



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Adamson v. The Owners, Strata Plan NW 2582*, 2019 BCCRT 377

B E T W E E N :

Steven Adamson

APPLICANT

A N D :

The Owners, Strata Plan NW 2582

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This is a dispute about an exemption from a bylaw that restricts rentals. The applicant, Steven Adamson, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 2482 (strata). The strata previously granted the applicant an exemption from the rental restriction bylaw. The applicant sought an extension of the exemption and the strata refused. The applicant seeks an order

that he be allowed to rent his strata lot. The applicant also seeks compensation for lost rental income, defamation, and other expenses.

2. The applicant is self-represented. The strata is represented by the strata council president (president).

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. 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.

ISSUES

7. The issues in this dispute are:
8. Did the strata fail to meet the deadlines for responding to the applicant's exemption request as set out in section 144 of the *Strata Property Act* (SPA) and the bylaws? If so, what remedy is appropriate?
 - a. Did the strata unreasonably refuse to grant the applicant's exemption request?

- b. Did the strata make defamatory statements about the applicant? If so, what remedy is appropriate?

BACKGROUND AND EVIDENCE

9. In a civil claim such as this, the applicant must prove his 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.
10. The strata is a townhouse development that consists of 29 strata lots in 8 buildings in Maple Ridge. The applicant has owned strata lot 12 since 2015.
11. The strata filed a complete new set of bylaws replacing all previous bylaws on December 11, 2002.
12. Bylaw 33(1) prohibits rentals but gives owners the right to apply for an exemption on the basis of hardship (rental bylaw).
13. Bylaw 33(2) states an owner's application for an exemption must include the reason that the owner thinks that they should get an exemption. Bylaw 33(2) also states that the strata may not unreasonably refuse to grant an exemption. These bylaws reflect the provisions of section 144 of the SPA, with 2 exceptions. First, bylaw 33(2) states that the strata must hold a hearing within 3 weeks of a request rather than 4 weeks, which reflects a previous version of section 144 of the SPA. Second, bylaw 33(2) does not say that an owner will get an automatic exemption if the strata fails to hold a hearing by the applicable deadline, while section 144 of the SPA does.
14. The applicant first applied for an exemption from the rental bylaw in September 2016. The precise date is not in evidence. On October 17, 2016, the president emailed the applicant asking to attend a hearing, which was held on October 19, 2016.
15. The applicant made a hardship claim because he and his spouse had to move from Canada to Singapore because of his spouse's immigration status. The applicant was not legally permitted to work in Singapore. Therefore, he would be without an income while they lived in Singapore.
16. On October 21, 2016, the president confirmed that the strata had approved the request, granting an exemption from December 1, 2016, to November 30, 2017.
17. In July 2017, the president spoke to the applicant's tenants, who told her that they might stay another year. The president emailed the applicant to reiterate that the tenants would have to leave in December 2017.

18. The applicant emailed the president on July 31, 2017. The applicant said that the high cost of living in Singapore prevented them from saving up the money they would need to move back to Canada. In addition, they still had not sorted out his spouse's immigration status. He said they had not informed the strata right away because they wanted to make sure that the tenants were working out before asking for an extension. He confirmed that the tenants had only signed a 1-year lease.
19. On August 19, 2017, the president said that the strata council was upset that the applicant did not tell them that he intended to rent out his strata lot for 2 years when he initially applied for a 1-year exemption from the rental bylaw. The president asked the applicant to give a specific date when the tenants would move out so that they could consider a time limited extension of his rental bylaw exemption.
20. The applicant emailed the president on September 13, 2017. The applicant refused to give an exact date when the tenancy would end because he did not know when his financial hardship would end.
21. On September 21, 2017, the strata granted a further 1-year exemption, from December 1, 2017, to November 20, 2018, rather than the indefinite exemption that the applicant asked for.
22. On May 3, 2018, the applicant advised the strata that the tenants had terminated their lease early and would be leaving June 1. The applicant said that he was considering moving home and having family members move in as roommates.
23. On June 20, 2018, the applicant emailed the strata asking for a further 1-year extension, from December 1, 2018 through November 30, 2019. The applicant did not request a hearing. The applicant did not provide any supporting documentation, but said that his financial situation had deteriorated.
24. On June 21, 2018, the president responded that the strata had denied his request for a further extension. On June 22, 2018, the president provided the strata's reasons for denying the request. The president said that they initially granted a 1-year exemption only to find out that the applicant signed a 2 year lease with his tenant, which was not accurate.
25. On June 22, 2018, the applicant emailed the president asking to explore a "roommate/tenant arrangement", which the applicant believed another owner had. The president responded that the applicant's situation was not the same as the other owner's because the other owner was living in their strata lot with a roommate. The president did not say that the applicant could not have a roommate. Rather, the president said that unless the applicant moves back into his unit, there

is nothing for them to consider with respect to his request for an exemption that would allow him to have a paying roommate.

