



# Civil Resolution Tribunal

Date Issued: February 23, 2021

File: ST-2020-006694

Type: Strata

Civil Resolution Tribunal

Indexed as: *Gerbrandt v. The Owners, Strata Plan NW 493*, 2021 BCCRT 210

B E T W E E N :

KENDRA GERBRANDT

**APPLICANT**

A N D :

The Owners, Strata Plan NW 493

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell, Vice Chair

## INTRODUCTION

1. This dispute is about a hardship exemption to strata corporation's rental prohibition bylaw.

2. The applicant, Kendra Gerbrandt, owns strata lot 22 (SL22) in the respondent strata corporation, The Owners, Strata Plan NW 493 (strata). Ms. Gerbrandt says the strata has unreasonably denied her request for an exemption from its rental prohibition bylaw. She says she is entitled to the exemption under the *Strata Property Act* (SPA), due to financial hardship. Ms. Gerbrandt requests an order that the strata exempt her from its rental prohibition bylaw. She also requests compensation for lost rental income from October 1, 2020 onwards.
3. The strata says Ms. Gerbrandt is not entitled to an exemption, as she has not established financial hardship. It says the dispute should be dismissed.
4. Ms. Gerbrandt is self-represented in this dispute. The strata is represented by a strata council member, BM.
5. For the reasons set out below, I find in favour of the strata in this dispute. I find the strata reasonably denied Ms. Gerbrandt's hardship exemption request, and she is not entitled to compensation for lost rent.

## **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 legal principles. 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, videoconference, 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. Ms. Gerbrandt's claim for lost rental income was not included in the CRT Dispute Notice, as it was not part of her original application. However, based on the documentation before me, I find the strata had sufficient notice of the claim to respond to it with evidence and submissions. I therefore find there is no procedural unfairness and no prejudice to the strata in deciding the issue as part of this dispute.

## **ISSUES**

11. The issues in this dispute are:
  - a. Did the strata unreasonably deny Ms. Gerbrandt's request for an exemption from the rental prohibition bylaw?
  - b. Is Ms. Gerbrandt entitled to compensation for lost rental income?

## **BACKGROUND**

12. I have read all the evidence and submissions provided but refer only to that which I find relevant to provide context for my decision. In a civil proceeding like this one, the applicant must prove their claims on a balance of probabilities.
13. The strata was created in 1976. It consists of 60 residential strata lots, and is located in Abbotsford, BC.
14. In July 2013, the strata repealed and replaced its previous bylaws by filing new bylaws at the Land Title Office. The strata filed 3 sets of bylaw amendments after 2013, but I find these are not relevant to this dispute. Therefore, the bylaws applicable to this dispute are those filed in July 2013.

15. Strata bylaw 31(1) says that subject to SPA sections 141 to 144, no strata lot in the strata may be rented or leased.
16. SPA section 141(2)(a) permits a strata corporation to prohibit residential strata lot rentals by bylaw, as in this case.
17. SPA section 144(1) says an owner may apply to the strata for an exemption from a rental prohibition or restriction bylaw, on the grounds the bylaw causes “hardship to the owner.” Section 144(2) says an application for a hardship exemption must be in writing, must state the reason the owner thinks an exemption should be made, and must state whether the owner wishes a hearing before the strata council.
18. Section 144(5) of the SPA says that the strata may grant an exemption for a limited time. Section 144(6) says the strata must not unreasonably refuse to grant the exemption.

## **REASONS AND ANALYSIS**

### ***Did the strata unreasonably deny Ms. Gerbrandt’s request for an exemption from the rental prohibition bylaw?***

19. Ms. Gerbrandt says she has lived in Abbotsford all her life, and would have preferred to stay, but in 2020 she completed a Master of Divinity degree, and obtained a job in her field that required her to live in Vancouver. The evidence before me confirms the degree, and that she signed a contract of employment with her new employer on May 29, 2020.
20. Ms. Gerbrandt provided a copy of the employment contract, with an attached job description. Page 2 of the job description confirms that the job requires her to live in Vancouver. Ms. Gerbrandt submits that this is a typical requirement in her field, as she is expected to participate in activities and attend events outside of normally scheduled working hours.

21. The evidence before me also shows that Ms. Gerbrandt listed her strata lot for sale on June 22, 2020. Starting on August 15, 2020, she rented an apartment in Vancouver, at a cost of \$1,575 per month.
22. Ms. Gerbrandt's strata lot did not sell, so on August 18, 2020 she applied to the strata for an exemption to the rental prohibition bylaw. Her original application is not in evidence, but the strata agrees she provided detailed financial information as part of her application.
23. The strata denied Ms. Gerbrandt's hardship exemption application by letter on August 28, 2020. The letter said Ms. Gerbrandt's "choice to move to Vancouver" did not fit the definition of hardship. In its submissions to the CRT, the strata confirms this position. The strata also submits Ms. Gerbrandt should have listed her strata lot at a lower price, and should have deferred mortgage payments or borrowed money through means such as a home equity line of credit or second mortgage in order to make up the shortfall between her income and living costs until her strata lot sold.
24. Ms. Gerbrandt says the strata's decision to deny her hardship exemption application was unreasonable, contrary to SPA section 144(6). She says moving to Vancouver was not a choice, as it was a job requirement. She also says she was unable to sell her strata lot due to strata corporation insurance issues, and a related increase in strata fees.
25. In *Als v. The Owners, Strata Corporation NW 1067*, 2002 BCSC 134, the BC Supreme Court set out useful guidelines for assessing an application for a hardship exemption under SPA section 144. The court said that whether an owner is suffering hardship within the meaning of section 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. In *Als*, the court adopted the *Shorter Oxford English Dictionary* definition of "hardship", meaning "hardness of fate or circumstance; severe toil or suffering; extreme privation."

