



Civil Resolution Tribunal

Date Issued: November 15, 2021

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW1276 v. Mehroke*, 2021 BCCRT 1206

BETWEEN:

The Owners, Strata Plan NW1276

APPLICANT

AND:

SAHASPREET MEHROKE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Roy Ho

INTRODUCTION

1. This strata property dispute is about a rental restriction bylaw and related fines.
2. The respondent, Sahaspreet Mehroke, owns a strata lot (SL1) in the applicant strata corporation, The Owners, Strata Plan NW1276 (strata). The strata says Mr. Mehroke

violated its rental restriction bylaw. Conversely, Mr. Mehroke alleges the strata had approved renters for SL1. He further says the strata unreasonably refused his request to rent SL1 under the hardship provisions of the *Strata Property Act* (SPA).

3. The strata denies that it permitted renters in SL1. The strata also says Mr. Mehroke did not establish hardship and it reasonably denied his request to rent SL1 under the provisions of the SPA. The strata asks for an order for Mr. Mehroke to pay \$4,800 in bylaw fines and an order for him to stop contravening its rental restriction bylaw.
4. Mr. Mehroke is self-represented. The strata is represented by a strata council member.
5. For the reasons that follow, I find Mr. Mehroke contravened the strata's rental restriction bylaw and the strata reasonably refused to grant Mr. Mehroke's hardship request. However, I find the bylaw fines were invalid because the strata failed to follow the procedural requirements of the SPA when it imposed the bylaw fines. I also find that the strata has failed to prove that Mr. Mehroke owes \$4,800 in bylaw fines.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
9. 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.

ISSUES

10. The issues in this dispute are:
 - a. Did Mr. Mehroke violate the strata's rental restriction bylaw?
 - b. Did the strata unreasonably refuse Mr. Mehroke's hardship request to rent out SL1?
 - c. Must Mr. Mehroke pay the strata \$4,800 in bylaw violation fines?

EVIDENCE AND ANALYSIS

11. In a civil proceeding such as this, as applicant, the strata must prove its claims on a balance of probabilities. I have read all the submission and evidence provided by the parties but refer only to information I find relevant to give context for my decision.
12. The strata is a residential strata corporation consisting of 10 strata lots. The strata was created in March 1979 under the *Strata Titles Act* and continues to exist under the *Strata Property Act* (SPA).
13. Documents from the Land Title Office (LTO) show that the strata filed 3 bylaw amendments but did not file a complete set of amended bylaws with the LTO. So, I find the Schedule of Standard Bylaws in the SPA apply to this dispute, as well as the amendments summarized below.

14. I find the relevant amendment was the September 7, 2012 amendment filed at the LTO. I summarize the relevant parts of the amended bylaw as follows:
- a. The number of permitted rental strata lots will be changed from 2 to 0.
 - b. The bylaw does not take effect until 1 year from the bylaw filing date.
 - c. Until the bylaw amendment takes effect, prospective or current landlords must apply in writing to the strata for permission before renting or re-renting their strata lot. The maximum allowed rental term may not exceed 2 years from the bylaw filing date.
 - d. Rental strata lots will cease to become rental strata lots at the earliest of: (1) when the tenant moves out after the bylaw takes effect, or (2) when the maximum rental term of 2 years ends from the bylaw filing date.
15. Under the Standard Bylaws section 23, it says the strata may fine a person who contravenes a bylaw \$50 maximum for each contravention. Section 24 says that the strata may impose a fine every 7 days for a continuing bylaw contravention.

Did Mr. Mehroke violate the strata's rental restriction bylaw?

16. A title search shows Mr. Mehroke purchased SL1 in 2020. It is undisputed that Mr. Mehroke received a copy of all the strata's records, including bylaw amendments, when he purchased SL1.
17. Mr. Mehroke says that when he purchased SL1 renters were already living in it with the approval of the strata. The strata denies this. However, in a September 19, 2020 email to Mr. Mehroke, the strata president admitted that the strata granted special permission to SL1's previous owner to have renters for a fixed rental tenancy term due to "special circumstances". Therefore, contrary to the strata's assertion, I find the strata had approved renters in SL1 before Mr. Mehroke purchased it.
18. In that email, the strata says that the rental term ended when the previous owner sold SL1 to Mr. Mehroke. The tenancy agreement is not before me in evidence. However,

I find nothing turns on this, since under the rental bylaw, all rentals effectively ended on September 7, 2014, which was 6 years prior to Mr. Mehroke's purchase of SL1.

