



Civil Resolution Tribunal

Date Issued: August 16, 2021

File: ST-2020-009442

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 459 v. Greaves*, 2021 BCCRT 893

B E T W E E N :

The Owners, Strata Plan LMS 459

APPLICANT

A N D :

BENJAMIN GREAVES

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This is a strata property dispute about rental bylaws.
2. The respondent, Benjamin Greaves, owns strata lot 10 (SL10) in the applicant strata corporation, The Owners, Strata Plan LMS 459 (strata). The strata says Mr. Greaves

violated its rental restriction bylaw by renting his strata lot to his sister, LG. As remedy, the strata requests payment of \$1,200 in fines accrued to the date of the Dispute Notice, plus ongoing fines of \$200 per week after that. The strata also seeks an order that Mr. Greaves comply with the rental bylaw, and an order that he evict LG.

3. Mr. Greaves admits LG and her family live in SL10, but says they are not tenants, and he does not rent SL10.
4. The strata is represented by a strata council member in this dispute. Mr. Greaves is self-represented.

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)*. CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8. Under CRTA section 123 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. In this dispute, Mr. Greaves provided evidence and submissions about prior CRT disputes, and other disagreements with the strata about matters such as pets and water leaks. I place no weight on any of this material, as I find it is not relevant to the issue before me to decide, which is whether Mr. Greaves rented SL10 contrary to strata bylaws.

ISSUE

10. Has Mr. Greaves breached the strata's rental bylaw and if so, what remedies are appropriate?

REASONS AND ANALYSIS

11. In a civil claim like this one, the strata, as applicant, must prove its claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.
12. The strata plan shows that the strata was created in July 1992, and is made up of 48 residential strata lots plus common property.
13. Documents from the Land Title Office (LTO) show that the strata filed a set of amended bylaws with the LTO on March 29, 2010. The bylaws have not been amended since that time, so I find the bylaws filed in March 2010 govern this dispute.
14. Bylaw 42 sets out restrictions on strata lot rentals. I summarize the relevant parts of bylaw 42 as follows:

42.1 – only 5 strata lots in the strata may be rented at any one time, except those who own strata lots at the time the bylaws were registered (in March 2010) may rent out their strata lots until they sell them. An owner who purchases a strata lot after the bylaws were registered may not rent out their

strata lot if there are more than 5 rentals in the strata. Bylaw 42 does not apply to the strata lot until the later of one year after the bylaw is passed, or one year after the tenant occupying the strata lot at the time the bylaw is passed stops occupying it as a tenant.

42.2 – any owner wishing to rent a strata lot must apply in writing to the strata council for permission.

42.3 and 42.4 – if more than 5 strata lots are rented at the time an owner applies for permission to rent, excluding strata lots exempt under *Strata Property Act* (SPA) sections 143 and 144, and *Strata Property Regulation* (Regulation) section 17.15, the council must refuse permission and place the owner on a waiting list. Otherwise, the strata must grant permission to rent.

15. Regulation section 17.15 was repealed in January 2010. However, I find nothing in this dispute turns on that.
16. LTO documents show that Mr. Greaves bought SL10 in January 2015. Since he did not own SL10 when the amended bylaws were passed in 2010, I find Mr. Greaves is not exempt from bylaw 42.
17. SPA section 142 says a rental restriction bylaw does not apply to a “family member”, as defined in the Regulation. Regulation 8.1 says that for the purpose of SPA section 142 “family member” means a spouse, parent, or child of the owner, or a parent or child of the owner’s spouse. Based on this definition, which is binding, rental to a sister is not exempt from the strata’s rental restriction bylaw.
18. The strata says the evidence shows that Mr. Greaves does not live in SL10, and that he is “effectively” renting SL10 to LG. The strata says Mr. Greaves is contravening bylaw 42.2 by not obtaining permission to rent. The strata also says that 5 strata lots were already rented and there is an ongoing waiting list, so Mr. Greaves was not entitled to rent SL10 under bylaw 42.1.

