



Civil Resolution Tribunal

Date of Amended Decision: June 11, 2019¹

Date of Original Decision: May 21, 2019

File: ST-2018-007307

Type: Strata

Civil Resolution Tribunal

Indexed as: *Butler v. The Owners, Strata Plan LMS 597*, 2019 BCCRT 606

BETWEEN:

Eric Butler

APPLICANT

AND:

The Owners, Strata Plan LMS 597

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Eric Butler is the sole director of 1122159 B.C. Ltd. (holding company) which owns unit 105, (strata lot 142) in the respondent The Owners, Strata Plan LMS 597 (strata). The applicant is also the sole director of Split Second Basketball Ltd. (Split Second).
2. The applicant allowed one of his employees through Split Second, Mr. P, to live in the unit, rent-free. The applicant says the strata has levied fines against his holding company for an unauthorized rental. The applicant says that Mr. P's use of the unit is an occupancy, not a tenancy. The applicant says he has not contravened the strata's bylaws. The applicant seeks a cancellation of the fines levied against the holding company and asks that the strata pay its legal fees. As well the applicant wants the strata to accept that Mr. P is an occupant, not a tenant.
3. The strata relies on a bylaw that limits rentals to 25 of its 189 units. It says that Mr. P receives accommodation in the unit as part of his employment compensation. Although Mr. P did not pay rent, he received consideration in the form of employment services, in exchange for the accommodation. On that basis, the strata says Mr. P is a tenant.
4. The strata seeks a finding that Mr. P is a tenant. If the tribunal rules that the situation is a rental, the strata says it will levy fines for breach of the rental bylaw dating from September 28, 2018. The strata asks that the applicant's claims be dismissed.
5. The applicant is self-represented. The respondent is represented by a strata council member.

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. 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.
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. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
10. Under section 123 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

11. The issue in this dispute is whether the use of unit 105 was an unauthorized rental contrary to the bylaws.

BACKGROUND AND EVIDENCE

12. Split Second Basketball employs Mr. P as a coach and operations manager.
13. The applicant set up the holding company to purchase a residential strata lot so that one or both employees of Split Second could live there. The applicant did not intend to charge rent to the employee(s).

14. Mr. P is not a shareholder or director of the holding company.
15. In June 2017, the holding company bought unit 105 in the respondent strata.
16. Shortly thereafter, Mr. P moved into unit 105, where the applicant says he was given accommodation in exchange for his being available to “coach more variable hours” including evenings and weekends.
17. When Mr. P moved into unit 105, the strata had a long waiting list for rentals to be permitted. The strata had not authorized the rental of unit 105 at the time.
18. In July 2017, Mr. P went to the strata office to register as the occupant of unit 105. No Form K was submitted.
19. At that time, the property manager inquired with the applicant, who said the property was owned by the holding company, and that Mr. P was “involved in” the company. There is no evidence that Mr. P is involved in the holding company.
20. It is undisputed, and I find, that In March 2018 Mr. Butler told a strata council member that he planned to identify the market value of unit 105 as a taxable benefit on Mr. P’s T4 slip, with respect to his employment with Split Second.
21. In July 2018, the strata told the applicant that Mr. P either needed to move out of unit 105 or face a \$50 fine per week starting September 30, 2018.
22. Mr. P’s written contract of employment with Split Second, as filed in this dispute, does not mention use of the strata lot as part of his compensation.
23. At some later point, Split Second gave another employee, a Mr. D, permission to live in unit 105.

Bylaws

24. Bylaw 46 limits the number of strata lots that may be rented to 25. Bylaw 46.2 requires an owner wishing to rent their strata lot to make a written request for permission, which, once granted, is valid for 90 days.

25. Bylaw 46.3 requires an owner to provide a Form K Notice of Tenant's Responsibilities to the strata. If the owner fails to do so, a \$50 fine per month "will be levied" until the Form K is received.
26. Bylaw 46.4 provides that a landlord must not rent a strata lot for less than 12 consecutive months.
27. Bylaw 3.3 says that all residential strata lots shall be used principally as private dwellings and not to directly operate a business or commercial enterprise.

ANALYSIS

28. The SPA defines an occupant as a person, other than an owner or tenant, who occupies a strata lot.
29. The SPA defines a tenant as someone who rents all or part of a strata lot, with 2 exceptions that do not apply here.
30. The SPA does not define the word rent. The *Residential Tenancy Act* (RTA) defines rent as "money paid...or a value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit..."
31. The RTA definition allows that rent can include non-monetary value or rights, such as, in this case, the employment given to Mr. P by Split Second. The RTA does not require a written agreement for an arrangement to be a tenancy.
32. Section 48(2) of the RTA says that "An employer may end the tenancy of an employee in respect of a rental unit rented to or provided by the employer to occupy during the term of employment by giving notice to end the tenancy if the employment is ended." (emphasis added)
33. The applicant argues that, because the holding company and Mr. P did not intend a true tenancy, his use of the strata lot was only an occupancy license.
34. As well, the applicant says that because the holding company would require Mr. P to vacate the unit if he ceased to be employed by Split Second, Mr. P does not have

“legal possession” of the strata lot. The applicant says that this makes the relationship between the holding company and Mr. P a “licence”, not a lease.

