Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 744 v. Gan*, 2021 BCCRT 1338

B E T W E E N :

The Owners, Strata Plan LMS 744

APPLICANT

A N D :

LIGUAN GAN and TIANPO YE

RESPONDENTS

AMENDED REASONS FOR DECISION

Tribunal Member: J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about alleged contravention of a strata corporation's occupancy bylaw.

2. The respondents, Liguan Gan and Tianpo Ye, jointly own 2 strata lots (SL133 and SL134, together, the strata lots) in the applicant strata corporation, The Owners, Strata Plan LMS 744[1] (strata).

3. The strata says the respondents and their tenants are acting contrary to its occupancy bylaw (bylaw 6.1) that restricts the use of a strata lot "for any purpose other than for occupancy by a single family". The strata says the 4 people that rent the strata lots are not from a single family, but rather from 4 families. The strata seeks orders that the respondents and their tenants comply with bylaw 6.1.

4. The respondents do not oppose the strata's allegations. They say they rent their strata lots, which have been combined into 1 dwelling, to "4 young professionals who are friends". The respondents also say they signed a 2-year rental agreement with their tenants and that they cannot force their tenants to move out "if they did nothing wrong". The respondents also say they were not aware of the bylaw and have accepted they must pay the $200 per week fine imposed by the strata.

5. The strata is represented by a strata council member. The respondents are married and are represented by their friend Mike Zhang, who is not a lawyer.

6. For the reasons that follow, I dismiss the strata's claims against the respondents and make no findings about the strata's claims against the respondents' tenants.

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). 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.

8. 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.

9. 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.

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 – Order Against the Tenants

11. As noted, the strata seeks an order that the respondents' tenants comply with bylaw 6.1. However, the strata did not name the tenants as respondents in this dispute. I find it would be procedurally unfair for me to consider the strata's claim against the tenants given the tenants have not had the opportunity to respond to the strata's allegations. Therefore, I decline to make findings about the strata's claims against the tenants.

12. This includes addressing the strata's submissions about potential *BC Human Rights Code* violations concerning the tenants' relationships, which one of the tenants mentioned in an email they had been advised might be a potential defence.

ISSUES

13. The issues in this dispute are:

    a. Are the respondents using the strata lots contrary to bylaw 6.1?

b. If yes, what is an appropriate remedy?

BACKGROUND, REASONS AND ANALYSIS

14. As applicant in a civil proceeding such as this, the strata must prove its claims on a balance of probabilities. I have read all the submissions and evidence provided by the parties, but refer only to information I find relevant to give context for my decision.

15. The strata is a residential strata corporation consisting of 139 strata lots in a high rise building. It was created in February 1993 under the *Condominium Act* and continues to exist under the *Strata Property Act* (SPA). The strata lots are located next to each other on the 24th floor of the high rise building. The parties agree that the 2 strata lots have been combined into 1 dwelling unit with access between the strata lots through the common dividing wall that separates the 2 strata lots.

16. Land Title Office (LTO) documents show the strata filed a complete new set of bylaws December 13, 2017. Further bylaw amendments were filed with the LTO on June 4, 2018, but these amendments are not relevant to this dispute. The 2017 bylaws include bylaw 6.1 which reads in its entirety:

> No Owner, Tenant, or Occupant shall use a Strata Lot for any purpose other than for occupancy by a single family, which may include a live in housekeeper, nanny, or nurse.

17. The 2017 bylaws also include bylaws that restrict the number of strata lots that may be rented and prohibit short-term accommodations, such as AirBnB. However, the strata says that the issue in this dispute does not relate to these bylaws and I agree. December 2020 emails between the strata's property manager and respondent's representative confirm the respondents have the strata's approval to rent their strata lots. Based on the copy of the tenancy agreement provided and related Form K – Tenant's Undertaking, there is no short-term accommodation.

18. The tenants moved into the strata lots in February 2021 and quickly, noise complaints were made by the resident strata council member living in a strata lot below. There are several pieces of evidence about the noise complaints that I will not address here given the tenants' noise is not an issue before me to decide in this dispute. As a result of the noise complaints, the strata determined the tenants were not family members. On February 12, 2021, the strata wrote to the respondents alleging "5 or more adults" were residing in the strata lots contrary to bylaw 6.1.

19. On February 27, 2021, the respondents requested an exemption from bylaw 6.1 which the strata denied at a council hearing held March 18, 2021. The strata confirmed its denial of the respondents exemption from bylaw 6.1 in a letter dated March 22, 2021. The strata's letter also confirmed the strata council had decided to fine the respondents $200 for contravening bylaw 6.1 and would apply additional $200 fines every 7 days for continuing bylaw contraventions, citing bylaw 34.1 that permits such continuous bylaw fines consistent with SPA section 132.

