



Civil Resolution Tribunal

Date Issued: June 26, 2020

File: ST-2019-010772

Type: Strata

Civil Resolution Tribunal

Indexed as: *Henderson v. The Owners, Strata Plan KAS 1755*, 2020 BCCRT 711

B E T W E E N :

HEATHER HENDERSON

APPLICANT

A N D :

The Owners, Strata Plan KAS 1755

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. The applicant, Heather Henderson, owns a residential strata lot in the applicant strata corporation, The Owners, Strata Plan KAS 1755 (strata). Ms. Henderson says that the strata inappropriately denied her application for the rental renewal of her strata lot. Ms. Henderson is self-represented.
2. The strata says that it properly denied the rental renewal request based on its bylaws and the *Strata Property Act* (SPA). The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT 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.
4. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. In some respects, this dispute amounts to a "she said, it said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

5. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
6. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the CRT 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

7. The issue in this dispute is whether the strata properly denied Ms. Henderson's rental renewal request.

EVIDENCE, FINDINGS AND ANALYSIS

8. In a civil dispute such as this, the applicant must prove her claim. She bears the burden of proof on a balance of probabilities.
9. While I have reviewed all of the material provided, I have only commented below on the evidence and submissions necessary for this decision.
10. In November 2019, Ms. Henderson requested a rental renewal extension from March 15, 2020 to March 1, 2021. The strata says that it denied the renewal request based on strata Bylaw 13.17(c) which states that an owner may reapply for a further renewable period of 12 months and the council may approve the renewal if the intended tenant for the renewal period has not conducted him or herself in such a manner as to allow the council to give the tenant a notice of termination described in section 138 of the SPA.
11. SPA section 138 states that a repeated or continuing contravention of a reasonable and significant bylaw or rule by a tenant of a residential strata lot that seriously interferes with another person's use and enjoyment of a strata lot, the common property, or the common assets, is an event that allows the strata corporation to

give the tenant a notice terminating the tenancy agreement under section 4 of the *Residential Tenancy Act*.

12. The strata says that Ms. Henderson's tenant repeatedly contravened numerous bylaws. I note that the evidence shows that the strata found the tenant violated Bylaw 5.1 which says that a resident must not park their car in any location other than a garage or roadway. The strata also fined the tenant for violations of Bylaw 5.3 which says that, if there is no room in the garage or the driveway of the strata lot, a visitor may temporarily "stand" the vehicle for as brief a period as possible on the roadway adjacent to the strata lot but the visitor must not leave the vehicle on the roadway overnight or on a regular basis. The strata provided a summary of parking violations indicating that there were 13 violations before the Dispute Notice was filed. The tenant was fined \$50 per violation and Ms. Henderson paid these fines.
13. The strata submits that the tenant committed other bylaw violations. However, the strata did not show that it followed proper procedure and that any of these violation complaints were followed up on by the strata or that any fines were ever issued. Therefore, I find the only bylaws the tenant was ever found to have contravened dealt with parking issues.
14. Both parties based their submissions on whether these violations amount to a repeated or continuing contravention of a reasonable and significant bylaw or rule by a tenant that seriously interfered with another person's use and enjoyment of a strata lot, the common property, or the common assets such that the strata could give the tenant a notice of termination described in section 138 of the *Act*. I agree with Ms. Henderson that, based on the evidence, the parking violations described do not meet this test. I do not find that restrictions on parking along the roadway amounts to significant bylaw or rule, or that the evidence shows that the parking violations seriously interfered with another person's use and enjoyment of a strata lot, the common property, or the common assets.

15. Having said that, I also find that SPA section 138 is not determinative of this dispute because the strata was not trying to evict the tenant but rather was denying the rental renewal. The question is whether the strata was entitled to determine whether Ms. Henderson could continue to rent to the tenant.
16. The strata submits that the tenant is not a desirable resident. It also says that Ms. Henderson was in violation of Bylaw 13.1 which states that the owner is responsible for undertaking background and reference checks to ensure to the best of their ability that the tenant is of good character and will respect all bylaws.
17. SPA section 141 says that the strata corporation must not screen tenants, establish screening criteria, require the approval of tenants, require the insertion of terms in tenancy agreements, or otherwise restrict the rental of strata lots except in relation to the number or percentage of residential strata lots that may be rented, and the period of time the strata lot may be rented. Further, SPA section 121(1) says that a bylaw is not enforceable to the extent that it contravenes the SPA, see *Carnahan v. The Owners Strata Plan LMS522*, 2014 BCSC 2371.
18. Based on the evidence, I find that the strata was attempting to restrict Ms. Henderson's ability to rent out her strata lot for a reason other than a concern over the number or strata lots allowed to be rented or the rental's time period. The strata's submissions are clear that it did not want this particular tenant to continue to rent the strata lot. This shows that the strata was screening tenants. The strata relies on Bylaw 13.1 and argues the tenant is not of good character and will not respect all bylaws. I find that this Bylaw violates SPA section 141 and is being used as a way of screening tenants. Therefore, the strata is not able to rely on it to refuse the rental renewal request.
19. In conclusion, I find the Ms. Henderson has proved that the strata did not provide a valid reason for why it denied her rental renewal application. I find that the strata does not have a basis for denying this rental renewal request.

TRIBUNAL FEES, EXPENSES, AND INTEREST

20. Under section 49 of the Act, and the tribunal's rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Ms. Henderson was successful in this dispute and therefore she is entitled to have her \$225 tribunal fees reimbursed. There was no claim for expenses.
21. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Henderson.

DECISION

22. I order that the strata allow Ms. Henderson's rental renewal request.
23. I order that within 30 days of this decision, the strata must reimburse Ms. Henderson \$225 in tribunal fees.
24. Under sections 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. The order can also be enforced by the Provincial Court of British Columbia if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Kathleen Mell, Tribunal Member