



Civil Resolution Tribunal

Date Issued: October 11, 2017

File: ST-2017-002016-A1

Type: Strata

Civil Resolution Tribunal

Indexed as: *Corner v. The Owners, Strata Plan K 833*, 2017 BCCRT 89

B E T W E E N :

Elaine Corner

APPLICANT

A N D :

The Owners, Strata Plan K 833

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

Bonnie Elster

INTRODUCTION

1. Elaine Corner (applicant) is the owner of strata lot 32 or unit 307 (#307) in the respondent strata corporation, The Owners, Strata Plan K 833 (strata). The applicant claims that the strata is not properly managing dryer vent installation and cleaning and that she is entitled to reimbursement of amounts paid by her.

2. The applicant is self-represented. The strata vice-president represents the strata.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (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 and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email or a combination of these. I decided to hear this dispute through written submissions because I find there are no significant issues of credibility or other reasons that might require an oral hearing.
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. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
7. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute, the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Should the strata refund the dryer vent inspection fee to the applicant because the inspection was unnecessary and was not required for another unit, 306 (#306)? Is this claim statute-barred because it is out of time?
 - b. Should the strata require the owner of unit 304 (#304) to cease using his dryer until it is independently vented through the roof?
 - c. Should the strata reimburse the applicant (and other owners) for the cost of alterations to rooftop dryer venting because the owner of unit 310 (#310) did not pay for new dryer venting? Is this claim statute-barred because it is out of time?
 - d. Is the strata management company authorized to charge an administration fee to owners for dryer vent cleaning?
 - e. Does the strata need to make reference to certain bylaws in its form of waiver making owners responsible for any future expenses associated with alterations to strata lots and/or common property?

BACKGROUND AND EVIDENCE

Dryer venting and #306, #304 and #310

9. In August 2006, the strata filed two bylaw amendments at the land title office, bylaws 6 and 7. These bylaws, in part, require owners, who alter strata lots (bylaw 6) and owners, who alter common property, (bylaw 7) to get permission from the strata for renovations and, as a condition of the strata's approval, to agree, in writing, if requested to do so by the strata, to take responsibility for any future expenses relating to the alteration.

10. The form of agreement used by the strata with owners who alter strata lots and/or common property is a specific form of waiver adopted by the strata for this purpose.
11. The applicant's strata lot, #307, is one of a number of "super suites" in the strata. The super suites are so-called because each is comprised of two, amalgamated strata lots. The super suites are located on the top floor of the building. In May 2006, the applicant applied to council for approval of certain renovations to #307. Council minutes of May 3, 2006 show that council gave its approval and in October 2008, the Thompson Nicola Regional District (TNRD) issued a building inspection report for the renovations to #307 and authorized final occupancy.
12. In early 2009, the applicant, together with several other owners, commenced an action in BC Supreme Court (2009 Supreme Court action), by petition, against the strata, the owner of #306, the strata manager and several others. As part of the 2009 Supreme Court action, the applicant attached a sketch plan of the kitchen renovation for #306, as an exhibit (exhibit 6) to her affidavit. In April 2009, the owner of #306 prepared a statement in response to exhibit 6. The owner of #306 said that she had had a lengthy phone conversation with the TNRD before starting her renovations. In that phone call, she described to the TNRD all of her renovations and based on that phone call, the TNRD told her that she did not require a building permit. The owner of #306 did not submit plans to the TNRD because of that phone conversation.
13. The evidence shows an email, dated June 27, 2008, to the owner of #306 from a building official at the TNRD. The TNRD official stated: "after viewing Unit 306 yesterday, I concluded that the interior renovations that were completed would not require a building permit or a plumbing permit".
14. In February 2011, the fire chief for the District of Logan Lake inspected the strata building. In his report, dated March 4, 2011, the fire chief stated that a plumber had reported to him that dryer vents in super suites were connected to old, existing stovetop exhaust vents and did not meet fire code because the pipes were

undersized. In his report, the fire chief said the pipes would be acceptable if the undersized vent pipes were cleaned of old grease and lint or they were replaced with a larger diameter vent pipe. He advised that the build up of grease and lint created a fire hazard and that owners must stop using the dryers until a qualified person assessed the venting issues and certified the vent pipes safe to use as dryer vents.

