



Civil Resolution Tribunal

Date Issued: January 9, 2023

File: ST-2022-003420

Type: Strata

Civil Resolution Tribunal

Indexed as: *Mudrie v. The Owners, Strata Plan KAS 1993*, 2023 BCCRT 18

B E T W E E N :

MICHAEL WILLIAM MUDRIE

APPLICANT

A N D :

The Owners, Strata Plan KAS 1993

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about short term accommodation (STA) in a strata corporation.
2. The applicant, Michael William Mudrie, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan KAS 1993 (strata), which is in Kelowna, BC (city). Mr. Mudrie says the strata does not have any bylaws prohibiting STAs, but the

strata has refused to sign a consent form required so that he can obtain a municipal business license to use his strata lot for STA. Mr. Mudrie claims \$14,101 in lost STA revenue for 2022 and seeks an order for the strata to sign the required consent form.

3. The strata says it declined to sign the consent form because its current insurance policy does not cover STAs, and its premiums will increase if strata lots are used for STA. The strata argues that while it does not currently have any bylaws prohibiting STAs, it must obtain the owners' approval to increase its insurance costs for STA use before allowing Mr. Mudrie to use his strata lot for STAs. So, the strata says it intends to schedule a meeting for owners to consider the issue, and Mr. Mudrie's claim should be dismissed.
4. Mr. Mudrie is represented by a friend who is not a lawyer. The strata is represented by a strata council member.

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). 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.
6. 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.
7. 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.

8. 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

9. The issues in this dispute are:
 - a. Did the strata act significantly unfairly by refusing to sign the consent form?
 - b. Should I order the strata to sign the consent form?

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Mudrie must prove his claims on a balance of probabilities (meaning “more likely than not”). I have read all of the parties’ evidence and submissions, but I refer only to what I find is necessary to explain my decision.
11. The strata filed bylaw amendments in the Land Title Office on December 21, 2012 and May 6, 2019. Neither of these amendments indicate that the strata repealed the Standard Bylaws under the SPA. So, I find the amendments, together with the Standard Bylaws, apply to this dispute.
12. It is undisputed that the strata does not have any bylaws prohibiting STA. It is also undisputed that the city’s bylaws require a person to obtain a business license to operate STAs, and that where STAs are offered within a strata lot, the applicant must complete a consent form signed by the strata confirming that the strata’s bylaws do not prohibit STAs.
13. Mr. Mudrie says that in 2021, he received the strata’s verbal permission to use his strata lot for STA, and that he did so without complaints from any owners. It is

undisputed that Mr. Mudrie did not have a business license to operate STAs in 2021, and I infer that he was not aware of that requirement. Mr. Mudrie says he earned over \$14,000 in STA revenue in 2021.

14. Mr. Mudrie says that when a new strata council was elected in 2022, the council president advised him that he needed a business license from the city to use his strata lot for STA, which required a consent form signed by the strata. It is undisputed that the strata advised Mr. Mudrie it would not sign the required consent form because the council was considering a bylaw amendment to restrict STAs in the strata.

Did the strata act significantly unfairly by refusing to sign the consent form?

15. While Mr. Mudrie does not specifically use these words, I find he is arguing the strata's decision to not sign the consent form was significantly unfair.
16. The CRT has jurisdiction to determine claims of significant unfairness under CRTA section 123(2): see *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164.
17. The courts and the CRT have considered the meaning of "significant unfairness" in many contexts and have found it refers to oppressive or unfairly prejudicial conduct. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the BC Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, or is unjust or inequitable. See also: *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.
18. In *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, the BC Court of Appeal established a reasonable expectations test, restated in *Watson* at paragraph 28, as follows:
 - a. What is or was the expectation of the affected owner or tenant?
 - b. Was that expectation on the part of the owner or tenant objectively reasonable?
 - c. If so, was that expectation violated by an action that was significantly unfair?

