



Civil Resolution Tribunal

Date Issued: August 21, 2017

File: ST-2016-00087

Type: Strata

Civil Resolution Tribunal

Indexed as: *Lorenz v. The Owners, Strata Plan NW 2001*, 2017 BCCRT 65

BETWEEN:

Kevin Lorenz

APPLICANT

AND:

The Owners, Strata Plan NW 2001

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

- 1) The applicant Kevin Lorenz (the owner) owns unit 402, strata lot 19 (SL19), in the strata corporation The Owners, Strata Plan NW 2001 (the strata). Initially, the

owner's claims were for various building-wide deficiencies and related maintenance, as described in the July 29, 2016 dispute notice.

- 2) However, through facilitation with the Civil Resolution Tribunal (tribunal) those initial claims were withdrawn and instead this dispute became a claim about repairs to SL19. In particular, the owner says that after his tub faucet had been leaking, around July 27, 2016 the strata's contractors dismantled his bathroom and the strata then willfully or negligently delayed performing repairs. The owner claims the strata has also prevented the owner from doing the repairs, and he has been without water in his tub/shower since July 27, 2016. The owner is self-represented and the strata is represented by legal counsel, Matthew Bujar.
- 3) In addition to reimbursement of \$225 in tribunal fees, the owner wants an order requiring the strata to immediately repair his bathroom and bedroom to their original condition, as detailed in a November 23, 2016 estimate by ServiceMaster, along with loss of use and enjoyment damages and punitive damages.

JURISDICTION AND PROCEDURE

- 4) These are the formal written reasons of the tribunal. The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness. The tribunal also recognizes any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
- 5) The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
- 6) I note the strata's objection that the applicant provided statements and documents to the tribunal later in the process, some of which were in response to my

questions. The strata said such new evidence was unfair because the evidence portion of the process had completed. Again, the tribunal is not a court and part of our mandate allows some flexibility. I find both parties had reasonable opportunity to provide evidence and submissions, which I have admitted.

- 7) The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I heard this dispute through written submissions because I find there are no significant credibility issues or other reasons that might require an oral hearing. In particular, to the limited extent there is a relevant dispute in the evidence as to what was said or done, I find I can fairly and adequately resolve such conflicts based on the documentary evidence and written submissions. Neither party requested an oral hearing.
- 8) Under section 48.1 of the Act, in resolving this dispute the tribunal may make one or more of the following orders:
 - a) order a party to do something;
 - b) order a party to refrain from doing something;
 - c) order a party to pay money.

ISSUES

- 9) There are five related issues in this dispute:
 - a. Is the strata responsible for the repair and maintenance of the owner's shower valve, also known as a shower diverter (diverter)?
 - b. To what extent is the strata responsible to repair the owner's bedroom and bathroom following the July 2016 water leak?
 - c. Did the owner unreasonably refuse to permit the strata an inspection of SL19?
 - d. To what extent should the strata pay the owner loss of use and enjoyment damages, \$205 per day as claimed or otherwise, and pay punitive damages?

- e. To what extent are the parties entitled to reimbursement for dispute-related expenses, such as the \$225 the owner paid the tribunal or the strata's legal expenses?

POSITION OF THE PARTIES

- 10) The owner says the strata is responsible to repair the SL19 damage because it was done by the strata's contractors. The owner says the requested remedies are appropriate because it returns him to the position he was in before the strata accessed his suite and did the damage. The owner denies that he has failed to accommodate any reasonable inspection requests by the strata.
- 11) The strata says repairs within a strata lot that do not form part of common property are the responsibility of the strata lot owner, as per the strata's bylaw 7.1. Further, the strata says the *Strata Property Act* (SPA) does not create an obligation on the strata to repair damage or deficiencies within a strata lot save for common property and/or some limited common property. Further, the strata's bylaw 6.1 permits the strata to access a strata lot to conduct investigations. The strata says the stop work order it issued against the owner's strata lot was necessary to address concerns related to the removal of potentially hazardous materials. The strata says there was no need to commence the tribunal proceeding had the owner permitted the strata to conduct its necessary investigations. The strata says the owner's actions resulted in the breakdown of a determination of the cause of the owner's complaints and any repairs to be performed.