15. On May 1, 2011, a vent servicing company advised the strata and the fire chief by email that the company had cleaned numerous 4" dryer vents, including #307, and those clean dryer vent pipes have been vented independently through the pipe chases on the roof. The service person reported that the vent piping and exhaust vents for #304 and #310 were not cleaned and were capped because they were inactive. The service person recommended annual cleaning of vent pipes to ensure air flow was sufficient to reach the vent exit.
16. In May 2011, the owner of #304 retained a different service company to carry out work to make his dryer vent fire code compliant. The service company reported to the fire chief and the owner of #304 that he had completed the work. The invoice, dated May 4, 2011, for the work done for #304, is addressed to the owner of #304 and marked paid. The description of the work performed indicates that the company changed the dryer vent pipe to 4" and installed a 4" galvanized hood vent 12" above the roofline.
17. On May 18, 2011, the fire chief reauthorized dryer usage for the super suites, including #304, and reminded the strata, again, about regular dryer vent cleaning.
18. It is the strata's evidence that the strata did not pay for or oversee alterations to the dryer vent for #310. The strata claims that it obtained a copy of an invoice, dated June 24, 2013, from the owner of #310. The invoice is from the same vent service company that addressed problems in 2011 with most of the super suite dryer vents, except #304.
19. In October 2013, the strata wrote to the applicant and said that council was reviewing all super suites with dryers. Council said that the applicant's original

renovation request did not mention a dryer vent or any alterations to the venting system. As a result, council required an immediate inspection of the venting changes to see if those changes met manufacturer's specifications and were certified safe to use. The strata's letter said that council will hire a qualified inspector at the applicant's expense and if the applicant failed to comply with the inspection request, the applicant must stop using her dryer.

20. The strata carried out its inspection of #307 and, in December 2013, the strata received an inspection report (2013 report). The 2013 report said that the service person "entered the attic to the location of the vent in question". The service person observed "approximately six feet of flexible dryer vent piping entering the attic space from the unit below and terminating at the existing vent stack". The service person concluded that the installation conforms to building code requirements, generally, except that insulation around the duct had become dislodged and should be reinstalled to completely encase the duct.
21. On May 21, 2014, the applicant, together with other owners in the strata commenced an action in BC Provincial Court (Provincial Court action). They were suing the strata for levying fees against them in connection with dryer vent alterations and cleaning. The court's decision, released on September 18, 2014, summarizes the facts of the Provincial Court action as follows:

Apparently the Claimants own what are called super suites which were created by combining two separate suites. ... the owners or original owners converted one of the range hood vents in the suites to dryer vents. ... The Claimants object to being charged for alterations made necessary to address fire hazards that came to light following the alterations. They have also been charged pursuant to a bylaw passed by the strata corporation for cleaning of those vents. (*Corner at al. v. Strata Plan KAS 833*, 2014 BCPC 206 (CanLII))

22. The matter for the Provincial Court to decide was whether these issues were within the jurisdiction of Provincial Court. At the time, under the *Strata Property Act* (SPA), the jurisdiction for virtually all strata disputes was BC Supreme Court. The

judge dismissed the case as not being within the jurisdiction of the Provincial Court.

23. In December 2016, the applicant wrote to council. In her letter, she stated that in the spring of 2016, she visited #306 and noticed that the stove had been relocated. The applicant stated that it was her belief, as a result of that visit, that the stove venting for #306 must have been altered. The owner decided that since #306's alteration to common property was also not approved, an inspection was required and the cost of the inspection should be charged to the owner of #306. In the alternative, the applicant said she should be reimbursed \$262.60 for the fee she paid for the inspection in December 2013.

