

# THE RENTAL OF STRATA LOTS UNDER THE STRATA PROPERTY ACT



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# WHAT IS A “RENTAL”?

The Strata Property Act (“SPA”) does not define the term “rent”.

It defines “tenant”:

**"tenant"** means a person who rents all or part of a strata lot, and includes a subtenant but does not include a leasehold tenant in a leasehold strata plan as defined in section 199 or a tenant for life under a registered life estate;

“rent” - “Consideration paid, usu. periodically for the use or occupation of property.” *Black’s Law Dictionary*

# WHAT IS A “RENTAL”?

The *Residential Tenancy Act* defines “rent” as:

**"rent"** means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

# WHAT IS A “RENTAL”?

## Strata Plan VR2213 v. Duncan 2010 BCPC 123

- Strata lot was being used for short term furnished rentals
- Issue was whether each new occupancy constituted a new “tenancy” thereby requiring a Form K to be submitted and a move-in fee paid each time
- The court ruled the strata lot was occupied under a license agreement and was not a tenancy given the short term nature of the arrangement
- The SPA recognizes a class of persons as “occupants”
- Not every occupancy of a strata lot without the owner present (even for money) is a tenancy

# CONTROLLING RENTALS

Section 141(2) of the SPA permits a strata corporation to prohibit or restrict rentals (but only in certain ways).

(2) The strata corporation may only restrict the rental of a strata lot by a bylaw that

(a) prohibits the rental of residential strata lots, or

(b) limits one or more of the following:

(i) the number or percentage of residential strata lots that may be rented;

(ii) the period of time for which residential strata lots may be rented.

# CONTROLLING RENTALS

## RENTAL RESTRICTION BYLAWS

- Can only restrict the number of strata lots that can be rented and the length of time
- Cannot set limits for each building within the complex
- Cannot set conditions which must be met before being able to rent (i.e. have owned the strata lot for one year)
- Must contain a basic procedure for administering the limit such as a waiting list (Mathews v. The Owners, Strata Plan VR90 2016 BCCA 345)
- Must set out when the right to rent ends. Tenancy ends? Sale of strata lot?
- A bylaw which doesn't address these things is unenforceable (Carnahan v. Strata Plan LMS522 2014 BCSC 2375)

# CONTROLLING RENTALS

A rental restriction bylaw should contain the following points:

- Identify the number of strata lots that may be rented
- Provide that an owner wishing to rent must inquire if they can
- Provide for a length of time within which owner must exercise the right to rent
- Establish the use of waiting list
- Stipulate when the right to rent comes to an end
- Require an owner to submit a Form K
- Impose a fine of \$500 every 7 days for breach of the bylaw

# CONTROLLING RENTALS

In determining if the limit has been reached the strata corporation must not include strata lots rented:

- To a family member (Section 142 SPA)
- On the basis of a hardship (Section 144 SPA)
- Pursuant to the terms of a Rental Disclosure Statement (Section 143 SPA)



# CONTROLLING RENTALS

## Section 141(1) SPA

**(1) The strata corporation must not screen tenants, establish screening criteria, require the approval of tenants, require the insertion of terms in tenancy agreements or otherwise restrict the rental of a strata lot except as provided in subsection (2).**

**This section prevents a strata corporation from, amongst other things, prohibiting subleases.**

# EXEMPTIONS

The SPA exempts certain owners from having to comply with a rental prohibition or restriction bylaw.

The statutory exemptions are:

- The Rental Disclosure Statement Exemption (s.143(2) SPA)
- Rental to a family member (s.142 SPA)
- Hardship exemption (s.144 SPA)
- Current tenant exemption (s.143(1) SPA)

# EXEMPTIONS

## Rental Disclosure Statement Exemption

Under s.139 of the SPA an owner-developer may file a Rental Disclosure Statement (“RDS”) setting out the number of strata lots rented or identifying which ones the developer reserves the right to rent in future.

The RDS must also set out a date by which the right to rent ends. (Under the *Condominium Act* that date could be “indefinitely”).

Depending on when the RDS was filed, certain owners get the right to rent based on the RDS regardless of a bylaw to the contrary.

# EXEMPTIONS

Where an RDS was filed prior to January 1, 2010 the first purchaser gets the right to rent until the earlier of:

- the date set out in the RDS; or
- the date they sell their strata lot

Where an RDS is filed on or after January 1, 2010 all owners of the strata lot (whether first, second or later) get the right to rent until date set out in the RDS.

An RDS filed after January 2010 effectively prevents the implementation of any rental bylaw until the date set out in it.

# EXEMPTIONS

## Family Member Exemption

An owner can rent to a family member despite the strata corporation having a bylaw prohibiting or limiting rentals.

