

Short-term letting by-law penalty paid to the owners corporation | Meaning of “Principal place of residence”

The Consumer and Commercial Division of the NSW Civil and Administrative Tribunal (the “Tribunal”) recently made orders for lot owners to pay a pecuniary penalty for breach of a short-term rental letting by-law. The by-law prohibited short-term rental letting of the lot in circumstances where the rental term was more than 3 months and the lot was not the principal place of residence of the lot owners.

The owners corporation, in the matter of *The Owners – Strata Plan No 102798 v Patrick Knight and Daisy Knight*, commenced penalty proceedings pursuant to section 147 of the Strata Schemes Management Act 2015 (NSW) (the “SSMA”), against the lot owners for continuously and consistently breaching by-law 19.2 (“By-Law 19.2”) of the scheme, which prohibited short term rental letting of the lot in certain circumstances. The background details are as follows:

1. In or around May 2022, the lot owners commenced advertising their lot on Booking.com for short-term rental letting;
2. On 24 May 2022, the owners corporation issued a breach of by-law notice to the lot owners;
3. On 19 July 2022, in light of the continued short-term rental letting of the lot, the owners corporation issued a subsequent breach of by-law notice to the lot owners;
4. On 14 February 2023, in light of no cessation of short-term rental letting of the lot by the lot-owners, the owners corporation resolved to issue a Notice to Comply to the lot owners;
5. On 5 December 2023, the owners corporation issued a Notice to Comply to the lot owners.
6. In light of continued advertisement for the short-term rental letting of the lot, the owners corporation commenced proceedings in the Tribunal.

What does By-Law 19.2 say about short-term rentals?

In bringing these proceedings, the owners corporation argued that the lot owners had breached By-Law 19.2 which provides that short-term rental letting of a lot in the scheme is only permitted in circumstances where the lot is the principal place of residence of the lot owner and the rental letting term is less than 3 months. Please see relevant part of By-Law 19.2 extracted below:

“19.2 Restrictions on leasing and occupancy generally

An Owner or Occupier must not:

- a. *enter into a Short-term Rental Accommodation Arrangement in respect of a Lot, where that Short-term Rental Accommodation Arrangement has a term of less than 3 months other than*



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where the Lot is the principal place of residence of the person who, pursuant to the arrangement, is giving another person the right to occupy the Lot;

b.”

What is considered a Principal Place of Residence?

The lot owners in their defence claimed that the lot is their Principal Place of Residence to claim that they had not breached By-Law 19.2. As evidence in support, the lot owners also adduced letters and notices that were addressed to the lot owners and had the lot’s address on it.

While the SSMA provides no definition of a “*Principal Place of Residence*”, the Tribunal relied on the definition of “*Principal Place of Residence*” provided in the *Land Tax Act 1956* (NSW) for guidance. Please see section 5B of the *Land Tax Act 1956*, extracted below:

“5B Surcharge land tax--residence requirement applying to principal place of residence exemption

(2) The person must use and occupy the land as the person's principal place of residence for a continuous period of 200 days in the land tax year. This requirement is referred to as "the residence requirement".

....”

The Tribunal also took cognisance of the following circumstantial factors to decide that the lot was not the Principal Place of Residence of the lot owners.

1. The frequency at which the lot was let on a short term basis;
2. One of the lot owners’ admission on his LinkedIn page about over 150 reviews from guests on Booking.com in a period of 2 years;
3. The lot being advertised for short-term rental letting all year round i.e., there is no period when the lot is not available for rent;
4. Admission of the lot owner on his LinkedIn page that his intention was “to compete with the 5-star hotels in the Sydney CBD”; and
5. Lack of evidence that could be adduced from the neighbours.

It can be incredibly frustrating to have lot owners breach short-term rental letting by-laws and rely on a loophole in the by-law to deny a breach. Furthermore, a breach by one lot owner may encourage other lot owners in your scheme to do the same, which is not conducive to the proper management of a scheme. For these reasons, it is imperative that when a short-term rental letting by-law is breached, immediate action from the owners corporation ought to be taken.

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