



# Civil Resolution Tribunal

Date Issued: October 18, 2022

File: ST-2022-000534

Type: Strata

Civil Resolution Tribunal

Indexed as: *Corona v. The Owners, Strata Plan VR 1166*, 2022 BCCRT 1139

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

ANGELINA CORONA

**APPLICANT**

**A N D :**

The Owners, Strata Plan VR 1166

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. This strata property dispute is about an owner's request to be exempted from strata restrictions about short term rentals.
2. The applicant, Angelina Corona, owns strata lot 12 (SL12) in the respondent strata

corporation, The Owners, Strata Plan VR 1166 (strata).

3. As discussed below, the Dispute Notice for this dispute was amended by a preliminary decision to remove some of Ms. Corona's original claims. In the amended Dispute Notice, Ms. Corona says the strata has acted contrary to the *Strata Property Act* (SPA) by refusing to hold a council hearing to discuss her financial hardship and her requested exemption from short term rental restrictions. She also says there was a "serious roof leak" that caused damage to SL12. Ms. Corona seeks orders that the strata allow her to rent SL12 on a short term basis, and repair damages resulting from the roof leak.
4. In its Dispute Response, the strata says Ms. Corona's claims are outside the jurisdiction of the Civil Resolution Tribunal (CRT). The strata's position is largely based on a petition filed by the strata in the BC Supreme Court to force the sale of SL12 for outstanding strata fees and special levies. The strata did not amend its Dispute Response as a result of the preliminary decision discussed below. However, in submissions, the strata says its bylaws restrict rentals to a minimum of 30 days and Ms. Corona is free to rent SL12 for periods of longer than 30 days. The strata also says its owners approved an exemption permitting Ms. Corona short term rentals of less than 30 days for a 1-year period, but that the owners expressly voted against extending the exemption past March 31, 2022. I infer the strata asks that Ms. Corona's claims be dismissed.
5. I note at the outset that the parties do not distinguish between short term rentals and short term licencing, which the courts have addressed, as I discuss below.
6. Ms. Corona is self-represented. A strata council member represents the strata.
7. For the reasons that follow, I find in favour of Ms. Corona because the strata has no bylaws that restrict an owner from renting or licencing their strata lot.

## **JURISDICTION AND PROCEDURE**

8. These are the formal written reasons of the 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.
9. 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.
10. 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.
11. 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 Decision***

12. On May 24, 2022, another tribunal member issued a preliminary decision about Ms. Corona's claims relating to a lien the strata placed against the title of SL12. The lien was placed under SPA sections 116, 117 and 118 for unpaid strata fees, special levies and other amounts Ms. Corona owed to the strata. SPA section 116 allows the strata to file a lien, section 117 allows the strata to apply to the BCSC to for a forced sale to collect money owing under the lien and section 118 addresses costs added to the amount owing under the lien, including reasonable legal costs.

13. The tribunal member accepted the strata's statement that it had filed a petition with the BC Supreme Court under SPA section 117 on February 28, 2022, although a copy of the petition was not before the tribunal member. However, a copy of the petition is before me and I confirm the tribunal member's findings that the strata filed the petition on the date and for the reasons stated above.
14. The tribunal member considered the CRTA, noting section 121(1)(f) says the CRT does not have jurisdiction over claims relating to SPA section 117 and section 10(1) that says the CRT must refuse to resolve claims over which it does not have jurisdiction. She also noted CRTA section 11 gives the CRT discretion to refuse to resolve a claim if, among other things, another legally binding process would be more appropriate to resolve the issue. The tribunal member refused to resolve Ms. Corona's claim under SPA section 117 and exercised her discretion to refuse to resolve Ms. Corona's claims under SPA sections 116 and 118. She ordered the Dispute Notice amended to remove such claims and an amended Dispute Notice was issued by the CRT on June 7, 2022, to include only the claims I have noted above.
15. The preliminary decision is not binding on me but I agree with the tribunal member's decision and adopt her reasoning here.
16. The parties were provided a copy of the amended Dispute Notice before they provided evidence and submissions, so I find there are no procedural fairness issues resulting from the CRT's process described above.

## **ISSUES**

17. During the facilitation stage of this dispute, the parties agreed on the roof repair issue. CRT staff advise that the claim was withdrawn before the end of the facilitation phase consistent with CRT rule 6.1. As a result, I will not address the roof repair issue in this decision.
18. The sole remaining issue in this dispute is whether the strata should exempt Ms. Corona from renting or licencing SL12 for periods less than 30 days.

