



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Rahmanian v. Section 1 of The Owners, Strata Plan LMS 1866, 2021*
BCCRT 264

B E T W E E N :

ARASH RAHMANIAN

APPLICANT

A N D :

Section 1 of The Owners, Strata Plan LMS 1866

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about short-term accommodation (STA) in a strata lot. The applicant, Arash Rahmanian, is the occupant of a strata lot in the respondent residential section of a strata corporation, Section 1 of The Owners, Strata Plan LMS 1866 (section). Mr. Rahmanian says that the section has inappropriately assessed fines against the

strata lot and treated him in a significantly unfair manner by refusing to provide him with authorization to operate STA in the strata lot. He asks for orders that the fines be reversed and that the section authorize STA. Mr. Rahmanian also asks for an order that the section follow its bylaws and act in a fair and equitable manner.

2. The strata denies that it has treated Mr. Rahmanian in an unfair manner, and says that he is not entitled to the reversal of the fines. The strata says it already treats owners fairly and acts in accordance with the *Strata Property Act* (SPA).
3. Mr. Rahmanian is self-represented. The section is represented by a member of the section executive.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
7. 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.

8. 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.
9. Both parties submitted evidence as required by the CRT's processes, but Mr. Rahmanian provided some of his evidence after the deadline. The section noted that this evidence was late, but did not object to it. I find that the section was unlikely to have been taken by surprise by the late evidence, which consists of correspondence generated by its property manager. I note that one of the late items is a duplicate of evidence provided earlier. As the section had the opportunity to review the late evidence and respond to it in its submissions, I find that there is no prejudice to the section in my accepting it. However, like the other evidence before me, I will address the late evidence only to the extent that is relevant and necessary to provide context to my decision.
10. The parties did not agree on the section's correct legal name. I find that the correct legal name is Section 1 of The Owners, Strata Plan LMS 1866, as written on the Dispute Notice, based on bylaw 1(a) and section 193(4) of the SPA.

ISSUES

11. The issues in this dispute are:
 - a. Whether STA are permitted under the section's bylaws,
 - b. Whether the section treated Mr. Rahmanian in a significantly unfair manner by refusing to provide him with authorization for STA,
 - c. Whether the section should be ordered to provide Mr. Rahmanian with authorization to operate STA,
 - d. Whether the section should be ordered to abide by its bylaws and act in a fair and equitable manner,

- e. Whether Mr. Rahmanian is entitled to reimbursement of \$2,800 in fines assessed against a previous owner of the strata lot, and
- f. Whether the fines assessed after March of 2020 should be reversed.

BACKGROUND, EVIDENCE AND ANALYSIS

- 12. Strata lot 230, which is also known as suite 2007, was owned by TM between July of 2011 and March of 2020. TM is not a party to this dispute.
- 13. Mr. Rahmanian says that he leased the strata lot from TM and that it has been his primary residence since he September 1, 2018. He says that, as he was under the impression that TM had obtained permission from the section for STA, he applied for and received a licence from the City of Vancouver (City) for STA. According to Mr. Rahmanian, he offered the strata lot for STA periodically, both commercially and on an unpaid basis to friends and family.
- 14. The City has created a scheme for the authorization of STA in its municipal bylaws Licence By-law 4450, section 25.1, says that a person operating STA must have a licence from the Chief Licence Inspector, must operate STA in their principal residence, and, if the residence is in a strata, obtain authorization from the strata council before applying for the business licence.
- 15. In the summer of 2019, the section posted notices in common areas about the requirements for STA in the building, including the requirement for authorization from the section. The section received complaints about STA operating in a number of strata lots without its authorization, including strata lot 230. The section says that it was not aware that the strata lot was tenanted, and its property manager sent a letter to TM on October 17, 2019 about what it felt was “illegal” activity in the strata lot and a violation of its bylaws about use of property. The letter set out the information that would be required if TM wished to apply for authorization for STA. This information included copies of utility bills, a link to the AirBnB posting, and information about what steps were being taken to ensure that guests comply with the bylaws and rules.