Strata management company charging administrative fees directly to owners

24. The applicant says, in the past, the management company's procedure was to copy the vent cleaning invoice, distribute it to owners with the amount owing written on the invoice and the owners sent their payments to the strata.
25. Now, the applicant says, the strata management company creates an invoice for each super suite owner and adds a \$10.00 administration fee per suite. The applicant says this administration fee is unacceptable because the annual vent cleaning cost per suite is \$26.25.
26. The owner says that the strata manager is in a conflict of interest because it is looking out for itself.
27. An excerpt from the strata management contract (item 12.) indicates that the strata management company will charge an administration fee of \$10.00 to an owner for any direct repairs to an owner's unit.
28. In June 2011, the strata added Bylaw 3.3 which states:

Bylaw 3.3: Owners of super suites with dryer vents are responsible for the cost of cleaning their dryer vents on an annual basis. Strata will arrange and supervise the cleaning and invoice the owners whose dryer vents were cleaned.

The Waiver Form

29. The strata uses a form of waiver that it requires all owners to sign if they have made alterations to their strata lot and/or common property. The purpose of the waiver is to make an owner responsible for all expenses, starting from the time of strata approval of alterations, which may result from those alterations.
30. The applicant refused to sign the strata's waiver from the time of her renovations in 2008. However, in October 2013, the applicant provided her own version of waiver that was very similar to the strata's form of waiver, except that the applicant's waiver referred to bylaw 6. The strata rejected the applicant's form or waiver.
31. In January 2016, council pressed the applicant again to sign a waiver. The strata advised the applicant that if she did not sign the strata's form of waiver by March 15, 2016, the applicant must remove her dryer.

POSITION OF THE PARTIES

32. The applicant claims that the inspection of her dryer vent was unnecessary and that #306 made alterations to dryer venting, but, unlike the applicant's alteration, it was not inspected. The applicant wants the cost of the inspection reimbursed. It is the strata's position that the 2013 inspection of #307 dryer venting was warranted and there will not be a reimbursement of the cost.
33. The applicant claims that #304 does not have a proper dryer vent. The strata says #304 venting is safe.
34. The applicant claims that the strata paid for a rooftop vent for unit #310 while other super suite owners had to pay for their rooftop vents themselves. The strata says it did not pay for #310's dryer venting.
35. The applicant claims that the strata management company is not authorized to charge an administration fee when invoicing for vent cleaning. The strata says that the strata management company has the authority to charge an administration fee.

36. The applicant claims that the strata's form of waiver should reference the bylaw that governs the specific alterations when the strata wants owners to assume responsibility for alterations to common property. The strata requires the applicant to sign the strata's form of waiver.
37. The applicant claims that the strata should reimburse the applicant for CRT fees.

ANALYSIS

Should the strata refund the dryer vent inspection fee to the applicant because the inspection was unnecessary and not required for another unit? Is this claim statute-barred because it is out of time?

38. For the reasons that follow, I find the applicant's claim for reimbursement of the inspection fee paid by her in connection with dryer venting is statute-barred by the *Limitation Act* as out of time.
39. The *Limitation Act* applies to disputes at the tribunal. A limitation period is a specific time period within which a person may pursue a claim. If the time period expires, the right to bring the claim disappears. The *Limitation Act* became law on June 1, 2013. It allows two years for a person to bring a claim for all SPA claims after June 1, 2013. The two-year limitation period starts to run on the first day that a person 'discovers' a claim. (*Limitation Act* s. 6(1)) A claim is discovered on the first day that the person knew or reasonably ought to have known all of the following:
- (a) that injury, loss or damage had occurred;
 - (b) that the injury, loss or damage was caused by or contributed to by an act or omission;
 - (c) that the act or omission was that of the person against whom the claim is or may be made;

