



# Civil Resolution Tribunal

Date Issued: May 12, 2022

File: ST-2021-007013

Type: Strata

Civil Resolution Tribunal

Indexed as: *Clark v. The Owners, Strata Plan EPS741*, 2022 BCCRT 567

**B E T W E E N :**

DAVID CLARK and SHERREE CLARK

**APPLICANTS**

**A N D :**

The Owners, Strata Plan EPS741

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell, Vice Chair

## **INTRODUCTION**

1. The applicants, David Clark and Sheree Clark, own strata lot 13 (SL13) in the respondent strata corporation, The Owners, Strata Plan EPS741 (strata).

2. The Clarks say that since they bought SL13 in 2015, they have offered it for paid use by others under licence arrangements. The Clarks say these occupancies are not rentals. They say that since July 2020, the strata has improperly charged them move-in fees for these occupancies, and required them to provide completed Form K Notice of Tenant's Responsibility forms (Form K). The Clarks argue that the move-in fee is unreasonable, and that neither the move-in fee or the Form K is required for occupations by licence.
3. As remedies, the Clarks request orders that the strata stop charging them moving fees, and stop requiring them to provide Form Ks. The Clarks also request an order that the strata reverse \$300 in move-in fees and related bylaw fines charged to their strata lot account.
4. The strata says that its bylaws do not permit short term accommodations, and that the Clarks are renting SL13. The strata says the Clarks therefore must pay the move-in fee and provide a completed Form K for each new occupancy. The strata says its move-in fee bylaw, as amended in 2021, is reasonable and enforceable.
5. The Clarks are self-represented in this dispute. The strata is represented by a strata council member.
6. For the reasons set out below, I find in favour of the Clarks in this dispute, and allow their claims.

## **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 which 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 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**

11. The issues in this dispute are:
  - a. When must the Clarks give the strata a completed Form K?
  - b. When must the Clarks pay a move-in fee?
  - c. Must the strata reverse any fees or fines from the Clark's strata lot account?

## **REASONS AND ANALYSIS**

12. In a civil claim like this one, the Clarks, as applicants, must prove their claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.

13. When the strata was created in 2014, the owner developer filed a set of bylaws at the Land Title Office (LTO) which replaced the Standard Bylaws under the *Strata Property Act* (SPA). The strata filed 5 sets of bylaw amendments after that, which I discuss as relevant below.

### **Form K**

14. In April 2021, the strata amended its bylaws to include the following provision:

4(3) Before an owner rents out all or part of a residential strata lot, the owner must give the prospective tenant the current bylaws and rules, and a Notice of Tenant's Responsibilities (Form K). Within 2 weeks of renting out all or part of a residential strata lot, the owner must give the strata corporation a copy of the Form K signed by the tenant.

15. Bylaw 37 is also relevant to this dispute. It says an owner may not rent a strata lot for a period of less than 30 days.

16. In this dispute, the strata does not allege that the Clarks have breached bylaw 37. Rather, the strata says the fact that bylaw 37 prohibits short term rentals proves that each new occupancy of SL13 is a rental that requires a completed Form K under bylaw 4(3). The strata provided a screenshot of the advertisement offering SL13 for occupancy. The advertisement indicates a 30-day minimum stay.

17. The Clarks say they are not required to provide the strata with Form Ks because they are not renting out SL13, and there are no tenants. Rather, the Clarks argue that SL13 is used as vacation or travel accommodation, under licence agreements.

18. The strata says the Clarks must provide a new Form K for each new occupant of SL13, as they are renting the strata lot, and the occupants are tenants. The strata says the Clarks' argument that the SL13 occupants are not tenants is a "semantic claim". Similarly, in an October 21, 2021 email to the Clarks, the strata manager wrote:

Tenancies are not exclusive to long-term rentals; therefore, I refer to your 30-day and less rentals as tenancies...

