



Civil Resolution Tribunal

Date Issued: August 17, 2021

File: ST-2021-001558

Type: Strata

Civil Resolution Tribunal

Indexed as: *Brown v. The Owners, Strata Plan NW 197*, 2021 BCCRT 903

B E T W E E N :

LESLIE BROWN AND DENISE BROWN

APPLICANTS

A N D :

The Owners, Strata Plan NW 197

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about an owner's ongoing hardship exemption from a rental restriction bylaw.

2. The applicants, Leslie (Les) Brown and Denise Brown, co-own a strata lot (SL19) in the respondent strata corporation, The Owners, Strata Plan NW 197 (strata). Mr. Brown is the father of Ms. Brown.
3. The applicants say the strata acted unreasonably when it denied their hardship request to continue to be exempt from the strata's rental restriction bylaw in January 2021. They ask for an order that the strata exempt them from its rental restriction bylaw for an unlimited time.
4. The strata says it permitted the applicants to rent SL19 for a 1-year period expiring May 31, 2021 based on a "circumstantial hardship" exemption it says is consistent with the *Strata Property Act* (SPA) and its bylaws. The strata says the applicants failed to show hardship continued to exist in January 2021 when they applied for an extension as required under its rental restriction bylaw. I infer the strata asks that the applicants' claim be dismissed.
5. The applicants are represented by Mr. Brown, and the strata is represented by a strata council member.
6. For the reasons that follow, I dismiss the applicants' claim and this dispute.

JURISDICTION AND PROCEDURE

7. 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.
8. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, email, 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.

9. 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.
10. 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.

Preliminary Issue – Response to Dispute Notice

11. In their submissions, the applicants say the strata failed to respond to the Dispute Notice within 14 days. I infer the applicants are referring to CRT rule 3.1(1), which requires a response be filed within 14 days of a respondent receiving a copy of it. CRT records show the strata was served with the Dispute Notice on March 3, 2021 and that strata filed its Dispute Response on March 18, 2021. The *Interpretation Act* applies to the CRTA. Under section 25.2(2) of the *Interpretation Act*, the day the Dispute Notice was served on the strata is not counted in the number of days, so I find the strata filed its Dispute Response within the time required by the CRT rules.

ISSUE

12. The sole issue in the dispute is whether the strata acted unreasonably when it denied the applicants' January 2021 request to extend their exemption from the strata's rental restriction bylaw for an unlimited time.

BACKGROUND

13. In a civil proceeding such as this, the applicants must prove their claim on a balance of probabilities. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
14. The strata was created in February 1974 under the *Strata Titles Act* and continues to exist under the SPA. It contains 36 residential strata lots in a 3-storey building.

15. On July 10, 2009, the strata filed with the Land Title Office (LTO) bylaw amendments that repealed the Standard Bylaws under the SPA and all registered bylaws, except for the rental restriction bylaw. The filed Form I included a copy of the approved ¾ vote resolution which stated the “rental restriction bylaw previously registered is amended and replaced as per Division 9 of these bylaws”. The rental restriction bylaw is numbered as bylaw 33 and consists of 13 subsections. I find this is the applicable bylaw to this dispute. I summarize the relevant parts of bylaw 33 as follows:

33 (1) Restricts the number of strata lots that may be rented to 2.

...

(3) Owners who want to rent their strata lot must apply to the strata council in writing and the strata council must advise of its decision in writing, within 2 weeks. The strata council will keep a register of rented strata lots and those owners who have applied and have been put on a waiting list. Rental requests will be granted on a first come, first served basis.

(4) Except for owners who are exempt from the bylaw, a strata lot must be rented with 60 days of being granted permission or the right to rent is lost and the owner will need to re-apply. If re-approved, the owner will be placed at the bottom of the waiting list. A strata lot is deemed rented during the 60-day period.

...

(6) An owner may apply in writing “for an exemption to the rental bylaw on the grounds that this bylaw causes hardship to the owner”. The written application must state the reason the owner considers an exemption should be made and whether the owner requires a hearing. If a hearing is requested, the strata council must hold it within 3 weeks after the application is given to the strata corporation. An exemption is allowed if the strata council does not give its written decision within 1 week of the hearing, or within 2 weeks after the

application is given if no hearing is requested. The strata council cannot unreasonably refuse to grant a hardship exemption.

(7) If a hardship exemption is granted, the strata council can specify the length of time of the rental and the owner must rent their strata lot within 60 days, of the exemption is withdrawn.

...

(10) Where permission to rent has been “automatically withdrawn, terminated, or will expire, an owner may re-apply for permission to rent the strata lot” under the provisions of this bylaw and the SPA.

16. In August 2018, the applicants applied for permission to rent SL19 on the basis of hardship. The reason given in the letter was because the size of SL19 was too small for Ms. Brown, her partner, and their daughter, who resided in SL19 at that time. The applicants’ request was originally denied, but after a strata council hearing, the strata council permitted a 1-year rental on the basis of “circumstantial hardship”. The applicants were unable to rent out SL19 within 60 days as required under bylaw 33(7), so under the bylaw, the exemption was automatically withdrawn. This is not disputed.
17. In April 2020, the applicants again applied for permission to rent SL19 for the same reason given in their earlier 2018 request, that SL19 was too small. An April 22, 2020 letter to the applicants from the strata states approval was granted “on compassionate grounds” for the applicants to rent out SL19 from May 1, 2020 to April 30, 2021, based on “circumstantial hardship”. The letter states the applicants were to inform the strata of their “situation” by March 30, 2022 “as hardship is meant to be temporary and not a permanent situation”. The strata also acknowledged the applicants’ declaration that SL19 was listed for sale.
18. The applicants proceeded to rent out SL19 on June 1, 2020 for a 1-year period. A copy of the tenancy agreement was provided in evidence that shows the rental period was for a fixed term ending on May 31, 2021.