- (d) that, having regard to the nature of the injury, loss or damage, a court (tribunal) proceeding would be an appropriate means to seek to remedy the injury, loss or damage. (*Limitation Act*, s. 8)
40. In other words, the two-year clock starts on the day that the person making the claim learns the underlying material facts or ought to have discovered those facts by the exercise of reasonable diligence.
41. The applicant claims in her Dispute Notice and in a letter to council, dated December 13, 2016, that she first became aware of the issue with #306 when she went into #306 in May 2016 and saw the stove was not in its original position. However, the evidence contradicts the applicant's position. The applicant was a member of the strata council in February 2007 when #306 requested approval for kitchen renovations. Also, the applicant filed exhibit 6, a copy of the sketch plan for #306, depicting the kitchen renovations and the change to the location of the stove, in the 2009 Supreme Court action, as part of her affidavit materials. I find the applicant knew about the stove relocation in #306 as early as 2007 and certainly knew about it in 2009. [My emphasis]
42. A tribunal proceeding must not be commenced more than 2 years after the day on which the claim is discovered. I find that the applicant discovered her claim, not in May 2016 when she entered #306 and saw the stove placement, but when the applicant had to pay the strata for the cost of a professional inspection of her dryer exhaust vent in December 2013 and the owner of #306 was not required to have such an inspection.
43. Even if the applicant did not discover her claim in December 2013 because she did not know or reasonably ought to know that she had a claim against the strata at the time of the December 2013 inspection, she joined other super suite owners as a claimant in the Provincial Court action. The Provincial Court action was started on May 21, 2014. Therefore, the applicant discovered her claim for reimbursement of inspection fees between the time of the inspection in December 2013 and May 21, 2014, when the Provincial Court action was started. The Provincial Court's

decision shows that the issues were alterations to dryer vents, related fire hazards and charges for dryer vent cleaning.

44. The applicant filed the dispute notice with the CRT on April 21, 2017. The *Limitation Act* provides a two-year time period within which a claimant must begin their claim or the claim is out of time.
45. I find the applicant's claim for reimbursement of the inspection fee is statute-barred by the *Limitation Act* as out of time because more than two years has elapsed from the discovery of the claim for reimbursement and her filing of the dispute notice with the tribunal.
46. I order the applicant's claim for reimbursement of the inspection fee paid by her is dismissed.

Should the strata require the owner of #304 to cease using his dryer until it is independently vented through the roof?

47. The applicant takes the position that #304 should cease using his dryer until he pays for independent venting through the rooftop housing. I find the evidence does not support the applicant's claim.
48. In March 2011, the fire chief ordered #304 to stop using his dryer until it was professionally assessed and certified safe to use. On May 4, 2011, a vent service company, retained by the owner of #304, replaced the existing dryer vent and changed the diameter of the vent pipe out. The vent service company reported to the fire chief on May 24, 2011 that the vent servicing work was completed to manufacturer's specifications and the vent terminated with a damper hood in accordance with the specifications for that model of vent hood.
49. On May 18, 2011, the fire chief wrote to the strata to reauthorize dryer usage for the super suites, including #304.
50. Based on the report by the vent servicing company to the fire chief and the authorization by the fire chief for the owner of #304 to resume using his dryer, I

dismiss the applicant's claim that #304 should stop using his dryer and replace the roof vent.

Should the strata reimburse the applicant (and other owners) for the cost of alterations to rooftop dryer venting? Did #310 pay for new dryer venting? Is this claim statute-barred because it is out of time?

51. For the reasons that follow, I find the applicant's claim for reimbursement of the cost of alterations to rooftop venting is statute-barred and therefore, out of time.
52. In March 2011, the fire chief ordered owners of super suites, including #310 to stop using their dryers until certain work was completed to bring dryer venting up to fire code standards. The applicant bases her claim for reimbursement for the cost of her rooftop housing alterations on her belief that the strata paid for the alterations for the rooftop housing for the dryer for #310.
53. The applicant's claim with respect to reimbursement of her alteration costs is part of the Provincial Court action started in May 2014 by a group of owners, including the applicant. The super suite owners sued the strata for being charged for alterations made necessary to address fire hazards that came to light following alterations.
54. The applicant, therefore, discovered her claim against the strata or reasonably ought to have known about the new roof housing for #310 between the time of the vent service work in June 2013 and the filing of the Provincial Court action on May 21, 2014.
55. The *Limitation Act* came into force on June 1, 2013. The applicant could not have known or could not reasonably ought to have known about the dryer vent serving alterations to #310 until after those alterations were actually done. The *Limitation Act* permits a two-year period during which a dispute may be brought to the tribunal. The limitation period starts on the day that the person making the claim learns the underlying material facts or when the person ought to have discovered those facts by the exercise of reasonable diligence.