EVIDENCE, SUBMISSIONS & ANALYSIS

- 12) For clarity at the outset, I will make a few observations about the timing of this dispute. The tribunal issued the Dispute Notice on July 29, 2016 with the owner's claims broadly stated in terms of overall building maintenance issues. The owner's remaining claim about the SL19 bathroom leak and related investigation did not evolve until later with the tribunal beginning facilitation of the dispute in September 2016. I mention this backdrop because it was only 2 days before the Dispute

Notice was issued, July 27, 2016, that the strata's tradespeople began an investigation into the SL19 bathroom leak which then was halted with the owner's bathtub/shower left without water and the drywall dismantled. The issues in this dispute for the most part turn on why the investigation was halted and the repairs left incomplete. However, the owner has claimed damages for loss of use and enjoyment that relate to the loss of use of his bathtub/shower that has now been ongoing over a year.

- 13) As set out in the tribunal decision plan for this dispute, the parties agree:
 - a. SL19 has one bathroom.
 - b. In July 2016, the strata engaged a plumber from Citywide Plumbing, Heating & Drain Cleaning Ltd. (Citywide) to inspect the diverter in SL19.
 - c. On July 27, 2016, Citywide's technician attended SL19 and observed what he perceived to be mould behind the wall, and decided not to proceed with work in SL19. Instead, the technician capped the tub/shower diverter lines.
 - d. In or about July 2016, the strata's property management company engaged CJB Construction (CJB) to inspect an alleged mould issue in SL19.
 - e. The strata issued a stop work order to E, 1 of the strata's 2 property managers, after several hours of CJB working in SL19.
 - f. The water supply line to SL19's shower/tub was capped as of late July 2016.
- 14) As of a June 30, 2016 annual general meeting (AGM), the strata has two sections: section 1 (commercial section) and section 2 (residential section). The owner's SL19 is located in section 2, which contains 29 residential units. At the June 30, 2016 AGM, the strata passed new bylaws that replaced all previous bylaws of the strata (together with a separate bylaw that created the sections, as noted above). There are no separate bylaws for the sections, although the strata's bylaws address the sections' separate rights and obligations.

- 15) Summarized below are the relevant excerpts from the bylaws (my bold emphasis added):
- a. *“Common property” and “common expenses”*: are defined to have the meaning set out in the *Strata Property Act (SPA)*.
 - b. **“Entry Infraction”**: is defined as including the scenario where an owner denies, impedes or interferes with access to a strata lot in contravention of bylaw 6.1(a) or (b).
 - c. *Bylaws 6.1 and 6.2*: An owner must allow **a person authorized by the strata** to enter a strata lot in an emergency, or at a reasonable time on 48 hours’ written notice, **to inspect**, repair or maintain common property or any portions of a strata lot that are the responsibility of the strata to repair and maintain (bylaw 6.1). The 48 hours’ written notice must include the date, approximate time of entry, and the “reason for entry” (bylaw 6.2).
 - d. *Bylaw 6.6*: **an owner must indemnify the strata from and against all damages or expenses that the strata may incur or be put to as a result of an entry infraction.**
 - e. *Bylaw 7*: an owner must repair and maintain the owner’s strata lot, except for where the bylaws say it is the strata’s or a section’s responsibility (bylaw 7.1). The strata must repair and maintain common property (bylaw 7.4 (b)). The strata must repair and maintain strata lots with respect to the building’s “structural components” (bylaw 7.4 (d) (i)).
 - f. *Bylaw 8*: an owner must obtain the written approval of the strata before altering or doing a renovation or other work to a strata lot that involves common property located within the boundaries of a strata lot or plumbing, piping, or other services within any walls (bylaw 8.5). An owner must provide the strata with detailed plans and a written description of the work and “any other materials or information reasonably requested” by the strata (bylaw 8.6). The strata must not unreasonably withhold its approval, but may require the

owner to comply with any permits and approvals and to take responsibility for any expenses related to the alteration (bylaw 8.7).