26. On June 27, 2018, the applicant emailed the strata council asking it to reconsider his application for an exemption. The applicant asked that his previous correspondence with the president and his June 27 email be considered a “hearing” because he was unable to attend in person.
27. On July 4, 2018, the president said that the strata council would consider the matter at their next meeting, on July 19, 2018.
28. On July 25, 2018, the president emailed the applicant. The president advised that the strata council held a hearing on July 19, 2018, although the applicant was unable to attend. The strata council decided that it had insufficient information to properly consider the applicant’s request for an exemption based on hardship. The strata council requested information and documentation about the applicant’s financial situation, his spouse’s financial situation, and his spouse’s Canadian Permanent Residency application status. The strata council said that if he provided that information within 7 days, they would meet again to further consider his request.
29. The applicant did not provide any of the requested information.

POSITION OF THE PARTIES

30. The applicant argues that:

- The strata failed to hold a hearing within 4 weeks of his request and failed to give a decision within 1 week of the hearing, contrary to section 144 of the SPA. In addition, the strata failed to hold a hearing within 3 weeks of his request, contrary to bylaw 33. Accordingly, he argues that he is entitled to an automatic exemption from the rental bylaw.
- The strata failed to consider his hardship request with an open mind and unreasonably refused to grant the request.

31. The applicant asks that I order that he is exempt from the rental bylaw. The applicant also seeks \$19,800 in lost rent, \$600 in BC Hydro costs, \$500 in other maintenance and cleaning costs, and \$3,500 in damages for defamation.

32. The strata argues that:

- The strata complied with all applicable deadlines in section 144 of the SPA and bylaw 33 because it is unclear what date the applicant requested the hearing.
- The strata did not unreasonably refuse to grant the hardship request because the applicant did not provide sufficient information about his financial situation.

33. The strata asks that I dismiss the applicant's claims.

ANALYSIS

Did the strata fail to meet the deadlines for responding to the applicant's exemption request as set out in section 144 of the Strata Property Act (SPA) and the bylaws? If so, what remedy is appropriate?

34. Section 144 of the SPA sets out the process for an owner to apply for an exemption from a bylaw restricting or prohibiting rentals.
35. Section 144(1) of the SPA states that an owner may apply for an exemption to a bylaw restricting or prohibiting bylaws. Section 144(2) of the SPA says that the application must be in writing and must include the reason the owner thinks they should get an exemption. An owner may request a hearing.
36. Section 144(3) of the SPA requires the strata to hold a hearing within 4 weeks of an owner's application, if the owner requests one.
37. Section 144(4) of the SPA states that the strata must give a written decision to an owner within 1 week of a hearing. Section 144(4) of the SPA also states that if the strata fails to give a written decision within 1 week of a hearing or fails to hold a hearing within 4 weeks of a request, the owner automatically receives the exemption they sought.
38. The deadlines in section 144 of the SPA are strict. If a strata corporation misses a deadline, the tribunal has no discretion to provide relief even if there is no prejudice as a result of the delay. See *The Owners, Strata Corporation LMS3442 v. Storozuk*, 2014 BCSC 1507 and *The Owners, Strata Plan LMS 724 v. Smith et al*, 2018 BCCRT 765.
39. The applicant's request for an exemption to the rental bylaw proceeded in a somewhat unusual way. The applicant made an initial request on June 20, 2017, which the strata denied the next day.

40. The applicant made a second request for an exemption on June 27, 2017. I find that for the purposes of section 144, the June 27, 2017 request was a new request and that the applicant requested a hearing. The strata considered the exemption request on July 19, 2018, at a strata council meeting. The applicant argues that because the strata did not approve or deny his exemption request, the strata did not consider the meeting a “hearing”.
41. I reject this argument for 2 reasons. First, although the applicant was not present, he asked the strata to consider his emails as part of a hearing at the time of his request. His position in this dispute is therefore inconsistent with his own request to the strata about how to treat his request. In addition, the strata council met and provided the applicant with an opportunity to be heard, which he chose to do in writing. Their summary email referred to the meeting as a hearing. I find that the strata held a hearing on July 19, 2018, which was less than 4 weeks after the applicant’s request. Therefore, the strata complied with the deadline in section 144 of the SPA.
42. However, the strata did breach bylaw 33(2) by failing to hold a hearing within 3 weeks. The bylaws do not specify a remedy. I find that the reasoning in *Storozuk* is limited to the requirements in section 144 of the SPA, not the requirements set out in a strata corporation’s bylaws. I conclude that I have discretion to order an appropriate remedy. In the circumstances of this dispute, I find that it would not be appropriate to order an automatic exemption to the rental bylaw based on the strata’s breach of bylaw 33(2).
43. First, the strata complied with the current version of section 144. Bylaw 33 reflects the deadlines in section 144 as they were at the time the strata passed the bylaws in 2002. I therefore find that the strata did not intend to provide for stricter deadlines than those found in section 144. Second, as discussed in more detail below, the strata acted reasonably with respect to its consideration of the applicant’s request. Third, and most importantly, the applicant has not identified any prejudice as a result of the delay, which was only 1 day after the deadline in the bylaws. I find that the breach was insignificant.
44. The applicant also says that the strata failed to give a decision within 1 week of the hearing. The strata sent the applicant its email asking for more information and documentation about the applicant’s alleged hardship within 1 week of the hearing. The question is whether this email is a “decision” within the meaning of section 144(4) of the SPA.
45. The applicant says that the strata did not approve or deny the request and therefore did not make a decision. The strata says that a decision does not necessarily need to be a yes or no. I agree with the strata.

