Civil Resolution Tribunal

Date Issued: October 18, 2019

File: ST-2019-000768

Type: Strata

Civil Resolution Tribunal

Indexed as: *Highstreet Accommodations Ltd. v. The Owners, Strata Plan LMS 3824*, 2019 BCCRT 1205

B E T W E E N :

HIGHSTREET ACCOMMODATIONS LTD.

APPLICANT

A N D :

The Owners, Strata Plan LMS 3824

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Sarah Orr

INTRODUCTION

1. The applicant, Highstreet Accommodations Ltd., is the tenant of strata lot 145 (SL145) in the respondent strata corporation, The Owners, Strata Plan LMS 3824 (strata). The owner of SL145 is not a party to this dispute.

2. The applicant says the strata's bylaws 4.5 (e) and 41.12 (disputed bylaws) do not apply to SL145 or else are unenforceable because they do not comply with Part 8 of the *Strata Property Act* (SPA). It wants the tribunal to declare that the disputed bylaws do not apply to SL145 or else are unenforceable. It also wants the strata to reverse all fines issued against SL145 for contravening the disputed bylaws.

3. The strata says the disputed bylaws apply to SL145, and that they are enforceable because they are not rental restriction bylaws, so they are not required to comply with Part 8 of the SPA. It says there is no basis to reverse the fines it issued against SL145 for contravening those bylaws.

4. The applicant is represented by an employee or principal, and the strata is represented by S.H., who I presume is a council member.

5. Throughout their submissions the parties refer to bylaw 44.12 and 41.12 interchangeably and to bylaw 4.4 (e) and 4.5 (e) interchangeably. In the context of the applicant's claims and submissions I presume these are simply typographical errors. I have written this decision on the basis that the applicant takes issue with bylaws 4.5 (e) and 41.12, not bylaw 4.4 (e) and 44.12.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims under section 121 of the Civil Resolution Tribunal Act (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The tribunal must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the tribunal's process has ended.

7. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.

8. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The tribunal may also ask the parties and witnesses questions and inform itself in any 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 CRTA 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.

ISSUES

11. The issues in this dispute are:

    a. Do the disputed bylaws apply to SL145, and if so, are they enforceable?

    b. Has the applicant contravened the disputed bylaws?

    c. Is the strata required to reverse all fines issued against SL145 for contravening the disputed bylaws?

EVIDENCE AND ANALYSIS

12. In a civil claim like this one, the applicant must prove its claim on a balance of probabilities. This means the tribunal must find it is more likely than not that the applicant's position is correct.

13. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.

14. The strata was created in 1999. In December 2001 the strata repealed and replaced all but 1 of its previous bylaws with new bylaws, which it filed with the Land Title Office (LTO). The strata has filed numerous bylaw amendments with the LTO since that

time. On July 13, 2015, the strata amended its bylaws to add the following disputed bylaws:

> Bylaw 4.5 (e): An owner must not use a residential strata lot other than as a private residential dwelling and not for transient, short-term rentals, commercial hotel or hotel-like accommodation, a boarding house, house letting, a bed and breakfast, or for any other short-term accommodations.
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> Bylaw 41.12: An owner wishing to lease or rent a strata lot to a person or corporation must apply to the strata for permission to rent before entering into a tenancy agreement. The lease or tenancy shall be for a minimum term of 6 consecutive months. No residential strata lot shall be occupied under a residential tenancy lease, contract, or license arrangement for transient, short-term rentals, commercial hotel or hotel-like accommodation, a boarding house, house letting, a bed and breakfast, or for any other short-term accommodations, and shall only be leased or rented as a private residential dwelling.

15. On February 10, 2012 the applicant started its tenancy in SL145. It is undisputed that the applicant has never occupied SL145. It is undisputed that the applicant is a corporate housing and hospitality management company providing furnished, equipped, and serviced accommodations to clients through license agreements. The applicant says its licensees are mostly seeking accommodation after an insured loss, or employees who have relocated for their employment. It says it requires its licensees to stay in SL145 for a minimum of 1 month and it is not in the business of vacation or similar rentals. The strata does not dispute this.

16. On July 19, 2018, the strata notified the owner of SL145 and the applicant that it had received a complaint that SL145 was being used for short-term accommodations under license agreements in breach of the disputed bylaws. The applicant attended a hearing before the strata council in September 2018, after which the strata maintained its position that the applicant was in breach of the disputed bylaws, and it fined the applicant.

