



It's About Time: Navigating Rental Exemption Periods Under A Rental Disclosure Statement

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Tick Tock Estates is a 140-unit residential strata corporation in Vancouver, British Columbia. Five years ago, the owners of Tick Tock Estates overwhelmingly passed a ¾ vote resolution approving a rental prohibition bylaw. The climate at Tick Tock Estates' Annual General Meeting was clear: no rentals allowed. Recently, however, a tiny tempest has begun brewing for the Strata Council. One of the owners has challenged the enforceability of the rental prohibition, arguing that the owner developer already guaranteed their ability to rent their strata lot, regardless of any bylaw being passed in the future. It's about time that this Strata Council looked into the matter, but where to begin and what to look for?

The Rental Disclosure Statement

Debates regarding whether or not an owner developer reserved the right to rent in a strata development begin by looking at the Rental Disclosure Statement filed with the Superintendent of Real Estate.

The Rental Disclosure Statement, otherwise known as an "RDS", is but one of many documents the owner developer must file when creating a strata development. It is also one of the documents that the owner developer must give to prospective purchasers before entering into a contract of purchase and sale for a strata lot. The purpose of the RDS is to specify which strata lots (if any) are reserved the right to rent, and the length of time that right would apply.

Strata corporations like Tick Tock Estates should have retained a copy of the RDS among its records, however an additional copy can be obtained later for a small fee from the Financial Institutions Commission.

The ABC's of the RDS

Why do owner developers reserve the right to rent residential strata lots on an RDS? Owner developers are motivated to facilitate rentals for a variety of reasons. Although nearly one million British Columbians reside in strata developments, strata living is (not surprisingly) not for everyone. Allowing rentals attracts investment buyers whose goal is to purchase strata lots they can rent out, as opposed to live in. Some purchasers also appreciate the flexibility of being able to have the option of renting down the line. Alienating these buyers from the building invariably alienates sales, and so owner developers are inclined to foster these interests when creating a strata development. The owner developer's lenders are also interested in rental possibilities. In the event of any financial problems with the development during the project, lenders appreciate the ability to rent strata lots they may inherit from a foreclosure proceeding.

The Rental Period Exemption

If the owner developer did indeed reserve the right to rent any or all strata lots at Tick Tock Estates, then the RDS will impact when and if the Strata Council can enforce its rental prohibition bylaw against certain strata lots. The scope of the rental period exemption largely depends on when the RDS was prepared and filed with the Superintendent of Real Estate, as governed by sections 139 and 143 of the *Strata Property Act*.

If Tick Tock Estates' RDS was filed before January 1, 2010, then its rental prohibition bylaw does not apply to an affected strata lot until the earlier of:

1. the date on which the strata lot is conveyed by the first purchaser to a new owner; and
2. the date on which the rental period set out in the RDS expires.

A "first purchaser" means a person who purchased directly from the owner developer, and does not include subsequent purchasers of the strata property. Although these RDS forms were permitted to specify an "indefinite" rental exemption period, the actual time period of the exemption was frequently finite; once the property was sold to a new owner, the rental exemption period provided under the RDS was lifted. This limitation on the rental period exemption is an important one, and one that has changed dramatically for RDS forms filed after December 31, 2009.

If Tick Tock Estates' RDS was filed after December 31, 2009, then its rental prohibition bylaw would not apply to the affected strata lot until the date on which the rental period set out in the RDS expires. This exemption not only applies to all first purchasers, but also encompasses all subsequent purchasers as well, thus opening the door to a much broader rental period exemption for affected strata lots. However, due to amendments made to the RDS form, an RDS filed after December 31, 2009 must now state a specific expiration date for the rental period exemption to apply; reference to "indefinite" rental exemptions once permitted with pre-January 1, 2010 filings is no longer permissible on the new form.

Spelling Counts

In the event that an RDS is not completed properly or does not spell out the required information on the prescribed form, the rental exemption period identified on the RDS may not be enforceable. When in doubt about the validity of an RDS or the scope of its proposed rental exemption period, the Strata Council should obtain a legal opinion before attempting to enforce its rental bylaw, or exempting an owner from its application.

Time's Up

Once a rental exemption period expires as stipulated on the RDS, then the *Strata Property Act* provides owners with a final opportunity to adjust to the new rental prohibition or restriction. Section 143 of the *Strata Property Act* makes it clear that a bylaw that prohibits or limits rentals does not apply to a strata lot until the later of:

1. one year after a tenant who is occupying the strata lot at the time the bylaw is passed ceases to occupy it as a tenant, and
2. one year after the bylaw is passed.

Once this further exemption is applied, the time is up on the delayed application of the rental bylaw....that is, unless another exception applies.

Exceptions to Every Rule (or Bylaw...)

Despite Tick Tock Estate's desire to ban rentals in its building, the rental exemption afforded in an RDS is not the only rental exemption available to owners under the *Strata Property Act*. Indeed, the *Strata Property Act* affords special exemptions when renting to a family member (as defined under the legislation), or when the owner is eligible to rent on the basis of hardship. An improperly worded rental bylaw can also render itself unenforceable and give owners a window of new rental opportunities. Conveniently, these exemptions are found in the same statutory neighborhood as the RDS exemption (sections 141 - 144 of the *Strata Property Act*), so strata corporations needn't venture far to find them.

Whether or not your strata corporation prohibits or restricts rentals, it is important to consult with the RDS to determine whether any exemptions apply, even before a challenge is raised. Certainly, for strata corporations currently dealing with rental bylaw disputes, there is no time like the present to initiate your investigation. *Tick tock.....*

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