



# Civil Resolution Tribunal

Date Issued: August 18, 2020

File: ST-2020-000303

Type: Strata

Civil Resolution Tribunal

Indexed as: *Bujdos v. The Owners, Strata Plan LMS 2687*, 2020 BCCRT 921

B E T W E E N :

ISTVAN BUJDOS, MARGIT BUJDOS, and EVA REID

**APPLICANTS**

A N D :

The Owners, Strata Plan LMS 2687

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Rama Sood

## INTRODUCTION

1. The applicants, Istvan Bujdos, Margit Bujdos, and Eva Reid (owners), own strata lot 134 (SL 134) in the respondent strata corporation, The Owners, Strata Plan LMS 2687 (strata). Mr. Bujdos and Ms. Reid are Ms. Bujdos's adult children.

2. The owners say the strata unreasonably refused to extend a rental exemption and sent letters threatening to issue fines and asserting that the owners sell their strata lot. The owners also say the strata issued incomplete Form B Information Certificates which negatively affected their attempts to sell SL 134. Although this issue was resolved during the facilitation process, the owners say the strata should still pay the Civil Resolution Tribunal (CRT) fees.
3. The owners seek an order that the strata must extend the rental exemption for SL 134 until July 2021, an order that the strata can no longer send letters threatening to issue fines to the owners or stating that the owners should sell their strata lot, and an order requiring the strata to pay the CRT fees.
4. The strata says the owners did not provide the documents it requested so it could assess whether to grant the rental exemption. It also says it required approval from  $\frac{3}{4}$  of the strata owner approval before it could grant the exemption. The strata denies that it sent any threatening or inappropriate correspondence. The strata says since it apologized for the Form B errors and provided a new completed Form B, the owners should not have continued with this dispute. Consequently, it says it should not have to pay the CRT fees.
5. The owners are self-represented. The strata is represented by one of its strata council members, KH.

## **JURISDICTION AND PROCEDURE**

6. These are the CRT's formal written reasons. 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.

## **ISSUES**

10. The parties reached an agreement on certain issues before this adjudication and so I have not addressed those issues in this decision.
11. The remaining issues in this dispute are:
  - a. Was it reasonable for the strata to refuse to extend the rental exemption until July 2021?
  - b. Did the strata send threatening correspondence to the owners and, if so, what remedy is available?
  - c. Should the strata pay CRT fees even though the Form B issue was resolved during facilitation?

## **EVIDENCE AND ANALYSIS**

12. 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, the owners must prove each of their claims on a balance of probabilities.
13. The strata was established in February 1997 under the *Condominium Act*. It consists of 147 strata lots in 3 buildings. In December 2018, it repealed and

replaced its bylaws. The relevant bylaws applicable to this dispute are summarized as follows:

- a. Bylaw 45.1 states that strata owners are prohibited from renting their strata lots.
- b. Bylaw 45.3 states that a strata owner who contravenes bylaw 45.1 will be subject to a \$500 fine every 7 days.

### ***Attempt to sell SL 134***

14. The owners purchased SL 134 in February 2006. In late 2018 or early 2019, Ms. Bujdos was residing in SL 134 when, due to health issues, she moved closer to Mr. Bujdos. The owners decided to sell SL 134 since Ms. Bujdos no longer intended to reside there. They listed it for sale in January 2019 but say they were unable to sell it for several reasons, including:

- a. The strata provided Form B information certificates that did not include SL 134's parking stall number and storage locker number,
- b. The strata had not completed construction work to replace the building's waterproof membrane which made SL 134 less marketable,
- c. Potential buyers were unable to obtain financing because of a "future special levy that lacked transparency by the council and strata management company", and
- d. The real estate market had cooled down because the provincial government had implemented a "foreign buyer's tax" and a "stress test".

15. As background information, in the October 2019 annual general meeting, the strata owners approved a special levy to fund a 2 year waterproofing membrane replacement project for all 4 buildings that started on December 1, 2019. The owners say this caused the buildings to appear as a "construction zone" and detracted buyers.

16. As discussed below, the strata admitted it made errors in the Form B. It apologized to the owners and provided a new Form B. It also says it implemented new procedures to ensure the parking stall and storage locker information is updated regularly.
17. The strata denies there was a lack of transparency about the special levy. It says the special levy was approved by the strata owners at the October 2019 annual general meeting and the information is available to strata owners. The strata also says that the construction work is on schedule.