17. The statement of account for SL145 in evidence shows that between August 20, 2018 and November 26, 2018 the strata fined the applicant $3,000 for contravening the disputed bylaws. In May 2019 the strata reversed the fines it issued against SL145 between October 25, 2018 and November 26, 2018, which totalled $1,000. This left an outstanding balance of $2,000 in fines owing on SL145's strata account.

18. On November 22, 2018 the strata amended its bylaws to add bylaw 4.5 (f) which prohibits using a strata lot as a vacation, travel, or temporary accommodation (VTTA). This bylaw defines VTTA to include a licensed use of a strata lot and it increased the maximum fine under that bylaw to $1,000. The parties do not raise bylaw 4.5 (f) as an issue in this dispute, and the fines that are at issue in this dispute were imposed before this bylaw came into effect. Therefore, I decline to address bylaw 4.5 (f) in this decision.

Do the disputed bylaws apply to SL145, and if so, are they enforceable?

Applicability

19. The applicant says bylaw 41.12 is a "rental restriction bylaw" because it states, "a lease or tenancy of any residential strata lot shall be for a term of not less than six consecutive months," which clearly restricts the period of time for which a strata lot may be rented. It says the current owner of SL145 purchased it from the owner developer, and therefore under section 143 (2) (a) (i) of the SPA, SL145 is exempt from rental restriction bylaws until the current owner sells SL145.

20. The strata says bylaw 41.12 does not prohibit or restrict rentals, so it is not required to comply with Part 8 of the SPA.

21. Section 141 (2) of the SPA says a strata can only restrict the rental of a strata lot through its bylaws. Such bylaws may only limit rentals by prohibiting them altogether, or by limiting the number and time period of rentals. If a bylaw limits the number of strata lots that may be rented, it must set out the strata's procedure in administering that limit.

22. On a plain reading of bylaw 41.12 and section 141 of the SPA, I find that bylaw 41.12 limits rentals to periods of at least 6 months, therefore I find it is a rental restriction bylaw permitted by section 141 (2) of the SPA. The next question is whether the exception in section 143 (2) (a) (i) of the SPA applies to SL145.

23. Section 143 (2) (a) (i) of the SPA says that if a strata lot has been designated as a rental strata lot on a Rental Disclosure Statement (RDS), all requirements of section 139 have been met, and if the RDS is filed before January 1, 2010, a rental restriction bylaw does not apply to that strata lot until the earlier of the date the strata lot is conveyed by the first owner other than the owner developer, or the date the rental period expires, as disclosed on the RDS.

24. Section 139 (1) of the SPA requires an owner developer who rents or intends to rent a strata lot to file an RDS with the superintendent and give a copy of the RDS to each prospective purchaser before they purchase a strata lot.

25. The applicant relies on *Spagnuolo v. Owners, Strata Plan BCS 879*, 2009 BCSC 1733, in which the Supreme Court found a rental restriction bylaw did not apply to the petitioners under section 143 of the SPA, and they were permitted to continue renting their strata properties.

26. It is undisputed that the current owner of SL145 bought it from the owner developer on July 25, 2000. The problem for the applicant is that it did not submit the RDS as evidence, and it is possible there never was an RDS. Without it, I am unable to determine whether SL145 is properly designated as a rental strata lot, whether the requirements of section 139 have been met, and whether it was filed before January 1, 2010. Since the applicant is relying on the exception in section 143 (2) (a) (i) of the SPA, it is the applicant's responsibility to prove it meets the criteria for that exception. On the evidence before me, I find it has not done so.

27. Section 143 (1) of the SPA says that a rental restriction bylaw does not apply to a strata lot until the later of (a) 1 year after a tenant who is occupying the strata lot at the time the bylaw is passed ceases to occupy it as a tenant, or (b) 1 year after the bylaw is passed. It is undisputed that the applicant has never occupied SL145, so I

find section 143 (1) (a) does not apply to it (see *Highstreet Accommodations Ltd. v. The Owners, Strata Plan BCS 2478*, 2019 BCCA 64). Bylaw 41.12 came into effect on July 13, 2015. Therefore, on the evidence before me, I find bylaw 41.12 started applying to SL145 one year later, on July 13, 2016.