16. The section received no response to the October 17 letter, and sent another letter to TM on December 9, 2019 advising that it had assessed a \$200 fine against him, and would impose a new fine every 7 days for continuing contraventions related to STA.
17. On December 19, 2019, TM's agent provided the section with a Form K Notice of Tenant's Responsibilities signed by Mr. Rahmanian. There was some confusion at that point about whether Mr. Rahmanian, as a tenant, could communicate with the section or request hearings under the SPA. Once that confusion was resolved, Mr. Rahmanian requested that the section authorize STA in strata lot 230 and provided information to the section's property manager in support of this request. In the meantime, the section imposed additional fines on TM for continuing contraventions.
18. The section's decision to deny Mr. Rahmanian's request for authorization apparently was not communicated in writing but rather in a February 2020 telephone call with the strata's property manager. As neither party submitted the associated section executive meeting minutes with their evidence, the rationale behind that decision is not clear.
19. In March of 2020, 2 corporate entities purchased the strata lot from TM. The corporate entities paid the arrears of \$2,800 in fines to the section's property manager as part of the sale transaction. After the change in ownership, the section imposed additional fines on the strata lot's account for refuse in the hallway and STA contraventions. There was also a complaint about noise, but it is unclear if it resulted in a fine.
20. Mr. Rahmanian had a hearing with the section executive on March 30, 2020 to discuss his request for STA authorization. On April 1, 2020, the property manager advised him in an email that, due to the pending CRT dispute, the section executive had decided to "defer the decision to the CRT". Mr. Rahmanian's position is that this decision was, in effect, a further denial of his request for STA authorization.
21. The section suggests that Mr. Rahmanian has some sort of relationship with the corporate entities which now own the strata lot. Mr. Rahmanian did not provide a specific comment on this matter, but refers to the corporate entities as "co-applicants". However, as they are not parties to the dispute, Mr. Rahmanian cannot act as their

representative. Mr. Rahmanian says he is “an individual-occupant of the registered corporate owners”. It does not appear that a Form K has been provided to the section for a tenancy. I find that Mr. Rahmanian meets the definition of an occupant in the SPA and that he is participating in this dispute on that basis.

Are STA permitted under the section’s bylaws?

22. The parties agree that there is no specific section bylaw that prohibits STA, but disagree about how this affects STA in the strata lots. Mr. Rahmanian says that the section is violating section 141(2) of the SPA, which says that a strata corporation may only restrict the rental of a strata lot by bylaw. The section says that the absence of a bylaw prohibiting STA does not give an owner or tenant “carte blanche” to use strata lots as STA.
23. I considered the section’s bylaws in *Ikbāl v. Section 1 of The Owners, Strata Plan LMS 1866*, 2021 BCCRT 5, in which the owner of another strata lot disputed the section’s decisions around STA. As the same version of the bylaws before me in *Ikbāl* remains in effect, the same conclusions apply here.
24. The section permits residential rentals under bylaw 42. However, STA are not considered rentals but rather licences for the use of a strata lot. A person may occupy a strata lot under a tenancy agreement or a licence agreement, but occupants do not become tenants as a result of a licence agreement (see *Semmler v. The Owners, Strata Plan NES3039*, 2018 BCSC 2064, *HighStreet Accommodations Ltd. v. The Owners, Strata Plan BCS478*, 2017 BCSC 1039, and *Liapis v. The Owners, Strata Plan BCS 1073*, 2018 BCCRT 878). As STA are licences and not rentals, I find that any decisions made by the sections about STA do not violate section 141(2) of the SPA.
25. Bylaw 4.1(d) says that a resident or visitor must not use a strata lot, the common property, or common assets in a way that is illegal or otherwise contrary to any applicable laws (including the provisions, rules, regulations or ordinances of any statute, whether federal or provincial, or any municipal by-laws).

