



Civil Resolution Tribunal

Date Issued: September 28, 2020

File: ST-2020-002644

Type: Strata

Civil Resolution Tribunal

Indexed as: *Levesque v. The Owners, Strata Plan KAS 1202*, 2020 BCCRT 1089

B E T W E E N :

ELIZABETH LEVESQUE

APPLICANT

A N D :

The Owners, Strata Plan KAS 1202

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about an exemption from a rental restriction bylaw for reasons of hardship.
2. The applicant, Elizabeth Levesque, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan KAS 1202 (strata). Ms. Levesque is self-

represented, and the strata is represented by a strata council member.

3. Ms. Levesque says the strata unreasonably refused her request for a hardship exemption of the strata's rental restriction bylaw. In submissions, she also says the strata failed to meet statutory deadlines of the *Strata Property Act* (SPA) and that her request for exemption should be allowed under the SPA.
4. Ms. Levesque seeks an order that the strata exempt her from the rental restriction bylaw for 2 years. Ms. Levesque also seeks orders for payment of lost rental revenue at a rate of \$1,700.00 per month or \$56.13 per day since March 4, 2020 plus legal fees of \$286.25.
5. The strata disagrees with Ms. Levesque. The strata says it acted reasonably and in accordance with the SPA and its bylaws by refusing Ms. Levesque's rental requests. The strata asks that Ms. Levesque's claims be dismissed.
6. For the reasons that follow, I order the strata to authorize a 2-year hardship exemption from its rental prohibition bylaw for Ms. Levesque.

JURISDICTION AND PROCEDURE

7. 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 CRT's process has ended.
8. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, email, 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.
9. 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.

10. The applicable CRT rules are those in effect at the time the Dispute Notice was issued.
11. 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.

ISSUES

12. In her initial submissions, Ms. Levesque makes certain accusations that the strata breached privacy laws by not keeping her personal financial information confidential. The strata responded to Ms. Levesque's submissions, but in her reply submission, Ms. Levesque stated she noted the events "for reference only" and agreed with the strata that her allegations about breach of privacy were outside the CRT's jurisdiction. Based on Ms. Levesque's final submission, I have not addressed the strata's alleged breach of her confidential information in these reasons.
13. The issues in this dispute are:
 - a. Did the strata meet the SPA's statutory deadlines when it responded to Ms. Levesque's February 4, 2020 request for a hardship exemption from the strata's rental prohibition bylaw?
 - b. If so, did the strata unreasonably deny Ms. Levesque's hardship requests?
 - c. What remedies, if any, are appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

14. In a civil proceeding such as this, Ms. Levesque as applicant, must prove her claims on a balance of probabilities.

15. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
16. The strata was created in February 1993 under the *Condominium Act* and continues to exist under SPA. It consists of 126 residential strata lots in several 3-storey buildings located in Kelowna, BC.
17. In May 2015, the strata filed bylaw amendments at the Land Title Office (LTO) that repealed and replaced all of its bylaws, including the Schedule of Standard Bylaws under the SPA. I find the May 2015 bylaws apply to this dispute. Several subsequent bylaw amendments were filed at the LTO, but I find none are relevant to this dispute.
18. Bylaw 1.5(1) states that lease or rental of strata lots is prohibited subject to any exemptions permitted under the SPA. It also states that the intention of the strata is to discourage “investors purchasing [strata lots] for the sole purpose of leasing [them]”. There is no dispute that bylaw 1.5 meets the criteria of a valid rental restriction bylaw under section 141 of the SPA, and I find that it does.
19. The exemptions to a rental restriction bylaw permitted under the SPA are set out in sections 142 through 144 of the SPA. I summarize the exemptions applicable to this dispute as follows:
 - a. leases or rentals of a strata lot to a family member as defined under section 142 of SPA and section 8.1 of the *Strata Property Regulation*,
 - b. the bylaw does not take effect for a period of 1 year from the date the bylaw is passed, or if the strata lot is rented at the time the bylaw was passed, 1 year from the date the tenant ceases to occupy the strata lot,
 - c. if a strata lot is designated as a rental strata lot on the Rental Disclosure Statement filed by the owner developer as set out in section 143 of the SPA, the strata lot is exempt until the earlier of the date the strata lot is sold by the owner developer or the date shown on the Rental Disclosure statement, or
 - d. if the bylaw creates hardship for an owner.