28. The applicant did not explain why it says bylaw 4.5 (e) does not apply to SL145. However, I find bylaw 4.5 (e) clearly prohibits "short-term rentals." Although the bylaw does not define "short-term," I find that it restricts the time period of rentals, and therefore it is a rental restriction bylaw. For the same reasons explained above, I find that on the evidence before me, bylaw 4.5 (e) started applying to SL145 on July 13, 2016.

Enforceability

29. The strata says bylaw 41.12 is not enforceable because it requires an owner wishing to lease or rent a strata lot to a person or corporation to apply to the strata for permission to rent before entering into a tenancy agreement. It says this screening is prohibited by section 141 (1) of the SPA. That section prohibits the strata from screening tenants, establishing screening criteria, requiring the approval of tenants, requiring the insertion of specific terms in tenancy agreements, or otherwise restricting the rental of strata lots except in accordance with section 141 (2). The strata relies on *Mathews v The Owners, Strata Plan VR 90*, 2016 BCCA 345 in which the Court of Appeal said that the prohibition against screening criteria in section 141 (1) applies equally to tenants and owners applying for permission to rent their strata lots.

30. For the following reasons, I find bylaw 41.12 does not breach section 141 (1) of the SPA, and therefore it is not unenforceable on this basis. Bylaw 41 has 12 subsections pertaining to rentals. Bylaws 41.1 and 41.2 limit the number of strata lots that may be rented to 10. Bylaws 41.3 to 41.8 set out the procedure for determining which strata lots may be rented, and this procedure requires an owner wishing to rent their strata lot to apply to the strata for permission. In this context, I find the requirement in bylaw 41.12 for an owner to apply to the strata for permission to rent is simply a restatement

of its process for administering the 10-strata lot rental limit, and I find it does not breach section 141 (1) of the SPA.

31. The applicant has not explained why it says bylaw 4.5 (e) is unenforceable. In the absence of evidence or submissions indicating otherwise, I find bylaw 4.5 (e) is enforceable.

Has the applicant contravened the disputed bylaws?

32. The strata essentially says the applicant contravened the disputed bylaws in 2 ways. First, it says the applicant allowed its clients to occupy SL145 through license agreements on a short-term basis. Second, it says the applicant's use of SL145 in this manner does not fall within the definition of a "private residential dwelling."

33. The applicant says "short-term accommodations" is not defined in the bylaws, and that it has always used the strata lot for residential purposes.

34. Bylaw 4.5 (e) prohibits an owner from using a residential strata lot other than as a private residential dwelling. It specifically prevents an owner from using a strata lot for transient, short-term rentals, commercial hotel or hotel-like accommodation, a boarding house, house letting, a bed and breakfast, or for any other short-term accommodations. I find the wording of bylaw 4.5 (e) applies only to an owner's use of a strata lot. Since the applicant does not own SL145, it cannot contravene bylaw 4.5 (e).

35. In contrast, I find the relevant wording of bylaw 41.12 applies to the use of a strata lot, and not specifically to an owner's use. Therefore, I find this bylaw applies to the applicant, and I focus the remainder of my analysis in this section on whether the applicant has breached bylaw 41.12.

Short-term accommodations

36. I agree with the applicant that "short-term accommodations" is not defined in the bylaws. The applicant says the case law generally defines "short-term accommodations" as anything less than 30 days, which it says is consistent with the

City of Vancouver's bylaw prohibiting short-term accommodations. It is undisputed that the applicant's licensees have never occupied SL145 for less than 30 days since the disputed bylaws came into effect.

37. The strata does not specifically address this point.

38. The only time period restriction in the bylaws relates to rentals, which must be for a minimum of 6 months. However, it is undisputed that the occupants of SL145 occupy SL145 under license agreements, not rental agreements. Therefore, I find the 6-month minimum does not apply to the licensed occupancies of SL145. Since the bylaws do not define short-term accommodations, I find the licensed occupancies of SL145, all of which have been more than 30 days in length, were not short-term accommodations as contemplated in bylaw 41.12.

Private residential dwelling

39. The next question is whether SL145 is leased or rented as a private residential dwelling. Since the applicant is the tenant, this means that under bylaw 41.12 the applicant's use of SL145 must fall within the meaning of "private residential dwelling," which is not defined in the bylaws.

