



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR 351 v. Cuthbertson*, 2019 BCCRT 899

B E T W E E N :

The Owners, Strata Plan VR 351

APPLICANT

A N D :

JANE CUTHBERTSON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The respondent, Jane Cuthbertson (owner) owns a strata lot in the applicant strata corporation, The Owners, Strata Plan VR 351 (strata).

2. The owner is self-represented in this dispute. The strata is represented by a strata council member.
3. The strata says the owner rented out her strata lot on a short-term, hotel-type basis, contrary to the strata's bylaws. The strata seeks an order that the owner pay \$2,100.00 in bylaw violation fines.
4. The owner seeks to have the dispute dismissed. She says a rental exemption applies to her strata lot, and also that there is no bylaw prohibiting short-term rentals.

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. 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.
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 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

10. The issue in this dispute is whether the owner violated the strata's bylaws, and if so, whether she must pay fines.

BACKGROUND FACTS

11. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding such as this, the applicant strata must prove its claims on a balance of probabilities.
12. The strata was created in 1976, and consists of 16 residential strata lots.
13. The strata bylaws applicable to this dispute are those registered at the Land Title Office (LTO) on August 8, 2011. By filing amendments on August 8, 2011, the strata repealed and replaced all previous bylaws. The LTO records show that the strata has not amended its bylaws since then.
14. The bylaws relevant to this dispute state as follows:

Bylaw 3.1 – Strata Lots shall not be used for commercial or professional purposes requiring a business licence or Public Access.

Bylaw 9.1 – Except in accordance Section 142 of the [Strata Property] Act, no Owner shall enter into a tenancy agreement, or rent, lease, or grant to any Person a license or right to occupy all or any part of a Strata Lot, including without limiting the generality of the foregoing, permitting any Person other than an Owner or Family Member to reside in, possess, occupy, or use a Strata Lot.

Bylaw 9.3 – Before a Tenant takes possession of a Strata Lot pursuant to Section 142 or 144 of the Act:

- (a) an Owner must deliver to the Tenant the Bylaws and Rules and a Notice of Tenant’s Responsibilities in the form required by the Act;
- (b) within two weeks of renting the Strata Lot, an Owner must give the Strata Corporation a copy of the Notice of Tenant’s Responsibilities duly signed by the Tenant;

Bylaw 9.4 – Where an Owner contravenes this Bylaw 9, the Owner shall be subject to a fine of \$500.00 and the Strata Corporation may take all necessary steps to terminate the Owner’s agreement with the Tenant, including, but not limited to, seeking a declaration or Court injunction to enforce this Bylaw 9. Any legal costs incurred by the Strata Corporation in enforcing this Bylaw 9 shall be the responsibility of the contravening Owner and shall be recoverable from the Owner on a solicitor and own client basis by the Strata Corporation.

- 15. According to a November 2017 letter provided in evidence, the owner was granted a hardship exemption to the strata’s rental restriction bylaw, under section 144(1) of the *Strata Property Act* (SPA). The letter contains no time limit on that exemption.
- 16. On May 7, 2018, the owner and another individual were issued a business licence by the City of Vancouver. The business licence states that the owner’s business was located at the strata lot address. The “business type” is listed as “Short-Term Rental”. Various rules are listed on the licence, including the following:
 - a. Post the licence in a visible location within the short-term rental accommodation.
 - b. No more than two adults sleeping per room.
 - c. Only allow short-term rentals to occur in the unit specified on the licence.
 - d. Include the business licence number in all marketing.

17. On August 15, 2018, the strata sent the owner a “notice of bylaw contravention”, stating that it had received a complaint that the owner had contravened bylaw 3.1 by operating a short-term rental business in her strata lot. The notice offered the owner an opportunity to respond to the complaint, including by requesting a hearing before the strata council. The notice said that if the owner failed to respond or the strata found she had contravened the bylaws, further action for enforcement could occur.
18. On September 22, 2018, the strata sent the owner a second “notice of bylaw contravention”. The second notice said the strata had received a complaint that the owner had contravened bylaws 9.3 and 9.4 by renting out her strata lot without providing a Form K – Notice of Tenant’s Responsibilities. The notice offered the owner an opportunity to respond to the complaint, including by requesting a hearing, and also warned of possible further action for enforcement.
19. On September 22, 2018, the strata sent the owner a “demand notice for payment”, stating that \$1,600.00 in bylaw violation fines were due and payable within 14 days. An attached letter said the fines were for contraventions of bylaw 3.1, because the owner was operating a short-term rental business out of her strata lot. The text of bylaw 3.1 was set out in the letter. The \$1,600.00 in fines were broken down as \$200.00 per week, for each week from July 22 to September 15.
20. On October 20, 2018, the strata sent the owner a second “demand notice for payment”, stating that a \$500.00 fine had been levied against her strata lot for renting it out in June 2018 without providing a Form K. The notice cited bylaws 9.3 and 9.4, and demanded payment within 14 days.
21. A hearing before strata council was held on November 19, 2018. The parties negotiated after that, but did not reach an agreement.

