



Civil Resolution Tribunal

Date Issued: November 9, 2021

File: ST-2020-009534

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan EPS1980 v. Priest*, 2021 BCCRT 1185

B E T W E E N :

The Owners, Strata Plan EPS1980

APPLICANT

A N D :

JULIA PRIEST

RESPONDENT

A N D :

The Owners, Strata Plan EPS1980

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This dispute is about short-term rentals. Julia Priest (owner) used to own a strata lot in the strata corporation, The Owners, Strata Plan EPS1980 (strata). The strata says that the owner operated short-term accommodations (STAs) in her strata lot, contrary to its bylaws. In its claim, the strata initially asked for an order that the owner permanently stop operating STAs and comply with the strata's bylaw prohibiting STAs. As discussed below, I find that these claims are now moot given that she has sold the strata lot.
2. In her counterclaim, the owner says that the bylaw in question is invalid or, if valid, was unenforceable against her. She says that the strata improperly relied on the bylaw to refuse to cooperate with her application for a business license from the municipality. She also says that the strata council president negligently misrepresented to her that the municipality had agreed not to fine her. The owner says that the municipality did fine her, and she has lost revenue. She claims \$10,000 in damages.
3. The strata says that the bylaw is valid and enforceable, so it could not consent to a business license application. The strata asks me to dismiss her counterclaims.
4. The strata is represented by a strata council member. The owner 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). 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 tribunal 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. As noted above, the owner no longer owns a strata lot in the strata. Because she was an owner at the times relevant to this dispute, I find that she has standing, or a legal right, to bring this dispute. See the non-binding but persuasive CRT decision *Gill v. The Owners, Strata Plan EPS 4403*, 2020 BCCRT 4403, at paragraphs 19 to 24.
10. Also as noted above, the strata's initial claims were about preventing the owner from operating STAs in her strata lot in the future. While the strata did not formally withdraw these claims, it concedes in its submissions that this is no longer a live issue. I agree that the strata's claims are moot, and I dismiss them accordingly.

ISSUES

11. The remaining issues in this dispute are:
 - a. Is bylaw 32 valid and enforceable? If so, was the owner exempt from bylaw 32?
 - b. Did the strata wrongfully deny the owner consent to operate STAs for the purpose of obtaining a business license?
 - c. Did the strata negligently misrepresent the likelihood of municipal fines?
 - d. What remedy, if any, is appropriate?

BACKGROUND AND EVIDENCE

12. In a civil claim such as this, the owner must prove her counterclaims on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
13. The strata consists of 8 residential strata lots in 4 duplex-style buildings. The owner bought her strata lot in 2018 from the owner developer. She sold it in 2021.
14. The owner developer filed a Form J with the Superintendent of Real Estate on June 25, 2015. A Form J is a document that an owner developer can file to designate strata lots as rental lots for a set period of time. The Form J said that all 8 strata lots may be rented until December 31, 2114. This means that under section 143(2) of the SPA, a bylaw restricting rentals would not apply to any of the strata lots until January 1, 2115.
15. The strata filed a set of bylaw amendments on August 13, 2019, which includes the bylaw at issue in this dispute (bylaw 32). Bylaw 32 says that the "short-term rental of a strata lot is prohibited". The bylaw goes on to define a "short-term rental" as including a short-term license, a vacation rental, a rental through Airbnb or similar online platform, a bed and breakfast, a house exchange, or a hotel or motel use. The owners passed this bylaw at a special general meeting on April 9, 2019.
16. It is undisputed that the owner had rented out her strata lot as a vacation rental before the owners approved bylaw 32. It is also undisputed that she continued to do so after bylaw 32 came into effect.
17. At an annual general meeting on December 11, 2019, the owners unanimously decided not to impose fines against the owner at that time. They further agreed to hold a special general meeting "in the near future" to consider the issue further. This meeting did not happen until December 7, 2020, when the owners present voted unanimously to keep bylaw 32 in place and to refuse to cooperate with the owner's application for a municipal business license. However, the strata never fined the owner for breaching bylaw 32.

18. Instead, this dispute is mostly about municipal fines. The municipality prohibits STAs unless an owner has a business license. As part of the application process for a license, the applicant must indicate whether the strata corporation's bylaws permit STAs. If bylaws permit STAs, the applicant must obtain their strata corporation's written consent and include it with their business license application. The municipality will not issue a business license for STAs in the face of a strata corporation bylaw prohibiting them.
19. The evidence is somewhat unclear about what exactly happened between the owner and the strata about the business license application process. There is no evidence that either party raised the issue until after the owners approved bylaw 32. After that, in broad terms, the owner wanted the strata to give its consent so that she could apply for a business license. This request was based on her understanding that bylaw 32 did not prohibit her from operating STAs in her strata lot. The strata refused to give that consent, based on its position that bylaw 32 did prohibit STAs. Without the strata's written consent, the owner did not apply for a business license.
20. According to the owner's municipal account, the municipality fined her a total of \$4,775 between September 30, 2019, and February 23, 2021, for operating STAs without a business license.

