



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Atlas v. The Owners, Strata Plan 991*, 2017 BCCRT 96

B E T W E E N :

Paramjit Atlas

APPLICANT

A N D :

The Owners, Strata Plan 991

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrew Pendray

INTRODUCTION

1. The applicant, Paramjit Atlas (the owner) seeks reimbursement of \$16,511.25 she says she spent on replacing the windows of two enclosed balconies that formed part of her strata lot. The owner says that although those windows were the

responsibility of the strata, she was forced to replace them as the strata had failed to do so, despite ongoing issues of water leaking into her strata lot.

2. The respondent strata, The Owners, Strata Plan 991 (the strata), takes the position that the owner is solely responsible for the expense incurred in replacing the windows of her enclosed balconies. Specifically, the strata says that its bylaws make clear that the strata is not responsible for expenses incurred related to the maintenance, repair, or replacement of such windows.

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. Both parties in this dispute were self-represented, and it proceeded by way of written submissions. In allowing the dispute to proceed in this manner, I found that there were 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.

ISSUE

8. The issue is whether the strata is responsible for the cost of replacing the balcony windows of the owner's strata lot.

BACKGROUND AND EVIDENCE

9. Although I have reviewed all the evidence and information provided by the parties, the following is not intended to be a recitation of each piece of evidence and information before me in this dispute. Rather, it is intended to give context for my reasons.
10. The owner purchased her strata lot in 2012. The strata corporation consists of a single, apartment-style building. At the time she moved into the strata building the owner was provided with a copy of the strata's bylaws.
11. The owner's strata lot has two balconies, which are referred to on the strata plan as "sun decks". As the parties have generally referred to the sun decks as balconies in their submissions, I have also used the term balcony in this decision. The strata plan designates the balconies as being part of the strata lot to which they are attached.
12. Although the balconies of the strata building were originally designed as being open to the elements, over the years many of the strata lots had undertaken renovations to enclose their balconies. The owner's unit was one of those which had undergone such renovations.

13. In November 2012, the owner contacted the strata to request that it address what she described as water leaking into her strata lot through the windows of her enclosed balconies. In her initial email to the strata, dated November 17, 2012, the owner indicated that there was water leaking through the “livingroom and sunroom windows” of her unit.
14. On December 20, 2012, the owner emailed the strata and reported that a handyman had attended, as arranged by the strata, and had placed some silicone around the leaking area. The owner indicated that shortly after that individual had left she noted that the “corner of the sun room” was leaking. The owner noted that it was not raining at the time, and indicated that she felt that the water was collecting in the wall and then leaking through.
15. The strata replied via email on December 20, 2012, indicating that the strata’s position was that the enclosed balconies were the owner’s responsibility to repair and maintain. The strata recommended that the owner contact a contractor at her own cost.
16. Eventually, on October 16, 2014, the owner wrote to the strata and requested permission to undertake repair work on the windows on both of her balconies. That same day, the strata provided a letter to the owner giving her that permission.
17. The work on the owner’s balcony windows was completed in November 2014. The owner reported to the strata, via email on November 22, 2014, that despite the installation of new windows, her balconies continued to have the same leak issues as previous. The owner indicated that the contractor had conducted further inspection and that the suite above hers was the cause of the leak.
18. The contractor then performed repairs on the balconies of the strata lot directly above the owner’s balconies. Those repairs also did not remedy the water leak issue on the owner’s balconies.
19. The strata subsequently arranged for the contractor who had replaced the owner’s balcony enclosure windows to perform further testing to determine the source of

the leaks. That testing indicated that water was entering into a cross vent, located on the exterior vinyl siding of the strata building, and that the water entering into that vent was the cause of the water in the owner's enclosed balconies.

