



Civil Resolution Tribunal

Date of Original Decision: July 10, 2020

Date of Amended Decision: July 30, 2020

File: ST-2019-010021

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR 245 v. Jiwa*, 2020 BCCRT 775

B E T W E E N :

The Owners, Strata Plan VR 245

APPLICANT

A N D :

ZULFIKAR¹ JIWA, NASIM JIWA, SHAILA JIWA, FARRAH JIWA and
JUBILEE UNITED VENTURES INC.

RESPONDENTS

AMENDED REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about providing short-term accommodations. The applicant, The Owners, Strata Plan VR 245 (strata), says that the respondents Zulfikar¹ Jiwa,

Nasim Jiwa, Shaila Jiwa, Farrah Jiwa and Jubilee United Ventures Inc. (the Jiwas), own multiple strata lots, and use them as short-term accommodations in contravention of the bylaws. It also says they advertise the strata lots through Airbnb and other websites. Mr. Zulfikar¹ Jiwa is the Director of Jubilee United Ventures Inc. The strata asks for an order that the Jiwas stop using their strata lots in contravention of the bylaws and stop advertising them on short-term accommodation websites. The strata is represented by a strata council member.

2. Mr. Zulfikar¹ Jiwa represents all the respondents and says that his family and company do allow people to stay in their strata lots for a fee. However, he argues that the stays are all for a minimum of 30 days in keeping with the city's bylaw requirement and therefore they are not short-term accommodations and are allowed.

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 "it said, they 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 CRT considers appropriate.

ISSUE

7. Are the Jiwis contravening the bylaws by allowing people to stay in their strata lots for a fee for periods over 30 days?

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant strata must prove its claim on a balance of probabilities. I have reviewed all of the evidence provided but refer only to evidence I find relevant to provide context to my decision.
9. It is undisputed that the Jiwis arrange for people to stay in their strata lots for a fee mostly on Airbnb but have also used other platforms such as Craigslist. The strata provided evidence that the strata lots are also advertised on LetsBookHotel.com. The Jiwis acknowledge that they were allowing accommodations in their units for 14 days. They say they learned in 2018 that, because the strata lots were not their primary residences, the city's bylaws required the accommodations to be for a minimum of 30 days. They say they then followed the city's bylaws and obtained licenses from the city to allow accommodations in their strata lots for a 30 day minimum.

10. The Jiwass also do not dispute that the strata has provided them with multiple notices about violation of the bylaws, opportunities for hearings and instituted fines. The Jiwass' only defence is that the accommodations are for a minimum of 30 days and therefore not short-term.
11. The strata submits that some of the accommodations were for a period under 30 days. Because of my finding below that the Jiwass are not entitled to provide accommodations in their strata lots in the manner they have been, even for 30 days, I need not consider whether some of the periods were under 30 days.
12. The strata's bylaws were filed at the Land Title Office in 2014. The strata does not have a specific bylaw that addresses short-term accommodations. However, Bylaw 6.5 says that a resident must not use, or permit to be used, a strata lot except as a private dwelling home. Bylaw 7.7 states that an owner may not use the strata lot for commercial or professional purposes or for a purpose which may be illegal or is injurious to the reputation of the building or its owners.
13. In a decision from the CRT, *Dhanji et al v. The Owners, Strata Plan LMS 2472*, 2019 BCCRT 1194 (*Dhanji*), a tribunal member considered similar circumstances where the bylaws did not address short-term accommodations. The bylaws in *Dhanji* also stated that the strata lot could not be used for a commercial purpose or other than as a private dwelling home. I note that the facts are different in *Dhanji* because the tribunal member was considering accommodations of under 30 days. However, I find this does not affect the tribunal member's consideration of what the terms "commercial purpose" and "private dwelling home" mean.
14. The tribunal member referred to *Nanaimo (Regional District) v. Saccomani*, 2018 BCSC 752 which, in the context of a zoning bylaw, said that providing accommodations in a home to tourists was not a residential use and that a residential use must be "non-transient." The Court noted that short-term visitors do not share the same goals or interests as the residents.

15. The tribunal member in *Dhanji* also referred to *HighStreet Accommodations Ltd. v. The Owners, Strata Plan BCS2478 (Highstreet)*, 2019 BCCA 64, where the Court stated that:

residential use of strata property differs markedly from commercial use for short-term accommodation. For some owners, the latter creates a welcome opportunity to generate income; for others, a revolving door of strangers within their collective home.

16. I also note that *HighStreet* stated that short-term accommodations do not typically give the guest exclusive possession and control of the property, but rather only a license to occupy the property for a specified period of time. *See also Rutherford v. The Owners, Strata Plan 170*, 2019 BCCRT 531.
17. In *Semmler v. The Owners, Strata Plan NES3039*, 2018 BCSC 2064, the court found that the words ‘rent’ and ‘rental’ in the *Strata Property Act* (SPA) Part 8 are used in the context of tenancies and do not apply to licenses.
18. I also note that *Dhanji* considered whether the occupants were tenants or licensees. The tribunal member said that the strata was not screening tenants, which would be in violation of the SPA, because these were not tenants, but people licensed to stay in the strata lot. The tribunal member in *Dhanji* applied these cases and decided that short-term accommodations are transient and not private and therefore not consistent with using a strata lot as a private residence.
19. I am bound by the principles set out in the Supreme Court and the Court of Appeal decisions noted above. Also, although the *Dhanji* decision is not binding on me, I am persuaded by its reasoning and apply it in this decision. As discussed below, I find that the Jiwass’ guests are not tenants but are temporary visitors the Jiwass have licensed to use their strata lots.
20. The Jiwass argue that they are entitled to “rent” out the strata lots for over 30 days. However, they do not show that the occupants are tenants and they have not

provided any landlord and tenancy agreements. Further, the websites advertising the strata lots describe the Jiwas as hosts and the occupants as guests.