19. The July 7, 2020 annual general meeting (July 2020 AGM) minutes show a proposed resolution to approve a change in the rental limit from 2 strata lots to 6 strata lots was defeated because it failed to achieve the required $\frac{3}{4}$ vote.
20. At the November 2020 strata council meeting, the strata council voted not to approve an extension to a rental bylaw exemption that was granted on April 22, 2020. Although the minutes do not identify the strata lot or applicants, I find the decision was about SL19. This is confirmed by Ms. Brown's December 9, 2020 email to the strata stating she had read the minutes and that she and her father requested a council hearing at the next strata council meeting. The decision is also confirmed in the strata's December 21, 2020 letter to the applicants.
21. The council hearing occurred on January 6, 2021 as confirmed in strata council meeting minutes of that date. The applicants were requested to put their reasons for their hardship exemption request in writing to meet the requirements of the SPA, which they did on January 7, 2021.
22. In a January 11, 2021 letter to the applicants, the strata advised its strata council met on January 8, 2021 and voted to deny the applicants' request to extend the rental bylaw exemption for SL19 past June 30, 2021 (corrected to read May 31, 2021 in a January 19, 2021 letter). The January 8, 2021 strata council meeting minutes confirm this.
23. In January and February 2021, the parties and their legal council exchanged correspondence but were unable to resolve the dispute. The CRT issued the Dispute Notice on February 24, 2021.

EVIDENCE AND ANALYSIS

24. The applicants' position is that the strata has unreasonably refused to grant their January 2021 hardship exemption is based on 2 arguments. First, they say their requests for exemption from the rental restriction bylaw have not changed since 2018 and relate only to the size of the SL19. They say for the strata to now refuse their request is unreasonable because the strata has a responsibility to make fair,

equitable and consistent decisions. Second, although they state they are not claiming financial hardship, the applicants argue the building is nearing the end of its useful life, is not well-maintained, and will be imminently re-developed as a result of the property's rezoning by the City of New Westminster.

25. In response, the strata says the strata's approval of the April 2020 exemption was clearly for a 1-year period, and the applicants were advised at the time the exemption was granted that re-approval must be obtained from the strata before SL19 can be re-rented. It also says re-development of the strata property is not imminent and, even if it was, case law suggests sale proceeds, even at a loss, are not the only determining factor for hardship.
26. SPA section 144 addresses exemptions from rental restriction bylaws. Under subsection 5, an exemption may be for a limited time, and under subsection 6 a strata corporation **must not** unreasonably refuse to grant an exemption request (my emphasis).
27. The strata relies on *Als v. The Owners Strata Corporation NW 1067*, 2002 BCSC 134, which focused on the definition of "hardship" in section 144 of the SPA. The court adopted the Shorter Oxford English Dictionary definition of hardship, which means "hardness of fate or circumstance; severe toil or suffering; extreme privation."
28. The court said that determining whether a strata corporation complied with section 144 of the SPA requires a consideration of the facts that were before the strata council when it decided to deny an exemption. The court also said the applicant has the burden of proving hardship, and what may be considered hardship to one owner may not be hardship to another.
29. I find that the court's reasoning in *Als* is binding on me and applies in this dispute.
30. The question I must decide is whether the strata's decision to refuse the applicant's January 2021 hardship application was reasonable in all the circumstances, as contemplated in *Als*. Based on the evidence before me, I find that it was.

31. I do not agree that the strata's approval of 2 previous exemptions, apparently without documentary evidence, means that it was bound to keep approving the applicants' requests for as long as the applicants assert the hardship continues. If the applicants held that expectation, it was not a reasonable one. This was the decision reached by a CRT member in *Adamson v. The Owners, Strata Plan NW 2582*, 2019 BCCRT 377, which although not binding on me, I find persuasive. This is particularly so given the wording of bylaw 33(10) that says where an exemption will expire, as was the case here, an owner may re-apply for permission to rent under the provisions of this bylaw and the SPA. I find the language used in bylaw 33(10) means the applicants must make a fresh application to the strata council for any exemption from the bylaw.
32. The only reason given by the applicants at the time of the January 2021 exemption request was that the size of SL19 was too small for the family of 3. No supporting evidence was given by the applicants to prove their claim. Even if the reason given by the applicants was proven true, I do not find that reason meets the definition of hardship as defined in *A/s*.
33. I find it is also significant that the strata ownership defeated a proposed increase in the number of permitted rental strata lots. I find this is a clear indication that the strata ownership wanted to keep rental to a maximum of 2.
34. As mentioned, the applicants did not claim financial hardship until after their January 2021 exemption request, so I find it was reasonable for the strata not to request financial particulars of the applicants at that time.
35. As for the applicants' argument that the strata building is nearing the end of its useful life, is not well-maintained, and that a sale is imminent, I find they did not provide any evidence this is the case.
36. For these reasons, I dismiss the applicants' claims that the strata unreasonably refused their January 2021 hardship request for SL19 to be exempt from bylaw 33.

CRT FEES AND EXPENSES

37. As noted, under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for reasonable dispute-related expenses, and for CRT fees. I see no reason to deviate from this general rule. The strata was the successful party in this dispute but did not pay CRT fees and neither party claimed dispute-related expenses. Therefore, I make no order for CRT fees or expenses.
38. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against the applicants.

ORDER

39. I order the applicants' claims and this dispute dismissed.

J. Garth Cambrey, Vice Chair