19. I find that the strata's position on this issue is incorrect. The distinction between tenants and licensees is not merely semantic, but is legally significant.
20. Part 8 of the SPA governs rentals in strata corporations. The Form K document is authorized and created by SPA Part 8 and the *Strata Property Regulation* (Regulation). Courts have found that the rights and obligations in SPA Part 8 only apply where the renter receives exclusive possession and control of the property, known as legal possession (*HighStreet Accommodations Ltd. v. The Owners, Strata Plan BCS 2478*, 2017 BCSC 10, affirmed 2019 BCCA 64).
21. In *Semmler v. The Owners, Strata Plan NES3039*, 2018 BCSC 2064, the BC Supreme Court (BCSC) found that the words "rent" and "rental" in SPA Part 8 are about tenancies and do not apply to licenses. Because terms used in bylaws must carry the same meaning as the terms in the SPA, the BCSC held that the strata's rental bylaws in that case did not apply to short-term licence agreements.
22. In *Semmler*, the BCSC set out the following principles:
  - a. A person may occupy a strata lot under a tenancy agreement or a license agreement.
  - b. A tenant is a person who rents all or part of a strata lot and who, through that arrangement, receives an interest in the property including exclusive possession of the premises.
  - c. An occupant is a person other than an owner or tenant who occupies a strata lot.
  - d. A licensee is an occupant but not a tenant.
  - e. Provisions of the SPA that relate to tenants and tenancies do not apply to licensees (para 45).

23. In *The Owners Strata Plan VR2213 v. Duncan & Owen*, 2010 BCPC 123, the strata corporation argued that a move-in fee and Form K was required for every change in occupancy of a strata lot used to provide accommodation to others for a fee. The BC Provincial Court (BCPC) summarized case law on the distinction between tenancies and licences to occupy, and said that under the SPA, there could be people lawfully occupying strata lots who are neither owners, tenants, or subtenants (paragraphs 43-44). The BCPC found that the SPA did not require a Form K to be delivered to the strata whenever there was a change in occupancy, unless that occupant was a tenant or subtenant (paragraph 44). The BCPC concluded that occupiers (who stayed anywhere from 30 days to a year) were licensees and not tenants or sub-tenants.
24. I agree with the reasoning in *Duncan* and *Semmler*, and rely on it here. The evidence before me shows that SL13 was offered through a website advertisement for stays of 30 days or more. The strata describes this as a “vacation rental” website. The Clarks assert there was no tenancy agreement, and there is no evidence to the contrary, nor is there evidence indicating that the SL13 occupants had exclusive possession of the strata lot (such as a right to sublease it as discussed in *Semmler*).
25. For these reasons, I find SL13 was not rented. Both bylaw 4(3) and SPA section 146 specify that a Form K only applies to rentals. For that reason, I conclude that the Clarks are not required to provide Form Ks for each new occupant, unless they rent SL13 to a tenant.

### ***Move-in Fees***

26. In April 2016, the strata amended bylaw 36, which is entitled “Move In/Move Out”. Bylaw 36 was amended to say that persons moving into any strata lot must pay a \$100 move-in fee. The amended bylaw also said that if the person moving was a tenant, the strata lot owner was responsible for paying the move-in fee.
27. In 2020, the strata imposed move-in fees on the Clarks based on the April 2016 version of bylaw 36. In early 2021, the strata imposed fines for non-payment of the move-in fees. However, the correspondence in evidence shows that on April 28, 2021, the strata reversed those fees and fines, because the strata failed to hold a

council hearing the Clarks requested. Therefore, I find fees and fines from before April 2021 are not at issue in this dispute.

28. The strata filed a new amendment to bylaw 36 at the Land Title Office in June 2021. I find this is the version of bylaw 36 that applies to this dispute. The June 2021 amendment includes a new subsection, 36(3), which states as follows:

Persons moving into any strata lot shall pay a move-in fee. Persons moving into a strata lot that involves moving furniture and/or household items shall pay a move in fee of \$125. **Persons moving into a strata lot where the move does not involve furniture and/or household items...shall pay a fee of \$50.** If the party moving in is a tenant or occupant, the Owner of the suite is responsible for ensuring that the fee is paid. (Emphasis added.)

