookings that guests have already made. I considered whether to make my order effective at a later date to limit any costs associated with such cancellations. I decided to make my order effective immediately because the respondents continued to rent out Unit A as a vacation rental well after they knew that they were in breach of the City’s zoning bylaw, and therefore the strata’s bylaw, and over the legitimate protests of their neighbours.

Bylaw 3(1)(e) – contrary purpose

49. The strata argues that the SPA only provides for 2 types of strata lots, residential and non-residential. The strata argues that Unit A is a residential strata lot and that, as a result, bylaw 3(1)(e) prohibits any use other than a residential use.
50. I find that the strata's argument misinterprets bylaw 3(1)(e), which refers to the strata plan, not the SPA. Nothing in the strata plan expressly or by necessary implication indicates that Unit A must be used as a residence rather than a vacation rental.
51. The strata relies on *The Owners, Strata Plan VR812 v. Yu*, 2017 BCCRT 82. However, the strata corporation in that dispute had a bylaw that prohibited the use of a strata lot except as a "private dwelling home". The reasoning in that dispute is not applicable to this dispute because there are different bylaws at issue.
52. I find that the respondents did not breach bylaw 3(1)(e) when they rented out Unit A as a vacation rental.
53. The strata also asks that I order that the strata pass a bylaw prohibiting short-term vacation rentals.
54. The tribunal has jurisdiction to direct the strata to pass a bylaw if it would remedy or prevent a significantly unfair action or decision. The strata suggests that it is unfair that it is unable to pass a bylaw prohibiting short-term rentals because of the SPA's requirement that new bylaws pass with a $\frac{3}{4}$ vote. I am not satisfied that the strata has identified any unfairness. The requirement of a $\frac{3}{4}$ vote to change the bylaws reflects a strong presumption that bylaws should only be changed if a significant majority of the owners agree. In the context of a strata with 3 strata lots, the SPA requires unanimity.
55. The bylaws have not changed since the respondents purchased Unit A in 2003. Given the provisions of the SPA, I find that the respondents have a reasonable expectation that the bylaws will not change unless all of the owners agree. I decline

to order the strata to pass a bylaw to prohibit short-term vacation rentals and I dismiss this aspect of the strata's claim.

Is the way the strata divides its natural gas costs significantly unfair? If so, what remedy is appropriate?

56. The strata asks for 2 orders about the strata's natural gas expenses. First, the strata asks me to order the respondents to reimburse the strata \$1,200 in past natural gas costs. Second, the strata asks me to order the respondents to install separate meters so that future natural gas costs are allocated properly, at the respondents' expense.
57. While the strata does not use these specific words, I find that they essentially argue that the respondents are acting in a significantly unfair manner by refusing to agree to change the way natural gas expenses are allocated. Section 123(2) of the Act gives the tribunal the authority to remedy a significantly unfair action or decision by making orders against a strata corporation, strata council, or person who holds 50% or more of the votes none of which apply to this dispute. Under sections 99 and 100 of the SPA, the strata must pass a unanimous resolution to change how the natural gas expenses are divided. Therefore, the resident owners cannot change how the natural gas expenses are divided without the respondents' agreement or an order. In effect, the strata seeks an order on behalf of the resident owners that the strata divide expenses differently.
58. That said, while I am skeptical that the strata can bring this claim on behalf of the resident owners, in the interests of providing closure and allowing the parties to move forward, I will explain why I would have dismissed this claim even if the resident owners brought it against the strata.
59. The test for what actions are significantly unfair is found in *Dollan v. The Strata Plan BCS 1589*, 2012 BCCA 44, which I summarize as follows:
- a. Did the owner have a reasonable expectation of the strata?

b. If so, did the strata violate that reasonable expectation in a way that was significantly unfair?

60. The strata says that the resident owners did not know that Unit A had natural gas stoves and hot water tanks until mid-2018. The resident owners raised the issue at the June 7, 2018 meeting, wanting to change the way the strata allocates strata fees to compensate them for Unit A's allegedly disproportionate use of natural gas.
61. The respondents say that the unequal strata fees account for any discrepancy in how much natural gas each strata uses. In addition, the respondents say that there is no evidence about how much each strata lot uses and so it is impossible to determine that the owners are paying disproportionate amounts. The respondents say that the way that the strata has dealt with natural gas was the status quo when the resident owners each bought their strata lots, so they tacitly agreed to it when they purchased their respective strata lots. Finally, the respondents say that the way the owners pay for the natural gas is not unfair, in part, because the respondents pay for all of the electricity for the boiler circulation pumps, which benefits all 3 strata lots.
62. I agree with the respondents. First, and perhaps most importantly, while it may be true that the respondents end up paying a disproportionate amount of the gas costs, sections 99 and 100 of the SPA say that common expenses must be calculated by unit entitlement unless the strata passes a unanimous resolution to change the formula. These sections reflect the nature of strata corporations that all owners do not always benefit equally from each strata expense. Therefore, I find that the resident owners do not have a reasonable expectation that the natural gas expenses will be divided on basis other than unit entitlement.
63. Second, I find that the strata's attempts to quantify how much extra natural gas the respondents use is creative, but speculative. It is not possible to know how much extra natural gas the respondents use. As a matter of common sense, the respondents likely use more heat in the winter but by the same token the resident owners likely use their fireplaces more during the winter. It is also not possible to

know how any extra natural gas cost compares to the respondents' higher strata fees or electricity costs. Therefore, I find that the strata has not proven that the way the strata divides the natural gas costs is significantly unfair.

64. I dismiss the strata's claims about the natural gas costs.

TRIBUNAL FEES, EXPENSES AND INTEREST

65. 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 strata was partially successful in this dispute so I order the respondents to reimburse the strata for half of the strata's \$225 in tribunal fees, which is \$112.50.

66. The strata did not claim any dispute-related expenses.

67. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the respondents.

DECISION AND ORDERS

68. I order that:

- a. The respondents must stop renting Unit A or any portion of it as a vacation rental, including but not limited to bookings through Airbnb and similar online vacation rental platforms, for as long as the zoning bylaw prohibits vacation rentals in Unit A.
- b. The above order will take effect immediately unless the respondents have a renter in either suite who has already commenced a rental on the date of this decision, in which case the above order will take effect when the current renter's rental has ended.
- c. Within 14 days of this decision, the respondents reimburse the strata \$112.50 in tribunal fees.

69. The strata is entitled to post judgement interest under the *Court Order Interest Act*, as applicable.
70. I dismiss the strata's remaining claims.
71. 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.
72. 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.

Eric Regehr, Tribunal Member