



Civil Resolution Tribunal

Date Issued: February 12, 2021

File: ST-2020-006654

Type: Strata

Civil Resolution Tribunal

Indexed as: *Hunt v. The Owners, Strata Plan EPS2112*, 2021 BCCRT 173

BETWEEN:

FRED HUNT

APPLICANT

AND:

The Owners, Strata Plan EPS2112

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about a pet bylaw in a strata corporation.
2. The applicant, Fred Hunt, owns a strata lot in the respondent strata corporation The Owners, Strata Plan EPS2112 (strata). Mr. Hunt rents his strata lot to tenants who have a dog. Mr. Hunt says the strata's pet bylaw, which prohibits tenants from having

pets, is unfair and contravenes section 141 of the *Strata Property Act* (SPA). He asks that the strata be ordered to withdraw or waive the bylaw.

3. The strata says the pet bylaw allows owners to have pets, but not tenants. It says Mr. Hunt and his tenants were aware of, or should have been aware of, the bylaw. The strata says the bylaw is enforceable and asks that the dispute be dismissed.
4. Mr. Hunt represents himself. The strata is represented by a strata council member.
5. Mr. Hunts' tenants are not parties in this dispute.

JURISDICTION AND PROCEDURE

6. 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.
7. The CRT 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 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.
9. 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.

10. Under section 61 of the CRTA, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. The CRT may make such an order on its own initiative, on request by a party, or on recommendation by a case manager.

ISSUE

11. The issues in this dispute are:

- a. Is the strata's pet bylaw enforceable?
- b. If so, is the pet bylaw significantly unfair and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this one the applicant, Mr. Hunt, must prove his claim on a balance of probabilities. I have reviewed all the evidence and submissions provided by both parties, but only refer to that necessary to explain my decision.

13. The strata was created in 2014 and consists of 38 residential strata lots.

14. Mr. Hunt rented his strata lot to tenants AP and RL, starting March 1, 2020. The tenants did not have a dog at that time. The tenants signed a Form K – Notice of Tenant's Responsibilities and acknowledged that they had read the strata's bylaws, on February 11, 2020. In May 2020 Mr. Hunt gave the tenants permission to have a dog in the strata lot and they got a puppy. None of this is disputed.

15. The strata repealed its former bylaws and filed a set of 45 new bylaws in the Land Title Office on October 17, 2017. Bylaw 5(1) says that "only owners and occupants" residing with an owner may keep pets in a strata lot. Subsection (2) restricts the number and size of pets that owners are allowed to have in their strata lot.

16. I find bylaw 5 restricts pet ownership to owners and occupants living with owners. So, implicitly, the bylaw does not allow tenants to have pets in the strata complex.

17. In a July 13, 2020 letter the strata warned the tenants that they were violating bylaw 5 by having a dog in the strata lot. The letter was copied to Mr. Hunt. Mr. Hunt requested, and received, a strata council hearing on August 20, 2020. The tenants did not attend the hearing.
18. In an August 27, 2020 letter the strata advised Mr. Hunt of its decision that the dog residing in Mr. Hunt's strata lot was a breach of bylaw 5. The strata asked that the dog be removed from the complex by September 9, 2020. The strata warned that a fine could be levied if the dog was not removed. It is unclear whether the dog has been removed as of the date of this decision.
19. Mr. Hunt says the strata cannot enforce bylaw 5 because it contravenes section 141 of the *Strata Property Act* (SPA). He also says the bylaw is unfair because it treats tenants and owners unequally. I will address each argument in turn.

Is the bylaw enforceable?

20. Section 121 of the SPA says that a bylaw is not enforceable if it contravenes the SPA or any other law.
21. Section 141(1) of the SPA prohibits the strata from screening tenants, establishing screening criteria, requiring the approval of tenants, inserting terms into rental agreements or otherwise restricting strata lot rentals, except in compliance with subsection (2). Subsection (2) allows a strata to pass rental restriction bylaws only if the bylaw prohibits rentals entirely or limits the number or percentage of strata lots that can be rented.
22. I infer Mr. Hunt to mean that, because bylaw 5 restricts tenants from having pets, it effectively restricts strata lot rentals to only those tenants who do not have pets, contrary to section 141 of the SPA. I cannot agree with Mr. Hunt's position because it would mean that any pet bylaw, whether it applies to all residents or only tenants, would effectively restrict rental rights and also be unenforceable. I find that result cannot have been the legislators' intention in creating section 141 of the SPA.

23. Further, tenants are required to comply with the strata's bylaws, and can be fined for contravening them (see SPA, section 130). It would be illogical to say that a bylaw that requires a tenant to do or not do something is unenforceable against the tenant by operation of section 141 of the SPA.
24. I find bylaw 5 does not restrict rentals and does not insert screening criteria into the tenancy agreement. I dismiss this part of Mr. Hunt's claim.

Is the bylaw significantly unfair?

