



Civil Resolution Tribunal

Date Issued: July 23, 2021

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Liang v. The Owners, Strata Plan LMS 1781*, 2021 BCCRT 806

B E T W E E N :

RAYMOND HAO WEN LIANG

APPLICANT

A N D :

The Owners, Strata Plan LMS 1781

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant, Raymond Hao Wen Liang, owns strata lot 100 (SL100) in the respondent strata corporation, The Owners, Strata Plan LMS 1781 (strata). He says the strata approved SL100 for rentals many years ago but in April 2020 it improperly prevented his tenants from moving into SL100 and prevented him from accessing SL100.

2. Mr. Liang claims \$13,300 in lost rental income. He also claims reimbursement of \$735 in moving costs, \$126 in management fees, and \$750 in legal fees for a total of \$14,911.
3. The strata says it never gave Mr. Liang permission to rent SL100, but nonetheless it attempted to accommodate his new tenants in April 2020. However, the strata says Mr. Liang failed to follow its COVID-19 protocols for new tenants, which is why it prevented his tenants from moving into SL100. It says it never prevented Mr. Liang from accessing SL100. It says Mr. Liang's claims are frivolous and without merit.
4. Mr. Liang is self-represented, and the strata is represented by a council member.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
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. Mr. Liang says the strata prevented him from accessing SL100 starting in April 2020 for an unspecified period of time. He submitted evidence indicating that his fobs were not working in late May 2020. However, he does not request any remedies for his alleged inability to access SL100. So, I decline to address his allegation in this decision.
10. In his submissions Mr. Liang says that while he was at the strata building on April 22, 2020, the strata council president followed him around, did not observe physical distancing rules, and spat at him. However, Mr. Liang did not raise this alleged incident in his Dispute Notice, nor did he request any remedies related to it. So, I decline to address this alleged incident in this decision.

ISSUES

11. The issues in this dispute are:
 - a. Did Mr. Liang have permission from the strata to rent SL100 in April 2020?
 - b. Did the strata have a legal basis for preventing Mr. Liang's tenants from moving into SL100 in April 2020?
 - c. Is Mr. Liang entitled to damages?

EVIDENCE AND ANALYSIS

12. In a civil claim like this one, as the applicant, Mr. Liang must prove his claims on a balance of probabilities. This means the CRT must find it is more likely than not that his position is correct. I have reviewed all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.
13. The strata was created in 1994 under the *Condominium Act* and continues to exist under the *Strata Property Act* (SPA). It is a single high-rise building comprised of 100 residential strata lots. In 2013 the strata filed a new set of bylaws with the Land Title Office (LTO) which replaced all previously filed bylaws. I find the 2013 bylaws are applicable to this dispute. The strata amended the 2013 bylaws in 2016 and 2018,

but I find those amendments are not relevant to this dispute. The strata further amended the rental bylaws in 2019, which I find are also relevant to this dispute. I address the relevant bylaws below.

Did Mr. Liang have permission from the strata to rent SL100 in April 2020?

14. Mr. Liang says that in 2013 or 2014, the strata granted him permission to rent SL100 and he has been renting it since that time. In support of his position, he submitted 2 rental agreements for SL100 between November 2013 and October 2015 in which he is named as the landlord. The strata does not dispute this, but says it never granted Mr. Liang permission to rent to the tenants at issue in this dispute in April 2020.
15. Section 141(1) of the SPA prohibits the strata from screening tenants, establishing screening criteria, requiring the approval of tenants, or otherwise restricting the rental of a strata lot except as provided for in section 141(2). Section 141(2) of the SPA only allows a strata to restrict the rental of a residential strata lot through bylaws that either prohibit all rentals or limit the number or percentage of strata lots that may be rented, or the period of time for which strata lots may be rented.
16. Under the 2013 bylaws, bylaw 43.1 says a maximum of 10 strata lots may be rented at any one time and must be rented for a term of not less than 1 year. In 2019 bylaw 43.1 was amended to increase the rental limit to 20 strata lots. Bylaw 43.2 requires an owner wishing to rent a strata lot to apply in writing to the strata council for permission. Bylaw 43.4 says that if the strata lot rental limit in bylaw 43.1 has not been reached when the owner applies for permission to rent a strata lot, the council will grant permission and notify the owner in writing as soon as possible. Bylaw 43.5 says an owner receiving permission to rent or lease a strata lot must exercise the permission within 90 days from the date the council granted permission, otherwise the permission expires.
17. On the evidence before me, I accept that the strata granted Mr. Liang permission to rent SL100 in 2013. Aside from requiring an owner to rent their strata lot within 90 days of receiving the strata's permission, the bylaws are silent about when the strata's permission to rent a strata lot may be revoked. In any event, I find there is no evidence

