



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Hulbert et al v. The Owners, Strata Plan LMS 2125*, 2019 BCCRT 773

B E T W E E N :

Tabitha Hulbert and Adam Hulbert

APPLICANTS

A N D :

The Owners, Strata Plan LMS 2125

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant Tabitha Hulbert owns a 98/100 undivided interest in strata lot 34 (SL34) in the respondent strata corporation, The Owners, Strata Plan LMS 2125 (strata). The applicant Adam Hulbert, Ms. Hulbert's father, owns a 1/100 undivided interest in SL34. V.M., who is not a party to this dispute, owns the remaining 1/100 undivided interest in SL34.

2. The strata's bylaws prohibit rentals, and the applicants seek a hardship exemption to rent SL34 for a minimum of 2 years with a possibility of extension for an additional 2 years if required. Ms. Hulbert has already applied twice to the strata for hardship exemptions, both of which the strata denied.
3. The strata says Ms. Hulbert has failed to provide sufficient financial and other information to establish hardship, and that the other 2 owners of SL34 have not established hardship.
4. The applicants are self-represented and the strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

5. 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.
6. 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 "he said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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.

7. 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.
8. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
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, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

10. The issue in this dispute is whether the strata complied with section 144 of the *Strata Property Act* (SPA) when it denied Ms. Hulbert's requests for an exemption of the rental restriction bylaw, and if not, whether Ms. Hulbert is entitled to her requested exemption.

EVIDENCE AND ANALYSIS

11. In a civil claim like this one, the applicants must prove their claim on a balance of probabilities. This means the tribunal must find it is more likely than not that the applicants' position is correct.
12. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.

Did the strata comply with section 144 of the SPA when it denied Ms. Hulbert's requests for an exemption of the rental restriction bylaw, and if not, is Ms. Hulbert entitled to her requested exemption?

13. The strata was created in 1995. The most recent set of bylaw amendments were filed with the Land Title Office (LTO) in September 2016. These are the bylaws that apply to this dispute.
14. Ms. Hulbert bought SL34, a 2-bedroom unit, in 2002 and lived in it with her daughter until the spring of 2018. Ms. Hulbert's daughter is now a teenager. Ms. Hulbert's brother has a brain injury and significant mental health issues, and he lived with Ms. Hulbert's mother until her death in 2016. When Ms. Hulbert's mother died, Ms. Hulbert became the primary caregiver for her brother, and she says the only way she could fulfil this role was to live with him. She says SL34 is too small for the 3 of them, because her brother needs a quiet, private space to regulate his mental health, and her teenaged daughter also requires privacy. She says she was forced to move out of SL34 and rent a larger dwelling to accommodate her family's needs.
15. Bylaw 9.1 says that in cases of undue physical or financial hardship of a personal nature, an owner may make a written request to the strata council in accordance with section 144 of the SPA to rent a strata lot for a limited period of time. If the council has been provided with evidence that undue hardship will result if limited rental approval is not granted, the council will not unreasonably withhold permission for a limited rental.
16. Section 144 of the SPA says an owner wishing to apply for a hardship exemption from a bylaw prohibiting rentals must do so in writing and state the reason the owner thinks the strata council should make an exemption. If the owner requests a hearing, the strata must hear the owner within 4 weeks of the request. The owner is allowed the exemption if the strata does not give the owner its decision in writing within 1 week after the hearing, or if the strata does not hold a hearing within 4 weeks of the request. The strata may grant an exemption for a limited time, and the strata must not unreasonably refuse to grant an exemption.

17. In *Als v. The Owners, Strata Corporation NW 1067*, 2002 BCSC 134, the BC Supreme Court said that whether an owner is suffering hardship under section 144 of the SPA depends on the circumstances of each case. The applicant has the burden of proving hardship, and what may be considered hardship to one owner may not be hardship to another. The court adopted the *Shorter Oxford English Dictionary* definition of hardship, which means “hardness of fate or circumstance; severe toil or suffering; extreme privation.” The court also said that determining whether a strata complied with section 144 of the SPA requires a consideration of the facts that were before the strata council when it decided to deny an exemption.
18. The question I must decide is whether the strata’s decisions to refuse Ms. Hulbert’s hardship applications were reasonable in all the circumstances, as contemplated in *Als*. Based on the evidence before me, I find that they were.
19. On April 28, 2018 Ms. Hulbert informed the strata that she had moved out and was requesting a hardship exemption to rent out SL34. On May 10, 2018 she requested a hearing.
20. On May 23, 2018 the strata sent Ms. Hulbert a letter outlining the requirements for applying for financial hardship. That letter is not in evidence and none of the parties have articulated the contents of the letter. However, I find there is no requirement for the strata to instruct an owner as to which specific documents it requires for them to prove hardship. Rather, I find it is the owner’s responsibility to provide evidence of their particular situation to establish hardship.
21. On May 24, 2018 Ms. Hulbert attended a hearing in person before the strata council. It is undisputed that she provided no documentary evidence at this hearing. Ms. Hulbert says the reason she did not disclose any financial information to the strata council was because she did not feel comfortable doing so. She says the strata council had previously failed to maintain confidentiality and professionalism, and she had experienced conflict with them in the past. She submitted a statement from T.M. who is her neighbour and a former strata council member. T.M. said that she believes certain council members are unable to put aside their personal

