Civil Resolution Tribunal

Date Issued: November 15, 2017

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Civil Resolution Tribunal

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W E E N :

The Owners, Strata Plan NW 2170

APPLICANT, RESPONDENT BY COUNTERCLAIM

A ND :

Karen Broadbent

RESPONDENT, APPLICANT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Andrew Pendray

INTRODUCTION

1. The Owners, Strata Plan NW 2170 (the strata) and Karen Broadbent (the owner) have both brought claims to the Civil Resolution Tribunal (the tribunal) for decision. The two disputes relate largely to a renovation project (the renovation) completed in

the owner's strata lot in the spring of 2015. The strata says that the owner did not seek appropriate approval as required by its bylaws prior to having the renovation completed, and that the owner subsequently prevented the strata from investigating whether the renovation was completed in a safe manner.

2. In its claim, the applicant The Owners, Strata Plan NW2170 (the strata) seeks an order requiring the owner to pay for the cost of an engineering inspection of the renovation and an order requiring the owner to pay all of the cumulative bylaws fines the strata has levied against her strata lot for her breach of strata bylaw.

3. In her counterclaim the owner seeks an order finding that the strata has proceeded against her in a manner that is frivolous, vexatious, and in a conflict of interest; an order that all fines assessed against her strata lot be waived; an order that the strata council's monthly and annual general meeting minutes be amended; and an order awarding her $35,000 for loss of enjoyment of amenities and life.

4. Both the strata and the owner are self-represented, with the strata being represented by an authorized member of the strata-council.

JURISDICTION AND PROCEDURE

5. 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.

6. 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, telephone etc.], because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

7. 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.

8. The applicable tribunal rules are those that were in place at the time this dispute was commenced.

9. 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:

order a party to do or stop doing something;

order a party to pay money;

order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. I note that the strata was, at the commencement of this dispute, seeking an order that the owner provide access for an engineer to enter her strata lot to inspect the renovation. That inspection in fact occurred on May 23, 2017. The strata was also seeking that the owner provide drawings of the renovation, and the owner did so. I will not address those issues further in this decision.

11. The issues in this dispute are:

a) Did the owner breach strata bylaw 5(1)?

b) Should the owner pay for the cost of the engineer's inspection?

c) Is the owner liable to pay the bylaw fines assessed by the strata?

d) Should the strata council minutes be amended?

e) Should the owner be awarded monetary damages for treatment on the part of the strata that was frivolous, vexatious, and in a conflict of interest?

BACKGROUND AND EVIDENCE

12. As I have indicated above, although before me are both the claim from the strata and the counterclaim from the owner the issues generally arise out of the renovation of the owner's strata lot which was completed in the spring of 2015. While I have reviewed and considered all of the evidence and information that the parties have put before me, the following will not be a recitation of all of that information. Rather, it is intended to provide background information to give context to my reasons.

The Renovation and the Inspection of the Renovation

13. In the spring of 2015 the owner hired a contractor/carpenter to perform a renovation on her strata lot. Specifically, the renovation involved the widening of the walkthrough doorway between the dining room area and the kitchen area of the owner's strata lot.

14. The original width of the walkthrough was 36 inches. After completion of the renovation, the walkthrough was 57.5 incheswide.

15. An engineer inspected the worker's renovation on May 23, 2017. In a May 26, 2017 report of that inspection the engineer indicated that the original wood beam that had been over the walkthrough had been replaced with a longer beam, and that the new beam was supported by 2x6 studs at each side of thewalkthrough.

16. The strata is made up of a number of townhouses style residences. The townhouses are not standalone buildings, in that they are connected in groups as part of a larger building. The walkthrough on which the renovation was performed was on the ground floor of the owner's strata lot. The beam across the top of the walkthrough was described, in a previous November 7, 2016 report from the same engineer of his inspection of the walkthrough in another unit in the strata building that was identical to the owner's unit, as being "load bearing" in nature.

17. In the May 26, 2017 report the engineer indicated that his understanding from his inspection was that during the renovation the second floor structure of the strata lot

had been temporarily shored up. The engineer wrote that his view was that the BC Building Code would have suggested a larger beam be installed across the top span of the walkthrough than that which was installed during the renovation.