### ***Rental exemption***

18. Since the owners were unable to sell SL 134 for a satisfactory price, they decided to rent it until the real estate market improved.
19. In a May 16, 2019 letter to the strata, Ms. Bujdos requested a rental exemption from the strata council. She stated that due to her health, she needed to be closer to her family member. She also stated the owners were unable to sell SL 134 and lost 3 potential sales due to an incomplete Form B prepared by the strata.
20. In a May 28, 2019 letter, the strata council approved the owners' request and permitted the owners to rent SL 134 for a 12 month period on a month-to-month basis until July 2020. The letter also stated that the strata council reserved the right to withdraw its approval at its discretion. The strata did not state whether there was a notice period if it decided to withdraw its approval. The strata says it granted the exemption based on Ms. Bujdos's medical issues.
21. The owners rented SL 134 to 2 tenants starting on July 1, 2019. Although the tenancy agreement showed it was a month-to-month rental, the parties agree it was for a 1 year term because the owners verbally promised the tenant the initial term was for 12 months and then month-to-month until June 30, 2020. The owners say they did not realize the lease had to be month-to-month. However, nothing turns on this in this dispute.

22. In a November 25, 2019 letter, the strata notified the owners it had decided that the “rental request will terminate on January 31, 2020.” From this I infer that effective January 31, 2020, the strata was revoking the rental exemption it had granted. The strata says there was no longer a basis to permit the rental exemption since the real estate market had improved and Ms. Bujdos’s family was assisting with her medical issues. The strata provided a list of 7 strata lots that sold from November 27, 2019 to January 21, 2020. I infer the list was provided to support the strata’s submission that the real estate market had improved. I give the list no weight for 2 reasons. First, I note that some of the strata lots were allegedly sold after the date of the strata’s decision. Second, the strata did not identify the source of its information or provide the sale prices or the strata lot sizes.
23. In a December 2, 2019 letter to the strata council, Ms. Bujdos denied that the real estate market was improving. She stated that according to her real estate agent, the “current building assessment” and the parking space situation was still an issue. I infer Ms. Bujdos was referring to the errors in the Form B and the alleged lack of transparency about the special levy. She stated that she would incur considerable losses if the owners sold under the current conditions. She also stated that it was better for her to live close to family due to her health. She also mentioned that she would have to terminate her rental agreement and that would be difficult for her tenants.
24. In a December 10, 2019 email to the strata council, Ms. Bujdos stated that previous offers to purchase SL 134 fell through because of errors in the Form B and that the strata buildings were still a “construction zone”. She requested a rental exemption based on financial hardship until the real estate market became more favourable. She again referred to her health and stated that she had moved due to health reasons and that strata should not rescind the exemption because she was unable to move back to SL 134 due to her age and health. Ms. Bujdos says she is 84 years old, but did not provide any information about her health issues.
25. The strata reconsidered its decision to rescind and in a December 12, 2019 letter, it notified the owners that it was allowing the tenants to remain until the end of the

rental agreement term. It also stated that the strata council would not consider extending the lease and it expected the tenants to vacate once the term ended. It also informed the owners that they could still rent SL 134 despite the bylaw if the owners demonstrated a hardship.

26. The parties participated in the CRT facilitation process on February 11, 2020 and the strata acknowledged that it had made errors in the Form B. It also offered to extend the rental exemption until September 2020.
27. In a February 18, 2020 letter to the owners, the strata apologized for the errors and provided the owners with a new Form B that included the parking stall and storage locker numbers. It also stated that it was denying the owners' extension request beyond July 1, 2020 since Ms. Bujdos was receiving support from her family for her medical issues. However, it also stated that the owners could submit a new request for rental restriction hardship exemption due to financial hardship.

***Must the strata extend the rental exemption until July 1, 2021?***

28. According to section 144(1) of the SPA, an owner can apply to the strata for an exemption from a bylaw prohibiting or limiting rentals on the grounds that the bylaw causes hardship to the owner. Section 144(6) of the SPA states that the strata must not unreasonably refuse to grant an exemption. Section 144(5) of the SPA states the exemption can be for a limited time.
29. In their Dispute Notice, the owners initially requested a rental exemption due to hardship until the strata provided a proper Form B that included a parking stall and locker number and "until at least one year after all the membrane work is complete and there are no further nor upcoming assessments." I find the owners' request for a rental exemption until the strata provided a new Form B is no longer an issue since the strata provided a new Form B containing these details in February 2020.
30. Even if the strata had not provided a new Form B, I would have refused to resolve this claim under CRTA section 10(1) because the CRT does not have jurisdiction to order relief from the effect of an inaccurate Form B (see the CRT decision in *Fisher*

*v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379 at paragraph 47, although I am not bound by it). I say this because according to section 59(6) of the SPA, the Supreme Court can make any order it considers just to give effect to or relieve the strata corporation from the consequences of an inaccurate Form B.