Did the owner violate bylaw 3.1?

22. The strata says the owner violated bylaw 3.1 by allowing short-term paid occupancies of her strata lot, which is a licenced, hotel-type business, contrary to bylaw 3.1.
23. I find that the owner did allow short-term occupancies of her strata lot. In the Dispute Response Form provided to the tribunal, the owner did not specifically deny this assertion, but said she had no single renter for more than 30 days, and that she or her children occasionally stayed in the suite during the period in question. She also argued that she had a right to engage in short-term rentals under the strata's bylaws, and under the authority of the short-term rental licence issued by the City.
24. Based on these submissions and the evidence before me, I accept that the owner engaged in short-term rentals of her strata lot from July 22 to September 15, 2018. In making this finding, I note that the owner provided no particulars or evidence to support her assertion that she or her children occupied her strata lot during some of the relevant period. It was open to the owner to provide documents such as a guest schedule or payment confirmation, but she did not do so and I therefore conclude there were short-term rentals during the period in question.
25. In *Rutherford v. The Owners, Strata Plan 170*, 2019 BCCRT 531, I reasoned in paragraphs 21 to 25 that a hardship exemption to a strata corporation's rental prohibition bylaw does not apply to short-term, hotel-type occupancies (such as Airbnb). This is because such occupancies are not rentals but licences to occupy: *The Owners, Strata Plan BCS 3625 v. Wiltsey et al*, 2018 BCCRT 155, at paragraph 31.
26. Although previous tribunal decisions are not binding precedents, I find the same reasoning applies in this dispute, and therefore the short-term occupancies of the owner's strata lot are not covered by her hardship exemption. A hardship exemption is issued under section 144 of the SPA, and only applies to rentals, rather than licences to occupy.

27. Strata bylaw 9.1 prohibits licences to occupy, in addition to rentals. However, since none of the strata's correspondence informed the owner of a breach of bylaw 9.1, or set out a fine for that breach, I find that bylaw 9.1 is not determinative of this dispute. Under SPA section 135, before imposing a fine for a bylaw breach, a strata corporation must receive a complaint about the breach, and give the owner written particulars of the complaint with an opportunity to respond. Since the strata did not give the owner notice of a breach of bylaw 9.1, no fine may apply. Without deciding the issue, I note that future short-term, hotel-type occupancies would appear to be contrary to bylaw 9.1.
28. However, I find that the owner's short-term occupancies also violated bylaw 3.1. Bylaw 3.1 says strata lots shall not be used for commercial or professional purposes requiring a business licence or Public Access.
29. The owner relies on the BC Supreme Court's decision in *Semmler v. The Owners, Strata Plan NES3039*, 2018 BCSC 2064 to support her argument that her short-term rentals are not a commercial or professional use.
30. In part, *Semmler* dealt with whether short-term occupancies were a breach of a strata corporation's bylaw prohibiting the use of any strata lot for a "business purpose" without permission. Based on the specific wording of that strata corporation's bylaws, the court concluded that the owner's short-term rentals were passive income, rather than a business. In reaching that conclusion, the court reasoned that in determining the meaning of the "business purpose" bylaw, it was necessary to read the bylaws as a whole (paragraph 18). The court held that since rentals of over 30 days were permitted in the strata, and since the business purpose bylaw also prohibited visible storage of "inventory for the purpose of a business", the intention of the "business purpose" bylaw was to prohibit using a strata lot for such things as a business office, retail outlet, or production facility.
31. While *Semmler* is a binding precedent, I find that the facts are different from those before me in this dispute. Bylaw 3.1 does not refer to "business", and more importantly, the strata's bylaws prohibit all rentals of any length. This is significantly

different from *Semmler*, where only rentals of under 30 days were prohibited. In *Semmler*, the court reasoned as follows in paragraphs 18 and 19:

While the Strata Bylaws are not a statutory enactment, it is my view that basic rules of statutory interpretation should be employed in understanding how the Bylaws work together. As such, I find that in determining the meaning of an individual bylaw, the Bylaws must be read as a whole. An interpretation which allows the Bylaws to work together harmoniously and coherently should be preferred: *Carnahan v. Strata Plan LMS522*, 2014 BCSC 2375 (CanLII) at para. 25.