- g. *Bylaws 12.2 and 12.3*: Where an owner is “responsible” for loss or damage to insured property the strata may make a claim with its insurer and repair the damage, and then require the responsible owner to pay the strata the lesser of the deductible and the repair costs.
 - h. *Bylaw 12.4*: an owner is solely responsible for all forms of property insurance on their strata lot and all fixtures and contents or improvements and perils are not insured by the strata, for amounts in excess of amounts insured by the strata and for whatever is not covered by the strata’s insurance.
- 16) Section 1 of the SPA defines common property as including (my bold emphasis added):

(b) **pipes**, wires, cables, chutes, ducts and other facilities **for the passage or provision of water**, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, if they are located

(i) **within a floor, wall or ceiling that forms a boundary**

(A) between a strata lot and another strata lot,

(B) **between a strata lot and the common property**, or

(C) between a strata lot or common property and another parcel of land, or ...

Is the shower diverter common property?

- 17) The first issue in this dispute is whether the owner’s shower diverter was common property, because if it was the strata was obliged to repair and maintain it at its expense.
- 18) The owner says the diverter “assembly” was located entirely behind the bathroom wall and behind the insulation. The strata says the diverter is “located in an interior

wall to unit SL19 and behind that wall is the exterior wall to the building”. The strata further says that the diverter at issue itself was within the SL19 bathroom interior, although components of the shower piping were within the wall. The owner provided a photo that shows a hole cut into the bathroom tile with the diverter about an inch behind the tile, with insulation surrounding it.

- 19) The owner’s bathroom wall at issue is a boundary wall within the common property definition in the SPA. I say this because the parties agree that the building’s common property exterior wall is on the other side of the affected bathroom wall. The strata has an obligation to repair and maintain common property piping inside the owner’s boundary walls. I find the shower diverter was a “pipe” as it allowed for the passage of water, and this is not disputed by the parties. Further, based on the photo, I find the shower diverter sits “within” the boundary wall.

Strata’s obligation to repair the SL19 bathroom leak

- 20) Based on the strata’s bylaws and section 72 of the SPA, the strata has the obligation to repair and maintain common property. Contrary to the strata’s submission, I find the strata has an obligation to repair and maintain the owner’s shower diverter, because I have found it is common property. The fact that historically the strata charged diverter repairs back to strata lot owners is not determinative. It is important to note that the strata’s erroneous position that it was not ultimately responsible for the cost of the diverter repair did not impact its handling of the repairs. I say this because while a charge-back was planned, the strata clearly planned to investigate and do the repairs, given the potential impact of mould on the rest of the building. I have addressed the inspection issue below.
- 21) I further find the strata must also restore the owner’s bathroom drywall to a paint-ready condition as part of its repair of the common property shower diverter, given the strata had to remove the drywall in order to investigate and would need to do so in order to repair it. However, the strata is not an insurer and I find the owner is responsible for his own strata lot. Thus, I find the owner is responsible for painting

the “paint-ready” drywall and any necessary bathroom re-tiling. However, these conclusions are not the end of the matter, as discussed below.

Did the owner improperly refuse to permit reasonable inspection by the strata?