26. As noted, the City bylaws require that STA occur only in an operator's principal residence and with authorization from the strata. I find that operating STA in a manner that does not comply with the City's regulatory scheme would be contrary to the City's bylaw, and would be a use of the strata lot that would be prohibited by section bylaw 4.1(d). Although not binding on me, another tribunal member made a similar finding in *Hall v. The Owners, Strata Plan EPS2983*, 2019 BCCRT 806 at paragraph 42. I also followed this reasoning in *Ikkal*.
27. Mr. Rahmanian suggests that bylaw 4(1)(d) should only be applied after the City has determined that there has been an infraction of its bylaws. In *The Owners, Strata Plan LMS 4498 v. Mac Phee-Manning et al*, 2019 BCCRT 463, another tribunal member agreed with a strata corporation's argument that the strata lot owners were breaching its illegal use bylaw by violating a municipal zoning bylaw. In that situation, there was no indication that the municipality was investigating a possible breach or enforcing the zoning bylaw. As in *Ikkal*, I agree with the reasoning in this decision that a strata corporation (or section) is not required to wait for a municipality to act on municipal bylaw violations before considering whether there has been a violation of its own bylaws.
28. Section bylaw 4.1(e), which says that a strata lot must not be used in a way that is contrary to a purpose for which it is intended on the strata plan, also applies to the STA issue. According to the strata plan, the strata lot is designated as a residential strata lot. In addition, the section's bylaws define a "Residential Lot" as strata lots 1 through 243. Section 1 of the SPA says that "residential strata lot" means a strata lot designed or intended to be used primarily as a residence. In *Meloche v. The Owners, Strata Plan BC 478*, 2019 BCCRT 230, I found that the requirement in the City's bylaws that STA occur only in an operator's principal residence meets the definition in the SPA for use "primarily as a residence".
29. Taken together, I find that the section's bylaws permit STA only to the extent that those operations comply with the City's bylaws (including obtaining authorization from the section) and occur in the owner or tenant's principal residence. While the owner or tenant does not necessarily need to be present in the strata lot at the same time

as STA guests, the strata lot must be used primarily as the owner or tenant's residence in addition to any STA operation in order to comply with the section's bylaws.

30. I disagree with Mr. Rahmanian's submission that, by regulating STA, the section is acting "in the role of a vigilante" and improperly attempting to enforce the City's bylaws. I find that the section may regulate STA with its bylaws, whether or not the City is investigating or enforcing STA under the municipal bylaws. Given this conclusion (and keeping in mind the CRT's mandate for proportionality), I find that it is not necessary to consider the section's argument that it may enforce the City's bylaws under the *Vancouver Charter*.

Significant Unfairness & STA Authorization

31. Mr. Rahmanian's position is that the section has treated him in a significantly unfair manner by refusing to provide him with authorization for STA. The strata denies this, and says that it has treated Mr. Rahmanian in the same way as others who wish to operate STA in their strata lots. According to the strata, it has approved some STA applications and denied others depending upon whether the applicant establishes that the strata lot is their principal residence and whether they are using the strata lot for the purpose shown on the strata plan.
32. The courts have interpreted "significantly unfair" to mean conduct that is oppressive or unfairly prejudicial. "Oppressive" conduct has been interpreted as conduct that is burdensome, harsh, wrongful, lacking fair dealing or done in bad faith. "Prejudicial" conduct means conduct that is unjust and inequitable (*Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, affirmed 2003 BCCA 126).
33. The test for significant unfairness was summarized by a CRT Vice Chair in *A.P. v. The Owners, Strata Plan ABC*, 2017 BCCRT 94, with reference to *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44: what is or was the expectation of the affected owner or tenant? Was that expectation on the part of the owner or tenant objectively reasonable? If so, was that expectation violated by an action that was significantly unfair? The British Columbia Court of Appeal recently confirmed that

consideration of the reasonable expectations of a party is “simply one relevant factor to be taken into account” (see *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342 at paragraph 89).

34. Mr. Rahmanian expected that he would receive STA authorization given that STA are not prohibited by the bylaws and that he provided the section with various documents that he says show the strata lot is his primary residence.
35. Mr. Rahmanian provided the section’s property manager with copies of documents including personal identification, vehicle insurance documentation, and utility bills, all of which are in his name and bear the strata lot’s address (although I note that the vehicle insurance documents say that the vehicle was kept at a different address). Although Mr. Rahmanian says that this is “reasonable proof of principal residency”, he did not provide the section with a link to his AirBnB posting or information about what he was doing to ensure that his guests comply with the bylaws and rules.
36. The section says it needs the link to the STA advertisement on AirBnB or another website as the link provides information about the frequency of STA use and whether an owner or tenant resides in the strata lot. Mr. Rahmanian did not explain why this evidence was not provided to the section or in his submissions. Further, Mr. Rahmanian did not provide evidence about the dates of the visits of friends and others that he says he allowed to stay in the strata lot at no charge.
37. While it is objectively reasonable to expect that the section will treat all applications for STA equally and fairly, I do not find that it is objectively reasonable for an applicant to expect to receive authorization when they have not provided all of the information requested as part of the application process and necessary to establish their entitlement.
38. Even if Mr. Rahmanian had provided all of the requested information, it was open to the section to consider other evidence about whether the strata lot was being used as his primary residence and for residential use as indicated on the strata plan. The section’s evidence includes a statement from JG, the owner of a neighbouring strata lot, who describes their observations of and interactions with various people

accessing suite 2007. JG says that they did not see one consistent person accessing the strata lot, and that they have had discussions with people who identify themselves as STA guests from various countries. According to JG, there is a pattern of cleaning staff arriving shortly after these occupants leave the strata lot. The section says it took JG's evidence about the strata lot into consideration when making its decision.