18. Nevertheless, the engineer went on to indicate that his inspection led to a conclusion that the beam that had been installed could support the applied loads from the second floor of the owner's strata lot. As a result, the engineer indicated that he accepted that the beam was built appropriately, that it could support the building load, and that the renovations appeared to meet the requirements of the BC Building Code. The engineer concluded that the structure was, on the whole, safe.

Complaint and Investigation into the Renovation

19. The strata's dispute notice indicated that it became aware, on June 28, 2016, of the fact that the owner had completed what the strata referred to as "unauthorized structural alterations" on her unit. The strata indicated that it was at that time that it became concerned that the structural integrity of the owner's strata lot building may have been compromised by the renovations.

20. The strata council meeting minutes from June 28, 2016 indicate that the strata's property manager (the property manager) was directed to follow up with the local municipality to determine whether a permit had been issued with respect to "structural alteration to a strata lot". In a July 6, 2016 email the property manager indicated that the local municipality's engineering department had indicated that no permit application had been filed. The property manager further indicated that a complaint had been filed with the municipality and that a building inspector would attend the strata that week.

21. On July 14, 2016 the local municipality left an inspection notice for the owner indicating that it had received a complaint about construction being done to her unit without permits. The notice indicated that the owner was required to consult with her strata manager within two weeks in order to obtain permits.

22. The owner wrote an email to the property manager on July 15, 2016 indicating that she had received the inspection report from the municipality. The owner requested that the property manager inform her as to whether the owner who had complained about her renovation was a strata council member.

23. The property manager replied on the same date, and indicated that council had received a complaint about her renovation and that it had not been able to locate any alteration application for the owner's strata unit. The property manager declined to inform the owner as to who had made the complaint.

24. The owner replied, again on July 15, and again requested that the property manage inform her as to whether the complaint came from a council member or a non-council member. The owner noted that two council members had in fact viewed her renovation while the construction was underway and after completion. She indicated further that her understanding was that the council had discussed her renovation "at that time".

25. On July 20, 2016 the property manager wrote to the owner and referenced bylaw 5, which sets out that an owner must obtain permission prior to making an alteration within a strata lot, including alterations to the structure of a building. The property manager requested that the owner provide:

- a structural professional to verify that the alteration did not compromise any structural elements of the strata lot;
- plans or drawing to illustrate the alteration; and
- an assumption of responsibility for the alteration which the owner would be required to disclose to any interested party.

The property manager indicated that when the strata was satisfied that no structural element of the building was compromised, it would issue a letter which would enable the owner to complete a building permit application.

26. The owner declined to complete the assumption of liability in the form provided by the property manager. She indicated that she was seeking the strata's approval that she undertake construction on her dining room entranceway (therenovation).

27. On July 22, 2016, the owner again emailed the property manager and queried whether the June 28, 2016 strata minutes would be amended to indicate that there had been a complaint about her renovation, as the current minutes did not indicate as much. The owner further indicated that the structural professional she had engaged to review her renovation was out of the country andunavailable.

28. On July 25, 2016 the property manager emailed the owner and indicated that the strata could not approve the owner's retroactive renovation application as she had not provided a drawing or plan, or any information from a structural professional. The property manager also indicated that the strata did not accept the revised assumption of responsibility form she hadcompleted.

29. In that email the property manager informed the owner that it was apparent that she was in breach of bylaw 5, and noted that she was subject to a maximum fine of $200 for breaching such bylaws, which could be imposed every 7 days until the breach was rectified.

The Imposition of Fines

30. On July 27, 2016 the owner emailed the property manager. She provided photographs of her completed renovation. The owner reiterated that she could not comply with the strata's requests for documents from the structural professional who had assisted with her renovation as that individual was out of thecountry.

31. On August 8, 2016 the property manager emailed the owner and informed her that the council had determined that the owner had breached bylaw 5, and that she would be fined $50.00 every 7 days until she complied with the bylaw. That email did not contain any information indicating that the owner had the opportunity to request a hearing or to dispute the fine the imposition offines.

32. The property manager wrote the owner again on August 22, 2016, and requested the name of the "structural professional" who was out of the country until September. The property manager noted that a $50 fine had been levied against the owner, and that the strata "can" apply a fine every 7 days until compliance was established.

