



Civil Resolution Tribunal

Date Issued: May 1, 2023

File: ST-2022-004200

Type: Strata

Civil Resolution Tribunal

Indexed as: *Cuthbertson v. The Owners, Strata Plan VR 351*, 2023 BCCRT 357

BETWEEN:

JANE CUTHBERTSON

APPLICANT

AND:

The Owners, Strata Plan VR 351

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about a strata corporation's denial of an owner's hardship exemption under a rental restriction bylaw.
2. The applicant, Jane Cuthbertson, co-owned strata lot 12 (SL12) in the respondent strata corporation, The Owners, Strata Plan VR 351 (strata). Between May 2021 and

October 2022, Ms. Cuthbertson rented SL12 out to a non-family member. Ms. Cuthbertson is self-represented. A strata council member represents the strata.

3. Ms. Cuthbertson says “the manner in which [they] have been treated by [the strata] constitutes harassment”, because the strata did not allow their hardship exemption under the *Strata Property Act* (SPA) section 144 and the strata’s rental bylaw. They say they were forced to sell SL12 as a result.
4. Ms. Cuthbertson seeks an order that the strata pay them \$24,795.33, which they say are their costs associated with the sale of SL12.
5. The strata says it denied Ms. Cuthbertson’s rental bylaw exemption request because Ms. Cuthbertson failed to provide convincing evidence of hardship. It denies harassing Ms. Cuthbertson. I infer the strata seeks the dismissal of Ms. Cuthbertson’s claims.
6. As explained below, I find in favour of the strata and I dismiss Ms. Cuthbertson’s claims and this dispute.

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.
11. I note that in *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32, the Court found that the SPA definition of “owner” includes former owners. Further, in *Downing v. Strata Plan VR2356*, 2019 BCSC 1745, the BC Supreme Court said that the fact that an owner becomes a former owner does not, by itself, result in their no longer being an “owner” under the SPA or remove the CRT’s ability to decide a dispute. Given these decisions, I find that I have jurisdiction to consider Ms. Cuthbertson’s claim even though they no longer own SL12.

Preliminary Matter – Plumbing Repairs

12. In submissions, Ms. Cuthbertson says in the months leading up to its denial, the strata “put undue pressure” on their tenants about a plumbing issue involving blocked pipes. The issue was not included in the Dispute Notice so I find it would be procedurally unfair for me to consider it. Further, the allegation does appear to relate to the hardship exemption request. For these reasons, I will not address the matter further in my decision.

ISSUE

13. The issue in this dispute is whether the strata unreasonably denied Ms. Cuthbertson’s rental exemption request?

BACKGROUND, EVIDENCE AND ANALYSIS

14. As the applicant in a civil proceeding such as this, Ms. Cuthbertson must prove their claims on a balance of probabilities, meaning more likely than not. I have considered

all the submissions and evidence provided by the parties, but refer only to information I find relevant to explain my decision. I note that the parties provided little evidence and their respective submissions were short.

15. The strata was created in July 1976 and consists of 16 residential strata lots in a 2-level building over underground parking. SL12 is located on the top floor of the building.
16. The strata filed a complete new set of bylaws with the Land Title Office (LTO) on August 8, 2011, which replaced all previous bylaws. There are subsequent bylaw amendments filed with the LTO, so I find the August 8, 2011 bylaws apply to this dispute. Bylaw 9 addresses rentals. I summarize the relevant parts of bylaw 9 as follows:
 - 9.1 Except in accordance with SPA section 142 an owner may not rent, lease, or grant a licence or right to occupy all or any part of a strata lot.
 - 9.2 An owner may apply in writing to the strata for an exemption pursuant to SPA section 144.
17. I note that at the time of Ms. Cuthbertson's dispute resolution request in August 2022, SPA section 144 permitted an owner to make written application to a strata corporation to be exempt from a rental bylaw that prohibits or limits rentals on the grounds of hardship. This was the reference to section 144 set out in bylaw 9.2. SPA section 144 was repealed on November 24, 2022, but that was after Ms. Cuthbertson sold SL12, so I find it was in force at the time of this dispute.
18. The following background facts are not at issue.
19. In November 2017, Ms. Cuthbertson was granted a hardship exemption from bylaw 9, but did not rent out SL12 at that time.
20. On May 10, 2021, Ms. Cuthbertson presented her approved hardship exemption to the current strata council and requested permission to rent out SL12. The strata council granted Ms. Cuthbertson a 1-year hardship exemption, expiring in May 2022.

