



Civil Resolution Tribunal

Date Issued: August 17, 2020

File: ST-2020-001746

Type: Strata

Civil Resolution Tribunal

Indexed as: *Barton v. The Owners, Strata Plan 1581*, 2020 BCCRT 913

B E T W E E N :

PATRICIA BARTON

APPLICANT

A N D :

The Owners, Strata Plan 1581

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. The applicant, Patricia Barton, is the former owner of strata lot 87 (SL 87) in the respondent strata corporation, The Owners, Strata Plan 1581 (strata).
2. Ms. Barton says the strata refused to grant her an exemption from a bylaw limiting the number of occupants in a strata lot and this delayed the sale of SL 87. Ms.

Barton says she should have been granted the exemption because the strata council did not provide its decision about the exemption within the statutory time frame.

3. Ms. Barton seeks \$2,000 for lost opportunity, \$2,000 for pain and suffering, and one month of carrying costs for SL 87 due to the delayed sale.
4. The strata denies Ms. Barton's claims. The strata says Ms. Barton failed to provide evidence supporting her request for an exemption to the bylaw. The strata also says its decision was made in compliance with the *Strata Property Act* (SPA).
5. Ms. Barton is self-represented. The strata is represented by a council member.

JURISDICTION AND PROCEDURE

6. 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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
7. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
8. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
9. 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.

10. CRT documents incorrectly show the name of the respondent as The Owners, Strata Plan NW1581. Based on section 2 of the SPA and the strata plan, the correct legal name of the strata is The Owners, Strata Plan 1581. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the strata's name above.
11. In her submissions, Ms. Barton says the strata council "forced" her to give up her position as a strata council member since she filed a claim with the CRT. However, Ms. Barton did not raise this issue in the Dispute Notice issued on February 24, 2020 or file an amended Dispute Notice, and so I refuse to resolve it.

ISSUES

12. The issues in this dispute are:
- a. Did the strata council unreasonably refuse to grant an exemption to Ms. Barton and if so, what remedy is available to her?
 - b. Did the strata council fail to provide its decision within the statutory time limits?
 - c. Did the strata council enforce bylaws inconsistently?

BACKGROUND, EVIDENCE AND ANALYSIS

13. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision. In a civil proceeding such as this, Ms. Barton must prove each of her claims on a balance of probabilities.
14. The strata was established in May 1981 under the *Condominium Act*. It consists of 102 strata lots in 6 buildings. The strata repealed and replaced its bylaws in April 2018. I have summarized the relevant bylaws as follows:

- a. Bylaw 4.4 – up to 4 persons are permitted to occupy a 2 bedroom strata lot unless the strata owner is granted prior written approval by the strata council.
 - b. Bylaw 4.5 – the strata council must not unreasonably refuse a strata owner's request for permission to be exempted from bylaw 4.4 on the basis of the hardship.
15. Ms. Barton purchased SL 87 in 2013, and at some point was elected to the strata council.
16. In October 2019 Ms. Barton listed SL 87 for sale. On November 22, 2019 Ms. Barton received an offer to purchase for \$385,000. The offer was subject to the buyers receiving confirmation from the strata that there were no restrictions on the number of occupants. Ms. Barton texted a strata council member on November 23, 2019 and requested an exemption from bylaw 4.4. On November 25, 2019 the strata council declined her request.
17. On December 3, 2019 Ms. Barton emailed the strata council. In her email Ms. Barton stated "The first step in filing a Civil Resolution Tribunal (CRT) claim is requesting a meeting with the Strata Council. I am requesting a meeting with NW1581 Strata Council regarding Bylaw 4.4 and 4.5".
18. The strata council held a hearing on December 23, 2019. In a January 1, 2020 email to DC, the property manager, a strata council member stated the following:
- a. At the hearing Ms. Barton stated she requested the meeting as the first step towards progressing to the CRT.
 - b. Ms. Barton did not further explain her situation or plead her case to the strata council.
 - c. Ms. Barton stated the CRT would review the bylaws and instruct the strata council on how to proceed.
 - d. The strata council member instructed DC to remove Ms. Barton as "CRT officer" immediately. The strata did not explain this term.

- e. The strata council's opinion was unchanged after the hearing and it would not grant an exception to the occupancy bylaw.
19. Ms. Barton did not dispute the strata's allegation that she did not provide further information at the hearing.
20. The strata says due to the holidays, DC was off work from December 23, 2019 until January 7, 2020. The strata did not state whether someone was acting as the property manager in DC's absence.
21. The strata council sent a letter to Ms. Barton dated January 3, 2020. In its letter, the strata council stated that it voted unanimously to maintain its original ruling to uphold the occupancy bylaw and to not grant an exception. The letter also stated that the strata council voted to remove Ms. Barton as the CRT liaison effective upon receipt of the letter.

Did the strata unreasonably refuse to grant the exemption?