40. The strata says that at all relevant times the applicant has been in the hospitality management and corporate housing business, and that it does not occupy SL145 as a private dwelling. However, I find the wording of bylaw 41.12 does not specifically require the applicant to occupy SL145 as a private residential dwelling, but rather to use it as one. The strata says all prohibited uses of strata lots in the disputed bylaws are commercial uses, and the purpose of those bylaws is to ensure that an owner does not use or allow their strata lot to be used for commercial purposes. It says the disputed bylaws are clearly worded to restrict short-term commercial occupancy licence agreements.

41. The applicant says the strata's assertion that a license to occupy SL145 amounts to a commercial use is insufficient, and that the character of the occupancy must be considered. It says its licensees are people who live and work in Burnaby and require

accommodation for an indefinite period of time. It says most of its licensees are unable to inhabit their homes due to an insured loss, or else they do not have another home in the area. The strata does not dispute the applicant's description of these occupancies. The applicant says there is nothing "commercial" taking place in SL145.

42. The applicant relies on the definition of "tenancy agreement" in the *Residential Tenancy Act* which includes a license to occupy a rental unit. It says that based on this definition, a license to occupy SL145 does not mean it is used for commercial purposes. The applicant also relies on the Residential Tenancy Branch's Tenancy Policy Guideline number 14 which says that re-renting rental units does generally create a commercial tenancy. However, the applicant in this case has not re-rented SL145, so I find this policy guideline is unhelpful on this point.

43. In *Semmler v. The Owners, Strata Plan NES 3039*, 2018 BCSC 2064, the BC Supreme Court found that an owner who allowed guests to occupy her strata lot though short-term license agreements did not breach the strata's bylaw prohibiting use of strata lots for business purposes. Although the bylaws in that case were not the same as the disputed bylaws, I find the reasoning in that case persuasive. In particular, the court said it made no difference to its analysis whether the owner offered her strata lot for occupation directly to guests or through a management company.

44. Based on the reasoning in *Semmler* and the very limited evidence before me, I find the applicant's licensees have occupied SL145 as a private residential dwelling, albeit for temporary periods of time, usually for several months. Since bylaw 41.12 does not define "short-term accommodations," I find the applicant did not contravene bylaw 41.12.

Is the strata required to reverse all fines issued against SL145 for contravening the disputed bylaws?

45. I have found that the applicant did not contravene bylaw 41.12. I have also found that, as a tenant, the applicant cannot contravene bylaw 4.5 (e). The problem is that the strata issued fines against SL145 for contravention of these bylaws, not against the

applicant. Therefore, in order to reverse the fines, I must also determine whether the owner contravened the disputed bylaws, even though the owner is not a party to this dispute.

46. The wording of bylaw 4.5 (e) is almost identical to the wording of part of bylaw 41.12. My finding that the applicant did not contravene bylaw 41.12 is based on the ambiguity of the terms "short-term accommodation" and "private residential dwelling," both of which appear in bylaw 4.5 (e). The evidence clearly indicates that the use of SL145 is the same regardless of whether that use is framed from the owner's perspective or the applicant's perspective. Therefore, in the circumstances, and for the same reasoning explained above, I find the owner has not contravened either of the disputed bylaws.

47. Therefore, I find the strata must reverse all the remaining fines it imposed against SL145 for contravening the disputed bylaws. For the reasons explained previously, I make no findings in this decision about whether the applicant or the owner of SL145 breached bylaw 4.5 (f), as it is not an issue properly before me in this dispute.

TRIBUNAL FEES AND EXPENSES

48. Under section 49 of the CRTA, 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 not to follow that general rule. Since the applicant was only partially successful, I find it is entitled to reimbursement of half its tribunal fees in the amount of $112.50. It did not claim any dispute-related expenses.

49. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

ORDERS

50. I order that:

a. Within 14 days of the date of this order the strata must pay the applicant $112.50 in tribunal fees.

b. The strata must immediately reverse all fines issued against SL145 for contravening bylaws 4.5 (e) and 41.12.

51. The applicant is entitled to post judgement interest under the *Court Order Interest Act,* as applicable.

52. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing a validated copy of the attached order in the Supreme Court of British Columbia (BCSC). Once filed, a tribunal order has the same force and effect as a BCSC order.

53. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia (BCPC). However, the principal amount or the value of the personal property must be within the BCPC's monetary limit for claims under the Small Claims Act (currently $35,000). Under section 58 of the CRTA, the applicant can enforce this final decision by filing a validated copy of the attached order in the BCPC. Once filed, a tribunal order has the same force and effect as a BCPC order.

Sarah Orr, Tribunal Member