20. By the time that testing was conducted, the strata had been aware for some time the building had some general water ingress issues. Commencing in 2011, the strata had begun a process of building envelope repair, and by 2013 repairs had been completed on the four corners of the building.
21. In a May 15, 2015 letter, the contractor who had been performing the building envelope work on the strata building indicated that there remained repair work to be done on the building balconies and adjacent walls. The contractor noted that most of the balconies had been enclosed by strata lot owners, and that the enclosures presented an issue for the owners and for construction repair. Specifically, the contractor noted that it was the responsibility of individual owners to remove and then reinstall the enclosures in order for building envelope to proceed.
22. The contractor indicated that it was of the view that rather than having each owner remove the enclosures, followed by repair and remediation on the individual balconies, it would be more cost effective to properly enclose all of the balconies within the structure of the building, with the location of the guard railing becoming the new outside wall of the building.
23. The strata ultimately approved the enclosure of all the building balconies as recommended by the contractor in the May 15, 2015 letter. That work was completed in 2016. As part of bringing the balconies into the building structure, the windows that the owner had paid to be replaced were all removed.

POSITION OF THE PARTIES

24. The owner takes the position that there was entry of the water into her strata lot, in the area of her enclosed balconies, and that the strata had a duty to repair and maintain her strata lot in relation to such water ingress. She argues specifically

that the replacement of the windows on her two balcony enclosures was the responsibility of the strata. As a result, the owner says that she should be reimbursed the \$16,511.25 she spent on replacing those windows.

25. The strata acknowledges that it is responsible for maintaining the building envelope in such a way that the building will remain dry. It notes, however, that the balconies were originally designed to be open to the elements. More to the point, the strata says that its bylaws explain that once a balcony is enclosed, the responsibility to maintain the balcony falls to the individual strata lot owner. As a result, the strata says that the cost of replacing the windows of her balcony enclosure falls to the individual strata owner, and that the owner's claim should be dismissed.

ANALYSIS

The Strata Property Act (SPA) and the Strata Bylaws

26. Section 72 of the SPA requires that the strata corporation repair and maintain common property and common assets. Section 72(3) sets out that the strata may, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot.
27. The bylaws that were in place at the strata corporation when the owner took possession of her strata lot, and when she undertook the balcony window replacement work in November 2014, were registered with the land title office in December 2006. Although the strata's bylaws have been amended since that time, it is the bylaws that existed at the time that the owner undertook the repair work for which she now seeks reimbursement that have application to this dispute.
28. Section 2(1) of the bylaws provided that owners were responsible for repair and maintenance of their strata lot except for repair and maintenance that was the responsibility of the strata. As I have indicated above, the strata plan indicates that balconies (sun decks) formed part of each individual strata lot.

29. Section 5(3) of the bylaws provided that:

Once a balcony has been enclosed, the exterior of the building has been changed and as a result, the patio doors and windows, both new and existing, are the owner's responsibility.

30. Section 8(4) of the bylaws set out the specified portions of strata lots for which the strata had taken responsibility to repair and maintain. Of note, that section indicated that the strata had a duty to repair and maintain not only the exterior of the strata building generally, but also a duty to repair and maintain balconies generally.

31. Section 8(4)(d) of the bylaws, however, further explained that while the strata had a duty to repair and maintain windows on the exterior of the building if they leaked or were causing damage to the building, the strata was not obligated to maintain, repair or replace any improvements made pursuant to bylaw 5(3), or any improvements which were already in place at the time of the passing of the December 2006 bylaws. Rather, section 8(4)(d) provided that the maintenance, repair or replacement of any such improvements were the sole responsibility of the owner of the strata lot in question.

Is strata is responsible for the cost of replacing the balcony windows of the owner's strata lot?

32. I note that the strata does not dispute the owner's position that it had a duty to repair and maintain balconies. The strata in fact provided documentary evidence of repairs that it had paid for on other balconies, including the balcony directly above that of the owner's strata lot.

33. In my view this is not, however, a dispute over the strata's responsibility to repair balconies. Rather, this is a dispute about the strata's responsibility to reimburse the owner for the expense of replacing windows that formed part of her balcony enclosures.