“Family member” is defined in the Regulations:

**8.1 (1)** For the purposes of section 142 of the Act, "family" and "family member" mean:

- (a) a spouse of the owner,
- (b) a parent or child of the owner, or
- (c) a parent or child of the spouse of the owner.

# EXEMPTIONS

## Hardship Exemption

What is “hardship”?

“Hardness of fate or circumstance; severe toil or suffering; extreme privation”

*Als v. Strata Plan NW1067* 2002 BCSC 134

The hardship does not have to be “undue”. (Bylaws which attempt to set a stricter standard than the SPA are unenforceable)

# EXEMPTIONS

Hardship will differ from case to case as there is no definitive list of what is hardship and what isn't; only factors to be considered.

- A decrease in value or a loss on an investment is not a hardship unless it will ruin the owner financially.
- The fact that the unit will sell for less than the value of the mortgage against it, is not a hardship unless the owner lacks funds or assets to cover the shortfall.
- The owner must show a concerted effort to sell the unit at a price which will allow them to clear title.
- Owners who choose to maintain 2 residences do not suffer a true hardship since they can eliminate the hardship by selling one.

# EXEMPTIONS

Quite frankly, I find the logic of the Strata Council to be sound - or, if not that, at least not unreasonable. For example, should a person be able to claim hardship if they decided to lease three Mercedes Benz automobiles at a monthly cost of \$1,645.00? I think not. On the other hand, if a family was suddenly confronted with a shortfall in monthly finances due to loss of employment or a sudden illness of a child, matters over which they had little if any control, the situation would be quite different.

*Sangha v. Strata K-6 Corp.* 2016 BCPC 150



# EXEMPTIONS

The onus is on the owner(s) to prove hardship. They must be prepared to provide documents in support of their claim. The strata corporation must protect the privacy of those documents.

The strata corporation can (and should) ask for:

- Income tax returns
- Bank statements
- Investment (RRSP) statements
- A list of assets and liabilities
- A statement of income and expenses
- Information re loans (including mortgages)
- Current assessment for all properties owned

# EXEMPTIONS

Decisions on whether or not to grant hardship must be made by council (not the strata manager) and should be reflected in the minutes (minus reference to the strata lot or unit).

Decisions must be made and communicated within a set time frame. Otherwise the exemption is automatically granted.

Where an owner requests an exemption (without a hearing), the strata corporation must respond *in writing* within 2 weeks.

Where an owner requests a hearing before council with respect to an exemption the hearing must be held within 4 weeks with a decision being conveyed *in writing* within 1 week of the hearing.

# EXEMPTIONS

## Current Tenant Exemption

Where a strata corporation does not have a bylaw with respect to rentals and subsequently passes one, that bylaw does not apply to a strata lot until:

- 1 year after the bylaw is passed (if the strata lot is not already rented); or
- where the strata lot is rented at the time the bylaw is passed, the owner has the right to rent until that tenant leaves, plus an additional year.

# DEALING WITH TENANTS

Strata corporations have the power to control the behaviour of tenants.

Tenants can be fined for breaches of the bylaws (although owners remain liable for any fines).

Tenants can be required to pay the costs under s.133 of the SPA of remedying a bylaw contravention.

Tenants can be evicted for a “repeated or continuing contravention of a reasonable and significant bylaw... that seriously interferes with another person’s use and enjoyment of a strata lot or the common property.” – s.138 SPA

# DEALING WITH TENANTS

The rental of a strata lot:

- to a “family member”; or
- for a period of 3 years or more;

creates an **automatic assignment** of the owner’s powers and duties.

Where an owner rents to a family member they lose the right to vote at general meetings or deal with the strata corporation as representative of that strata lot.

# DEALING WITH TENANTS

Tenants are given certain rights under the SPA:

- They can request a hearing before council (s.34.1 SPA)
- They can attend AGM's and SGM's as observers (Standard Bylaw 26(1))
- They can sue the strata corporation (or take it to the CRT)
- They are named insureds under the strata corporation's insurance (s.155 SPA)
- They must get notice of any alleged bylaw violation and a chance to answer the complaint (s.135 SPA)

# SHORT TERM RENTALS

Short term rentals, vacation accommodation and similar uses are not caught by a rental prohibition bylaw. Unless there is a municipal bylaw prohibiting such uses, a specific bylaw is required.

Given the wide range of activities that could be undertaken in this regard, bylaws will need to be broad in the description of prohibited uses.

However, thought should be given to what activities (i.e.. home exchanges) might be permitted.

# SHORT TERM RENTALS

If a strata corporation decides to allow strata lots to be used for short term accommodation then it needs to consider issues such as:

- How many units will be allowed to participate?
- What information, if any, will strata require about the guests?
- How will fob access be dealt with?
- Will guests be permitted to use recreational facilities?
- How will visitor parking be regulated?



**THE END**

**Questions**

**Now**

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**Or later**

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