20. I find the permitted exemption that applies in this dispute is hardship, given the correspondence exchanged between the parties discussed below and that other possible exemptions were not argued by Ms. Levesque.
21. For completeness, I note Ms. Levesque occupied her strata lot after the May 2015 rental restriction bylaw was registered so I find exemption b noted above does not apply. Additionally, LTO documents show that it is unlikely Ms. Levesque purchased her strata lot from the owner developer, so I find exemption c noted above also does not apply.
22. Section 144 of the SPA addresses hardship exemptions and I reproduce it here in its entirety:

144. Exemption from rental restriction bylaw

144 (1) An owner may apply to the strata corporation for an exemption from a bylaw that prohibits or limits rentals on the grounds that the bylaw causes hardship to the owner.

(2) The application must be in writing and must state

- a) the reason the owner thinks an exemption should be made, and
- b) whether the owner wishes a hearing.

(3) If the owner wishes a hearing, the strata corporation must hear the owner or the owner's agent within 4 weeks after the date the application is given to the strata corporation.

(4) An exemption is allowed if

a) the strata corporation does not give its decision in writing to the owner,

i. if a hearing is held, within one week after the hearing, or

ii. if no hearing is requested, within 2 weeks after the application is given to the strata corporation, or

b) the owner requests a hearing under subsection (2)(b) and the strata corporation does not hold a hearing within 4 weeks after the date the application is given to the strata corporation.

(5) An exemption granted by a strata corporation may be for a limited time.

(6) The strata corporation must not unreasonably refuse to grant an exemption.

Did the strata meet the SPA's statutory deadlines when it responded to Ms. Levesque's February 4, 2020 request for a hardship exemption from the strata's rental prohibition bylaw?

23. Ms. Levesque made a total of 4 requests for permission to rent her strata lot in January, February, March, and June 2020. She expressly argues the strata missed its deadline by not responding to her February 4, 2020 exemption request within 2 weeks as set out in section 144(4)(a)(ii) of the SPA. The strata failed to address Ms. Levesque's argument even though it had the opportunity to dispute it in its response submissions. For the reasons that follow, I find the strata provided its response to Ms. Levesque's February 4, 2020 rental bylaw exemption request within the statutory deadlines of section 144(4) of the SPA.

24. The deadlines in section 144 of the SPA are strict. In *The Owners, Strata Corporation LMS3442 v. Storozuk*, 2014 BCSC 1507, the strata corporation missed the deadline to provide a written decision by 1 day and the Court permitted the exemption request on that basis. The strata corporation had already verbally told the owner the outcome of the hearing, so there was no prejudice to the owner from the delay. The Court acknowledged that its strict interpretation of the SPA might seem unjust, but found that the SPA specifically states a hardship exemption is allowed if the deadline is missed. The Court found it had no discretion to provide relief because the exemption is allowed automatically by operation of the statute.

25. The evidence shows Ms. Levesque first requested permission to rent her strata lot in her January 13, 2020 letter to the strata. The letter simply requested permission to rent effective April 1, 2020, said that a property management firm would be involved, and said that Ms. Levesque wished the reason for her request to remain confidential, but she disclosed her request involved her elderly father. The strata's email reply from its property manager dated January 16, 2020 advised that rentals were not permitted and included a copy of bylaw 1.5.

26. Following the property manager's January 16 email, further emails were exchanged between the parties on the same day. In her email, Ms. Levesque stated her rental request was due to financial hardship. The property manager informed Ms. Levesque that a written request, including if she wanted a hearing, was required if Ms. Levesque wished the strata to consider a bylaw exemption. The email also set out financial information that Ms. Levesque "must" provide to the strata council with her request.
27. On February 4, 2020, Ms. Levesque wrote the strata a second time requesting permission to rent her strata lot for "a one - two year period, effective April 1, 2020". The letter referenced "advice" received from the property manager to include certain financial documentation, which Ms. Levesque enclosed with the letter. However, the letter was again silent about whether the request was for hardship and whether Ms. Levesque wanted a hearing.
28. In submissions, the strata said it considered Ms. Levesque's request at a strata council meeting held February 11, 2020 and determined it had insufficient information to make a decision. There is no evidence Ms. Levesque requested a hearing or that she was present at the strata council meeting, and minutes of the February 11, 2020 meeting are not before me. Based on the overall evidence, I find the February 11, 2020 council meeting was not a hearing within the meaning of section 144 of the SPA.
29. The parties agree Ms. Levesque met with the strata council on February 20, 2020. Ms. Levesque says the strata requested she attend the meeting. There is no evidence about what occurred at the meeting. I infer the strata requested Ms. Levesque attend to answer questions the strata had about her request. I say this based on a February 22, 2020 email from the strata council president to Ms. Levesque that begins "Sorry, but we have a few more questions to ask you." In the email, the council president poses several questions, mostly related to financial information. Ms. Levesque answered the council president's questions by email later that same day. I find the February 20, 2020 council meeting was not a hearing under section 144 of the SPA. However, if I am wrong and February 20, 2020 council meeting can be considered a hearing, the strata's denied letter dated February 27,