34. I find that section 8(4)(d) of the bylaws provided clear direction as to the strata's responsibilities related to repair and maintenance of strata lots in general, and of balcony enclosure windows, including the owner's balcony enclosure windows in particular.
35. First, although I acknowledge that the evidence is that the owner's strata lot balconies had been enclosed well prior to December 2006, I consider that the windows that formed the owner's balcony enclosures are the type of improvement contemplated by section 5(3) of the bylaws. I accept that the intention of that bylaw is to indicate that owners were responsible for repair and maintenance of door and windows associated with balcony enclosures.
36. Second, section 8(4)(d) specifically provides that the strata has no obligation to maintain repair or replace any improvements already in place at the passing of the bylaw in December 2006. I have no difficulty finding that the balcony enclosures that formed part of the owner's strata lot were the type of improvement that section 8(4)(d) intended to target.
37. In sum, I find that the bylaws of the strata provide a clear answer to the owner's claim in this dispute. In my view, the unambiguous meaning of the bylaws is that maintenance and repair of windows that form part of a balcony enclosure improvement is the responsibility of the individual strata lot owner, not the strata. As the owner is seeking reimbursement for repair/replacement of her balcony enclosure windows, I find that her claim must fail.
38. I wish to acknowledge that, as the owner has argued, the replacement of her balcony enclosure windows turned out to be an unnecessary expense, given that the strata ultimately elected to proceed with a remediation project which eliminated the balconies and made them part of the building.
39. I note that the evidence before me indicates that this was true not only for the owner, but for other owners of the strata as well. The strata provided letters from three other strata lot owners who had, like the owner in this case, paid for

replacement of their balcony enclosure windows prior to the strata undertaking a remediation project which eventually.

40. Clearly, this was an unfortunate set of circumstances for those who chose to replace their balcony enclosure windows.
41. Further, the information provided in this dispute by the owner and the strata shows that it became apparent, after the fact, that the replacement of the enclosed balcony windows would not solve the problem of water getting into those enclosed balconies.
42. The information before me indicates that it was only after the balcony enclosure window replacements were completed, and the water ingress issue continued, that testing was performed which showed that the water ingress into the enclosed balconies was not related to the windows specifically, but to a cross vent on the exterior of the building. The strata does not dispute that the cross vent was a maintenance issue for it to address. Rather, it simply takes the position that it ultimately did undertake the maintenance required of it as part of its remediation project and that, as a result of the bylaws, it cannot be held responsible for the expense of replacement of balcony enclosure windows. As I have indicated above, I agree.
43. Again, there can be no doubt that the fact that a number of owners of the strata, including the owner in this dispute, were put to what turned out to be an unnecessary expense was unfortunate. The fact that the circumstances were unfortunate does not, however, mean that the strata is required to reimburse the owner for the windows she replaced. Again, the bylaws make clear that the strata was not required to do so.
44. I acknowledge that the owner says that the testing which showed that the water ingress issue on her enclosed balcony ought to have been performed prior to the strata determining that it was her responsibility to repair and maintain the enclosed balconies.

45. While I agree that, with the benefit of hindsight, it would have been preferable if such testing had been performed prior to the owner being put to the expense of replacing windows that were not in fact the cause of the problem, there is no evidence that such testing had been suggested at the time the owner (or the other owners) determined to undertake the balcony enclosure window replacement. Rather, the contractor that performed the replacement work on the owner's balcony windows indicated in a letter dated March 28, 2016 that at the time it performed the window replacement in 2014, "the thought was that installing new windows and flashing would fix any leaks".
46. While the replacement of the windows, on their own, turned out to be an unnecessary expense incurred by the owner, the fact that the expense was unnecessary does not mean that the strata must reimburse that expense. The owner chose to proceed with the replacement of the windows in question and, given the application of the strata's bylaws, I find that expense to be one that the owner must bear.
47. The owner's claim is therefore dismissed.

DECISION AND ORDERS

48. I order that the owner's claim be dismissed.
49. As the owner was not successful in this dispute, I find that she is not entitled to reimbursement for the amount she paid in tribunal fees.

Andrew Pendray, Tribunal Member