## **BACKGROUND, REASONS AND ANALYSIS**

19. As the applicant in a civil proceeding such as this, Ms. Corona must prove her claims on a balance of probabilities, meaning “more likely than not”. I have reviewed all the submissions and evidence provided by the parties, but I refer only to information I find relevant to give context for my decision. In particular, given my finding below that the strata has no bylaws that restrict either rental or licencing of individual strata lots, I do not need to review the parties positions in any greater detail than I already have.
20. The strata plan shows the strata consists of 12 residential strata lots in a single 3-storey building. It was created in August 1992 under the *Condominium Act* and continues to exist under the SPA. Land Title Office (LTO) documents show Ms. Corona purchased SL12 in May 2016.
21. SPA section 128(2) says that if a bylaw amendment is approved, the amendment must be filed in the LTO using the prescribed form (Form I) and until that filing, the bylaw amendment has no effect.
22. The strata’s LTO general index provides a listing of all bylaw amendments filed with the LTO. It shows the strata filed a complete new set of bylaws with LTO on December 17, 2001. The filed Form I includes a copy of the  $\frac{3}{4}$  vote resolution approved by the strata owners which states the new bylaws are a “consolidation of the existing Condominium Act Part 5 Bylaws and amendments with the Strata Property Act Standard Bylaws”. The approved  $\frac{3}{4}$  vote resolution lists numerous specific bylaw amendments and includes a “complete consolidation” of the new, renumbered bylaws resulting from the approved changes. I find this complete consolidated version of the bylaws formed the entire bylaws of the strata at December 17, 2001.
23. The December 2001 bylaws included bylaw 32 that restricted the number of rentals in the strata to 2 strata lots. There were no other filed bylaws dealing with rental or licencing restrictions.
24. The strata also filed several subsequent bylaw amendments with the LTO between 2002 and 2022. The only amendment applicable to this dispute was filed on April 24,

2019, which repealed bylaw 32 and replaced it with a new bylaw 32 that requires an owner to provide a completed Form K – Notice of Tenant’s Responsibilities to the strata for each new rental. The new bylaw 32 effectively mirrors SPA section 146. The result of the amendment is that the only filed rental restriction bylaw was repealed, leaving no rental restriction bylaw, short or long-term, in force.

25. SPA section 141 says a strata corporation may only restrict the rental of residential strata lots by bylaw. The fact that there were no restrictions on strata lot rental since April 2019 goes to the heart of this dispute. In submissions, the strata says it permits rentals for periods longer than 30 days but I have found there is no such bylaw as none are registered with the LTO.
26. The strata also says it does not allow “short term rental like Airbnb”. The courts have distinguished rentals from licensing arrangements, such as short term accommodation. In summary, the courts have found that rentals involve an interest in land, such as legal right of possession conferred to a tenant by a landlord under a rental agreement, whereas short term accommodations involve a licencing arrangement, such as Airbnb, and other vacation rental platforms. See for example *HighStreet Accommodations Ltd. v The Owners, Strata Plan BCS2478*, 2017 BCSC 1039, affirmed by the Court of Appeal in 2019 BCCA 64, and *Semmler v The Owners, Strata Plan NES3039*, 2018 BCSC 2064.
27. The legislature has recognized this difference by allowing maximum fines of \$200 every 7 days for contravention of a rental restriction bylaw, and \$1,000 daily for contravention of vacation, travel, and temporary accommodation bylaws under *Strata Property Regulation* section 7.1.
28. In any event, I find the strata’s bylaws do not prohibit or restrict rentals or licencing arrangements of any kind. Therefore, the strata was wrong to restrict Ms. Corona’s ability to allow others to use her SL12 for a fee. Accordingly, I order the strata to permit Ms. Corona to rent or licence SL12 for any length of time for as long as the strata’s current bylaws are in force. I note that if Ms. Corona rents SL12, she must have her tenant(s) complete a Form K and provide the completed form to the strata under SPA

section 141 and bylaw 32. The same does not apply to a licencing arrangement, as bylaw 32 only applies to rentals.

## **CRT FEES AND EXPENSES**

29. 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 in this dispute. Ms. Corona was the successful party, but she did not pay CRT fees or claim dispute-related expenses so I make no order for reimbursement of fees or expenses.
30. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Corona.

## **ORDER**

31. I order the strata to permit Ms. Corona to rent or licence SL12 for any length of time for as long as the strata's current bylaws are in force.

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J. Garth Cambrey, Vice Chair