31. The owners stated in their submissions that they now seek to extend the exemption until July 1, 2021. Despite errors in the strata's interpretation of the *Strata Property Act* (SPA), I find its decision not to extend the rental exemption was reasonable. My reasons are as follows.
32. The owners requested the exemption based on financial hardship. The owners say if they attempted to sell SL 134 now, they would incur a significant loss due to the following reasons:
  - a. The pandemic has adversely affected the real estate market,
  - b. The strata lot is less marketable because the City of New Westminster issued a stop work order on the construction work, which means it will take longer to complete the waterproof membrane replacement project, and
  - c. Their tenant is a registered nurse and must adhere to the social and physical distancing guidelines, which includes not allowing un-necessary visitors into her home. This makes it more difficult to show the strata lot to buyers.
33. The strata says the stop work order was temporary and was lifted within a few weeks. It says the order was issued because at the time the municipality was unable to meet the demand for building permits due to the pandemic. It also says construction is ahead of the estimated timeline. It says the owners were aware of the construction timeline because it was disclosed in the annual general meeting minutes.
34. The strata says the owners' most recent rental exemption request is based on financial hardship. It says it denied the request because the owners did not provide the documentation it requested at the hearing as required by section 144 of the SPA. I infer from the strata's submissions that by "hearing" the strata meant the



February 11, 2020 CRT facilitation meeting. The owners did not dispute that they did not provide documentation requested by the strata. The burden of proving hardship under section 144 of the SPA lies with the owner (see *Als v. The Owners, Strata Corporation NW 1067*, 2002 BCSC 134). I find that since the owners did not comply with the strata's request, they did not meet the burden of proving hardship.

35. The strata also says in its submissions that it offered to extend the rental exemption until September 2020. It says it is not appropriate for only volunteer strata council members to decide whether to allow a rental in 2021 and strata owners would vote on the issue at the 2020 annual general meeting in October 2020 (2020 AGM). It says that allowing rentals will increase the strata's insurance rates. For this reason, the strata says the issue of whether to permit rentals requires  $\frac{3}{4}$  strata owner approval at the 2020 AGM. The strata says if the pandemic delays the 2020 AGM, it will consider extending the rental exemption until January 2021. The strata did not provide evidence that allowing rentals would increase the insurance rates.
36. I find the strata does not need to obtain  $\frac{3}{4}$  strata owner approval under either the bylaws or section 144 of the SPA before it can grant a rental exemption. The only criteria is that a strata corporation must not unreasonably refuse to grant an exemption (see section 144(6) of the SPA). Hence, I find the strata's decision not to grant the extension because it lacked authority is also incorrect.
37. In addition, I also find it was reasonable for the strata to deny the owners' request since it was based on the owners' belief that they would incur financial losses if they sold SL 134 in the current real estate market. The strata says a downturn in the real market is not a hardship. I agree. 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*).
38. Based on the evidence before me, I find the strata acted reasonably when it refused to extend the rental exemption and I dismiss this claim.

***Did the strata send threatening correspondence to the owners and, if so, what remedy is available?***

39. The owners say the strata sent them several letters “threatening” to impose fines and stating that the owners must sell SL 134. The strata denies the letters were threatening. It says it is required under bylaw 28 and bylaw 29 to send letters to strata owners who contravene bylaws or rules. It says it agreed not to send any further infraction letters and has not done so since January 2020.
40. Bylaw 28 and bylaw 29 permit the strata council to levy fines for bylaw contraventions but do not state that the strata is required to send letters to a strata owner. However, I agree that strata must give notice to strata owners before levying fines. Under section 135(1) of the SPA, a strata corporation must notify a strata owner or tenant in writing about a complaint and provide them with a reasonable opportunity to respond before imposing a fine.
41. I have reviewed the letters provided by the parties and I find the language is appropriate and professional. The owners have not pointed to any particular words or phrases that would be considered threatening, harassing, or bullying. For this reason, I dismiss the owners’ claim.

***Should the strata pay the CRT fees even though the Form B issue was resolved during facilitation?***

42. During the facilitation process, the strata admitted that the Form B was incomplete. The strata apologized to the owners and provided them with a new Form B. The owners subsequently withdrew their claim requesting a Form B that included SL 134’s assigned parking stall and storage locker numbers.
43. The strata says the owners should not have requested a decision from the CRT since the Form B issue had been resolved. The owners say they continued with the dispute so they would be awarded costs for the CRT fees. The owners say the amount is trivial, but they wanted to send a message to current and future strata council members that they are responsible for following the bylaws and the SPA.

44. CRT Rule 9.5(1) states that If a dispute is not resolved by agreement, and a tribunal member makes a final decision, the unsuccessful party will usually be required to pay the successful party's tribunal fees and reasonable dispute-related expenses unless the tribunal member decides otherwise.
45. Since the parties agreed that the Form B issue was resolved during facilitation, the remaining issues before me were about whether the strata was unreasonable when it refused to extend the rental exemption and whether the strata was sending threatening letters to the owners. I dismissed both of these claims as explained above. Consequently, the owners were not the successful party and would not be entitled to recover the CRT fees. For this reason, I dismiss the owners' claim for CRT fees. The owners did not seek dispute-related expenses.
46. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

## **ORDER**

47. I dismiss the owners' claims and this dispute.

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Rama Sood, Tribunal Member