ANALYSIS

Is bylaw 32 valid and enforceable? If so, was the owner exempt?

21. The owner makes 2 arguments about the validity and enforceability of bylaw 32. First, she says that bylaw 32 does not clearly define "short-term rentals" and that the bylaw is therefore void for ambiguity. In a previous CRT decision, *Esfahani v. The Owners, Strata Plan BCS 2797*, 2018 BCCRT 176, the tribunal member applied the test for ambiguity from the municipal law context. This decision is not binding on me, but I agree with that approach. This requires the owner to prove that the bylaw is so vague that a "reasonably intelligent person would be unable to determine the meaning of the bylaw": see *Kelowna Mountain Development Service Ltd. v. Central Okanagan (Regional District)*, 2014 BCCA 369, at paragraph 17.

22. I find that bylaw 32 is not ambiguous. As mentioned above, bylaw 32 includes 7 examples of the types of specific uses that it considers to be “short-term rentals”, including vacation rentals. So, while bylaw 32 may not include an exhaustive definition, I find that with these examples a reasonably intelligent person would understand what a “short-term rental” means.
23. Second, she says that says that bylaw 32 is unenforceable because it offends section 141 of the SPA. Section 141 limits the ways a strata corporation can restrict rentals through its bylaws. She says that bylaw 32 bans rentals beyond what section 141 allows.
24. I disagree with the owner that bylaw 32 is about “rentals” as that term is used in section 141 of the SPA. In *Semmler v. The Owners, Strata Plan NES3039*, 2018 BCSC 2064, the court found that a person may occupy a strata lot either as a tenant or as a licensee. When a person rents a strata lot as a tenant, they obtain an interest in the property, including the right to exclusive possession. A person who occupies a strata lot under a license agreement is not a tenant because they do not get exclusive possession and control of the property. The court concluded that the words “rent” and “rental” in Part 8 of the SPA (which includes section 141) were about tenancies, not licenses.
25. I find that bylaw 32 does not restrict or prohibit tenancies, only licenses. I find that the list of examples in the bylaw make this clear. A tenancy is subject to the *Residential Tenancy Act*, which grants considerable rights to tenants that licensees do not have. I find that by their very nature, uses like vacation rentals and other STAs are licenses, not tenancies. See *Semmler*. For this reason, I find that bylaw 32 does not restrict rentals as that word is used in Part 8 of the SPA.
26. The owner also argues that bylaw 32 has no legal effect against her because of the Form J discussed above. However, under section 139 of the SPA, the Form J only applies to rentals, not licenses. I therefore find that it has no effect on whether the strata could enforce bylaw 32 against any particular owner.

27. As mentioned above, the owner believed that she could get a business license if the strata would consent to it. However, I find that this belief was based on the incorrect understanding that the strata's bylaws permitted STAs. For the reasons set out above, I find that bylaw 32 prohibited the owner from renting her strata lot out as STAs. I therefore find that the strata acted appropriately in refusing to provide written consent for the owner to operate STAs.

Did the strata negligently misrepresent the likelihood of municipal fines?

28. The owner also alleges that the strata negligently misrepresented that the municipality would not enforce its bylaws against the owner. She provided an email where the strata council president admitted telling her that a municipal employee had assured the president that the municipality would not fine the owner. The strata does not dispute that its president told the owner this, so I accept that the allegation is true.

29. A negligent misrepresentation occurs when:

- a. The person making the representation owes the other person a duty of care,
- b. A person makes a representation that is untrue, inaccurate, or misleading,
- c. The person breaches the standard of care in making the representation, and
- d. The other person reasonably relies on the misrepresentation to their detriment.

30. I find that I do not need to address the first 3 parts of the legal test because I find that the owner did not reasonably rely on the representation. At the time it was made, I find that the owner knew that operating her strata lot as STAs was a violation of a municipal bylaw. I find that a reasonable person would be skeptical that a municipal employee would tell a strata council president that the municipality would not enforce its bylaws against a particular homeowner. There is no suggestion that the owner took any steps to verify this information with the municipality. I find that it was not reasonable for her to rely solely on the strata council's president to conclude that she could continue her STAs without consequence. In any event, the owner continued to operate STAs out of her strata lot even after the municipality fined her for the first

time, at which point I find that she knew that the strata council president's statement was incorrect.

31. I therefore find that the owner has failed to prove that there is any legal basis for the strata to reimburse her for the municipal fines. She also failed to provide any evidence of lost revenue. I therefore dismiss her claims.

TRIBUNAL FEES AND EXPENSES

32. 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. Even though I dismissed the strata's claims for being moot, I find that the strata was the successful party in this dispute. I order the owner to reimburse the strata's \$225 in CRT fees. The strata did not claim any dispute-related expenses. I dismiss the owner's claim for CRT fees and dispute-related expenses.

DECISION AND ORDERS

33. Within 30 days of the date of this order, I order the owner to pay the strata \$225 in CRT fees.
34. The strata is also entitled to post judgement interest under the *Court Order Interest Act*.
35. I dismiss the parties' remaining claims.

36. 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.

Eric Regehr, Tribunal Member