the strata ever revoked its permission for Mr. Liang to rent SL100 or that his permission ever expired. So, I find Mr. Liang had the strata's permission to rent to the tenants in April 2020, subject to COVID-19 restrictions addressed below.

18. Even if I am wrong about the strata granting Mr. Liang permission to rent SL100 in 2013 or 2014, under bylaw 43.4 the only reason the strata may refuse permission to rent is if the building's rental limit has been reached. There is no evidence the strata's rental limit was reached in late 2019 or early 2020 when Mr. Liang notified the strata of his intention to rent SL100 in 2020, and the strata does not argue that it was. The strata also says it attempted to accommodate Mr. Liang's rental in April 2020, subject to COVID-19 restrictions, which I address below. On balance, I am satisfied that Mr. Liang had the strata's permission to rent SL100 in April 2020, subject to any COVID-19 restrictions addressed below.

Did the strata have a legal basis for preventing Mr. Liang's tenants from moving into SL100 in April 2020?

19. Mr. Liang says the strata required his tenants to quarantine for 2 weeks when they moved into SL100 without any legal basis. He says that when his tenants refused to quarantine the strata improperly prevented them from moving into SL100.
20. The strata says when it learned of Mr. Liang's plan to rent SL100 in April 2020 it attempted to accommodate the rental. It says it notified Mr. Liang of its concerns about COVID-19 and protecting the health of its residents. It says it agreed to allow Mr. Liang's tenants to move in if Mr. Liang agreed to submit a "proper safety plan" to be reviewed by the strata council, and if his tenants agreed to quarantine for 2 weeks. It is unclear if the strata required the tenants to quarantine before or after they moved into SL100. However, the strata says Mr. Liang failed to provide a sufficient safety plan, and his tenants refused to quarantine. The strata says such a quarantine was ordered by the Ministry of Health to ensure the safety of the elderly residents in the building, and since Mr. Liang failed to abide by its COVID-19 safety requirements, it prevented his tenants from moving into SL100.

21. As for the strata's requirement for a safety plan, the evidence shows that on April 17, 2020, Mr. Liang emailed the strata council president his proposed safety plan and asked the strata to review his proposal and provide any feedback. On April 20, 2020, Mr. Liang's rental agent emailed the strata with additional proposals for the safety plan. The strata does not appear to have directly responded to these proposals. The strata does not explain in its submissions why it determined Mr. Liang's proposed safety plan was insufficient. On balance, I am satisfied that Mr. Liang provided the strata with a sufficiently detailed and reasonable move-in safety plan for his tenants.
22. As for the strata's requirement for Mr. Liang's tenants to quarantine, on April 20, 2020 Mr. Liang's rental agent notified the strata that there was no legal basis requiring Mr. Liang's tenants to self-isolate for 2 weeks, or at all. It said it was not reasonable for the strata to require the tenants to quarantine because they did not have COVID-19 symptoms, nor had they been in contact with anyone with symptoms. On April 21, 2020, Mr. Liang notified the strata that he believed there were no health orders in place prohibiting his tenants from moving into SL100, and that moving companies were considered an essential service. He said he saw no relevant strata policy in the minutes and asked the strata to clarify its position. On April 22, 2020, the strata stated in an email to Mr. Liang, "until the pandemic is resolved Council is not permitting any move in until our legal council says otherwise Understood. No!" (reproduced as written). It is undisputed that on April 22, 2020, the strata prevented Mr. Liang's tenants from moving into SL100.
23. In support of his position Mr. Liang relies on section 30 of the *Residential Tenancy Act* which prohibits a landlord from unreasonably restricting a tenant's access to their rental unit. He also relies on Ministerial Order No. M089 under the *Emergency Program Act* which came into force on March 30, 2020 (M089). I note M089 was repealed on June 23, 2020 but was in force at all times relevant to this dispute. Section 7(1) of M089 set out certain circumstances in which a landlord could restrict a tenant's access to common areas of the residential property. However, section 7(2) of M089 specifically prohibited a landlord from restricting a tenant's access to their rental property. While it was Mr. Liang that was the tenants' landlord, not the strata, I