22. In order to be granted an exemption from bylaw 4.4, Ms. Barton must show that complying with the bylaw caused a hardship.
23. Although she sold SL 87 in January 2020 for \$383,000 with a closing date in February 2020, Ms. Barton says it would have sold one month earlier and for \$2,000 more had the strata council granted the exemption. Ms. Barton says in addition to the November 2019 offer mentioned above, another buyer made an offer and withdrew it on December 16, 2019 because strata refused to grant an exemption. I find Ms. Barton's evidence shows a prospective buyer decided not to make an offer since the strata was not granting an exemption, not that an offer was withdrawn. However, I find nothing turns on whether a second offer was actually received.
24. While I am not bound by it, I agree with the CRT decision in *Armitage et al v. The Owners, Strata Plan PGS 204*, 2018 BCCRT 352 that inability to sell a strata lot and devaluation while attempting to sell are not grounds, in themselves, establishing hardship (also see *Von Schottenstein v. Strata Plan 730* (1985), 1985 CanLII 520

(BC SC), and *Als v. Strata Corp.* NW 1067, 2002 BCSC 134). Although these decisions are about requests for exemptions from rental restrictions under section 144 of the SPA, I find the same principles apply for defining hardships when seeking occupancy limit exemptions.

25. Ms. Barton did not provide evidence to establish any other grounds that might constitute a hardship. Based on my reasons above, I find Ms. Barton failed to demonstrate that the strata council unreasonably refused her request.

Did the strata fail to enforce its bylaws?

26. Ms. Barton says she has been prejudiced because the strata does not enforce its bylaws consistently. She seeks an order that the strata enforce the bylaws uniformly and also \$2,000 for stress, pain, and suffering. The strata says Ms. Barton has not set out a cause of action and puts her to strict proof for her claim for stress, pain, and suffering.
27. Ms. Barton says 4 other strata lots exceed the occupancy limit. She also says a strata council member owns an unregistered dog contrary to bylaw 5.4 and another council member owns a cat that is almost always outdoors contrary to bylaw 5.5. Ms. Barton provided a 2017 letter from one of the strata lot owners, SV, that acknowledges there are 6 people living in a 2 bedroom strata lot. Aside from this letter, I find that Ms. Barton did not provide any evidence that the occupancy limit has been exceeded for the other 3 strata lots. Ms. Barton also did not provide evidence that bylaw 5.4 or bylaw 5.5 was contravened. The strata says it sent a letter to SV in 2017. It did not state whether it took any further actions.
28. While I am not bound by it, I agree with the CRT decision in *Berman v. The Owners, Strata Plan EPS2470*, 2019 BCCRT 179 that the strata has some discretion in enforcing bylaws. In particular the strata does not need to enforce a bylaw, even in the case of a clear breach, where the effect of that breach is trifling. There are three considerations when deciding if relief should be granted to an applicant alleging failure to enforce bylaws: the number of owners seeking relief, whether the order

sought was in the best interests of the strata corporation, and whether inaction would prejudice the applicant.

29. Ms. Barton did not provide any evidence that other strata owners were seeking to enforce bylaw 4.4 or that enforcing bylaw 4.4 was in the best interest of the strata corporation. She also did not demonstrate that she experienced any prejudice or that SV's alleged contravention of bylaw 4.4 affected the sale of her strata lot. Ms. Barton also did not provide any supporting evidence to substantiate that she experienced stress, pain, or suffering as a result of the strata not enforcing bylaws against other strata owners.
30. Based on my reasons above, I dismiss Ms. Barton's claim.

Did the strata council comply with section 34.1 of the SPA?

31. Section 34.1 provides that, on a written request from an owner or tenant, the strata council must hold a hearing within 4 weeks of the request. If the purpose of the hearing is to seek council's decision, council must give the applicant a written decision within one week after the hearing (see section 34.1(3)).
32. Ms. Barton says the strata council did not notify her of its decision within 7 days of the hearing as required under section 34.1 of the SPA. She says the hearing was on December 23, 2019 and she did not receive the strata's decision until January 3, 2020. The strata says it complied with the time limits because the statutory holidays that fell within December 23, 2019 and January 3, 2020 should be excluded when calculating the one week period.
33. Although I am not bound by it, I agree with the CRT's reasons in *Tugayli v. The Owners, Strata Plan BCS3444*, 2019 BCCRT 902 that section 34.1(3) provides that a written decision is only required where the purpose of the hearing is to seek a decision. I find that Ms. Barton requested a hearing about bylaw 4.4 and bylaw 4.5 so that she could file a CRT dispute and not to obtain a decision. I base my finding on Ms. Barton's December 3, 2019 email to the strata council and also because, as discussed above, Ms. Barton did not further explain her situation or plead her case

at the hearing. I find the strata did not violate section 34.1(3). Based on my findings, I do not need to consider the strata's argument about whether statutory holidays should be excluded.

34. I dismiss Ms. Barton's claims and consequently I find I do not need to address the issue of damages.

CRT FEES

35. In accordance with the CRTA and the CRT's rules, as Ms. Barton was unsuccessful, I find she is not entitled to any reimbursement for CRT fees. Ms. Barton did not claim dispute-related expenses.

36. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Barton.

ORDERS

37. I dismiss Ms. Barton's claims and this dispute.

Rama Sood, Tribunal Member