29. I find the Clarks are not required to pay the move-in fee for each new occupancy of SL13 for 2 reasons. First, under bylaw 36(3), the fee only applies to persons “moving in” to a strata lot. I find that someone occupying a strata lot for a month with a limited amount of personal belongings is not “moving in” in the ordinary sense of that phrase. I note that “moving in” is not defined in the SPA or bylaws.
30. Second, I find the \$50 move-in fee for moves without furniture does not meet the requirements of Regulation section 6.9(1), because it is not reasonable.
31. SPA section 110 says a strata corporation must not impose user fees for the use of common property or common assets, other than as permitted under the Regulation. I find that the move-in fee is a form of user fee: see *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164.
32. Regulation 6.9(1) says a user fee must be a reasonable amount, and must be determined on a reasonable basis, including:

(a) the user's rate of consumption;

(b) the recovery of operating or maintenance costs by the strata corporation;

(c) the number of users;

(d) the duration of use.

33. The strata says the fee for moves without furniture is reasonable and justified, based on the “associated costs of the physical move-in”, the administration of the occupancy changeovers, and the potential risk of common property damage.
34. I find the risk of possible damage is not a reasonable basis to impose a fee, since the strata has provided no evidence of actual damage in the past, or the associated costs. The strata suggests that personal items, such as bicycles, could cause damage. While this is possible, I find it is speculative, and does not meet the requirements of Regulation section 6.9(1). For example, there is no evidence that the strata has ever incurred maintenance costs related to moves without furniture that it must recover.
35. Similarly, the strata argues that it might need to reprogram or replace key fobs. However, this is also speculative. There is no evidence this has happened, or how much it cost.
36. I find that some of the strata’s argument about administration costs of occupancy changeovers is related to its argument that all new occupancies trigger the need for a Form K notice. Since I have found above that is not the case, it is unclear what other administrative burden exists. The strata says its caretaker is responsible for coordinating moves, which I agree is part of bylaw 36(2). However, as I note above, “moving in” is undefined in the SPA and bylaws, and it is likely unreasonable to assert that an individual accessing a strata lot with personal luggage is “moving in”, or requires caretaker coordination or supervision.
37. For these reasons, I find the \$50 fee for moves without furniture is unreasonable and therefore not permissible under Regulation 6.9(1). SPA section 121(1) says a bylaw that contravenes the Regulation is unenforceable. I therefore order the strata to stop enforcing the portion of bylaw 36(3) that imposes a \$50 fee for moves without furniture.



## ***Fees and Fines***

38. The SL13 account statement shows that the Clarks have \$300 in unpaid move-in fees, and related bylaw fines. Since I have found the fee for moves without furniture is unenforceable, the strata was not entitled to fine the Clarks for non-payment. I order the strata to remove the move-in fees and associated fines from the SL13 account.

## **CRT FEES AND EXPENSES**

39. As the Clarks were successful in this dispute, in accordance with the CRTA and the CRT's rules I find they are entitled to reimbursement of \$225.00 in CRT fees. Neither party claimed dispute-related expenses, so none are ordered.

40. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the Clarks.

## **ORDERS**

41. I order that:

- a. Except when the Clarks rent SL13 to a tenant, the strata must stop requiring the Clarks to provide completed Form K documents for each new occupancy of SL13.
- b. The strata must immediately stop enforcing the portion of bylaw 36(3) that imposes a \$50 fee for moves without furniture.
- c. The strata must immediately remove the move-in fees and associated bylaw fines from the SL13 account.
- d. Within 30 days of this decision, the strata must reimburse the Clarks \$225 for CRT fees.

42. The Clarks are entitled to postjudgment interest under the *Court Order Interest Act*, as applicable.

43. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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.

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Kate Campbell, Vice Chair