find M089 supports Mr. Liang's position that there were no government restrictions on tenants moving into rental units in April 2020 because of COVID-19.

24. Mr. Liang also relies on Ministerial Order No. M114 under the *Emergency Program Act* which came into force on April 15, 2020 and will be in effect until December 31, 2021. This order allows strata corporations to hold meetings electronically. He says the order does not allow strata corporations to deny owners, tenants or moving professionals access to a strata lot. I agree.
25. Mr. Liang also submitted a document from the BC Government website about COVID-19 and tenancies, which was updated on March 30, 2021. It states that a landlord must not prevent or interfere with a tenant's access to their rental unit. It also states that it is not reasonable to require tenants to quarantine for 14 days after a local trip such as to the store or to see a doctor. However, it is unclear if this version of the document was published in April 2020, so I place little weight on this evidence.
26. Aside from its assertions, the strata provided no evidence of government restrictions which would have required Mr. Liang's tenants to quarantine or self-isolate for any period of time before or after moving into SL100 in April 2020.
27. I accept that much was unknown about COVID-19 in April 2020, so I find it was reasonable for the strata to take steps to safeguard its residents. However, as there is no evidence that the strata's requirement for new tenants to quarantine were in response to an order from a public health official, the strata's decisions had to be made within its authority under the SPA or the bylaws (see *Oja v. The Owners, Strata Plan VIS4078*, 2021 BCCRT 69).
28. The strata's bylaws do not impose any restrictions on new tenants moving into the building, aside from those explained above in bylaw 43. So, I must consider whether the SPA gives the strata the authority to enforce its COVID-19 protocols for new tenants.
29. Mr. Liang says the strata failed to provide sufficient notice of its policy prohibiting move-ins unless tenants quarantined for 2 weeks. He says the policy is not in any

meeting minutes and the strata did not provide written notice to owners or post a notice in common areas. For the following reasons, I agree.

30. A strata may make rules under section 125 of the SPA. Any new rules must be set out in a written document capable of being copied and must be communicated to owners and tenants as soon as feasible. I find that the evidence before me does not establish that the strata had any rules prohibiting new tenants from moving in during the COVID-19 pandemic, or requiring them to quarantine for any period of time either before or after moving in.
31. In summary, I find there was no legal basis for the strata to require Mr. Liang's tenants to quarantine or to prevent them from moving into SL100 in April 2020. I find the strata's actions breached section 141 of the SPA by improperly restricting rentals.

Is Mr. Liang entitled to damages?

32. Having found the strata breached section 141 of the SPA by improperly restricting rentals, I find Mr. Liang is entitled to damages. He claims \$13,300 in lost rental revenue from April to October 2020, at \$1900 per month. He submitted his rental agreement with the tenants which was from April 15, 2020 until April 30, 2021 for \$1,900 per month. However, in his submissions Mr. Liang says he was unable to rent SL100 for 3 months, not 7 months. He says, and the strata does not dispute, that the strata did not retract its policy prohibiting move-ins until June 29, 2020. On June 30, 2020, Mr. Liang notified the strata of his intention to resume renting SL100. Mr. Liang submitted evidence showing that on October 14, 2020, he secured a 2-year tenancy agreement with new tenants for \$1850 per month. Mr. Liang's new tenant moved into SL100 in mid-November 2020.
33. Based on Mr. Liang's submissions and the evidence before me, I find Mr. Liang is entitled to lost rental revenue for 3.5 months from April 15, 2020 until July 31, 2020. I say this because his tenancy agreement started on April 15, 2020, not April 1, 2020. While the strata may have started allowing new tenants to move in on June 29, 2020, I find it would not have been reasonable for Mr. Liang to find a new tenant starting on July 1, 2020. That said, Mr. Liang did not provide many details about his search for