33. In an August 24, 2016 email the owner informed the property manager that she could not provide the name of the structural engineer due to the fact that he had retired. She noted that she would not be able to seek his permission to provide his name until he returned to the country. The owner noted further that she had not received any correspondence from the strata indicating that any fines had been levied against her strata lot, and she requested "proper notice" delivered via regular mail to her mailing address.

34. On September 12, 2016 the owner emailed the property manager and provided the name of the individual she had consulted with regarding the renovation, a Mr. K.P., who was a retired Applied Science Technologist. The owner indicated that Mr. K.P. had advised her that the renovation needed to be conducted with reference to the BC Building Code span tables, and that the renovation had confirmed to that advice. The owner indicated that she was not aware that she required the strata's approval prior to completing the renovation.

35. The property manager requested further information regarding Mr. K.P., including his contact information and the name of the firm he had worked for at the time of the renovation. The property manager further requested a detailed description of the renovation including drawings or plans, and "concluding documentation" for the renovation issued by Mr. K.P.

36. Prior to the provision of Mr. K.P's name, the strata had written the owner on September 9. 2016 and informed her that she was entitled to a hearing pursuant to section 135 of the *Strata Property Act* (SPA), and that the owner's hearing request was required to be received by the strata by September 16, 2016.

37. On September 15, 2016, the owner emailed the strata and acknowledged receiving the September 9, 2016 letter. The owner noted that the letter provided no indication of what the hearing referenced would be for, and that she would reserve her right to a hearing once further information was provided. The owner noted further that she had received the strata's notice of a fine, and that she intended to dispute the fine.

38. In an October 27, 2016 letter the strata took the position that the owner had chosen, in her September 15, 2016 email, to not exercise her right to a hearing pursuant to section 135 of the SPA. The strata further indicated that it had concluded that the owner had breached bylaw 5(1), and that a fine of $100.00 would be levied against the owner's property every seven days until the strata received the documentation it had requested in its September 14, 2016 letter.

39. On November 14, 2016 the strata wrote to the owner. In that letter the strata confirmed that a weekly fine of $100.00 was in place. The strata noted that as the owner had refused to provide any structural information regarding the renovation, and the strata had "evidence" to suggest that a structural component of the building may have been compromised, the strata had hired an engineering firm to perform a structural review on the owner's strata lot.

ANALYSIS

Did the owner breach strata bylaw 5(1)?

40. Section 5(1) of the strata's bylaws sets out that an owner must obtain the written approval of the strata before making an alteration to the strata lot that involves any of a number of things, including the structure of the building/the owner's strata lot.

41. The owner acknowledges that she did not obtain written approval from the strata before completing the renovation. She has argued, however, that she was not aware that she was required to obtain the corporation's approval for completing the renovation as it was completed on the interior of her unit.

42. I do not find that argument to be compelling.

43. The strata's bylaws had been in place since 2007. The owner had been resident in the strata, by 2015, for a period of approximately 20 years. She had been on strata council for a significant period of that time. I am certain that the owner knew of the existence of the bylaws. While she says that she was not aware of the need for approval, she does not deny that she was aware that her renovation project involved the alteration of some structure of the strata building, namely the removal and replacement of the beam across the top of the walkthrough.

44. The evidence before me is that during the course of the renovation and while the beam was removed, the carpenter who undertook the renovation temporarily shored up the second floor of the owner's strata lot.

45. Given that the owner would have known that the renovation involved removal of the beam, I consider that she knew that the renovation involved an alteration to the structure of the building. The bylaw clearly indicates that written approval is required from the strata prior to making such an alteration.

46. I find that in completing the renovation without obtaining such written approval prior to doing so, the owner was in breach of bylaw 5(1).

Should the owner pay for the cost of the engineer's inspection?

47. The strata says that as the owner did not obtain prior written approval for the structural changes involved in the renovation, and she did not provide a report or any other documentation from a certified professional which detailed the manner in which the structural change was undertaken, it was necessary for it to arrange for the engineer's inspection of the completed renovation.

48. I agree.

49. Bylaw 9(c)(ii)(A) requires that the strata repair and maintain the structure of a building. Bylaw 9(d) sets out that the strata must repair and maintain a strata lot in a strata plan in relation to the structure of a building.