- 22) Once the strata began investigation into the owner’s dripping tub faucet on July 27, 2016, was the strata permitted to inspect SL19? Did the owner fail to permit reasonable inspections as required under the strata’s bylaws?
- 23) The strata says the building has a history of mould issues, and it was a priority for the strata to investigate and determine any concerns arising that may affect the building as a whole or multiple units. In addition, the strata says that given the age of the building concerns arose as to whether any remedial work was being done with proper concern for potential asbestos concerns.
- 24) In the absence of the owner’s agreement to permit the strata council members’ access, the strata refused to permit repairs to the owner’s bathroom. He has remained without water to his shower/tub since late July 2016; days later he commenced the tribunal proceeding against the strata about broader building issues. To the extent SL19 was rendered uninhabitable, which the strata does not admit, the strata says the owner “was the author of his own misfortune”. In short, the result was a stalemate and the owner’s bathroom has sat unrepaired since.
- 25) What led to the strata’s request for an inspection? The strata says that once the strata was notified of the owner’s complaints of a dripping tub faucet, it acted promptly and instructed Citywide to attend SL19. The strata says Citywide attended SL19 on multiple occasions and initial investigations on July 18 and 27, 2016 indicated that the diverter needed replacement. While performing its remedial work on July 27, 2016, Citywide’s technician removed the diverter face plate to observe the condition of the wall behind the tile. The Citywide technician believed there was mould and reported it to the strata’s property manager, at which point the strata requested that they stop work and the diverter water lines were capped. None of this narrative is disputed.

- 26) The crux of this dispute turns on what happened next.
- 27) A further chronology is necessary. Generally, the dates and other information below is a compilation of the undisputed evidence of both parties that I have found relevant to this decision (my bold emphasis added).

- a. *July 22, 2016*: the strata council president C emailed the strata's property management (individuals E and G) and noted the upcoming July 27, 2016 plumbing repair scheduled for the owner's strata lot. C wrote that since the owner "has been complaining 'water leak' behind the wall for a while, **please let him know that I, representing the strata council, will be there when the plumber opens the wall and take a few pictures and/or video before, during and after the repair.** We want to make sure it is fixed once and for all."
- b. *July 27, 2016*: the owner emailed E and G and wrote that Citywide had just left his unit and black mould was discovered behind the wall and work immediately stopped. The owner wrote that his immediate and pressing concern was that his unit was "unlivable", noting it is his only washroom. The owner wrote it was his understanding that the strata has a clear responsibility to complete repairs and restoration work, and bring his bathroom back to its functional original condition. The owner wrote that it was an emergency and he expected the testing and restoration work booked by the end of the day, along with alternative housing arrangements for the owner.

C emailed E and asked for a list of indoor environmental professionals. **C also asked that 48hour entry notice be given to the owner before any works start in "strata space or involve strata funding" in his unit.**

- c. *July 28, 2016*: the owner emailed G expressing his concern that his bathroom was not repaired by Citywide but rather investigations were only underway, and repairs were pending those results and council approval. The owner stated that if the strata did not respond to his July 27th requests, he would

proceed with his own repair arrangements and forward all associated costs, including for temporary accommodation, to the strata.

The owner emailed E that he had given keys to “the restoration company” to complete restoration work on his bathroom. **The owner wrote that given C’s attempts on July 27th to “illegally enter my suite by harassing your plumber”, he wanted to be “crystal clear” that only CJB staff were authorized to enter his unit.**

E wrote the strata council advising that Citywide found black mould behind the owner’s bathroom drywall and would not proceed with the work. E sent photos and requested authorization to send a company like CJB to treat the black mould. C responded that the photos appeared to show waterproofing membrane rather than mould, and he stated further investigation was required. **C told E to not clean up the spot until a specialist could be on site to assess the matter, and to send an email to the owner to let him know that “people will go in his unit”.**

E emailed the owner that afternoon to give him 48 hour notice that the strata council required access to his unit for the purpose of inspecting all plumbing repairs and the black mould behind the drywall. **E asked the owner to respond with a convenient time within that 48 hour window, so that the inspection could be done.**

The owner emailed G complaining that had yet to receive a response to his email from July 27th about what the strata had done in terms of booking restoration work. The owner reiterated his request that the strata immediately begin all necessary remediation and repairs to his bathroom and arrange temporary housing. The owner stated if the strata did not do so by 2pm that date, he would proceed with his own arrangements and forward all associated costs to the strata, and if necessary pursue a tribunal proceeding or court.