opinions and biases, and that if certain council members like an owner, that owner is more likely to receive a favourable outcome.

22. The strata says it gave Ms. Hulbert the option of presenting her financial information to the strata's property manager so that she did not have to disclose confidential information to the strata council directly, and its property manager could have informed the council whether or not Ms. Hulbert had proven financial hardship. The strata says Ms. Hulbert declined this option and accused the strata of wrongdoing. The strata also says Ms. Hulbert could have printed out her financial documents and redacted all information irrelevant to her hardship application to minimize her privacy concerns.
23. Ms. Hulbert denies that the strata gave her the option to submit her financial information to the property manager. She says the only option the strata gave her was to meet with the property manager and the strata council president, which made her uncomfortable.
24. Regardless of whether the strata gave Ms. Hulbert the option of presenting her financial information solely to the property manager, or to the property manager and the council president, I find the fact Ms. Hulbert provided no financial information to the strata to be detrimental to her hardship application. Bylaw 9.1 requires an owner applying for a hardship exemption to provide the strata council with evidence of hardship. It is clear from the evidence before me that the strata was aware of Ms. Hulbert's privacy concerns and made some efforts to accommodate her. It is also clear that she had the option to provide redacted financial information or to present it only to certain individuals. In all the circumstances, I find Ms. Hulbert's privacy concerns did not absolve her from her responsibility to provide the strata with evidence to establish hardship under bylaw 9.1.
25. On May 24, 2018 the strata denied Ms. Hulbert's hardship application based on insufficient evidence, and in particular, a lack of financial information. Based on the undisputed fact that Ms. Hulbert provided no evidence at the hearing and my findings above, I find the strata's decision was reasonable in the circumstances, and

I find the strata complied with bylaw 9.1 and section 144 of the SPA in denying Ms. Hulbert's application at that time.

26. On June 19, 2018 Ms. Hulbert started this dispute with the tribunal.
27. On August 28, 2018 Ms. Hulbert had a second hearing before the strata council for her hardship exemption application. At that time Ms. Hulbert provided the strata with an unsigned doctor's letter which confirms her family situation, states that her brother cannot live independently, and states that her 2-bedroom strata lot is unsuitable for her family's circumstances. The strata says it was concerned that the letter was unsigned and that it read like a "sick note," however there is no indication the letter was not written by the doctor indicated on the letterhead or that the letter was otherwise falsified. While I find the doctor's letter confirms Ms. Hulbert's difficult family situation, I find it does not in itself establish hardship, as it does not provide any information about Ms. Hulbert's financial situation.
28. The strata says it told the applicant that at the August 28, 2018 hearing it required a mortgage statement, a signed rental agreement, proof of rent coming out of her bank account, and a T4 Statement of Remuneration Paid. Ms. Hulbert denies that the strata asked her for a mortgage statement or a rental agreement. Regardless of what the strata may have requested, it is undisputed that at the August 28, 2018 hearing the only financial information Ms. Hulbert showed the strata was screenshots of her bank account on her phone, which are not in evidence. The strata says it was unable to verify from the screenshots alone whether the bank account displayed belonged to Ms. Hulbert. It also says the e-transfer amounts coming out of the bank account displayed in the screenshots were all for different amounts, and therefore the strata was unable to determine which of those payments were for rent or for her mortgage.
29. The strata also says Ms. Hulbert's mother died in 2016 and that she refused to put her strata lot on the market when the condominium market in Chilliwack was doing well, despite knowing her family's needs. On the evidence before me it does not

appear that Ms. Hulbert provided the strata with any information at the August 28, 2018 hearing to explain why she did not try to sell her strata lot.