20. By email dated March 30, 2021, the respondents acknowledged receipt of the bylaw contravention letters from the strata and authorized the strata to withdraw "the fine of $200 every 7 days" from their bank account. None of this is disputed.

Are the respondents using the strata lots contrary to bylaw 6.1?

21. Bylaws are to be given their plain and ordinary meaning. See *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32, citing *Harvey v. The Owners, Strata Plan NW 2489*, 2003 BCSC 1316.

22. In *Semmler v. The Owners, Strata Plan NES3039*, 2018 BCSC 2064 at paragraph 18, the BC Supreme Court held that the basic rules of statutory interpretation should be applied when interpreting strata bylaws. The court further held that "in determining the meaning of an individual bylaw, the bylaws must be read as a whole. An interpretation which allows the bylaws to work together harmoniously and coherently should be preferred".

23. It is a general rule of statutory interpretation that the specific overrules the general or the specific is preferred over the general. An interpretation which allows the bylaws to work together harmoniously and coherently should be preferred. See *Carnahan v. Strata Plan LMS522*, 2014 BCSC 2375 (CanLII) at paragraph 25.

24. In light of this, I must determine the correct interpretation or intent of the bylaw based on its plain and ordinary meaning in the context of the SPA and the bylaws as a whole.

25. For the following reasons, I find the respondents are not using the strata lots contrary to bylaw 6.1.

26. The bylaw says in part "No Owner, Tenant, or Occupant ***shall use*** a Strata Lot for any purpose other than for occupancy by a single family" (my emphasis). Based on a plain reading, I find the respondents are not in breach of the bylaw because they are not ***using*** the strata lots. Rather, it is their authorized tenants who are using the strata lots. The wording of the bylaw only restricts the respondents' use of the strata lots. It does not say the respondents may not permit the strata to be used by anyone other than a single family. I find that any action the strata may have about bylaw 6.1 is against the respondents' tenants, and not the respondents themselves.

27. The strata asserts that the respondents have rented the strata lots to a group of people who are "ineligible" to use the strata lots in the "fashion" they are. The strata says bylaw 6.1 "establishes that [the strata lots] may only be occupied by a certain number of people, as defined by [bylaw 6.1]". First, I disagree that bylaw 6.1 sets any limit on the number of occupants of a strata lot. Stating the strata lots can only be used by a single family (or 2 families as the strata concedes based on the 2 strata lots), as the bylaw does, does not establish a particular number of people. There is nothing in the SPA or the bylaws that defines the number of people that comprise a family. Second, I note that the strata authorized the rental of the strata lots and that SPA section 141(1) does not allow the strata to screen tenants, establish screening criteria, approve tenants "or otherwise restrict the rental of a strata lot" except as provided under SPA section 141(2) by prohibiting or restricting the number of strata

lots that can be rented. Taking this into account, I find the strata cannot restrict the rental of the strata lots by limiting who the respondents can rent to.

28. I take it from the strata's submissions that it argues the 4 people occupying the strata lots as renters do not form a "family". The strata appears to rely on the definition of "Family Member" under its bylaw 1.14, to require the 4 occupants of the strata lots to be immediate family members, but the phrase "family member" is not used in bylaw 6.1 and "family" is not defined. The terms "family" and "family member" are defined under *Strata Property Regulation* (regulation) section 8.1, but that definition is only for determining whether an exemption exists for strata lot rentals, which does not apply here. The online Meriam Webster dictionary (www.Merriam-webster.com) says that (my emphasis):

> In modern use, family may refer to one of a number of different groups of people… who may or may not share ancestry. Family is often encountered in legal use, but even within the jargon of the law it is not restricted to a single meaning. In many legal contexts family denotes "individuals related by blood, marriage, or adoption," but in others *the definition may be somewhat broader, encompassing groups of individuals not related by these things*.

29. Following the modern use of the word "family" noted above, I find that people do not need to be related by blood, marriage, or adoption, as the strata appears to suggest, in order to be considered a family.

30. For these reasons, I find the respondents are not using the strata lots contrary to bylaw 6.1.

31. In light of my conclusion, I dismiss the strata's claims.

CRT 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. I see no reason not to follow this general rule. The respondents are the successful party in this dispute but did not pay CRT fees or claim dispute-related expenses, so I make no order for reimbursement.

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

ORDER

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

J. Garth Cambrey, Vice Chair

[1] Amendment Note: Paragraph 2 was amended to correct an inadvertent typographical error in the applicant's name under authority of section 61 of the Civil Resolution Tribunal Act.