The owner also emailed E and stated the “strata’s agents” had already completed their inspection, noting both Citywide and CJB had been in his unit. The owner

wrote that the SPA and the bylaws allow for limited access for specific purposes and “does not entitle any council member to wander through my private home to satisfy [their] own curiosity” and that no council member is a qualified plumber or remediation specialist. **The owner wrote that C was not qualified to conduct an inspection. The owner wrote that he would not accommodate the strata “simply pandering to [C’s] attempts to act as a petty dictator” and that he would pursue legal action if his unit was entered illegally.**

d. *July 29, 2016:* The owner emailed G and complained that CJB had advised him that the strata had still not authorized any repairs. The owner wrote that he would “continue to make arrangements myself if and when needed to ensure that repairs continue to move ahead”. The owner noted that G’s reply had not provided any specific issues that were preventing the strata from responding, and the owner invited G to share any concerns. The owner stated that he was concerned that E’s email from July 28th was an attempt by C to “abuse his position as strata chair and exert pressure” on the owner to grant access to his unit when **C “has no legal basis or entitlement to demand that access”.** **The owner said if he was mistaken in that assumption, he encouraged the strata to contact him.**

E emailed the strata council that the owner “does not accept the 48 hour request”.

C emailed E noting that C had clearly stated the strata would not do anything “until we can go in there and see what’s going on”. **C asked E to send a “stop-work” order to the owner, noting asbestos testing was required.** C later emailed G and E noting that reports had been received that the owner had workers “doing things” in his unit, prior to the owner’s own “deadline” that he had given. C explained that he had issued the stop-work order because the owner said he suspected mould and asbestos and that the owner wanted to call the City of Burnaby. C wrote, however, that the owner then “started tearing down things, neglecting the danger of disturbing asbestos ... and endangering the whole

building”. C noted that testing results takes a few days to have a result. C noted that he attended at the owner’s unit and saw no protective apparatus on the worker, and the waste coming out of the unit was in regular black garbage bags rather than designated orange bags with red tape, and were just left on the road side. C expressed concern about WorksafeBC. C asked that G and E not “just pass” the owner’s email to C, as the owner “thinks he is entitled to do whatever he wanted at whatever time”. C asked for G’s and E’s professional advice as to how to handle the emergency situation.

- e. *July 29, 2016*: CJB wrote E and stated that they have since completed the mould remediation in the owner’s bathroom as originally requested. CJB wrote that the owner had called him asking for an expedited repair, as it was his only bathroom.
- f. *August 3, 2016*: C emailed E and other council members that the police had closed their file. C wrote that another individual CC was with him when C knocked on the owner’s door, and there was never any “illegal entry”.
- g. *August 15, 2016*: G emailed C that he had received a call from CJB to the effect that CJB may have in fact not ceased operations. G wrote that the CJB project manager would send notes and photos along with his report, and that CJB had not returned to finish work as the strata council had asked that work stop given the owner had not permitted the council to “view the situation”.
- h. *August 18, 2016*: **C emailed G to say that it was “nothing personal” about the owner, and that the strata needed to be sure any asbestos was properly addressed before any repairs completed. C wrote, “please let [the owner] know that the council needs to view the current condition and location of the damaged area before the repair can continue”.**
- i. *August 18, 2016*: CJB emailed G, and stated that “most likely what caused the bulk of the damage” was condensation build-up from the hot and cold pressure lines along with a cold draft. CJB wrote that “constant buildup of moisture

levels resulting in long term mold growth". CJB wrote that it awaited approvals on repairs.

