

Short term by-law ruled invalid again by NCAT: overreach with bonds and administrative fees

Short term letting continues to strain owners relationships in strata schemes and NCAT continues to determine by-laws restricting or regulating such behaviour are valid. In the recent decision of ***Nicholson v The Owners - Strata Plan No 104042 [2025] NSWCATCD 202*** the Tribunal considered whether a specific by-law regarding short-term rental accommodation was valid and enforceable in accordance with the *Strata Schemes Management Act 2015 (NSW)* (“SSMA”).

The by-law in question purported to regulate the use of lots for short-term rental arrangements by imposing, amongst other things, a requirement on lot owners engaging in short-term letting a \$1,000.00 security bond and various administrative fees. The Tribunal determined that components of the by-law, specifically in relation to the bond and administrative fees, provided to the owners corporation an unfettered discretion to determine and recover costs from lot owners and that these components were harsh, unconscionable and oppressive and therefore invalid pursuant to section 150 of the SSMA. Considering this finding, the Tribunal then had to consider whether these parts of the by-law could be severed and or whether the remainder of the by-law could remain in force.

To reach its decision the Tribunal considered the case of *The Owners - SP No 91684 v Liu [2022] NSWCATAP 1* in which the Tribunal held that it should not “tamper” with a by-law to make it effective if the result is something the owners corporation might not have intended to pass. Ultimately, the Tribunal determined that in the circumstances, the requirement for a bond and the ability to recover administration fees appear to be integral protections upon which the owners corporation relied in determining to regulate, rather than prohibiting, where possible, short term rental accommodation. It could not be assumed that the owners corporation would have passed a by-law permitting and regulating this use without the accompanying financial securities and indemnities it deemed necessary to protect its interest. Accordingly, the Tribunal declined to sever the offending components of the by-law and declared the by-law invalid in its entirety.

Overall, the decision reinforces that by-laws must be drafted to strike a balance between regulation and fairness. Even where an owners corporation pursues legitimate objectives, such as managing short-term letting, it must do so in a way that does not confer excessive discretionary power.

If your scheme would like a by-law to assist it with regulating Short Term Letting we can assist.

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