46. I find that the applicant's interpretation of section 144(4) of the SPA would lead to a situation in which a strata corporation would have no reasonable ability to seek more information from an owner after a hearing. One week is very little time for a strata corporation to make a determination about what further information and documentation it requires, receive that information and documentation from the owner, consider it, and render a written decision. I find that the strata deciding that it had insufficient information to come to a conclusion is a decision that satisfies its obligations under section 144(4).
47. In summary, I find that the strata did not breach section 144 of the SPA. I find that the strata breached bylaw 33 but decline to order a remedy for the breach. Therefore, I find that the applicant is not entitled to an automatic exemption of the rental bylaw.

Did the strata unreasonably refuse to grant the applicant's exemption request?

48. Section 144(6) says that a strata must not unreasonably refuse to grant an exemption request.
49. The strata relies on *Als v. The Owners Strata Corporation NW 1067*, 2002 BCSC 134, which focused on the definition of "hardship" in section 144 of the SPA.
50. In *Als*, the owner's employer required him to relocate and the owner sought an exemption from a rental restriction bylaw. The strata corporation requested a financial statement from the owner, but the owner refused because it was "intrusive". The strata corporation refused the exemption request because the owner had not proven that the cost of maintaining his strata lot without rental income was a hardship to the owner. The Court found that the strata corporation reasonably refused the exemption request in the absence of evidence from the owner.
51. I find that the Court's reasoning, which is binding on me, applies in this dispute.
52. I find that it was reasonable for the strata to ask for more information and documentation to support the applicant's ongoing claim of financial hardship. The applicant does not explain why he did not provide any documentation to support his hardship claim. The applicant provided general information about why he had to continue to live in Singapore and that his financial situation was poor but did not provide any details about his finances to support his assertion.
53. I do not agree that the strata's approval of 2 previous exemptions without documentary evidence means that it was bound to keep approving the applicant's

requests for as long as the applicant asserted that the hardship continued. If the applicant held that expectation, it was not a reasonable one. I note that the applicant had asked for an indefinite exemption in September 2017, but the strata only granted a 1-year exemption. It is clear from the correspondence that the strata was concerned that the temporary exemption would gradually turn into an indefinite or ongoing exemption, which was contrary to the strata community's desire to prohibit rentals.

54. Furthermore, by asking for financial information, I infer that the strata was open to a further extension if the applicant's circumstances warranted it. The applicant refused to cooperate.
55. The applicant also argues that the strata unreasonably refused to consider a "roommate/tenant situation" as part of his hardship application. As discussed above, the strata did not refuse to allow the applicant to have a roommate. Rather, the strata told the applicant that they could not consider the request unless he moved back, which the applicant has not done. The applicant says that this response was unsatisfactory because it raises the prospect that the strata would be policing the amount of time that he spent at home. I do not agree that the strata insisting that the applicant be a resident in his strata lot means that the strata intended to monitor and enforce a minimum amount of time that the applicant had to be at home. Rather, I infer that the strata was skeptical that the applicant would move back without his spouse and wanted to ensure that the applicant was not trying to do indirectly what he could not do directly. In any event, the applicant still failed to provide any documentation to support his hardship claim.
56. Therefore, I find that the strata did not unreasonably refuse to grant the applicant an exemption based on hardship. However, nothing in this decision prevents the applicant from applying for an exemption from the rental bylaw in the future, with appropriate documentary support.

Did the strata make defamatory statements about the applicant? If so, what remedy is appropriate?

57. The applicant argues that the strata's misunderstanding of his arrangements with his tenants constitutes defamation because it casts him as untruthful. I find that that claims about defamation are outside of the tribunal's jurisdiction over strata property claims as set out in section 121 of the Act. Though not binding on me, this finding is consistent with previous tribunal decisions, including *Taylor et al v. The Owners, Strata Plan 1801 et al*, 2018 BCCRT 925 and *Pritchard v. The Owners, Strata Plan VIS3743*, 2017 BCCRT 69. For that reason, I refuse to resolve the applicant's claim

for defamation under section 10 of the Act. I make no comment on the merits of this aspect of the applicant's claim.

TRIBUNAL FEES AND EXPENSES

58. 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 dismiss the applicant's claim for tribunal fees and dispute-related expenses.

59. 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.

DECISION AND ORDER

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

Eric Regehr, Tribunal Member