



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Leis v. The Owners, Strata Plan KAS 2046*, 2023 BCCRT 53

B E T W E E N :

CINDY DARLENE LEIS

APPLICANT

A N D :

The Owners, Strata Plan KAS 2046

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about strata corporation bylaw exemptions. As explained below, I dismiss this claim because I find it is moot (of no practical significance).

2. The applicant, Cindy Darlene Leis, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan KAS 2046 (strata). She says the strata refuses to recognize her as an “original owner” and exempt her from the strata’s rental restriction bylaws. The applicant seeks an order for the strata to recognize her as an original owner and validate her rental restriction bylaw exemption.
3. In its Dispute Response, the strata says the applicant is no longer an “original owner” as she transferred the strata lot to herself and husband as joint owners. So, the strata says the applicant is no longer exempted from the strata’s rental restriction bylaws under section 143(2) of the *Strata Property Act* (SPA).
4. The SPA was amended by the *Building and Strata Statutes Amendment Act* (BSSA), which became law on November 24, 2022. The strata now says its rental restriction bylaws are unenforceable under the SPA as amended. It says the applicant’s dispute is now moot and asks the CRT to dismiss it. The applicant disagrees that her dispute is moot and asks for a declaration that her original owner exemption rights remain.

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.

PRELIMINARY ISSUE

9. Through an inadvertent CRT error, the strata's request for legal fee reimbursement as a dispute-related expense was not before me when I issued my original decision.
10. Under section 52(3) of the CRTA, and the common law, an administrative tribunal may reopen a proceeding to cure a jurisdictional defect. The British Columbia Court of Appeal discussed the scope of the power to reopen a hearing to cure a jurisdictional defect in *Fraser Health Authority v. Workers' Compensation Appeal Tribunal*, 2014 BCCA 499. Among other things, it is a jurisdictional defect for an administrative tribunal to fail to provide the parties with procedural fairness.
11. I find it would be a breach of procedural fairness for me to decide this dispute without considering both parties' full submissions on the strata's claim of legal fees as a dispute-related expense. So, I have exercised my authority under CRTA section 51(3) to reopen this dispute and consider the whole of the parties' submissions on the strata's claim for expenses.

ISSUE

12. The issue is whether I should dismiss this dispute as moot.

REASONS AND ANALYSIS

13. In making this decision I have reviewed the Dispute Notice, the Dispute Response, the strata plan, the strata's bylaws, and the parties' submissions on the issue of mootness.
14. The applicant purchased her strata lot in 2005. As this is the same year the strata plan for Phase 2 was deposited in the Land Title Office, and as the strata says the applicant was previously an "original owner", I find the applicant likely purchased the strata lot directly from the owner-developer.
15. Prior to the BSSA, former section 141(2)(b) allowed a strata corporation to have a bylaw that restricted strata lot rentals in certain specific ways, including limiting the number of rental strata lots. The strata filed an amended set of bylaws in the Land Title Office on December 5, 2018. Bylaw 42.1 says only 4 strata lots can be rented at any one time, subject to any exemptions.
16. Former section 143(2) of the SPA said that any such rental restriction bylaws did not apply to an owner who purchased their strata lot from an owner developer, if that strata lot was designated as a rental strata lot in a Rental Disclosure Statement in compliance with former SPA section 139. Given the strata's argument that the applicant was previously exempted from the strata's bylaw rental under SPA section 143(2), I find the applicant's strata lot was likely designated as a rental strata lot by the owner developer. For the purposes of this decision, I accept that the applicant was exempted from the strata's rental restriction bylaw under SPA section 143(2).
17. In 2018, the applicant added their husband to the strata lot title. As noted above, the strata originally said the applicant effectively transferred their strata lot from themselves as a sole owner, to themselves and their husband, as joint owners. The strata originally said this means the rental restriction bylaw exemption set out in SPA section 143(2) no longer applies to the applicant, because they are no longer an "original owner".

