

News

B.C. condo board's rental limit bylaw upheld

MICHAEL BENEDICT

The impassioned battle between those who mainly want to enjoy their homes and those who see property mainly as an investment recently went before the B.C. Court of Appeal.

This time, the B.C. high court in *Matthews v. Strata Plan VR 90 2016 BCCA 345*, sided with the owner-occupier side, supporting a condominium corporation that limits the number of units available for rental. (In British Columbia condominiums are known as strata).

The B.C. *Strata Property Act* allows strata corporations to pass bylaws which restrict the number of units that can be rented. In this case, Hycroft Towers, an eight-storey, 158-unit condominium in the trendy Fairview area of Vancouver, restricted rentals to just one apartment at a time. The Matthews family, who owned three units in the building, challenged the bylaw because it did not set out any procedure or criteria for approving rental applications.

In 2014, one of the units owned by the Matthews caught fire, causing substantial damage to other units as well as their own. The repairs required the Matthews and other owners to vacate their premises for an extended period. Shortly after the Matthews returned, they sought permission to rent out their unit on hardship grounds, an exception permitted by the act, since the building had already approved the one allowable rental. The Matthews maintained that their neighbours blamed them for the fire, and it would be best for everyone if they moved out and that they needed the rental income to afford alternative accommodation.

The strata council turned down their application, but said they could reapply with documentation to support their hardship claim. Instead, they brought forward an action in the B.C. Supreme Court challenging the validity of the bylaw. Relying on an earlier



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Douglas Harris
University of British Columbia

decision, Justice Neill Brown sided with the Matthews family, finding the act required that any rent-restriction bylaw must contain the criteria for assessing an owner's application to rent their unit.

But the appeal court disagreed. It said the strata needs to only set out the general approach in dealing with rental requests, not the actual process as well. In a decision released in August, the high court found: “The requirement that a strata corporation set out in the bylaw the procedure to be followed in administering the limit does not require the strata corporation to also detail in the bylaw the substantive decision-making criteria that will govern the determination of an owner's

request to rent. To hold otherwise unjustifiably imports into a procedural provision substantive decision-making criteria.”

While *Matthews* turned on a “narrow legal interpretation,” Douglas Harris of the University of British Columbia's Allard School of Law says it is “far more interesting” because it focuses on the larger policy issue of how society and the law should view home ownership. Asks Allard: “Do we want to protect the property interest or the investment interest?”

He adds: “It appears that owner-investors comprise a large percentage of the B.C. condo market. They naturally want an income stream, and the situation is exacerbated by short-term rentals such as Airbnb. Therefore, the way in which boards can supervise rentals is becoming increasingly important.”

Vancouver lawyer Alex Chang of Lesperance Mendes, who represented the Matthews family, says the judgment “limits an owner's ability to challenge a rental restriction bylaw and expands strata corporations' power to make bylaws less susceptible to challenge.” However, he adds that the ruling has provided helpful guidance to strata in dealing with rental requests. Says Chang: “The wait-list approach is the only procedure endorsed by the court. To depart from that could be risky and be subject to challenge.”

Indeed, writing for the court, Justice Gregory Fitch said that “any bylaw setting out a proced-

ure for administering a rent restriction cap that purports to screen prospective tenants or impose screening criteria on owners who wish to rent their strata lots” would run afoul of the act. Wrote Fitch: “By default, adoption of a wait list is, practically speaking, the only permissible way of administering the limit that is open to a strata corporation.”

For his part, the strata's counsel, Phil Dougan of Access Law Group in Vancouver, says the ruling means that, “As long as you have a procedure, as long as it is reasonable and as long as it does not treat one class differently

from another, then it is fair.”

Meanwhile, Ontario observers say that province's *Condominium Act* does not allow condo corporations to restrict rentals, although they can impose conditions on rentals such as term lengths. “The right of alienation is fundamental,” says Warren Kleiner of Miller Thomson in Toronto. “You can restrict the right to rental, but not take it away.”

Adds Denise Lash of Lash Condo Law in Toronto: “In Ontario, you have to treat all the owners equally, and you can't limit the number of allowable rentals.”

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