30. The strata also says several owners witnessed someone upgrading the floor in SL34 after Ms. Hulbert moved out in 2018, and that this weakened her claim for financial hardship. Ms. Hulbert says her boyfriend had been working on renovations to her strata lot for years a little at a time, as she cannot afford a contractor. I find Ms. Hulbert's explanation to be reasonable, and I find the fact that she is upgrading her floor is not a significant factor in determining whether she established hardship.
31. The strata denied Ms. Hulbert's second hardship exemption application.
32. Since the screenshots Ms. Hulbert showed the strata at the August 28, 2018 hearing are not in evidence I am unable to assess the strata's concerns about the information contained in them. However, since the applicants brought this dispute it is their responsibility to prove their claims. I find that by failing to submit the screenshots into evidence, and by providing no other financial information to the strata at the hearing, the applicants have failed to establish that the strata's decision to deny Ms. Hulbert's second hardship application was unreasonable in the circumstances.
33. On November 1, 2018 Ms. Hulbert gave the strata a letter from her financial advisor dated October 22, 2018 outlining her financial situation (letter). The letter says Ms. Hulbert's budget was "no longer workable," and that she was reluctant to sell SL34 because she was unable to secure a pre-qualification to buy a new home. The letter says that after paying her regular bills including loan payments, insurance, regular expenses and transport, Ms. Hulbert had only \$285 remaining per month to spend on groceries, medical expenses, clothing, and eating out. The letter suggests Ms. Hulbert's 3 main options were to downsize the rental home she was living in, sell SL34 and buy a 3-bedroom home, or obtain strata approval to rent SL34 to supplement her income. Ms. Hulbert provided the letter to the strata after it had already denied her hardship application for a second time, so the strata did not have this information available to it when it made its decision.

34. Ms. Hulbert also submitted an email she received from her mortgage broker on October 24, 2018 which says that because of her credit and current debts she did not qualify for a mortgage above \$400,000. It is unclear if or when she sent this email to the strata, but she received this email after the strata denied her hardship application for the second time.
35. Even if the strata did have the letter and the email before making its decision to deny Ms. Hulbert's hardship application, I find the information contained in the letter and the email is insufficient to establish hardship based on the factors set out in *A/s*. The court in *A/s* determined that an owner's inability to sell a strata lot on its own is insufficient to establish hardship. The letter and email indicate that Ms. Hulbert was unwilling to sell her strata lot because she would not be pre-approved for a mortgage to buy a larger residence elsewhere. However, neither of these documents provide information about the value of Ms. Hulbert's strata lot or the potential cost of alternative living arrangements, and she clearly has not attempted to sell her strata lot. For these reasons I find the letter and email insufficient to establish hardship.
36. The strata says that because there are 3 owners on title for SL34, each owner must provide proof of financial hardship. In *Lina Lacoursiere v. The Owners, Strata Plan KAS 989*, 2017 BCCRT 64, the tribunal said that section 144 of the SPA does not require all owners on title to apply for a hardship exemption. However, in that case the tribunal member found that 1 of the strata lot owners acted as agent for the other 2 strata lot owners. In this case, there is no indication that one of the owners of SL34, V.M., is aware of Ms. Hulbert's hardship applications or this dispute. Since I have already determined that the strata's decisions to deny Ms. Hulbert's hardship applications were reasonable in the circumstances, I find I am not required to make a finding as to whether Mr. Hulbert or V.M. were required to provide evidence of hardship. However, I note that each of them owns only 1/100 interest in SL34, so presumably Ms. Hulbert bears 98 percent of the costs of the strata lot and would bear the burden of any financial hardship.

37. On December 7, 2018 Ms. Hulbert moved back into SL34 because she says she could not afford her rental residence and her fees for SL34. She says her brother was forced to move back to Port Hardy on Vancouver Island where he has limited access to supports and services. She says she would be able to help her brother access required supports and services in Chilliwack, where she lives. She says she has made temporary arrangements for her brother in Port Hardy, but says she is often required to take time off work and take her daughter out of school to travel to Port Hardy when her brother is in crisis.
38. While I am sympathetic to Ms. Hulbert's difficult family situation, on the evidence before me I conclude that the strata's decisions to deny her hardship exemption applications were reasonable in the circumstances. I therefore dismiss the applicants claims, and this dispute. However, I find Ms. Hulbert is free to re-apply to the strata for a hardship exemption at any time. Should she choose to do so, I suggest that she print out all relevant financial statements and documents and redact any irrelevant information to best assist the strata council while also protecting her privacy.

TRIBUNAL FEES AND EXPENSES

39. 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. Since the applicants were unsuccessful, I find they are not entitled to reimbursement of their tribunal fees. They have not claimed any dispute-related expenses.
40. 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.

DECISION AND ORDERS

41. I dismiss the applicants' claims and this dispute.

Sarah Orr, Tribunal Member