18. As noted, the BSSA came into law on November 24, 2022. The BSSA amended SPA section 141. The current SPA section 141 prohibits a strata from restricting strata lot rentals. So, the strata's bylaw 42.1, and any other rental restriction bylaw, contravenes SPA section 141 and is therefore not enforceable under SPA section 121(1).
19. The strata says that, as its rental restriction bylaws are no longer enforceable, it no longer matters whether the applicant is exempted from those bylaws. So, the strata says this dispute is now moot.
20. A claim is "moot" when there is no longer a live controversy between the parties. While the CRT will generally dismiss a moot claim, it has discretion to decide the dispute if doing so will have a practical impact and potentially help avoid future disputes (see *Binnersley v. BCSPCA*, 2016 BCCA 259).
21. There is no indication that the applicant was prohibited from renting their strata lot, or that the strata alleged the applicant contravened the strata's rental restriction bylaws. Rather, the applicant asked for a finding about whether or not they were exempted from the strata's rental restriction bylaws. Given the strata can no longer restrict strata lot rentals, I find it no longer matters whether the applicant is exempted from restrictions that no longer exist.
22. The applicant says it is possible the strata could pass a new bylaw requiring all residents to be 55 or older. The applicant says this would restrict their ability to rent their strata lot based on age, so they ask for a declaration that they would be exempted from any such possible bylaw.
23. There is no indication the strata has passed an age restriction bylaw for residents. A prospective order is an order about future events that have not yet happened. In general, the CRT does not make prospective orders and I see no reason to make one here.
24. Additionally, I find the statutory exemption which the applicant relies upon no longer exists. This is because the BSSA repealed SPA sections 142 to 145, including section

143(2) which contained the rental restriction bylaw exemption for original owners. So, even if the strata does pass a resident age restriction bylaw in the future, the applicant would not have been exempted from it even if they remain an original owner.

25. Contrary to the applicant's submissions, I find their former statutory exemption to rental restriction bylaws does not extend to include pet and age restriction bylaws. Rather, pet and age restriction bylaw exemptions are found in SPA sections 123(2) and 123.2 respectively. Both those sections say such restrictive bylaws do not apply to pets or residents living in a strata lot at the time the applicable restrictive bylaw is passed. Those statutory exemptions do not rely on an owner's status as an "original owner". So, I find they are not applicable or relevant to this dispute.
26. On balance, I find there is no longer any live controversy between the strata and the applicant. The strata is now prohibited from restricting strata lot rentals and the applicant's former statutory exemption from any such rental restriction bylaws no longer exists. I find there is no practical significance in deciding whether the applicant remains an "original owner". So, I dismiss the applicant's claim.

CRT Fees and Dispute-Related Expenses

27. 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 the applicant was not successful in this dispute, I find they are not entitled to reimbursement of their paid CRT fees.
28. The strata claims reimbursement of \$2,149.50 in legal fees as a dispute-related expense. CRT rule 9.5(3) says the CRT will only order reimbursement of legal fees in exceptional circumstances. In deciding whether exceptional circumstances exist, Rule 9.5(4) says the CRT may consider the complexity of the dispute, the degree of the lawyer's involvement, whether the conduct of a party or their representative has caused unnecessary delay or expense, and any other factors the CRT finds appropriate.

29. The strata is represented by a lawyer, who provided submissions on this initial question of mootness. I find the legal concepts are not at all complex, and neither party provided a large volume of evidence, or lengthy submissions. In fact, this dispute was disposed of in a speedy and efficient manner, having been escalated for a preliminary decision about its mootness in light of the BSSA. These factors all weigh against a finding that the dispute is extraordinary.
30. The strata says the moot nature of the applicant's claim constitutes extraordinary circumstances.
31. The applicant applied for dispute resolution before the BSSA became law. So, I find the applicant's dispute was not moot when they filed their claim. Nor was it moot when the strata filed its Dispute Response. So, I find the applicant's claim was not frivolous.
32. However, as pointed out by the strata, CRT staff did advise the applicant of the BSSA and the potential that the BSSA may render the applicant's claims moot, shortly after the BSSA became law. The strata says the applicant's choice not to withdraw the dispute at that time caused unnecessary delay and expense. However, I find any delay or expense is minimal, given the dispute was disposed of in a preliminary manner, rather than proceeding through the entire CRT process. In any event, I find it would not be fair and just to punish the applicant for pursuing a claim they believed to be valid, even if that belief was incorrect.
33. This is not a situation where the applicant intentionally delayed or complicated proceedings, falsified evidence, was disrespectful to the strata or the CRT itself, or otherwise acted in a manner which might attract rebuke or reprimand. Rather, the applicant was incorrect in their legal position, which I find is not an extraordinary circumstance that justifies ordering them to pay the strata's legal fees. On balance, I dismiss the strata's claim for legal fees as dispute-related expenses.
34. The strata must comply with section 189.4 of the SPA, which includes not charging its costs of defending this dispute against the applicant.

ORDER

35. I dismiss the applicant's claims, the strata's claim for dispute-related expenses, and this dispute.

Sherelle Goodwin, Tribunal Member

¹ Amendments made to paragraphs 9 to 11 and 28 to 33 to cure the jurisdictional defect in failing to address the strata's request for reimbursement of legal fees as a dispute-related expense.