



Civil Resolution Tribunal

Date Issued: October 22, 2021

File: ST-2021-002596

Type: Strata

Civil Resolution Tribunal

Indexed as: *Parent v. The Owners, Strata Plan NW 1779*, 2021 BCCRT 1122

B E T W E E N :

COLLEEN PARENT

APPLICANT

A N D :

The Owners, Strata Plan NW 1779

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

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

2. The applicant, Colleen Parent, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 1779 (strata). Ms. Parent says the strata unreasonably refused her request for a hardship exemption from the strata's rental restriction bylaw. She seeks a time-limited hardship exemption until building envelope repairs are complete. Ms. Parent represents herself.
3. The strata says Ms. Parent has not established financial hardship. It says the dispute should be dismissed. The strata is represented by a person I infer is a strata council member.
4. For the reasons that follow, I find the strata's refusal to grant Ms. Parent a hardship exemption was reasonable, and I dismiss her claim.

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 and fairness.
7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. 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, 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.

ISSUE

9. The issue in this dispute is whether the strata's refusal to grant Ms. Parent a hardship exemption was unreasonable, and if so, what remedies are appropriate.

BACKGROUND

10. As the applicant in this civil proceeding, Ms. Parent must prove her claim on a balance of probabilities, meaning more likely than not. While I have read all the evidence and submissions, I only refer to what is necessary to explain my decision.
11. The strata was created in 1982 under the *Condominium Act* and continues to exist under *Strata Property Act* (SPA). The strata includes 55 townhouse strata lots in 8 buildings, located in Pitt Meadows, BC.
12. The strata filed a complete set of bylaws with the Land Title Office (LTO) in 2002. Subsequent amendments filed with the LTO are not relevant to this dispute.
13. Bylaw 39 governs rentals. It limits the number of strata lots that can be rented at any time to 1, excluding exempt strata lots under sections 143 and 144 of the SPA.
14. SPA section 143 is not relevant to this dispute. SPA section 144(1) says an owner may apply to the strata for an exemption from a rental prohibition or rental 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.
15. SPA section 144(5) says the strata may grant an exemption for a limited time. Section 144(6) says the strata must not unreasonably refuse to grant an exemption.

16. I infer from the evidence that in the recent past the strata retained a contractor to provide a “Building Envelope Condition Assessment” (BECA) report. The BECA report is not in evidence but according to a September 25, 2020 BECA report “budget update” letter, necessary repairs included siding, balcony and window replacement. The letter said that the budget for the “comprehensive” approach was revised to just over \$6 million. With 55 strata lots, the cost per strata lot under the comprehensive approach would be around \$110,000. The cost could be higher or lower depending on the approach and options selected. It is undisputed that the owners were to vote on which BECA repair strategy and options to proceed with at a special general meeting on July 21, 2021, after the parties made submissions in this dispute.
17. Between November 2020 and March 2021, Ms. Parent made several hardship exemption applications. The strata refused to grant the exemptions, sometimes asking for additional information.
18. Ms. Parent initially believed the strata missed a deadline to respond to her first request. SPA section 144(4) says if the strata misses this deadline, the exemption is allowed. However, the strata disputed that it missed the deadline, and Ms. Parent did not pursue it further at the time, nor does she in this dispute. In any event, Ms. Parent’s original request did not state whether she required a hearing, so in accordance with the non-binding but persuasive reasoning in *Levesque v. The Owners, Strata Plan KAS 1202*, 2020 BCCRT 1089, I find there would be no automatic exemption.
19. Ms. Parent has owned her strata lot since 2007. She says her long-term plan was to sell her strata lot and downsize when her children reached adulthood and moved out. Ms. Parent says her circumstances changed in the last 2 years. First, she says in June 2019, her child support payments stopped, and by January 2021 both her children moved out. She says she lost \$540 per month that her second child contributed to household expenses. Ms. Parent says maintaining her strata lot on her own is no longer manageable, and she is taking on debt. I note she provided no supporting evidence about the child support payments or any child’s contributions to household expenses

20. Second, Ms. Parent says her ability to sell her strata lot is compromised by the BECA report and the associated uncertain repair costs. Ms. Parent says being granted a hardship exemption is the only “plausible solution” to her current financial situation.
21. A time-limited hardship exemption from the rental restriction bylaw, Ms. Parent says, would provide her with rental income that would cover her mortgage and strata fees. This would allow her to reallocate funds in her monthly budget to debt repayment and funding the upcoming repairs outlined in the BECA report. She says a friend has offered her a place to stay, rent-free, until she sells her strata lot.