56. There is no evidence on what specific day the alterations to the dryer vent for #310 were completed. There is an invoice to the owner of #310 dated June 24, 2013. The completion of alterations to the dryer vent for #310 is a material fact. The applicant could not have known about the dryer vent servicing for #310 until after the work was done.
57. I find, on the balance of probabilities, that the applicant did not learn about the servicing work to #310 until after June 1, 2013, but before the start of the Provincial Court action on May 21, 2014. I find the applicant's claim for reimbursement of her costs of dryer vent alterations is statute-barred by the *Limitation Act* as out of time. I dismiss the applicant's claim for reimbursement of her costs to properly vent her dryer.
58. However, even if the applicant did learn about the alterations to the dryer venting for #310 prior to June 1, 2013, the evidence shows that the work by the vent servicing company was invoiced directly to the owner of #310.
59. I find it credible when the strata says that it did not pay for the vent servicing work for #310 and that it obtained a copy of the invoice from the owner of #310 and I accept the evidence of the strata. I find the applicant's claim for reimbursement based on her belief that the strata paid for the vent servicing alterations to #310 is unfounded and I dismiss the applicant's claim for reimbursement from the strata for her vent servicing work.

Is the strata management company authorized to charge an administration fee to owners for vent cleaning?

60. A strata corporation is responsible for the management and maintenance of the common property and common assets of a strata corporation for the benefit of the owners. (SPA s. 3) The powers and duties of the strata corporation must be exercised and performed by a council, unless the SPA, the regulations or the bylaws provide otherwise. (SPA s. 4) The strata has a contract with a strata management company. The evidence shows that the management contract between the strata and the strata management company has a schedule that lists

the amounts that the strata management company will charge for additional work performed by the management company and the amount of any additional fees charged by the management company to the strata.

61. The evidence shows that the strata management company supervises dryer vent cleaning, invoices super suite owners and charges an administration fee of \$10.00 per super suite over and above the cost of the dryer vent cleaning.
62. The strata adopted bylaw 3.3 in June 2011, shortly after the fire chief recommended annual cleaning of dryer vents of super suites. Bylaw 3.3 requires an owner to pay the cost of dryer vent cleaning and tasks the strata with arranging and supervising the cleaning and invoicing owners whose dryer vents are cleaned.
63. The strata relies on bylaw 3.3 or its specific form of waiver, signed by an owner who alters a strata lot or common property, in order to charge the cost of annual cleaning to the owners of super suites with dryers. However, I find bylaw 3.3 is unenforceable for the reasons that follow.
64. The strata must repair and maintain common property and common assets. (SPA s. 72(1)) The definition of “common property” includes ducts and other facilities for the passage of water, sewage, drainage, gas, oil, electricity, telephone, radio or other similar services, if they are located within a floor wall or ceiling that forms a boundary between a strata lot and the common property. (SPA s. 1, Definition of common property)
65. Therefore, by definition, the dryer venting ducts are common property because they are located between a strata lot and the common property roof.
66. The strata may, by bylaw, make an owner responsible for the repair and maintenance of common property, other than limited common property, but only if the regulations to the SPA permit it and subject to prescribed restrictions. (SPA s. 72(2(b))).
67. At present, there are no regulations to the SPA that permit a strata corporation, by bylaw, to make an owner responsible for the repair and maintenance of common

property. Therefore, bylaw 3.3 is contrary to the SPA because it makes owners of super suites responsible for the cost of cleaning common property dryer vents. I find bylaw 3.3 is unenforceable.