35. It is undisputed that unit 105 was not one of the strata lots that was permitted to be rented under bylaw 46.
36. In *HighStreet Accommodations Ltd. v. The Owners, Strata Plan BCS2478*, 2019 BCCA 64, the Court of Appeal considered a situation where a corporate tenant, Highstreet, rented strata lots from owners and then used the strata lots to provide short-term accommodation to individuals. In *Highstreet* the Court wrote:

The first point to note is that s. 143 determines when a rental restriction bylaw applies to a residential strata lot. A residential strata lot is a strata lot designed or intended to be used primarily as a residence (*SPA*, s. 1). The word “residence” generally connotes a person’s home or abode, the place where a person or that person’s family ordinarily eats, drinks and sleeps or where a person maintains a “bodily presence as an inhabitant” together with an element of permanency: *Strata Plan NW 499 v. Louis Estate*, 2009 BCCA 54 (CanLII) at paras. 25-29; *Okanagan-Similkameen (Regional District) v. Leach*, 2012 BCSC 63 (CanLII) at paras. 66-69. Although its officers or employees may do so, a non-corporeal entity such as a company does not inhabit or “occupy” a residence in this sense: *York Region Condominium Corp* at paras. 23-26. Nor does a tenant who is a natural person but who does not maintain any form of physical presence in a residence: *Louis* at paras. 23-29.

37. The applicant says that he licensed the occupancy of unit 105 to Mr. P, and later Mr. D. However, based on documents obtained from the Land Title Office, I find that his holding company, 122159 B.C. Ltd., owned unit 105 at the relevant time.
38. In submissions, the applicant says that Mr. P was given a “free place to stay during his time working with Split Second Basketball.” The applicant admits this was a verbal agreement only. It is undisputed, and I find, that Mr. P was permitted to live in

unit 105 while he was an employee of Split Second. Once he ceased to be an employee of Split Second, it was agreed that he would vacate unit 105.

39. Based on this evidence, I find that Split Second agreed to allow Mr. P to occupy unit 105, in exchange for his employment services. There was no agreement between the holding company and Mr. P.
40. Because the applicant is the sole director of the holding company and a director of Split Second, I find that he must have agreed, in his capacity as holding company director, to lease unit 105 to his other company, Split Second. The lease is not documented, presumably because it is an agreement between the applicant's two corporate personages. Under the lease, Split Second obtained an ability to offer employees housing at unit 105, while the applicant, as director of the holding company, received as consideration the increased stability of his other business, Split Second. This interpretation is consistent with the RTA definition of rent as encompassing some form of value or right, not limited to money.
41. Based on the applicant's submissions and evidence, I find that this lease agreement was made to allow employees of Split Second to occupy unit 105, when it was advantageous for them to do so in respect of their employment duties. As further support for this finding, the applicant agrees that the same occupancy permission was granted to another Split Second employee, Mr. D.
42. I find that there was a lease agreement between the holding company and Split Second whereby Split Second became the tenant. Because Split Second is a non-corporeal entity, it is not the occupant of the unit. Instead, Split Second, through the applicant, then either sublet or licensed the use of the unit to its employees.
43. Turning to whether Mr. P or Mr. D's occupancies were true rentals or licensed occupancies, in *Semmler v. The Owners, Strata Plan NES3039*, 2018 BCSC 2064, the Court referred to the analysis in *Strata Plan VR 2231 v. Duncan*, 2010 BC PC 123, which I find helpful. The Court in *Semmler* wrote:

“The court extensively reviewed the law of tenancies within strata corporations, the law of licensees and leases, and general tenancy law. The principles set out in *Duncan* make it clear that a tenancy tends to arise where the tenant is given a grant of exclusive possession of the premises, and a license is normally created where person is granted the right to use the premises without an entitlement to exclusive possession. The courts look to the intention of the parties to determine whether there was an intention to create an interest in the land. If the parties intended to create an interest in the land, a tenancy is created. If not, the arrangement is a license.”

44. Based on the analysis in *Semmler and Highstreet Accommodations Ltd. v. The Owners, Strata Plan BCS2478*, 2017 BCSC 1039, I find that Split Second was a tenant, because it had exclusive rights of possession to the strata lot under its agreement with the holding company. Mr. P and Mr. D, by contrast, were occupants and the terms of their occupancy determined by their respective agreements with Split Second. They did not have an interest in property including “exclusive possession” of the strata lot. I say this because Split Second could move in other employees, or ask them to move out, at its own option, under the license. I find that the agreements between Split Second and Mr. P and Mr. D were licenses to occupy, not tenancies, on the evidence before me.
45. I find that, because Unit 105 was not authorized for rental, 122159 B.C. Ltd.’s rental of unit 105 to Split Second is contrary to bylaw 46, regardless of my finding that the Mr. P and Mr. D were licensed occupiers, not tenants.
46. The strata asked whether using unit 105 as business-owned staff housing is a business use, prohibited by bylaw 3.3. I find that, because the occupancy by Mr. P and Mr. D was residential in practical effect, the use does not run afoul of bylaw 3, which addresses only the direct operation of a business through the strata lot.
47. However, I find the rental of unit 105 to be unauthorized and in contravention of bylaw 46.1 and 46.2. As well, if no Form K has yet been provided, the rental also

contravenes bylaw 46.3. There was no evidence before me to determine whether the rental is for a period of less than 12 months, so I cannot make a determination about whether bylaw 46.4 was also violated. The strata is therefore entitled to fine the owner, 122159 B.C. Ltd., by providing the appropriate notice and otherwise complying with section 135 of the SPA and in compliance with the bylaws. I decline to order the applicant's requested remedies.

48. I dismiss the applicant's claims and this dispute.

TRIBUNAL FEES, AND EXPENSES

49. 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. Given the strata's success, I find that the applicant must bear his own tribunal fees. I dismiss the applicant's claims for tribunal fees and dispute-related expenses.

50. 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

51. I order the applicant's claims, and this dispute, dismissed.

Julie K. Gibson, Tribunal Member

ⁱ Amendment Notes - An amendment was made to paragraph 47 to clarify the parts of Bylaw 46 that were contravened. The amendment was made under section 51(1)(a) of the *Civil Resolution Tribunal Act* which permits amendment for the purpose of clarifying a decision.