39. Based on the information before it, I find that it was reasonable for the section to conclude that the strata lot is not Mr. Rahmanian's primary residence. I find that Mr. Rahmanian has not established that he was treated in a different way than other owners or tenants who requested the section's authorization for STA. As a result, I find the section's decision to deny Mr. Rahmanian authorization for STA was not significantly unfair and I dismiss this aspect of the claim.
40. Given my conclusion, I will not make an order that the section provide Mr. Rahmanian with a letter authorizing STA in the strata lot. In addition, I will not make an order that the section stop issuing fines for STA. If the section receives complaints about additional allegations of STA in the strata lot, it must comply with the requirements of section 135 of the SPA before assessing any further fines.
41. Nothing in my decision would prevent Mr. Rahmanian from re-applying to the section for authorization to have STA in the strata lot. If Mr. Rahmanian were to submit additional information in support of a new request, the section would be required to abide by its bylaws and act in a fair and equitable manner. As this is an existing requirement under the SPA, it is not necessary for me to make an order in this regard.

Fines

42. As discussed, the section has issued fines both to TM as the previous owner and the 2 corporate entities as current owners. Mr. Rahmanian says that TM's agent told him that the section had consented to STA operations, and denies that he breached any of the section's bylaws. Mr. Rahmanian asks for an order that the section provide a reimbursement of the \$2,800 in fines that were applied to the strata lot account when TM owned the strata lot, and which he says were paid as part of the strata lot purchase. He also asks for the fines applied to the strata lot after the 2 corporate

entities purchased it be reversed. The section says that the fines were imposed in accordance with the SPA.

43. Section 130(1) of the SPA allows a strata corporation to fine an owner if a bylaw or rule is contravened by the owner, a visitor, or an occupant if the strata lot is not rented by the owner to a tenant. Section 130(2) says that a strata corporation may fine a tenant if a bylaw or rule is contravened by the tenant, a visitor, or an occupant if the strata lot is not sublet by the tenant to a subtenant.
44. As discussed above, when the section began to assess fines against the strata lot, it was not aware that TM had leased it to Mr. Rahmanian. Therefore, it assessed the fines against TM, and TM did not dispute the fines with the section. The payment of those fines as part of the sale transaction with the 2 corporate entities was a contractual matter between TM and the 2 corporate entities and it is not clear to me how this could be a matter in respect of the SPA as contemplated by section 121(1) of the CRTA.
45. In any event, the CRT has decided previously that a party does not have standing to make a claim relating to the interests of a non-party (see *Action Rooter Ltd. v. Alice Chen (dba Beaconsfield Inn)*, 2020 BCCRT 135 at paragraph 15). While this decision is not binding upon me, I agree with this reasoning. According to documents in evidence, Mr. Rahmanian was not a party to the sale of the strata lot as the transaction involved only TM and the 2 corporate entities. As TM and the corporate entities are not parties to this dispute, I find that Mr. Rahmanian does not have standing to make claims relating to their interests. So, I dismiss Mr. Rahmanian's claim regarding the \$2,800 in fines assessed against TM.
46. The same reasoning applies to the fines assessed against the 2 corporate entities after the sale of the strata lot. Even if Mr. Rahmanian has some sort of relationship with the corporate entities as the section suggests, they are not parties to the dispute and he cannot pursue a claim on their behalf. Therefore, I dismiss Mr. Rahmanian's claim about the fines assessed against the corporate entities.

47. I make no finding about the merits of any claims that TM or the 2 corporate entities may have against the section.

CRT FEES AND EXPENSES

48. 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. Rahmanian was unsuccessful, I dismiss his claim for reimbursement of CRT fees.

ORDERS

49. I dismiss Mr. Rahmanian's claims and this dispute.

Lynn Scrivener, Tribunal Member