68. However, bylaws 6 and 7 permit the strata, by written agreement with an owner, to charge vent cleaning costs to owners by written agreement with the strata.
69. As discussed below, the evidence shows that when the strata requested the applicant, on multiple occasions, to sign the strata's form of agreement, a waiver, pursuant to bylaws 6 or 7, the applicant refused.
70. The parties to the strata management agreement are the strata and the strata management company, not individual owners. Therefore, if the owners of super suites are to bear the cost of administrative fees, the strata must have an enforceable bylaw that requires owners to pay the administrative fees. (*Ward v. The Owners, Strata Plan VIS 6115*, 2011 BCCA (CanLII))
71. I find the strata management agreement contemplates administrative fees for management and oversight of repairs to owner's units. I have found bylaw 3.3 is unenforceable. Therefore, the strata may not rely on bylaw 3.3 to pass the costs of annual dryer vent cleaning and related administrative costs to owners. The strata must rely on its written agreements with owners of super suites, entered into pursuant to bylaws 6 or 7, to require owners to pay the vent cleaning costs, including administrative fees.
72. The applicant claims that she was charged \$10.00 per invoice for administration fees. However, I found no evidence of the precise amount that the applicant is claiming for administration fees and, even if I had such evidence, the strata management company is not a party to this dispute and, therefore, I cannot make any orders in that regard. I also find that when the strata management company charged the administrative fees, it was not acting as the agent of the strata.
73. I find the strata management company is not authorized to charge an administrative fee to owners of super suites for vent cleaning.

Waiver Form

74. The strata adopted bylaws 6 and 7 in August 2006. Bylaw 6 requires an owner to obtain approval from the strata before making an alteration to a strata lot, including common property within the boundaries of a strata lot. Also, the strata may require, as a condition of its approval, that the owner agree, in writing, to take responsibility for any expenses relating to the alteration and “release, indemnify and hold harmless”, the strata from any and all liability arising out of the alterations. [My emphasis]
75. Bylaw 7 provides the same requirements for an owner’s alteration to common property. Before the strata adopted bylaws 6 and 7, the Standard Bylaws to the SPA applied to the strata. The Standard Bylaws also had provisions that contemplated a written agreement between an owner and the strata where the owner altered common property or a strata lot. The strata’s bylaws 6 and 7 expand on the wording found in the Standard Bylaws to the SPA.
76. The strata presented the applicant with its form of agreement, a waiver, and the applicant rejected it. The applicant says that the waiver form does not make any reference to any specific bylaws of the strata or sections of the SPA that deal with alterations, except section 59(3)(c) of the SPA. Section 59(3)(c) requires any agreement between a strata and an owner that makes the owner responsible for expenses relating to alterations to a strata lot, common property or common assets, be attached to an Information Certificate on the sale of a strata lot.
77. The form of waiver presented to the applicant does make reference to the installation of a dryer vent by the applicant, but does not reference the bylaw that authorizes the waiver. However, I do not find that the absence of a reference to a specific bylaw is fatal to the strata’s form of waiver.
78. There is no mandatory form of waiver in the bylaws or the SPA that the strata must use. I find that the applicant’s refusal to sign the strata’s form of waiver when

requested to do so is a breach of bylaws 6 and 7. I find the strata may use its discretion to determine the form of waiver that it requires the applicant to sign. I dismiss the applicant's claim that the waiver must refer to a specific bylaw or section of the SPA.

DECISION AND ORDER

79. I order the applicant's claims be dismissed.
80. The applicant requested that I order the strata to reimburse her payment of CRT fees. Under section 49 of the Act and tribunal rules 14 and 15, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. The applicant was not the successful party and accordingly, I decline the applicant's request for reimbursement of CRT fees paid.

Bonnie Elster, Tribunal Member