19. More recently in *Kunzler*, the BC Court of Appeal determined that the reasonable expectations test set out in *Dollan* could be considered a factor in deciding whether significant unfairness has occurred, together with all other relevant factors including the nature of the decision and the effect of overturning it.
20. From Mr. Mudrie's submissions, I find his expectation is that in the absence of a strata bylaw specifically prohibiting STAs, the strata is obligated to sign the city's consent form so that he can obtain a business license to operate STAs in his strata lot.
21. However, I find Mr. Mudrie's expectation is not objectively reasonable. While there is no bylaw expressly prohibiting STAs in the strata, there is also no bylaw specifically permitting them. I find that just because the bylaws are silent on regulating STAs, does not mean the strata is obligated to approve and facilitate them. It could be that the strata had simply not considered the issue before. So, I find it was not reasonable for Mr. Mudrie to expect the strata to immediately sign the consent form without considering the potential effects of that decision.
22. I note there is no evidence before me that other owners in the strata had previously operated STAs out of their strata lots, or that the strata had previously signed consent forms for other owners to obtain business licenses for the purpose of operating a STA business. Further, while Mr. Mudrie alleges that he received the strata council's verbal permission to use his strata lot for STA in 2021, the strata expressly denies this. Mr. Mudrie did not provide any further evidence about the circumstances or who gave him the alleged permission. On the evidence before me, I find Mr. Mudrie has not proven he had the strata's approval to use his strata lot for STAs in 2021. So, I find there is no evidence that the strata's past behaviour would have led Mr. Mudrie to reasonably expect the strata would sign the consent form.
23. In the circumstances, I find it was within the strata council's discretion to refuse to sign the consent form, so long as it acted reasonably in reaching that decision.
24. Under section 3 of the SPA, the strata is responsible for managing and maintaining the common property and common assets of the strata for the benefit of the owners. Section 149 of the SPA requires the strata to insure common property, common

assets, the building, and original fixtures, and section 150 of the SPA requires the strata to also carry liability insurance.

25. The strata provided email evidence from its insurance broker, which indicates that if the strata allows “short term rentals”, it “could see” a 20% increase in its premium. The broker advised that once the strata decides to proceed with short term rentals, the broker will advise the 7 insurers on the strata’s policy and confirm the exact premium increase. Based on this evidence, I accept that allowing STAs in the strata would likely result in an increased insurance premium. As a decision to increase the strata’s premium costs would likely require owner approval, I find this is a factor the strata reasonably considered in its decision about whether to sign the consent form for Mr. Mudrie.
26. Further, the strata says that given Mr. Mudrie’s request to use his strata lot for STA and the information about the likely increased insurance premium, it intends to seek owners’ approval to allow STAs through bylaw amendments. The strata says that if the owners agree to permit STAs in the strata, and the resulting increased insurance rates, then the strata will sign the consent form, and Mr. Mudrie can proceed with his business license application.
27. The strata is entitled to put forward bylaw amendments for the owners’ consideration and approval. Given the strata’s stated intention to do so for STAs, which I accept is true, I find the strata reasonably declined to sign the consent form pending the outcome of the owners’ vote.
28. Mr. Mudrie also argues that his low income pension earnings and medical issues make it difficult for him to afford his mortgage without STA income. I find Mr. Mudrie is saying these factors make the strata’s decision to not sign the consent form particularly burdensome for him. However, Mr. Mudrie did not provide any financial or medical evidence and there is no evidence he advised the strata of these issues. Further, the land title documents show Mr. Mudrie purchased his strata lot in 2013, and he provided no evidence his personal circumstances changed in the last 2 years.

29. Overall, I find Mr. Mudrie has not established the strata's decision to not sign the consent form was burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, or was unjust or inequitable. Rather, I find the strata exercised its discretion reasonably, and decided to seek the owners' approval to allow STAs in the strata before facilitating Mr. Mudrie's business license by signing the consent form.
30. Given this conclusion, I do not have to consider Mr. Mudrie's damages claim. I also decline to order the strata to sign the consent form. I dismiss Mr. Mudrie's claims.

CRT FEES AND EXPENSES

31. 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. As Mr. Mudrie was unsuccessful, I dismiss his claim for CRT fees. The strata did not pay any fees and neither party claimed dispute-related expenses, so I make no order.
32. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner Mr. Mudrie.

ORDER

33. I dismiss Mr. Mudrie's claims, and this dispute.

Kristin Gardner, Tribunal Member