- j. *August 24, 2016:* **G emailed the owner that the strata council has maintained their request that they be permitted to view the damaged areas to ensure that they have a full and accurate understanding of the situation.** CJB only provided their report with a quote (around \$10,000) and photos on around August 22, 2016, which information was forwarded to the council. G recommended that the council be allowed to view the damage, which was not an unfair or unreasonable request. **The owner responded that if the strata council felt a genuine need to enter his suite there were "legal processes they can avail themselves of" and that the owner had not yet received anything resembling a court order.** The owner stated that in July C had attempted to harass and bully his way into the owner's home without his consent or knowledge and only stopped when the owner called the police. The owner disputed that C had made a reasonable request.
- k. *August 29, 2016:* **G wrote C, stating that the owner had responded advising that he will not cooperate with allowing council to enter his home to view the damages.** G wrote, "he does acknowledge the attempts being made to try and resolve the impasse on this matter, but continues to choose to not cooperate".
- l. *August 31 to September 7, 2016:* Email exchange between the strata's legal counsel and the owner. The owner stated he had not received any response to his late July 2016 emails in which he said he would give access to the strata's "repairmen". The owner stated he wanted his bathroom repaired as it was unlivable. **The strata's counsel wrote that the strata was retaining a contractor and two engineering firms to attend his unit along with G, and that she appreciated the owner did not want council members to attend his suite at this time. The owner responded that he would "happily grant access to any qualified contractor"** that was there to repair his bathroom,

but he wanted the company's name first and a copy of the scope of work/quote. **The owner objected to G being present**, asking what work G intended to do.

- m. *November 2016*: Further investigations of SL19 and reports by various trades, such as CCI Group, ServiceMaster, Astech Consultants, and Canstar Restoration. Mould testing was done which did not confirm any mould.
- 28) The strata says it promptly made efforts to respond to the owner's demands and conduct its investigations. Based on the timeline set out in the emails above, I agree. The strata directed its strata manager to source the necessary specialists and city officials to respond. The strata retained CJB to attend SL19 and investigate.
- 29) After the strata issued the stop work order to CJB, the strata says the owner instructed CJB to nonetheless continue. The strata says the owner told CJB he would pay for their work, but once he found out the cost he instructed CJB to stop. The owner denies giving such instructions to CJB and I find the evidence does not establish that he did so. I agree with the owner that as the water remained off, there was largely no work that CJB could do. CJB may well have conveyed to the strata that the owner had given instructions, but it is not sufficiently clear that the owner was simply asking CJB, as the strata's agent, that his bathroom be repaired quickly. Nothing turns on this. The strata says it did not proceed with further investigations and repairs of the SL19 bathroom because the owner did not provide access to the strata council to inspect it.
- 30) With respect to the owner's requests on July 27, 28, and 29, 2016, I recognize the owner was upset at the situation in his bathroom. However, I find his demands to the strata at that time unrealistic and unreasonable. The strata needed to function through the strata council and it needed a reasonable amount of time to consider the appropriate next steps. I accept the strata's evidence about the concerns it had about its observations of the removal of materials from SL19 that appeared to be potentially hazardous. I find their concerns to have been reasonable.

- 31) Further, the strata is not an insurer. In the absence of negligence, which has not been established against the strata, I would not expect the strata to provide temporary accommodation for the owner as he requested at that time.
- 32) The strata also says it cannot be held accountable for the period of time it was waiting for CJB's estimate and report. I agree. However, nothing turns on this because the owner never provided the council with access to inspect so it could decide what repairs to authorize, as discussed below.
- 33) In his initial submissions, the owner made the following comments, which I find are simply not supported by the email evidence detailed above:

The only thing I was ever told was to keep calling the police. I believe if you simply take the correspondence at face value and look at what I actually did do and what the strata actually did not do it is abundantly clear that it is the Strata that was unwilling to work with me. ... The strata chose halting repairs as a preferable option to actually speaking to me. That is not the response [sic] of a person acting in good faith.

- 34) In particular, while the owner was told at one point he was free to contact the police again, that is not all he was ever told by the strata. I find it is clear the strata repeatedly attempted to request access for the purpose of an inspection of the damaged area. The emails are evidence that the strata was willing to work with the owner, contrary to the owner's submission.
- 35) In reply, the owner submits that he has cooperated "with every legitimate request made of me". I cannot agree. The emails summarized above set out the numerous requests and the owner's responses. While bylaw 6.2 may not have been completely and technically complied with in every case in that an approximate time may not have been provided, I find it was complied with in substance because when asked to provide a convenient time the owner improperly refused council access. I find it was clear that the purpose of the inspection was to examine the leak and the area affected.