21. Based on the overall submissions and evidence, I find Ms. Cuthbertson requested a further hardship exemption in May 2022. I find it is this denial that forms the subject of this dispute.

Did the strata unreasonably deny Ms. Cuthbertson's rental exemption request?

22. The leading case about hardship exemptions is *Als v. The Owners, Strata Corporation NW 1067*, 2002 BCSC 134. In *Als*, the BC Supreme Court said that whether an owner is suffering hardship under section 144 of the SPA depends on the circumstances of each case. The Court defined hardship to be “hardness of fate or circumstance; severe toil or suffering; extreme privation” and noted that economic hardship alone is insufficient to establish hardship. The Court also said that determining whether a strata corporation complied with section 144 of the SPA requires consideration of the facts that were before the strata council when it denied the exemption. The applicant has the burden of proving hardship, and what may be considered hardship to one owner may not be hardship to another.

23. From the evidence, it is clear the strata requested certain financial information from Ms. Cuthbertson and the other co-owner of SL12, to assist it in making a determination of hardship. Ms. Cuthbertson provided some of the requested financial information, but the strata says they did not provide sufficient information to prove hardship. For the following reasons, I agree with the strata.

24. Ms. Cuthbertson's letter requesting a hardship exemption is not before me, but the strata's email response denying the request is. In a June 16, 2022 email to Ms. Cuthbertson, the strata council found Ms. Cuthbertson's claim that they “just break even” financially, did not prove hardship, based on the financial information provided. The strata commented that Ms. Cuthbertson's financial challenges appeared to result from paying mortgages on 2 properties since May 2021, the time they were given a 1-year exemption from the rental bylaw. On that basis, the strata denied Ms. Cuthbertson's rental hardship request and permitted Ms. Cuthbertson 3 months, or until September 26, 2022, to end their tenancy, before it would begin fining under bylaw 9.4.

25. On the same day, Ms. Cuthbertson responded that the second home they purchased “was cheaper than rent”, which I interpret to mean that it was less expensive to purchase their second home than rent a home. They also say the second home they purchased was “accessible for their brother and mother”, and one which her family members could move into when Ms. Cuthbertson decided to move “back to Vancouver”, which is where the strata is located. I take from this that Ms. Cuthbertson purchased their second home for their family members to eventually use.
26. In addition to financial information, Ms. Cuthbertson provided an undated letter from their 83-year-old mother claiming she was a caregiver to Ms. Cuthbertson’s disabled brother and, because of her age and health, required Ms. Cuthbertson’s support, but did not explain how the letter supported her hardship exemption request. While the letter identifies that Ms. Cuthbertson may provide support for their mother and brother, I do not see how such an argument applies to their rental exemption request.
27. In *A/s*, the court identified several factors that may arise in a hardship application. I find that the following are relevant to this dispute:
- a. Whether the strata lot’s sale price would be less than the purchase price.
 - b. Whether the owner has been unable to sell the strata lot.
 - c. Whether the strata lot makes up all or substantially all the owner’s assets.
28. Based on the facts here, I find Ms. Cuthbertson had no difficulty selling SL12, sold it quickly for a price greater than the purchase price, based on the net proceeds they received from the sale, and had a second home as an asset in addition to SL12. So I find these factors weigh in favour of the strata’s finding that no hardship existed.
29. For these reasons, I find the strata acted reasonably when it refused to grant Ms. Cuthbertson’s hardship exemption. I dismiss Ms. Cuthbertson’s claims and this dispute.

CRT FEES AND EXPENSES

30. Under CRTA section 49 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 that general rule here. The strata is the successful party but did not pay CRT fees, so I order no reimbursement.
31. Neither party claimed dispute-related expenses so I order none.

ORDER

32. I dismiss Ms. Cuthbertson's claims and this dispute.

J. Garth Cambrey, Vice Chair