19. Mr. Greaves says in September 2019 he married a woman who lived in Alberta. He says that before the marriage, and after, he allowed LG and her family to live with him in SL10. Mr. Greaves said that because he would be away from time to time to visit his partner, and because his daughter lived in SL10 and attended high school, he wanted LG to keep watch on his daughter.
20. Mr. Greaves says that once the COVID-19 pandemic began in March 2020, he agreed with his partner and LG that he would not visit SL10 as frequently, in order to avoid exposing his family members, including LG's baby, to potential illness. Mr. Greaves says SL10 is still his principal residence.
21. Much of the parties' evidence and submissions are about whether Mr. Greaves lives in SL10, and how often he is there. For example, the strata says Mr. Greaves is "rarely seen" by neighbours, and that no vehicle was observed in SL10's assigned parking stall during relevant periods. In a September 17, 2020 letter to Mr. Greaves, the strata said SL10 was no longer Mr. Greaves' principal residence, which meant he had entered into a landlord-tenant relationship with his sister. I do not agree. For the following reasons, I place no weight on the evidence and submissions about whether, and how often, Mr. Greaves lives in SL10.
22. Whether Mr. Greaves lives in SL10 does not determine whether SL10 is rented, or whether LG is a tenant. There are 2 reasons for this. First, SPA section 1(1) defines "tenant" as "a person who rents all or part of a strata lot". Therefore, I find it is possible that LG is a tenant even if Mr. Greaves lives in SL10, since she could rent only part of SL10.
23. Second, even if Mr. Greaves does not live in SL10, that does not necessarily mean that he is renting it, or that LG is a tenant. Again, under SPA section 1(1), a tenant is someone who rents all or part of a strata lot. "Rent" is not defined in the SPA. The *Residential Tenancy Act* (RTA) says "rent" means "money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for

services or facilities”. Thus, a person is only a tenant if they rent, and “rent” means exchanging money or other value for a right of possession.

24. So, the relevant question is whether LG “rents” any part of SL10. Based on the RTA definition of “rent”, I find the operative question in this dispute is whether LG pays Mr. Greaves money or other value (such as services) in exchange for her right to live in SL10. If she lives there for free, with no payment or service provided, then she is not renting, as defined in the RTA, and is therefore not a tenant, as defined in the SPA.
25. As explained above, the strata must prove that LG gives Mr. Grieves money, services, or other valuable consideration in exchange for her right to live in SL10. I find that the evidence before me does not establish this fact.
26. In his submissions, Mr. Grieves says he wanted LG to live in SL10 partly to watch over his teenage daughter while he was away. However, the strata disputes this, and says Mr. Greaves never had a daughter living in SL10. While I find that submission is unproven, I find the strata has not established that LG rents SL10 by child supervision services in exchange for occupancy.
27. I also find the evidence before me does not establish that LG pays money to live in SL10. There is no document or statement suggesting that such payments occur. The strata provided an October 16, 2020 email from a neighbour, MG, who said “the lady”, whom I infer is LG, said the strata lot was her brother’s, and “he was letting them stay there.
28. The strata provided an April 16, 2021 statement from other neighbours, SW and AK. They say that they understood from a conversation with a plumber following a leak incident that the occupants of SL10 were renters. However, I place no weight on this evidence because it is unsubstantiated hearsay. While hearsay evidence is admissible in CRT proceedings, I am unpersuaded by this statement because there is no statement directly from the plumber, and no explanation about how the plumber knew the SL10 occupants were renters as opposed to non-tenant occupants.

29. Mr. Greaves admits that he referred to LG as a “tenant” in a September 9, 2020 email to the strata council president. In the email, Mr. Greaves wrote that owners were not notified of window cleaning, which upset his tenant as she was caught unaware and was frightened by the man in the window.
30. The strata says this use of the word “tenant” is proof that Mr. Greaves is renting his strata lot to LG, contrary to the bylaws. While I have carefully considered this evidence, I find it is not sufficient to prove that LG is a tenant, or that SL10 is rented, contrary to bylaw 42. As explained above, in order to prove a tenancy, the strata must prove a rental, which requires proving that money, services, or other value was exchanged for LG’s occupancy in SL10. I find there is no such evidence, and the use of the word “tenant” in one email does not, in itself, prove that LG rents SL10.
31. In a subsequent email Mr. Greaves sent to the council president on October 9, 2020, after the president emailed him about “unauthorized rental”, Mr. Greaves wrote that he made a mistake in his previous email, which “should have correctly named my sister as occupant not tenant”.
32. I agree with the strata that Mr. Greaves’ use of the word “tenant” in his September 9, 2020 raises a legitimate question about whether he rented SL10. However, I find that the evidence in this dispute, taken as a whole, does not establish that it is more likely than not that Mr. Greaves rents all or part of SL10 to LG.
33. I therefore dismiss the strata’s claims, and this dispute.

CRT FEES AND EXPENSES

34. 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.
35. Mr. Greaves is the successful party. He paid no CRT fees and claims no dispute-related expenses. I therefore do not award them to any party.

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

ORDER

37. I dismiss the strata's claims and this dispute.

Kate Campbell, Vice Chair