- 36) At my request through the tribunal facilitator, the owner provided further submissions about his refusal to give C access to his home. The owner submits that the only time C was refused access was when C tried to get tradespersons to let him in without the owner's knowledge or consent. Again, given the chronology I have set out above, I disagree. The strata made repeated requests for access to be provided to the strata council, and the owner repeatedly made it clear he would not give that access. The evidence does not support the owner's assertion that it was mere "curiosity" on C's part. I find C, as a strata council member, had legitimate concerns and a reasonable basis to conduct an inspection. The strata's bylaws do not require a strata council member to be a plumber in order to reasonably require an inspection. The inspection can serve the legitimate purpose of informing the strata council so that it can make decisions about investigations and repairs.
- 37) Bearing in mind the tribunal's mandate to be mindful of ongoing relationships between parties, I will address the owner's concerns about C and his calling the police after C had attended at SL19. The applicant bears the burden of proof. I simply have insufficient evidence before me upon which I can conclude that C acted in any way inappropriately, including with respect to C's evidence that he knocked on the owner's door while tradespersons were present. Given the entire context, including the various email communications detailed above, I cannot accept the owner's allegation that C tried to push his way into the owner's home "illegally". In any event, it is important to note that the owner's refusal to permit the strata access went beyond C. As noted above in the email exchanges, the owner refused access to all but the strata's tradespersons and his doing so simply was not compliant with the strata's bylaws. Had the owner granted the strata council the access it was entitled to have in order to inspect under bylaw 6.1, I find the strata would likely have completed its investigations and repairs.
- 38) While the owner permitted access to contractors, I find he clearly refused to give access to strata council members and in particular strata council member C, which I find was due to some historical grievances and a belief that C was "curious" and

acting as a “petty dictator”. In any event, the owner submits council members are not qualified to conduct inspections. In contrast, the strata relies upon bylaw 6.1 to say that they were entitled to have the strata council members assess the potential mould and asbestos problem directly, for the benefit of all owners.

- 39) I agree with the strata’s submissions about the strata’s right to inspect SL19, and in particular to have a council member present. The strata functions through the strata council. If a member of the strata council instructs the property manager to request access under bylaw 6.1, the owner must comply so long as it is for a reasonable time on 48 hours’ written notice unless it is an emergency. There were multiple instances where the strata attempted to give the owner the required written notice of the strata’s request to inspect. The owner’s responses above made it clear he would not comply with bylaw 6.1. He erroneously believed that a strata council member needed to be particularly qualified. He suspected one or more persons the strata authorized were merely curious and did not have a legitimate purpose. I find that the applicant has not established that the strata acted with an illegitimate purpose in its requests for inspection.

Loss of use and enjoyment damages & punitive damage

- 40) I turn then to the owner’s claim for loss of use and loss of enjoyment damages. Upon further enquiry by the tribunal facilitator, at my request, the owner explained that he has not been staying at a hotel for \$205 a night. Rather, he claimed that amount based on the average cost of a hotel near his strata lot, intending the amount to be a proxy for various other costs he incurred that are “much harder to separate and attribute”. Later, the owner provided receipts for vacations in Hawaii, submitting that the strata should pay for those because if he had had the use of his bathroom he would have taken his vacation at home. The owner submits he has tried to cope with having no bathing facilities in his home by spending as much time as possible away from home and otherwise using community center facilities to shower. The owner also seeks punitive damages on the basis that it would have

been simple for the strata to allow the owner access to the water shut-off so he could complete repairs himself.