ANALYSIS

22. Both parties refer to *Als v. The Owners, Strata Corporation NW 1067*, 2002 BCSC 134. In that decision, the BC Supreme Court said that whether an owner is suffering hardship under SPA section 144 will depend on the particular facts of each application. The rental restriction must cause hardship “to the owner,” meaning an individual owner’s unique financial circumstances are considered.
23. In *Als*, the court described several factors to be considered in a hardship application. I find 3 of those factors are applicable in this dispute: Ms. Parent’s ability to sell the strata lot, the potential sale price as compared to the purchase price, and whether the strata lot makes up all or substantially all of Ms. Parent’s assets. The court did not suggest the factors are a closed list, so I have considered all the information Ms. Parent provided.
24. The strata says Ms. Parent has shown inconvenience but not “hardship” as described in *Als*. It suggests Ms. Parent intends to permanently move in with a prospective spouse and simply wishes to retain her strata lot as a rental or investment property. I find the fact that Ms. Parent seeks a time-limited exemption indicates she does not intend to keep the strata lot as a long-term rental or investment.
25. Ms. Parent provided a “financial snapshot” showing her assets, liabilities, income, expenses, and net worth. She says her financial advisor prepared it, but she does not say who this was. Nonetheless, Ms. Parent provided corresponding account

statements, so I accept the financial snapshot to be a generally accurate financial picture, other than the strata lot's value, as discussed below. The snapshot shows a monthly deficit of \$492. I find the budgeted expenses are reasonable, perhaps even conservative as Ms. Parent budgeted nothing in the categories of entertainment, gifts, donations, legal, accounting and miscellaneous.

26. The financial snapshot shows that Ms. Parent has a modest RRSP and an RESP for her children's education. The evidence confirms that Ms. Parent stopped her automatic contributions to the RRSP in December 2020. She has some credit card debt and a personal line of credit. I accept that the strata lot is Ms. Parent's primary asset, which weighs in favour of a hardship exemption. However, this is tempered by Ms. Parent's evidence that it was always her plan to sell her strata lot when her children moved out.
27. Ms. Parent provided a comparison of her financial picture under different scenarios. The scenarios include the current scenario in which she resides in her strata lot, a scenario in which she sells her strata lot, and a scenario in which she is granted the hardship exemption and rents out her strata lot. Some scenarios also include refinancing, but based on a June 2021 email from Ms. Parent's bank advising that it could not approve Ms. Parent's re-financing request, I accept that refinancing is not an option.
28. I accept that the best scenario for Ms. Parent is to rent her strata lot and live elsewhere, rent-free. This would allow her to pay down debt, contribute to her RRSP, and retain her strata lot as her primary asset and means of wealth accumulation. However, the test is not whether an exemption gives the owner the best financial scenario. The test is whether the refusal to grant an exemption causes the owner hardship.
29. The strata relies on *Gerbrandt v. The Owners*, Strata Plan NW 493, 2021 BCCRT 210, where a CRT vice chair found that the strata corporation reasonably refused the owner's hardship exemption request. In *Gerbrandt*, the vice chair accepted a real estate agent's opinion that it was "difficult" to sell the owner's strata lot, which was

priced at market value but remained on the market for 142 days. The strata fees were substantially higher than those of similar units in other strata complexes, which disqualified prospective buyers at the given price because their mortgage brokers had average strata fees in mind. The owner had dropped the asking price by 4%, and offered to pay 6-12 months of strata fees as an incentive to buyers. Despite this, the vice chair found the evidence did not show Ms. Gerbrandt was unable to sell her strata lot. Her reduced asking price was still higher than the provincial assessment of her strata lot, and she had “significant equity” in the strata lot.

30. It is possible to distinguish *Gerbrandt* on the basis that Ms. Gerbrandt did not provide conclusive evidence about whether her strata lot was her primary asset and did not show the balances of her TFSA and RRSP, or whether she had a pension. Here, Ms. Parent has provided her complete financial picture. However, I conclude from the reasoning in *Gerbrandt* that the most important factors were the equity in the strata lot and the failure to prove the strata lot could not be sold.
31. Ms. Parent acknowledges that her financial hardship could be alleviated by selling her strata lot. However, she says selling is proving to be “inconceivable” at this time due to the BECA report and the uncertainty of the repair costs and timeline.
32. On June 6, 2021, Ms. Parent listed her strata lot for sale. A listing printout shows the asking price was \$624,000. Ms. Parent does not say what she paid for her strata lot, but the evidence shows that she has significant equity in the strata lot, approximately 3 times as much as Ms. Gerbrandt did.
33. In her financial scenario comparisons, Ms. Parent indicated that the 2021 property assessment value of her home was \$531,900. She estimated selling the home at 95% of the assessed value, or \$505,305, as well as retaining \$100,000 on a 3-year holdback for the BECA. Ms. Parent does not explain why she listed the home at \$624,000, substantially more than the assessed value and her budgeted sale price.
34. Ms. Parent provided a June 20, 2021 email from her real estate agent, Terri Smith. I accept Terri Smith’s evidence as expert evidence under CRT rule 8.3 because they are a professional real estate agent.