50. In addition, section 69 of the SPA provides that there exists an easement in favour of each strata lot owner, and in favour of the common property, over vertical and sideways supports that are capable of providing support to a strata lot or common property. That easement includes a right of entry to inspect, maintain and repair the supports in question (section 69(3)(e). Section 69(4) of the SPA sets out that such an easement may be enforced by a strata corporation on its own behalf or on behalf of one or more owners.

51. I accept that the intention of the above noted sections of bylaw 9 is to require the strata to maintain the structure of a building or the structure of a building within a strata lot.

52. As I have indicated above, the May 26, 2017 engineer's report makes clear that the beam in the walkthrough of the owner's strata lot formed a structural component of the building that formed part of the owner's strata lot. The strata has a duty to repair and maintain the structure of that building, and as such, I consider that it rightly determined that it had a duty to ensure that the structure of the building had not been compromised by the renovation.

53. It may well be, as the owner argues, that an engineer was not required to sign off on the renovation given the scope of that renovation. On the other hand, the owner did not provide any information to the strata indicating the nature renovation, even after that request was made by the strata in the summer of 2016. Specifically, she did not provide at that time any information as to whether a structural component such as a beam was replaced, and if so, what it was replaced with.

54. In my view, given those circumstances and the strata's duty to maintain the structure of not only the general buildings of the strata but also the structure of the individual strata lots as set out in bylaw 9, it was reasonable for the strata to conclude that it was necessary for an engineer to inspect the renovation in order to ensure that the structure of the building and the strata lot had been properly maintained. The SPA further provided the strata with a right to inspect the

structural component of the renovation, as the beam over the walkthrough was at least “capable of providing support” as described in section 69.

55. In making that finding, I acknowledge the owner’s position that the use of an engineer was a wasteful expense on the part of the strata, and that the strata was in fact aware once it received the engineer’s inspection report of an adjacent strata unit (that report is dated November 7, 2016) that the walkthrough “was not a roof load bearing wall and that the passage only supports the second floor of a unit.”

56. With respect, I do not consider the distinction of being a “roof load bearing wall” and a second floor supporting wall is a relevant distinction. The bylaws indicate that the strata has a duty to repair and maintain the structure of the strata lot and the building. The strata had before it an engineer’s report dated November 7, 2016, which was an inspection of a strata lot with the same design as the owner’s, and in which the engineer had indicated not only that the walkthrough wall was load bearing but also that the alteration of the walkthrough would likely involve the alteration of a structural element of the building.

57. Given that information, I consider that the strata correctly determined that it had a duty, pursuant to the bylaws, to ensure that the renovation was not performed in a way which would have a negative impact on the structure of the strata building as a whole, and the owner’s strata lot in particular.

58. No issue has been raised with respect to the amount billed for the engineer’s May 26, 2017 report which would suggest that amount was in some way unreasonable. I find that the cost of obtaining the engineers report is appropriately seen as being the cost of remedying the owner’s contravention of bylaw 5(1). Section 131 of the SPA sets out that the strata may collect the costs of remedying a bylaw contravention from an owner, and I find that the owner should reimburse the strata for the cost of obtaining the May 26, 2017 engineers report.

Is the owner liable to pay the bylaw fines assessed by the strata?

59. As I have indicated above, the owner violated strata bylaw 5(1) when she failed to obtain written permission to complete the renovation. It was pursuant to the violation of that bylaw that the strata imposed a $100 weekly fine (although on the week of December 8, 2016 the fine was $50) commencing on November 3, 2016 and continuing until May 18, 2017.

60. I note that there is a suggestion in the submissions before me that the total fines imposed by the strata were equal to $5,000, however, the evidence indicates the amount is in fact $2,950.

61. Bylaw 25 indicates that the strata may fine an owner a maximum of $200 for each contravention of a bylaw. Bylaw 26 further indicates that if an activity or lack of activity that constitutes a contravention of a bylaw or rule continues, without interruption, for longer than 7 days, a fine may be imposed every 7 days.

62. The procedure to be followed when there is a complaint and in issuing fines is set out at sections 129, 130, and 135 of the SPA. Those sections explain that:

a) A strata may fine an owner to enforce a bylaw or rule contravened by the owner or occupant of the strata lot (sections 129 and 130);

b) The strata must not "impose a fine" for a bylaw or rule contravention unless the strata has received a complaint about it and given the owner the particulars in writing and a reasonable opportunity to answer the complaint (section 135(1)(a)); and

c) Once the strata has complied with section 135 "in respect of a contravention of a bylaw or rule", it may impose a fine for **a** continuing contravention without further compliance with the section (section 135 (3)).