Bylaw 4(47) does not prohibit all rentals of strata lots. Rather, it only restricts the rental of strata lots for periods of less than 30 consecutive days. By implication, rentals in excess of 30 consecutive days are permitted. If Bylaw 4(11) were to be construed to prohibit the rental of a strata lot as a business purpose, Bylaw 4(47) would be inconsistent with Bylaw 4(11).

32. In reading the bylaws before me as a whole, I find that their intention was to prevent short and long-term rentals. This is supported by the fact that bylaw 9.1 prevents both rentals and licences to occupy. Also, the wording of bylaw 3.1 is entirely different from the wording of the disputed bylaw in *Semmler*. Bylaw 3.1 says strata lots shall not be used for commercial or professional purposes requiring a business licence or Public Access.
33. I find that allowing hotel-type occupancies necessarily involves some level of public access, as members of the public will have to enter the common property in order to access the strata lot. Also, the owner's business licence for short-term rentals is in evidence. Since the owner paid to obtain the business licence, I infer that it was required. This is supported by the fact that the licence says short-term rentals were only permitted in the unit specified on the licence, and that the licence number was to be included in all marketing.
34. For these reasons, I find that the short-term hotel-type occupancies are a commercial purpose requiring a business licence, contrary to bylaw 3.1. The

reasoning in *Semmler* about business purposes is not applicable, as it involves different bylaws with entirely different wording and intentions.

35. The owner also submits that since she has a City licence permitting short-term rentals of her strata lot, that this licence should take precedence over any strata bylaw. I disagree. A licence issued by a municipal government does not take precedence over a strata's bylaws. Under the SPA, the strata has the authority to enact bylaws, including bylaws about rentals and short-term licences to occupy. The strata's bylaws are binding on all strata lot owners. City licences or bylaws may impose additional requirements on strata lot owners, but would not exempt them from a validly enacted bylaw.

36. For these reasons, I find that the owner violated bylaw 3.1.

\$1,600.00 Fine for Bylaw 3.1 Breach

37. Although I accept that the owner violated bylaw 31, I find the strata did not follow the requirements of SPA section 135 in imposing the \$1,600.00 fine for that breach.

38. The August 15, 2018 "notice of bylaw contravention" set out the particulars of the alleged breach, and said that further action for enforcement could occur. The specifics of such further enforcement were not provided.

39. The next correspondence in evidence about the bylaw 3.1 breach is the strata's September 22, 2018 demand notice and letter, which state that \$1,600.00 in bylaw violation fines were due and payable within 14 days. I find that this notice did not meet the requirements of section 135, as the owner was never specifically warned that she could or would be fined, or how much. Rather, she was giving one general warning with no information about potential fines, and then a bill for \$1,600.00. I find that this does not meet the procedural fairness requirements of section 135. Also, the strata did not follow section 135(2), which requires written notice of a decision to impose a fine "as soon as feasible". Under this provision, the strata was required to inform the owner in writing when it first imposed the fine on July 22, 2018.

40. The BC Court of Appeal has said the requirements of section 135 must be strictly followed before a fine can be imposed: *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.
41. For these reasons, I conclude that the \$1,600.00 fine for the bylaw 3.1 was invalid. The owner is not required to pay it, and I dismiss the strata's claim.

Did the owner violate bylaw 9.3?

42. The strata also says the owner violated bylaw 9.3 by failing to provide a Form K. Bylaw 9.3 says, in part, that within 2 weeks of renting a strata lot, and owner must give the strata a copy of the Notice of Tenant's Responsibilities (Form K) signed by the tenant.
43. I find that the owner was not required to provide a Form K because she did not rent out her strata lot, but rather allowed temporary licences to occupy. Again, as explained in *Rutherford*, Part 8 of the SPA does not apply to licences to occupy, because they are not rentals.
44. A Form K notice is required under the SPA section 146. Section 146 applies only to rentals, and not licences to occupy.
45. For these reasons, I find the owner was not required to provide the strata with a Form K. Therefore, she does not have to pay the \$500.00 for the alleged breach of bylaw 9.3. I dismiss this claim.

FEES AND EXPENSES

46. The applicant was unsuccessful in this dispute. In accordance with the Act and the tribunal's rules I find it is not entitled to reimbursement of tribunal fees or dispute-related expenses
47. The strata must comply with the provisions in section 189.4 of the SPA, which include not charging dispute-related expenses against the owner.

DECISION AND ORDERS

48. I dismiss the strata's claims, and this dispute.

Kate Campbell, Tribunal Member