35. Terri Smith said the biggest hurdle to a sale was finding a buyer that could obtain financing in a complex that is to undergo major repairs, before a vote on how and when the repairs will happen. This evidence is consistent with an email from Krista Peterson, another real estate agent who attempted to sell a strata lot in the same strata complex in October 2020. Krista Peterson said there were 4 offers but each buyer was unable to get financing due to the lenders being unwilling to take on the risk of an unknown repair cost. Based on this evidence, I accept that the BECA report and cost uncertainty make it more difficult for Ms. Parent to sell her strata lot.
36. Terri Smith also said that after repair decisions are made, lenders should be more comfortable offering financing approval. In Terri Smith's December 2020 letter, before Ms. Parent listed the strata lot for sale, they recommended waiting either until the cost of the repairs was determined, or until after the repair work had been completed. So, I find it is reasonable to expect the strata lot to sell once the repair decisions are made and the cost is known, and it is not necessary to wait until the repairs are complete.
37. As noted above, the owners were to vote on July 21, 2021 about which BECA repair strategy and options to proceed with. This means a substantial barrier to finding a buyer will be removed before this decision is issued.
38. Notably, Terri Smith did not comment on whether \$624,000 was a reasonable price given the lower assessed value, or how that price compared with those of similar listings in the area. It appears that Ms. Parent has room to lower the asking price. As well, the strata lot had just been listed when the parties made submissions, so it had not spent weeks or months on the market. For all these reasons, I find Ms. Parent has not shown that she is unable to sell her strata lot.
39. Ms. Parent relies on *Levesque*. In that decision, a CRT vice chair found the strata corporation's refusal to provide a hardship exemption was unreasonable. Ms. Levesque had recently had her income reduced, incurred a large tax debt, and was required to move to care for elderly parents. Ms. Parent also has debt to repay, including her share of the anticipated building repair costs. However, unlike Ms.

Levesque, Ms. Parent is not required to move. She simply has the opportunity to live elsewhere, rent-free. Another distinction is that there was no evidence that Ms. Levesque had acquired significant equity in her strata lot through the passage of time. Here, the evidence is that the equity in Ms. Parent's strata lot will more than offset all her debts, including the anticipated building repairs.

40. Ms. Parent says aside from financial hardship, she has experienced hardship of health. She says the stress of the situation has had a negative effect on her health, with symptoms including exhaustion, difficulty sleeping, body tension, migraines and panic attacks, and lost productivity at work and home.
41. Ms. Parent provided a note from her physician, Dr. Fox. It is brief, stating that the "cash call re condominium repairs has created significant concerns," and noting Ms. Parent reports panic attacks and trouble functioning at work and at home. It says a "suitable resolution would be advisable." The note does not indicate it was prepared as expert evidence for the CRT, and I do not accept it as such. The note does not say that Dr. Fox has diagnosed Ms. Parent with any condition or whether her reported symptoms are connected to being unable to rent her strata lot. For these reasons, I place little weight on Dr. Fox's letter. While I accept that Ms. Parent finds the situation stressful and that she is likely experiencing adverse health effects, I find that is not enough to warrant a hardship exemption.
42. In *Als*, the court referred to the *Shorter Oxford English Dictionary* definition of "hardship", meaning "hardness of fate or circumstance; severe toil or suffering; extreme privation." This a high bar to meet, and I find Ms. Parent has not met it. In summary, I find that Ms. Parent is not prevented from selling her strata lot, she has significant equity in the strata lot, and although the strata lot is her primary asset, she has long intended to sell it around this time. I find that Ms. Parent has not established that the strata's refusal to grant an exemption to its rental limitation bylaw was unreasonable. I dismiss her claim.
43. In submissions, Ms. Parent asks for \$9,000 for 4 months of lost rent. Arguably the strata did not have a sufficient opportunity to respond to this requested remedy that

was not included in the Dispute Notice. However, given my finding that the strata's refusal was reasonable, I would dismiss Ms. Parent's claim for lost rent in any event.

44. The strata says Ms. Parent put her strata lot on Facebook Marketplace for "rent to own" which it says is prohibited by the bylaws. The strata did not file a counterclaim seeking any remedy for this alleged bylaw contravention, nor did it explain how it was related to Ms. Parent's hardship exemption application. So, I make no finding about this.

CRT FEES AND EXPENSES

45. In accordance with the CRTA and the CRT's rules, as Ms. Parent was unsuccessful I find she is not entitled to any reimbursement of CRT fees. Neither party claimed dispute-related expenses.
46. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Parent.

ORDERS

47. I dismiss Ms. Parent's claims and this dispute.

Micah Carmody, Tribunal Member