



Civil Resolution Tribunal

Date Issued: December 30, 2019

File: ST-2019-006360

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wigard v. The Owners, Strata Plan 1073*, 2019 BCCRT 1447

B E T W E E N :

CHRISTINE WIGARD and GUNNAR WIGARD

APPLICANTS

A N D :

The Owners, Strata Plan 1073

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute over rental of a strata lot.
2. The applicant's Christine Wigard and Gunnar Wigard (owners), claim the respondent strata corporation, The Owners, Strata Plan 1073 (strata), is unfairly denying them permission to rent their strata lot (SL6). The owners ask for an order

that the strata allow them to rent SL6. The strata's position is that its bylaws do not permit the owners to rent their strata lot.

3. The owners are represented by Christine Wigard and the strata is represented by a strata council member.
4. For the reasons that follow, I find the strata cannot prohibit the owners from renting SL6 under the current bylaws.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.
8. 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.
9. Tribunal documents incorrectly show the name of the respondent as The Owners, Strata Plan, VIS 1073. Based on section 2 of the SPA, the correct legal name of the

strata is The Owners, Strata Plan 1073. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the strata's name in the style of cause above.

ISSUE

10. The issue in this dispute whether the owners are entitled to rent their strata lot.

EVIDENCE AND ANALYSIS

11. I have read all of the evidence but refer only to evidence I find relevant to provide context to my decision.

12. The strata was created in 1981 under the *Condominium Act* and continues to exist under the *Strata Property Act* (SPA). It is a 16 strata lot complex.

13. Under section 120 of the SPA, the strata's bylaws are the Standard Bylaws under the SPA unless different bylaws are filed at the Land Title Office (LTO). The LTO's general index for the strata shows two sets of bylaw amendments. The first set was filed as ES106280 on November 27, 2001 (2001 bylaws) and the second set was filed as FB381017 on October 26, 2010 (2010 bylaws). Both sets of bylaws refer to rental restrictions.

14. The parties say there is "confusion" among strata owners about the enforceability of the filed strata bylaws. The parties would like the tribunal to clarify the current bylaws regarding rentals, which is directly relevant to the issues before me.

15. I start with the more recently filed 2010 bylaws. Its bylaw 38 prohibits rentals except for circumstances of hardship or for families.

16. Section 128 of the SPA says a bylaw amendment must be approved at an annual or special general meeting (AGM or SGM) by a resolution passed by a $\frac{3}{4}$ vote. Section 45(3) says the strata must provide notice of the AGM or SGM that includes a

description of the matters that will be voted on at the meeting, including the proposed wording of any resolution requiring a $\frac{3}{4}$ vote.

17. The filed 2010 bylaws state they were passed at the November 26, 2009 AGM. However, the November 26, 2009 AGM minutes do not state that the strata passed its bylaw amendments by a $\frac{3}{4}$ vote. Instead, the minutes state that the bylaws and rules have to be “revamped”. As for rentals, the minutes record a motion that there be no rentals but does not include the wording of bylaw 38. I find the worded motion is very different than the filed bylaw 38.
18. I find the strata did not approve the rental bylaw amendment or any of the other amendments at the November 26, 2009 AGM under section 128 of the SPA. The strata held a special meeting on June 22, 2010 and did not pass the bylaw amendments at that meeting either.
19. I find there was also improper notice as required under SPA section 45(3). There is no evidence that the owners were notified of the proposed wording of any of the amendments in the 2010 bylaws.
20. I find the strata failed to meet the bylaw amendment procedures under section 128 and the notice requirements under section 45(3) of the SPA. For these reasons I find the 2010 bylaws filed in the LTO are invalid and as such, they are not enforceable.
21. So, do the 2001 bylaws apply to restrict rentals? I find they do not for the reasons that follow.
22. Related to rentals, the 2001 bylaws say:
 3. Strata 1073 allows only 2 rental units – at any time. Tenants must comply with and meet strata rules and regulations. Any other short term rental – because of moving, transferred, etc. must be approved by Council.
23. Part 8 of the SPA applies to rentals. Section 141(2)(b)(i) of the SPA says that the strata corporation may only restrict the rental of a strata lot by a bylaw that limits the

number or percentage of residential strata lots that may be rented. Section 141(3) says that a bylaw created under section 141(2)(b)(i) must set out the procedure to be followed by the strata corporation in administering the limit.

24. Bylaw 3 does not set out any procedure to administer the limit. To this extent, I find the bylaw contravenes the SPA. Under section 121 of the SPA, a bylaw is not enforceable to the extent that it contravenes the SPA. Therefore, I find the 2001 rental bylaw is also not enforceable.
25. In the absence of a specific amended bylaw, the Standard Bylaws apply. The Standard Bylaws have no rental restriction or prohibition. Therefore, I find the strata has no enforceable rental restriction or prohibition bylaws in place. Absent a bylaw restricting or prohibiting rentals, section 141 of the SPA provides that the strata cannot restrict or prohibit the owners from renting their strata lot.
26. For these reasons, I find the owners are entitled to rent SL6.
27. Since the owners raised the family member exemption in their submissions, I will comment on this exemption. Under section 142(2) of the SPA, a bylaw that restricts the number of rented strata lots does not apply to a member of the owner's family. I find that even if the strata had a rental restriction or prohibition bylaw, it would not apply to the owners' family member as defined in the Strata Property Regulation 8.1.
28. If in the future, the strata passes a valid rental restriction or prohibition bylaw, it will not apply until one year following its passing as set out under section 143(1)(b) and it may also be governed by a Rental Disclosure Statement filed by the owner developer.
29. Apart from bylaw 3, the parties did not provide submissions on the remainder of the 2001 bylaws and they do not pertain the rental issue before me. Therefore, I have not commended on whether the remainder of the 2001 bylaws are enforceable.

TRIBUNAL FEES

30. 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 dispute-related expenses. I see no reason in this case not to follow that general rule. I order the strata to reimburse the owners the \$225.00 they paid in tribunal fees. The owners did not claim dispute-related expenses, so I make no order in that regard.
31. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners.

ORDERS

32. I order that:
- a. The bylaw amendments filed as FB381017 on October 26, 2010 at the LTO, are invalid, and therefore of no force or effect.
 - b. Bylaw 3 of the bylaw amendments filed at the LTO under ES106280 on November 27, 2001, is unenforceable.
 - c. The owners are entitled to rent SL6 under the current bylaws.
 - d. Within 30 days of this order, the strata pay the owners \$225.00 for tribunal fees.
33. The owners are entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
34. 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.

35. 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 owners 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.

Trisha Apland, Tribunal Member