25. Although Mr. Hunt does not use these words, I find he argues that bylaw 5 is significantly unfair.
26. Section 123(2) of the CRTA gives the CRT the power to make an order directed at the strata, if the order is necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights. Significantly unfair conduct must be more than mere prejudice or trifling unfairness (see *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44). Significantly unfair means conduct that is oppressive or unfairly prejudicial. "Oppressive" is conduct that is burdensome, harsh, wrongful, lacking fair dealing or done in bad faith, while "prejudicial" means conduct that is just and equitable (see *Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, affirmed in 2003 BCCA 126).
27. The test for significant unfairness established in *Dollan* was restated in *The Owners, Strata Plan LMS 1721 v. Watson*, 2018 BCSC 164 at paragraph 28:
- a. What is or was the expectation of the affected owner or tenant?
 - b. Was that expectation on the part of the owner or tenant objectively reasonable?
 - c. If so, was that expectation violated by an action that was significantly unfair?
28. In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2020 BCSC 576, the court determined that the reasonable expectations portion of the *Dollan* test may apply where the strata council is exercising its discretion but is problematic when applied to a fundamental decision of the owners, such as the passage of a bylaw. The court

reasoned that the reasonable expectations test would mean that each owner would have a veto over decisions of the owners as a whole, which would effectively undermine the strata's right to make democratic decisions.

29. Applying the court's analysis in *Kunzler*, I find the reasonable expectation test is not applicable here. I find the test Mr. Hunt must meet is whether his expectations were violated by a significantly unfair action of the strata.
30. Mr. Hunt says that he, and his tenants, expect the strata's bylaws apply equally to all residents, regardless of whether they are owners or tenants. He relies on a legal opinion from his lawyer, which is contained in a letter to the strata. Mr. Hunt says his lawyer's opinion was approved by another lawyer Mr. Hunt consulted with. As noted by a CRT vice-chair in *Nicholson v. The Owners, Strata Plan KAS 1137*, 2020 BCCRT 1117, a lawyer's opinion in a CRT dispute is not determinative and carries no evidentiary weight. Rather, it is essentially a form of submission. Prior CRT decisions are not binding on me but are persuasive. I agree with, and adopt, the vice-chair's reasoning above and find the legal opinion is not expert evidence. However, as Mr. Hunt relies on the opinion in his submission, I will consider it as part of the submission.
31. Mr. Hunt cites *The Owners, Strata Plan LMS 677 v. Halatsis et al*, 2019 BCCRT 799 and *The Owners, Strata Plan BCS 2211 v. Bernard*, 2019 BCCRT as support for his position that bylaws apply equally to all residents. In both those decisions the bylaws at issue specifically referred to "owners, tenants and occupants" which, I find, means those bylaws applied equally to all residents in the strata complex. In this dispute, bylaw 5 specifically allows only owners and occupants living with those owners to have pets. As the wording in the bylaws considered in the above CRT decisions is fundamentally different than the wording in bylaw 5, I find those CRT decisions do not apply to this dispute. In any event, as noted above, CRT decisions are persuasive, but are not binding on tribunal members.
32. I agree with Mr. Hunt that bylaw 5 does not benefit all residents equally. It allows some residents to have pets, but not others. There is no requirement under the SPA or *Strata Property Regulation* that bylaws must benefit all residents equally. Various

rights and obligations exclusive to strata lot owners, such as paying strata fees, repairing strata lots, and voting at strata meetings, are set out in the SPA and the strata's bylaws. So, I find strata lot owners are necessarily treated differently than tenants and other residents under the SPA. I find that bylaw 5 is not significantly unfair simply because it treats owners and tenants differently. The test is whether the bylaw is oppressive or unfairly prejudicial.

33. According to the September 17, 2017 special general meeting (SGM) minutes, the amendments to bylaw 5 were duly passed with 23 votes in favour and 2 opposed. There is no indication that the process of passing bylaw 5 was significantly unfair in any way. The SGM minutes do not set out the reason for the bylaw amendment, and neither party provided any evidence or explanation for limiting pet ownership to strata lot owners and occupants who reside with them. However, given that the resolution passed with more than the required 3/4 vote, I find bylaw 5 represents the will of a majority of the owners. The BC Supreme Court has held that the fact that a minority of owners may be outvoted does not, on its own, justify court or tribunal intervention in democratic strata governance (see *Oldaker v. The Owners, Strata Plan VR 1008*, 2010 BCSC 776). As noted above, Mr. Hunt was not present at that meeting. If he took issue with bylaw 5, it was open to him to attend the meeting and express his disagreement at the time or have someone do so as his proxy.
34. From Mr. Hunt's submissions I infer he argues that bylaw 5 is significantly unfair to him because it means he cannot rent his strata lot to tenants with pets or allow his tenants to have a pet. He has provided no evidence that this would result in him losing any rental income, or otherwise being unable to rent his strata lot. As noted above, Mr. Hunt's tenants did not have a pet when they rented the strata lot or when they moved in. I find Mr. Hunt has failed to prove that bylaw 5 is sufficiently oppressive or unfairly prejudicial to satisfy the test for significant unfairness. I dismiss his claims.

CRT FEES, EXPENSES AND INTEREST

35. 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. As Mr. Hunt was unsuccessful in this dispute, I find he is not entitled to reimbursement of any CRT fees and I dismiss his claim for those. The strata, as the successful party, did not ask for reimbursement of any dispute-related expenses.

36. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Hunt.

ORDER

37. I dismiss Mr. Hunt's claims and this dispute.

Sherelle Goodwin, Tribunal Member