new tenants, and he did not explain why it took him over 3 months (from July to mid-October 2020) to find new tenants. In the circumstances, and on the evidence before me, I find 1 month would have been sufficient time to secure a new tenant, which means Mr. Liang could have reasonably started renting SL100 by August 1, 2020. At \$1,900 per month, 3.5 months of lost rental income equals \$6,650. I order the strata to pay Mr. Liang \$6,650 in lost rental income.

34. Mr. Liang also claims \$735 in moving costs. He submitted a May 1, 2020 invoice for the move on April 22, 2020. The invoice charged both Mr. Liang and one of the tenants for 4 hours of moving and 1 hour of travel, all at \$140 per hour for a total of \$735 including 5% tax. Mr. Liang says he had to pay his tenants' moving fees, and the invoice indicates it was paid. However, since the invoice is addressed to both Mr. Liang and one of the tenants, I find the invoice alone is insufficient to prove that Mr. Liang paid the \$735. I find it would be unusual for a landlord to pay their tenant's moving fees, and Mr. Liang does not explain why he did so. Mr. Liang also failed to provide a bank statement, cheque, or other proof of payment, though I suspect such proof would have been readily available to him. I am not satisfied on the evidence before me that Mr. Liang paid \$735 in moving fees.
35. Even if I had found that Mr. Liang paid the claimed moving fees, I would not have ordered the strata to reimburse him. Although I have found the strata's actions in preventing the tenants from moving in were not legally defensible, I find the strata made it clear to Mr. Liang before April 22, 2020 that his tenants were not allowed to move in. So, while Mr. Liang was entitled to disagree with the strata and bring this claim to the CRT for lost rental income, I find it was not reasonable for him to incur moving expenses when he knew the tenants could not move in.
36. Mr. Liang also claims \$126 in rental agent fees in relation to the tenants who could not move in in April 2020. He submitted an April 22, 2020 Cash Flow Statement from his rental agent for April 2020. It shows charges of \$36.75 for a credit check, \$78.75 for service trips, and \$10.50 for administration fees, for a total of \$126. I find this expense is reasonably related to securing his tenants, who I have found the strata prevented from moving into SL100 without legal basis. I also find on the evidence

before me that Mr. Liang's rental agent was directly involved in communications with the strata about the tenancy. On balance, I accept this claim, and I find the strata must reimburse Mr. Liang \$126 for rental agent fees. In total, I find the strata must pay Mr. Liang \$6,776 for lost rental income and reimbursement of rental agent fees.

CRT FEES, EXPENSES, AND INTEREST

37. 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. I see no reason in this case not to follow that general rule. Since Mr. Liang was partially successful, I order the strata to reimburse half his CRT fees in the amount of \$112.50.
38. Mr. Liang also claims \$750 in legal fees, which are dispute-related expenses. CRT rule 9.5(3) allows the CRT to order one party to pay another party's legal fees, but only in extraordinary circumstances. Relying on the factors set out in CRT rule 9.5(4), I find there was nothing particularly complex about this dispute, there is no evidence about the degree of Mr. Liang's lawyer's involvement in the dispute, and the strata did not cause any unnecessary delay or expense in this proceeding. I find Mr. Liang is not entitled to reimbursement of his claimed legal fees.
39. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Liang is entitled to pre-judgement interest on the \$6,776 owing, from April 15, 2020, the start date of Mr. Liang's tenancy agreement, to the date of this decision. This equals \$60.12.
40. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Liang.

ORDERS

41. Within 30 days of the date of this decision I order the strata to pay Mr. Liang \$6,948.62, broken down as follows:
 - a. \$6,650.00 for lost rental income,

- b. \$126.00 for reimbursement of rental management fees,
- c. \$60.12 in interest under the *Court Order Interest Act*, and
- d. \$112.50 in CRT fees.

42. Mr. Liang is also entitled to post-judgement interest under the COIA.

43. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court 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.

Sarah Orr, Tribunal Member