21. The Jiwas argue that all the above cases apply to short-term accommodations and because their accommodations are for 30 days or more, do not apply to them. The Jiwas rely on the city's definition of 30 days or more being long-term.
22. I do not accept that a stay of 29 days is short-term and a stay of 30 days or more is long-term. A decision of the CRT, *The Owners, Strata Plan LMS 4498 v. Mac Phee-Manning et al*, 2019 BCCRT 463 (*Mac Phee*), considered similar circumstances where the respondents used Airbnb to find guests. In *Mac Phee*, the respondents argued that because they had increased their minimum accommodation period to 28 days, they were no longer providing short-term accommodations.
23. The tribunal member referred to *Kamloops (City) v. Northland Properties Ltd.*, 2000 BCCA 344 (*Northland*), in which the Court of Appeal stated that residential zoning exists to permit occupation by persons "who normally reside there" at the exclusion of "tourists, travellers, and other persons who require only temporary lodging". In *Northland*, the Court said that there was no hard and fast line when a transient use becomes a residential use. The Court found that a number of factors will determine whether a person is staying somewhere as a resident:
 - a. Does the person live out of a suitcase or bring all of their belongings?
 - b. Does the person establish roots or connections in the local community or act as a visitor?
 - c. Is the person employed permanently or semi-permanently in the area?
24. The tribunal member in *Mac Phee* noted that Airbnb did not exist when *Northland* was decided and added that the way the respondent sought out accommodations was also a relevant factor. He noted that a person seeking a home would not seek it out on Airbnb or similar vacation sites and that sites such as Airbnb are intended to assist people to find temporary and transient accommodation.

25. Again, this tribunal decision is not binding on me, but it is well-reasoned, and I apply its analysis here.

26. I have considered the reviews of the Jiwass' Airbnb listings, which were provided in evidence. Although there is the occasional review stating that the person was there for work, it did not say that they had permanent or even semi-permanent employment in the city. Further, the website advertises like a hotel with check-in times. Additionally, the evidence shows that the website provided a calendar that says that pricing varies depending on dates chosen. I find this inconsistent with a long-term rental which does not operate in this manner. There is also no indication that the guest has an opportunity to inspect the strata lots or even know the exact address until they pay. This is also not consistent with a long-term rental.
27. The reviews indicate that the people are not residents of the city but are transient and visitors. The reviews speak of exploring things in Vancouver, using the strata lot to host a family member during a move, enjoying their stay, and some specifically refer to themselves as travellers.
28. Tellingly, one guest warned others that this was a strata and that the host told her she had to fill out a form K, which is a notice of tenant's responsibilities and also provides the strata with information about the person staying in the strata lot. The form K also requires the person to indicate when the tenancy began. The guest stated that the host wanted her to backdate the form K. This was after she was already using the strata lot for a stay. There was also a review indicating that Mr. Jiwa entered the unit when the guest was not present. This does not support a finding that the "guest" had exclusive possession and control of the property.
29. The strata provided a November 7, 2014 email where Mr. Jiwa told the strata that he should not have to pay move in or move out fees for his guests because his units are fully furnished, and his guests live out of their suitcases. I acknowledge that this email was written when the Jiwass were providing accommodations for 14 days and not 30 days, but the reviews indicate that nothing changed, and all the pictures of the units show fully furnished strata lots.
30. Based on the evidence, I find that the strata has proved that the people using the strata lots are not tenants but are temporary lodgers. The Jiwass argue that they

have some people who have stayed in the strata lots for very lengthy periods of time, but they have not provided proof of this. The Jiwass did not provide statements from any occupants and have not provided copies of form Ks which indicate when people are moving in or moving out. However, the strata has provided witness statements, listings, and reviews to show that the strata lots are being advertised as temporary lodgings on Airbnb. Therefore, I find the Jiwass are in violation of the bylaws because they have been providing their strata lots as temporary lodgings for a fee and not as a private dwelling unit in violation of the bylaws.

TRIBUNAL FEES AND EXPENSES

31. Under section 49 of the CRTA, and the CRT rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Because the strata was successful in its claims, it is entitled to reimbursement of its \$225 tribunal fees. There was no claim for expenses.
32. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the Jiwass.

ORDERS

33. The Jiwass, which in the entirety of these Orders includes Jubilee United Ventures Inc., must stop using their strata lots for licensed temporary lodgings instead of as private dwelling units as required by the bylaws.
34. The above order will take effect immediately unless the Jiwass have current guests in their strata lots who have already commenced a stay on the date of this decision, in which case the above order will take effect for those strata lots when the current guests' stay has ended. The Jiwass must provide the strata a list of who is currently occupying the strata lots and indicate how long they will be staying.
35. The Jiwass also must immediately stop advertising the strata lots on Airbnb, and other similar sites.

36. I order that within 14 days the Jiwas must reimburse the strata \$225 for tribunal fees.

37. 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

¹ This decision was amended to correct inadvertent errors about the spelling of Mr. Zulfikar Jiwa's name in the style of cause and in paragraphs 1 and 2 under the authority of section 64 of the CRTA.