2020 was hand delivered to Ms. Levesque within the 1-week deadline. I note that Ms. Levesque acknowledged receipt of the letter in a February 27, 2020 email to the council president.

30. The fact the letter was silent about the request being for hardship and whether Ms. Levesque wanted a hearing does not necessarily mean the letter was contrary to section 144(2). In *Storozuk*, the Court found that previous communications between the parties identified Mr. Storzuk's reasons and that Mr. Storzuk ultimately requested a hearing. Given there is no requirement under section 144(2) for an owner to provide the reasons for their hardship request and whether they want a hearing in the same correspondence, the Court found the various items of correspondence met the requirements of section 144(2) of the SPA. In the words of the Court, "the strata acquiesced to the imperfect form of rental exemption request" made by Mr. Storzuk. I interpret the Court's findings in *Storozuk* to mean the requirements of section 144(2) are mandatory and that an owner must provide a strata corporation with written reasons why they request a hardship exemption **and** whether they want a hearing. I also find a plain reading of the legislation supports that conclusion.
31. However, the facts are different here. Following *Storozuk*, I can reasonably find the correspondence between the parties established Ms. Levesque's February 4, 2020 exemption request was for hardship, but there is no evidence she ever requested a hearing. I find this is significant because the deadline for the strata to provide its response depends on whether an owner wants a hearing. If an owner's request is silent on whether they want a hearing, as is the case here, there is no way for the strata corporation to know when it must provide its decision. Specifically, I find that by not making any statement about whether she wanted a hearing, Ms. Levesque failed to meet the section 144(2)(b) requirement.
32. For these reasons, I find the owner's February 4, 2020 exemption request did not comply with the mandatory requirements of section 144(2) of the SPA, nor was the deficient hearing request later rectified. As such, there was no automatic exemption under section 144(4). I dismiss Ms. Levesque's claim in this regard.

Did the strata unreasonably deny Ms. Levesque's hardship exemption requests?

33. As noted, on February 27, 2020, the strata council wrote to Ms. Levesque citing section 144 of the SPA in its entirety, and stating the documentation she provided did not reasonably prove the strata's bylaw caused her hardship. No other reasons for the strata's denial were contained in the letter.
34. The strata wrote a near identical letter on March 23, 2020 in response to Ms. Levesque's March 9, 2020 exemption request.
35. Ms. Levesque made a further exemption request on about June 5, 2020. The strata's response is not before me, but I can reasonably infer the strata denied Ms. Levesque's June request given this dispute did not resolve.
36. The strata cites CRT decisions that conclude an owner is responsible to provide evidence to establish hardship (see *Hulbert et al v The Owners, Strata Plan LMS 2125*, 2019 BCCRT 773), and that a strata corporation is entitled to ask for more information from an owner to document an ongoing claim of hardship (see *Adamson v The Owners, Strata Plan NW 2582*, 2019 BCCRT 377). Although not binding on me, I find the conclusions reached in *Hulbert* and *Adamson* reasonable and I accept them.
37. However, Ms. Levesque does not dispute her responsibility to prove hardship nor that the strata was entitled to request additional information. Rather, the crux of her claim is that the strata unreasonably denied her hardship exemption request after she provided the strata with additional information. I agree with Ms. Levesque that she provided all information requested by the strata. I also agree that the strata unreasonably denied her exemption request. My reasons follow.
38. The parties take opposing views on whether the strata's refusal to grant Ms. Levesque's hardship exemption request was reasonable as required under section 144(6) of the SPA. However, they both agree that the leading case on hardship exemptions is *Als v. Strata Corporation NW 1067*, 2002 BCSC 134. I agree that *Als*

establishes useful guidelines for assessing an application for a hardship exemption under section 144 of the SPA.