26. In applying the reasoning in *A/s* to the facts of this case, I find that the strata's decision to deny Ms. Gerbrandt's hardship exemption request was reasonable in the circumstances. My reasons are as follows.
27. Ms. Gerbrandt provided a November 12, 2020 opinion letter from her realtor, David Smith. In his letter, Mr. Smith identifies that he is also a director of the Fraser Valley Real Estate Board. Based on this information, I accept Mr. Smith's report as expert evidence, under CRT rule 8.3.
28. In his report, Mr. Smith says Ms. Gerbrandt is facing hardship, as she has been unable to sell SL22. He gave information indicating that the property was thoroughly marketed, and received thousands of views online and at least 24 showings. Mr. Smith said that an offer was received one day after SL22 was listed, but the sale did not complete due to "insurance/building issues". Mr. Smith summarized his showing notes, which indicate that there were many showings, but in some instances pending increases in the strata corporation's insurance rates, or related increases to strata fees, deterred buyers.
29. Mr. Smith gave the opinion that building maintenance and insurance issues, compounded by increased strata fees, made it difficult to sell SL22. He said that in the previous 90 days there had been 16 listings in the building, and only 2 sales, both of which were 3 bedroom strata lots. SL22 has 2 bedrooms. Mr. Smith wrote that SL22 was priced at market value at the time of listing, but had been on the market for 142 days at the time he wrote his letter, when the median days on market for comparable sales in the region was 23 days. He wrote:

Ms. Gerbrandt's maintenance fee of \$567.52/month is massively higher than the median maintenance fee of \$366/month for the 19 comparable properties currently listed in Abbotsford (850-1000sq.ft / 40-50 Years Old). The fees essentially disqualify the property from any prospective buyers that are prequalified at this price point because their mortgage brokers will be functioning with an average maintenance fee in mind.

30. Annual general meeting minutes provided in evidence show that on August 24, 2020, the strata ownership approved a resolution to increase strata fees by 98.76%. Ms. Gerbrandt provided listing contracts showing that she dropped the asking price for SL22 by 4% in September 2020, and other information showing that she offered to pay 6 to 12 months of strata fees as an incentive to buyers.
31. I place significant weight on Mr. Smith's report, as I find that as a realtor in the local market, and as Ms. Gerbrandt's listing agent, Mr. Smith has direct knowledge of the real estate market and the factors affecting the sale of SL22.
32. The strata's representative, BM, provided an opinion contrary to Mr. Smith's. BM says that based on this experience buying and selling properties, including his own strata lot, he believes SL22 was overpriced, and that it would sell within 6 months. I am not persuaded by BM's opinion, as there is no indication that he has professional expertise in real estate sales or assessments. For that reason, I place no weight on it, and prefer Mr. Smith's expert opinion.
33. Thus, based on Mr. Smith's opinion, I accept that at the time she requested the hardship exemption, Ms. Gerbrandt was unable to sell her strata lot at or near the market price for similar strata lots in the region. I also accept, based on the financial information she provided, that paying for 2 residences left Ms. Gerbrandt with a monthly financial shortfall.
34. In *AIs*, the court identified several factors to consider when assessing a hardship application, including the following:
  - 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.
35. The evidence before me does not indicate the price Ms. Gerbrandt paid for SL22 when she bought it in October 2016. Therefore, I find this is not a ground supporting her hardship application.

36. As noted above, I accept, based on Mr. Smith's evidence, that Ms. Gerbrandt was unable to sell her strata lot at the regional market price for similarly sized strata lots. However, I find this evidence does not necessary show that Ms. Gerbrandt was unable to sell SL22 at all. The July 2020 property tax bill Ms. Gerbrandt provided shows that the assessed value of SL22 for tax purposes was \$197,600. Thus, even her reduced asking price was higher than the provincial assessment. Also, her mortgage statement shows that as of December 31, 2019, her mortgage balance was \$72,141.99. This means she had significant equity in the strata lot. I find these factors suggest that a further decrease in asking price may have been reasonable in the circumstances.
37. Also, in paragraph 21 of *A/s*, the court said that an inability to sell a strata lot is only one factor to consider in assessing whether hardship exists, and "is not sufficient alone to ground a claim for hardship." Ms. Gerbrandt did not provide conclusive evidence about whether SL22 is her primary or only asset. Her spreadsheet of expenses shows that until June 2020 she contributed monthly to "TFSA/RRSP", but she did not provide the balances of those accounts. Also, Ms. Gerbrandt provided no information about whether she has a pension from her previous career in nursing, or other assets.
38. For these reasons, I find the strata reasonably denied Ms. Gerbrandt's hardship exemption request. While I accept that Ms. Gerbrandt faced difficulties in selling SL22 for an amount equivalent to comparable strata lots elsewhere in the region, I find she has not established that she was unable to sell it, that the sale price would be less than the purchase price, or that SL22 made up all or substantially all of her assets.
39. I therefore deny Ms. Gerbrandt's claims. I conclude that she is not entitled to a hardship exemption to the strata's rental prohibition bylaw, and she is not entitled to compensation for lost rent.



## **CRT FEES AND EXPENSES**

40. Under CRTA section 49 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. I see no reason in this case not to follow that general rule.
41. The strata is the successful party. It paid no CRT fees and claims no dispute-related expenses. I therefore do not award them to any party.
42. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Gerbrandt.

## **ORDER**

43. I dismiss Ms. Gerbrandt's claims and this dispute.

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Kate Campbell, Vice Chair