19. Mr. Mehroke says that after he purchased SL1, he was given special permission to continue to rent it out. However, he does not say who gave him special permission nor did he provide any evidence showing this. For this reason, I find that the strata did not give permission for him to continue to rent out SL1.
20. Mr. Mehroke argues that since the strata had approved renters in SL1, he should be able to continue renting to them. In essence, I find that Mr. Mehroke is arguing that he should be exempted from the rental bylaw given the former rental arrangement the strata had with SL1's previous owner. However, I disagree for the reasons that follow.
21. SPA section 143(1) provides a rental exemption stating that "a bylaw that prohibits or limits rentals" does not apply to a strata lot until the later of 1 year after an existing tenant has ceased to occupy the strata lot and 1 year after the bylaw is passed. I find section 143(1) is the only circumstance where a rental exemption is permitted under the SPA. In the result, I find Mr. Mehroke was not exempted from rental restriction bylaw because the maximum exemption time had already passed when he had purchased SL1.
22. Mr. Mehroke also suggests in evidence that the rental restriction bylaw required a unanimous vote. However, he did not provide submissions or explain his position. In any event, I find that the bylaw did not require a unanimous vote. SPA section 128(1)(a) says that amendments to bylaws must be passed by a $\frac{3}{4}$ vote at an annual or special general meeting. The parties did not make submissions about whether the strata obtained $\frac{3}{4}$ ownership votes for the rental restriction bylaw, so I make no findings about that.
23. For the all the above reasons, I find that Mr. Mehroke violated the strata's rental restriction bylaw. In the strata's submissions, it asks for a "stop order" to remove the illegal SL1 renters and to prevent new renters from moving into SL1 again. However, I decline to make these orders for the following 2 reasons.

24. First, it is undisputed that SL1's previous renters have since vacated SL1. Therefore, I find to grant an order to remove SL1's previous renters would have no practical purpose.
25. While the strata also alleges that Mr. Mehroke is renting SL1 to new tenants, I find this allegation unproven. Mr. Mehroke says that his sister and her family now lives in SL1 with him, and they are not renters. The strata disputes this and says a strata council member spoke with someone currently living in SL1 who allegedly confirmed that they were renters and were not related to Mr. Mehroke. However, I place no weight on this evidence because it is hearsay. The strata did not provide a statement from the strata council member who spoke with this person. While the CRT has discretion to admit evidence that would not be admissible in court proceedings, including hearsay evidence, I decline to do so here. I find this material evidence critical to prove Mr. Mehroke's alleged continued rental violation, which the strata easily could have provided but did not. Therefore, I am not prepared to conclude that Mr. Mehroke continues to violate the rental bylaw based on hearsay alone.
26. The strata also argues that Mr. Mehroke's vehicle has never been seen in SL1's assigned parking spot. The strata says the vehicles it observed coming and going from SL1 do not belong to Mr. Mehroke. However, the strata has provided no evidence or explanation about how it knows this. I find this assertion speculative and unproven. Likewise, the strata also says that "Mr. Mehroke has never been witnessed moving into [SL1] nor has he ever been witnessed on the property". It is unclear who the strata refers to as the 'witness' but I also find that this assertion speculative and unproven, as I find it unlikely that SL1 was being monitored 24 hours a day. So, I am unable to conclude that Mr. Mehroke did not move into SL1 or that he had never attended SL1, as alleged.
27. Second, as I have found it is unproven that Mr. Mehroke continues to violate the rental bylaw, I find the prospects that Mr. Mehroke will continue to violate the rental bylaw is speculative at best. I am not prepared to make an order about events that have not yet occurred or does not appear likely to occur. I also find such an order would have

no meaning beyond the SPA provisions and the bylaws already in place, which Mr. Mehroke must comply with.

Did the strata unreasonably refuse Mr. Mehroke's hardship request to rent out SL1?