39. In *A/s*, the BC Supreme Court said that whether an owner is suffering hardship within the meaning of s. 144 will depend on the particular facts of each application. The burden of proving hardship lies with the applicant, and what may be “hardship” to one owner may not be hardship to another.
40. The Court in *A/s* reviewed several prior decisions about hardship exemptions and identified a non-exhaustive list of factors that may arise in a hardship application as stated in paragraphs 21 through 23. I find that the factors are only intended to provide guidance given they were derived from various different facts particular to each case. I find the following factors are relevant to this dispute:
 - a. Whether the strata lot’s sale price would be less than the purchase price.
 - b. Whether the owner has been unable to sell the strata lot.
 - c. Whether the strata lot makes up all or substantially all the owner’s assets.
 - d. Whether the bylaw causes hardship, defined as meaning “hardness of fate or circumstance; severe toil or suffering; extreme privation”.
41. I see no need to reproduce the detailed reasons behind Ms. Levesque’s exemption request. In essence, her reasons include she would lose money if she sold her strata lot, she is on a fixed income that was recently reduced as a result of divorce proceedings, she incurred a large tax debt in 2018 that must be paid, and her family situation requires her to be a caregiver for her elderly father and stepmother, who reside in the United States.
42. I will now address the relevant factors set out in *A/s*.
43. Ms. Levesque says that rental income of \$1,700 per month generated by her strata lot would allow her to meet her financial obligations and without it, she cannot do so. It appears that Ms. Levesque made further enquires into the possible rental of her strata lot in June 2020 and refers to a meeting with the strata on June 5, 2020. At

that meeting Ms. Levesque apparently provided a monthly budget of her personal income and expenses. The strata does not dispute the meeting occurred or that Ms. Levesque provided the additional information. In comparing Ms. Levesque's personal budget items to her December 2019 bank statements, I find the figures for her known expenses, including loan and credit card expenses, align. Discretionary expenses for food, gas, and telephone expenses at \$620 per month are reasonable. For those reasons, I accept that Ms. Levesque's monthly budget is more than likely an accurate reflection of her income and expenditures.

44. The figures show that Ms. Levesque would not be able to meet her financial obligations without renting her strata lot. With monthly rental income of \$1,700 from her strata lot, she might break even or have a very small surplus after making payment to her tax debt, such that she would pay it off in about 3 years.
45. While the strata seems to have several arguments about the financial details in this dispute, its responses to Ms. Levesque simply state she failed to prove the strata's bylaw caused her hardship, which in itself I find unreasonable. It is not clear that the strata would have permitted Ms. Levesque's exemption regardless of any financial circumstance, which is contrary to *A/s* and section 144(6).
46. Based on my review of her financial information, I find that Ms. Levesque provided sufficient financial information to establish her financial situation is dire such that hardship as defined in *A/s* results. I find that if not for the rental prohibition bylaw, Ms. Levesque's financial situation would be dramatically improved. I disagree with the strata's submission that Ms. Levesque's financial situation is nothing more than an "inconvenience". I also disagree with the strata's submission that Ms. Levesque's financial situation had not changed since she purchased her strata lot as clearly her income tax debt, which I find significant, arose after she filed her 2018 personal income tax, which was after the August 2018 purchase of her strata lot.
47. Based on the overall evidence, I find Ms. Levesque's assets consist of her strata lot and a car. This is not disputed by the strata. Based on the respective value of her assets, I find Ms. Levesque's assets consist primarily of her strata lot.

