

**Headline: The Case of the Tardy Hardship Reply**

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A recent decision of the BC Supreme Court demonstrates, in dramatic fashion, the importance of complying with the deadlines imposed on a strata corporation regarding applications for rentals based on hardship.

In the case of *The Owners, Strata Corporation LMS 3442 v. Storozuk* the strata corporation was seeking an order directing Mr. Storozuk ("Mr. S") to pay all outstanding fines levied against his strata lot. At the time of the hearing the fines totaled \$16,450 as a result of Mr. S' alleged breach of a rental prohibition bylaw.

Mr. S purchased his strata lot in 1999. In 2002, the strata corporation passed a rental restriction bylaw. In 2012 Mr. S purchased a building lot and began construction of a house. In July 2012, Mr. S listed his strata lot for sale however the strata lot did not sell. On February 22, 2013, Mr. S advised the strata corporation by email that he had purchased another property and that he needed to rent out his strata lot until the real estate market improved. Mr. S rented the strata lot beginning March 1, 2013.

On March 7, 2013, the strata council sent a notice of bylaw violation to Mr. S. The notice allowed Mr. S an opportunity to respond or request a hearing. The notice of bylaw violation also advised Mr. S that it was his responsibility to prove hardship and that he was required to present a written request in that regard and that he should include back up documentation. The letter advised that a strata council meeting was scheduled for March 11, 2013.

On March 7, 2013, immediately after receiving the email, Mr. S responded to the complaint and requested that his February 22, 2013 email be considered as his hardship application. Mr. S also advised that he would attend the March 11, 2013 strata council meeting which he did. At the meeting Mr. S presented various documents and financial information. At the conclusion of the meeting the strata council verbally advised Mr. S that his application for hardship was denied.

On March 19, 2013, the strata council advised Mr. S by email that the information provided at the strata council meeting on March 11, 2013 did not support a case for hardship. The strata corporation imposed fines against Mr. S between March 1, 2013 and November 2013 at which time the tenants vacated the strata lot and the strata lot was then sold. Subsequently the strata corporation applied to Court for a judgment for the fines.

Mr. S argued that because the strata corporation did not inform him of its decision to reject his hardship application until eight days after the meeting, the strata council was deemed to have accepted his claim for hardship pursuant to section 144 of the *Strata Property Act* (the "Act").

Section 144 of the Act provides:

- (1) An owner may apply to the strata corporation for an exemption from a bylaw that prohibits or limits rentals on the grounds that the bylaw causes hardship to the owner.
- (2) The application must be in writing and must state
  - (a) the reason the owner thinks an exemption should be made, and
  - (b) whether the owner wishes a hearing.

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- (3) If the owner wishes a hearing, the strata corporation must hear the owner or the owner's agent within 4 weeks after the date the application is given to the strata corporation.
- (4) An exemption is allowed if
  - (a) the strata corporation does not give its decision in writing to the owner,
    - (i) if a hearing is held, within one week after the hearing, or
    - (ii) if no hearing is requested, within 2 weeks after the application is given to the strata corporation, or
  - (b) the owner requests a hearing under subsection (2)(b) and the strata corporation does not hold a hearing within 4 weeks after the date the application is given to the strata corporation. (emphasis added)

The strata corporation responded by arguing, among other things, that Mr. S could not rely on the automatic and technical exemption that would be triggered by the delay of one day in providing him with a decision since he himself did not comply with section 144 of the Act for the reason that he had rented out his unit before making his hardship application. The strata corporation also argued that the February 22, 2013 email from Mr. S advising that he intended to rent the strata lot made no reference to "hardship".

In his March 7, 2014 email, Mr. S had asked the strata council to consider his February 22, 2013 email as his hardship application. The Judge noted that there were no requirements in the Act that would bar the application for hardship from being submitted in two separate emails. Although the term "hardship" was not used, the Judge found that the reason for the exemption was set out in the February 22, 2013 email in compliance with sections 144(1) and (2) by the statements that:

I bought land last year and started to build a house. This is now very near to completion. I need to rent out unit 130 until the real estate market improves. I have taken my unit off the market and am in the process of looking for suitable tenants. If you need to contact me ...

The Judge found that the strata council acquiesced to the imperfect form of the hardship application and treated the emails and subsequent correspondence as the hardship application.

The strata corporation also argued that Mr. S did not request a hardship hearing but merely attended a planned strata council meeting. The Judge found that the strata council was willing to hear Mr. S' application during the strata council meeting despite the lack of express written request for hearing.

The Judge held that having treated Mr. S' email as a hardship application and after hearing the application at a strata council meeting, the strata council could not attempt to treat the process as if it was not a hardship application and hearing.

The Judge then considered the strata council's delay in providing Mr. S with a written response. The Judge stated that although the strict interpretation of the statute seems unjust given that Mr. S knew the result of his application at the hearing when he received an oral decision, that the decision was only one day late, and that Mr. S had rented out his strata lot without following proper procedure, the Judge found that he was bound to apply the statute. The Judge noted that the statute specifically states that an exemption is allowed if the strata corporation does not give its decision in writing within one week after the hearing is held. The Judge also stated that there is nothing in the statute that indicates that this is a

flexible requirement or that gives the Court the discretion to interfere with the one week limit imposed by the statute. Additionally, the Judge noted that the remedy for failing to adhere to the one week limit is also expressly set out in the statute, which is that the exemption will automatically be allowed.

The Judge found that Mr. S' exemption from the rental restriction bylaw was therefore allowed pursuant to the statute and that the strata corporation was not permitted to impose fines after March 18, 2013 as after that date the rental was legal.

The *Storozuk* decision establishes that it is not necessary for the application for a hardship exemption to follow a strict and precise procedure, particularly where the strata council allows an owner to proceed with an application that is procedurally flawed. Additionally, the decision found that the term "hardship" does not need to be used, a hardship application may be set out in more than one document, and that there is no requirement for the hearing to be separate from a strata council meeting.

On the other hand however, there must be strict compliance with the procedures and deadlines applicable to the strata corporation. There is no discretion on the part of the strata council or the part of a Judge to extend the time to hold a hearing, reply to an application or provide a hearing decision nor is there discretion to vary the outcome if the timeframe is not met. If the deadlines are not followed, the exemption is absolutely allowed.

Strata corporations must therefore be diligent in determining the date a hardship application is received. Mailboxes must be checked and email must be retrieved daily to ensure that a hardship application is acted upon quickly after it is received by the strata corporation.

The key time periods for a strata corporation to respond to a hardship application are the following:

1. If the application for the exemption does not include a request for a hearing, a written response must be given to the owner within two weeks after the application is given to the strata corporation;
2. If a hearing is requested, the hearing must be held within four weeks after the date the application is given to the strata corporation; and
3. If a hearing is held, the written decision must be given to the owner within one week after the hearing.

If any of these time periods are not met, the exemption is permitted and the owner need not take any further steps.