
Do Rentals Restriction Bylaws Prevent Roommates?

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Rentals in strata corporations can be a difficult issue with diverging views and opinions on whether rentals should be permitted, how many, how long, and what kind of rentals are permitted. The *Strata Property Act* (SPA) permits a strata corporation to restrict rentals by either limiting the number of strata lots that can be rented at a time, or by setting minimum rental periods.

There has also been an ongoing debate in the strata law industry as to whether a strata corporation can prevent an owner from having a roommate in their strata lot, or even whether a strata corporation can prevent owners from renting their strata lot on a short term AirBnB type basis. With respect to roommates, one view has always been that the SPA only allows a strata to prevent the rental of an entire strata lot and does not affect roommates; however, this will often rely on the enforceability and application of the strata corporation rental bylaws.

The Civil Resolution Tribunal (CRT) has recently published 2 decisions that provide direction on how the CRT treats roommates and rental restriction bylaws. It is important to remember that CRT decisions are not binding on subsequent decisions because those focus specifically on the evidence and fact patterns of each claim.

In the case of *Wong v Section 1 of The Owners, Strata Plan NW 2320*, 2017 BCCRT 25, Wong, an owner sued the strata seeking a declaration that she was permitted to rent part of her strata lot to roommates, wanting a \$500 fine reversed, and for the strata to pay her \$7,300 for lost rental revenue.

The strata's rental restriction bylaw stated:

"The number of strata lots . . . that may be leased at any one time is limited to **NONE**"

The dispute was whether the above bylaw prevented the rental of roommates or only prevented the rental of the entire strata lot. The CRT determined that roommates fell within the definition of "tenant" within the SPA, which is defined as "a person who rents all or part of a strata lot. . .". The CRT then determined that the bylaw restricted all rentals, including roommates because of the definition of tenant in the SPA. As a result of the bylaw, the owner was not permitted to have any roommates or other tenants (except for exemptions under the *Act* such as hardship or family). The \$500 fine against Wong was not reversed and her claim for lost rental revenue was dismissed.

In *KM v The Owners, Strata Plan ABC XXXX*, 2018 BCCRT 29, KM, the owner, took a similar position: that the rental restriction bylaw did not prevent roommates. KM wanted to be able to have roommates and to receive reimbursement for lost rental revenue. The strata's bylaw in this case permitted up to 14 strata lots to be rented at a time. The bylaw also provided a procedure on how to determine which 14 of the 137 strata lots would be given permission to rent.

The strata told KM that she could apply for permission to be one of the 14 approved rentals and, if approved, she could have a roommate. Once the roommate moved out, she would have to apply again for approved rental status, which may or may not be provided, based upon whether other units were on the rental wait list. KM did not agree that she needed permission to be one of the 14 approved rentals.

The CRT came to the same conclusion in this case, that the definition of tenant included a person who rents part of a strata lot. Therefore, rental restriction bylaws could apply to a roommate. As a result, KM's claims were dismissed.

In the above cases, it was undisputed that the owners had roommates that were paying rent. However, it will not be easy in every case for the strata to know when the owner has a roommate that is actually paying rent. Rent can be actually money exchanged or other non-monetary consideration. It could be very difficult to enforce a roommate restriction rental bylaw because the strata is not part of the contract.

Seek a legal opinion before you adopt a new rental bylaw. Rental bylaws that limit or restrict the number of rentals also require a procedure identifying how rentals and rental application requests are administered. Once your strata corporation has adopted an enforceable rental bylaw you must also apply and enforce the bylaw fairly with respects to all owners and comply with the bylaw enforcement provisions of section 35 of the Act. Before you fine: give written notice of the complaint, give the owner the opportunity to respond in writing or request a hearing, then council decides at a council meeting the outcome of the enforcement based on the procedure and informs the owner.