48. I turn now to value of Ms. Levesque's strata lot and the undisputed fact that she did not list it for sale. Ms. Levesque says she would lose money on the sale of her strata lot but acknowledges in her requests average listing prices in the strata complex were \$309,000 in February 2020. If the sales pricing is accurate, Ms. Levesque would not lose money if she sold her strata lot. Ms. Levesque also says her realtor advised her it would be difficult to sell during the COVID-19 pandemic, but provided no proof of her realtor's opinion, such as a written statement. Although an owner's ability to sell their strata lot, and whether a sale might be less than the purchase price, is a factor set out in *A/s*, I do not find it is mandatory for Ms. Levesque to attempt to sell her strata lot before applying for a rental bylaw exemption.
49. Ms. Levesque says she purchased her strata lot with the intention to live in it for a long time. The evidence supports her intention in that there is no dispute she occupied her strata lot in August 2018. While the parties agree she made some upgrades to her strata lot I disagree with the strata that \$3,500 to install window coverings, replace allegedly damaged carpet, and replace laundry equipment after Ms. Levesque purchased her strata lot is relevant to this dispute. It is clear from the evidence that Ms. Levesque's hardship was unforeseen and occurred after she had completed these upgrades.
50. Another factor that I find is significant in the circumstances of this dispute is the language of bylaw 1.5. As I have mentioned, bylaw 1.5 expressly states that the intention of the strata in prohibiting rental is to discourage "investors purchasing [strata lots] for the sole purpose of leasing [them]". Based on the overall evidence, I do not find Ms. Levesque can be categorized as an investor. Rather, I find the circumstances of this dispute seem to portray an individual purchasing a retirement home who subsequently fell under financial hardship.
51. The fact that Ms. Levesque may have to care for elderly parents or step-parents may also impact her situation, but I agree with strata that this was unproven.
52. In considering whether Ms. Levesque provided sufficient evidence to reasonably establish hardship for the purpose of SPA section 144, I place significant weight on her financial situation after she purchased her strata lot, her desire not to sell it, and

the strata's express intention set out in bylaw 1.5 to discourage investors. I finds these factors outweigh the fact that Ms. Levesque did not put her property up for sale.

53. For these reasons, I find the strata unreasonably denied Ms. Levesque's hardship exemption requests.

What remedies, if any, are appropriate?

54. Ms. Levesque requests an order for a rental bylaw exemption for 2 years. She has been consistent in requesting this time frame in her formal requests to the strata and I find it to be reasonable. Therefore, I order the strata to write to Ms. Levesque exempting her from its rental prohibition bylaw 1.5(1) and granting her permission to rent out her strata lot for a 2-year period from the date she receives the strata's letter. Ms. Levesque is not exempted from bylaw 1.5(6) and must therefore rent out her strata lot within 60 days of receiving the strata's letter.
55. Ms. Levesque also claims lost rent from March 4, 2020 because she says that is when the strata should have granted her exemption request. I infer her selected date is roughly based on the date of the strata's February 27, 2020 denial letter.
56. I decline to order the strata pay lost rent to Ms. Levesque for 2 reasons. First, Ms. Levesque provided no evidence to support her claim that she can rent out her strata lot for \$1,700.00 per month. Second, she did not provide her personal budget setting out her financial situation to the strata council until June 2020. This is the information I found persuasive.

CRT FEES AND EXPENSES

57. As noted, under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. Levesque was partially successful in this dispute and paid \$225.00 in CRT fees. I find it appropriate to order the strata to reimburse Ms. Levesque ½ of her CRT fees, or \$112.50.

58. Ms. Levesque also claims \$286.25 for legal fees which I infer relate to legal assistance she obtained during this dispute. Under CRT rule 9.5(3) in place at the time this dispute was started, the CRT will not pay another party's legal fees in a strata property dispute unless extraordinary circumstances exist.
59. In *Parfitt et al v. The Owners, Strata Plan VR 416 et al*, 2019 BCCRT 330, the CRT member, as she then was, set out a detailed review of what constitutes extraordinary circumstances. Although not binding on me, I find the reasoning in *Parfitt* persuasive and I accept it. Following the principles in *Parfitt*, I do not find extraordinary circumstances exist here. Therefore, I dismiss Ms. Levesque's claim for reimbursement of legal fees.
60. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDERS

61. Within 14 days of this decision, I order the strata to:
- a. write to Ms. Levesque exempting her from its rental prohibition bylaw 1.5(1) and granting her permission to rent out her strata lot for a 2-year period from the date she receives the strata's letter. Ms. Levesque is not exempted from bylaw 1.5(6) and must therefore rent out her strata lot within 60 days of receiving the strata's exemption letter referenced above, and
 - b. pay Ms. Levesque \$112.50 for CRT fees.
62. Ms. Levesque's remaining claims are dismissed.
63. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. Under section 58 of the CRTA, 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.

J. Garth Cambrey, Vice Chair