28. 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.
29. SPA section 144(5) says the strata may grant an exemption for a limited time. Section 144(6) of the SPA says the strata must not unreasonably refuse to grant an exemption.
30. On November 9, 2020, Mr. Mehroke wrote to the strata requesting for a hardship exemption. Mr. Mehroke's stated reason for an exemption was because he was unable to vacate his tenants due to "current tenancy law and COVID restriction". Mr. Mehroke does not explain or elaborate about what he meant by this and how it caused him hardship.
31. On November 26, 2020, the strata responded to Mr. Mehroke denying his hardship exemption request because, in part, Mr. Mehroke had not demonstrated a hardship. I agree with the strata for the reasons that follow.
32. The leading case about hardship exemptions is *Als v. The Owners, Strata Corporation NW 1067*, 2002 BCSC 134. In *Als*, the BC Supreme Court said that whether an owner is suffering hardship under section 144 of the SPA depends on the circumstances of each case. The applicant has the burden of proving hardship, and what may be considered hardship to 1 owner may not be hardship to another. The court also said that determining whether a strata 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. In *Als*, the court adopted the *Shorter Oxford English*

Dictionary definition of “hardship”, meaning “hardness of fate or circumstance; severe toil or suffering; extreme privation.”

33. In applying the reasoning in *Als* to the facts of this case, I find that the strata’s decision to deny Mr. Mehroke’s hardship exemption request was reasonable given that Mr. Mehroke had the burden of proving hardship but had failed to do so. I dismiss Mr. Mehroke’s allegation that the strata unreasonably refused to grant his hardship request.

Must Mr. Mehroke pay the strata \$4,800 in bylaw violation fines?

34. Under section 135(1) of the SPA, before imposing bylaw fines, the strata must have received a complaint, given the owner written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if one is requested. Under section 135(2), the strata must give the owner written notice of its decision to impose fines “as soon as feasible”.
35. The BC Court of Appeal has found that strict compliance with section 135 of the SPA is required before a strata corporation can impose bylaw fines. The court also determined that bylaw fines may be found to be invalid if the procedural requirements set out in section 135 are not followed. See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.
36. I do not order Mr. Mehroke \$4,800 in bylaw fines because I find the strata did not strictly follow SPA section 135 when it retroactively imposed bylaw fines on Mr. Mehroke. The strata has provided no evidence that it gave written notice to Mr. Mehroke of its decision to impose fines, contrary to section 135(1). The records in evidence only show that the strata warned Mr. Mehroke that bylaw fines were accruing because of his failure to pay. Section 135(1) says the strata must give an owner a reasonable opportunity to be heard before imposing a fine. I find that the strata has failed to provide Mr. Mehroke of this opportunity. In *Dimitrov v. Summit Square Strata Corp.*, 2006 BCSC 967, the BC Supreme Court found at paragraph 33 that continuing fines under SPA section 135(3) are invalid if section 135(1) has not been followed.

37. I also find that the strata has failed to prove the bylaw fine amounts as alleged. First, the strata has provided no evidence, such as an account statement, showing when Mr. Mehroke's fines began accruing and how much the strata was charging him for each bylaw infraction. I find there is no way for me to determine which portions, if any, of the \$4,800 fined were validly charged to Mr. Mehroke.
38. Second, and related, I find from the records that the strata had inconsistently and invalidly fined Mr. Mehroke. As noted above, the maximum amount that the strata could fine Mr. Mehroke under its bylaws was \$50 every 7 days for a continuing bylaw contravention. However, in an August 14, 2020 email from the strata to Mr. Mehroke, the strata said a \$200 fine would be imposed for every 7 days for a continuing bylaw contravention. Then, in a November 26, 2020 email from the strata to Mr. Mehroke, the strata said fines continued to accrue at \$500 per week. Based on these inconsistent and invalid charges, I find it is not likely the \$4,800 amount claimed is accurate. So, I find the strata has also failed to show it is entitled to the amount claimed.
39. For the above reasons, I dismiss the strata's \$4,800 claim against Mr. Mehroke for bylaw fines.

CONCLUSION

40. In summary, I find that Mr. Mehroke violated the rental restriction bylaw and the strata reasonably refused his hardship request application. However, I decline to grant the orders the strata seeks, as I find it serves no practical purpose and Mr. Mehroke is already required to comply with the rental bylaw. I also find that the bylaw fines charged against Mr. Mehroke were invalid and unproven.

CRT FEES AND EXPENSES

41. 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.

As the strata was partially successful, I order Mr. Mehroke to reimburse the strata for half of its CRT fees. This equals \$112.50. The parties claimed no dispute-related expenses, so I order none.

42. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Mehroke.

ORDERS

43. I order Mr. Mehroke to pay the strata \$112.50 as partial reimbursement of CRT fees within 30 days of the date of this order.
44. The strata is entitled to post-judgment interest under the *Court Order Interest Act*.
45. I dismiss the strata's remaining claims.
46. 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.

Roy Ho, Tribunal Member