- 41) The strata says it acted honestly and in good faith and with the interests of the strata in mind. It says that it acted diligently once learning of the owner's complaints and made reasonable efforts to investigate them. The strata says the owner, contrary to his obligations the bylaws, refused access to the strata to conduct its investigations it said were necessary to respond to the owner's remediation requests. The strata says the owner's refusal to cooperate with the strata was the cause of his current complaints. The strata says it is not held to a standard of perfection but to act reasonably in the circumstances, and cites *Rawle v. The Owners, Strata Plan NWS 3423*, 2017 BCCRT 15. I agree with these submissions.
- 42) Given my conclusions above, I find that the owner's conduct in refusing to grant access for inspection to those persons authorized by the strata amounted to an entry infraction under the strata's bylaws. Bylaw 6.6 provides that an owner must indemnify the strata from and against all damages as a result of an entry infraction.
- 43) The owner's claims for loss of use of his bathroom result from his entry infraction. I say this because I find the strata never completed the repair of the owner's SL19 bathroom because the owner never provided the strata council and/or the property manager G the access it reasonably requested under bylaw 6.1.
- 44) In the result, I do not consider it appropriate to make an order for the strata to pay the owner anything for his loss of use of his tub/shower. As noted above, had the strata been permitted that inspection, the strata would have proceeded with the repairs I find it was required to make to the SL19 bathroom. That I have found that the strata would not have been able to later charge back those investigations and repairs to the owner, because the diverter is common property, is a separate issue.

- 45) The owner claims repairs to both his bedroom and his bathroom based on quotes and invoices from ServiceMaster and/or Canstar invoice. I agree with the strata that the owner has not proven any repairs are required to his bedroom as a result of the bathroom leak. I will not order the strata to repair the owner's SL19 bedroom.
- 46) I turn then to the issue of punitive damages, which the tribunal has jurisdiction to order under the Act, contrary to the strata's submission. However, contrary to the owner's claim, there is simply no evidence whatsoever that would support an order for punitive damages against the strata. Punitive damages would require oppressive or harsh or high-handed conduct by the strata, of which there is no evidence here. I do not agree that the strata's refusal to permit the owner to complete his bathroom repairs, if such refusal occurred, amounts to oppressive or high-handed conduct. I say this because I have found above that the strata had the responsibility to repair and maintain the common property diverter and because the strata reasonably believed it was entitled to an inspection of the affected area. I dismiss the owner's claim for punitive damages.

DECISION & ORDER

- 47) I order the strata to repair the SL19 diverter at its expense, which diverter I find to be common property. In the course of this repair, the strata must return the owner's bathroom to a paint-ready state. The owner is responsible for any painting and any re-tiling that may be necessary in his bathroom. The owner's share in the strata expenses related to the SL19 bathroom repairs is to be calculated in accordance with section 166(2) of the SPA.
- 48) In accordance with bylaw 6, I order the owner to provide any person authorized by the strata, which may include a strata council member other than C, access to facilitate and inspect the repairs to the SL19 bathroom. I have excluded C from being given access given the strata concedes it is not necessary for C to be the council member involved and because of the reference in evidence to the police perhaps having requested that C not seek entry to SL19.

- 49) The owner's claim in respect of repairs to his bedroom is dismissed.
- 50) I dismiss the owner's claims for loss of use damages and/or loss of enjoyment damages. I dismiss the owner's claim for punitive damages.
- 51) The strata was the more successful party in this dispute. The owner was partially successful in this dispute in that I have found the owner's SL19 diverter is common property and the responsibility of the strata to repair and maintain. However, this dispute did not arise because of that issue, as the strata had been willing to repair it, although it believed erroneously that it could later charge back the repair cost to the owner. This dispute arose because of, and the bulk of the evidence and submissions were devoted to, the inspection issue that the owner did not succeed in. As a result, I dismiss the owner's claim for reimbursement of the \$225 he paid for tribunal fees.
- 52) As for the strata's request that it be reimbursed its legal costs, I decline to make that order. The tribunal's rules provide that legal costs will not ordinarily be reimbursed and I see no reason in this case to make an exception.
- 53) The strata must ensure the owner is not required to contribute to any of the strata's expenses associated with defending this tribunal proceeding, as per section 167 of the SPA.

Shelley Lopez, Vice Chair