63. Again, as I have found above, the owner did violate bylaw 5(1) when she failed to obtain the written approval of the strata before making a structural alteration to the building or the structure of her strata lot building in particular. Pursuant to section 129 and 130 of the SPA, it was open to the strata to fine the owner in order to

enforce that bylaw and for contravening that bylaw, provided it did so in compliance with section 135 of the SPA.

64. After considering all of the evidence before me, I find that the strata failed to comply with the procedures for imposing a fine set out in section 135 of the SPA.

65. In this case, the strata first suggested to the owner that it intended to fine the owner for a breach of bylaw 5 in an August 8, 2016 letter. At that point in time the strata had not offered the owner an opportunity to attend a hearing to answer the complaint. While it does not appear that the strata in fact began to fine the owner in August 2016, if it had done so I would have found that the procedure required by section 135 had not been complied with, and that the fines ought therefore not to have been imposed.

66. In making that finding I note that in response to both the August 8 and 22 emails from the strata indicating that it considered the owner to have contravened bylaw 5(1) and that it would be imposing a fine of $50 every seven days, the owner repeated her request for further particulars regarding the nature of the complaint about her contravention of bylaw 5(1). The strata did not provide the same. Section 135(1)(d) required that it do so.

67. It was not until September 9, 2016 that the strata wrote to the owner to inform her that she was entitled to a hearing pursuant to section 135 of the SPA. That letter did not inform the owner, as she pointed out in her September 15, 2016 email in reply, what she was entitled to a hearing for. The owner demanded at that time further particulars as to what the hearing would be about, and she indicated that she reserved her right to have a hearing once those particulars were provided. The owner indicated in that same email that she intended to dispute the notice of fine that she had received from the strata (presumably via email on August 8 and 22, 2016).

68. The strata took the position, in an October 27, 2016 letter, that the owner had chosen (in her September 15, 2016 email) to not exercise her right to a hearing and that as a result the strata had concluded that the owner would be subject to a

fine of $100.00 every seven days until the strata received the following documentation:

a) Mr. [K.P.'s] contact information;

b) The firm [Mr. K.P] worked for during this project, if applicable;

c) Detail description of the project;

d) Drawings or plans of your the; and

e) Concluding documentation that was issued by Mr. [K.P.]

69. I do not consider that it was reasonable for the strata to take the position that the owner chose not to exercise her right to a hearing in her September 15, 2016 email.

70. To the contrary, the owner specifically indicated in that email that she was reserving her right to request a hearing once the strata had provided particulars as to what the hearing she was being offered was about. The owner's email reads, in part, as follows:

> I have received a letter from you advising that I am entitled to a hearing with no explanation of what a hearing is and/or what the purpose of the hearing would be. As no further information was provided, I put you on notice that I am reserving my right to a hearing should one be required. I have received the [strata's] notice of fine. I put you on notice that I will be disputing the notice of fine.

71. I do not accept that one could properly read the above to mean that the owner was waiving her right to a hearing. In particular, I consider the owner to have indicated in her email that she intended to dispute the fine that the strata had previously informed her it was levying (that being a $50 fine every 7 days) pursuant to a violation of bylaw 5(1). That the strata took an indication from the owner that she intended to dispute the notice of fine and that she reserved her right to a hearing once the strata provided information regarding what the hearing was to be about to

mean that the owner was in fact waiving her right to a hearing is, in my view, troubling.

72. I consider that it ought to have been clear from the contents of the owner's September 15, 2016 email that the owner in fact likely did wish to have a hearing on the issue of the fines that the strata suggested it intended to impose in its emails to the owner dated August 8 and 22, 2016.

73. The evidence before me does not indicate that such a hearing was in offered to the owner. Given the contents of the strata's October 27, 2016 letter, this is not surprising.

74. I would note further that the October 27, 2016 letter proposed to impose a different fine ($100 every seven days rather than $50 every seven days) than that which was referenced in the August 8 and 22 emails. Presumably, the September 9, 2017 letter indicating that the owner had a right to a hearing was related to the $50 fine the strata had indicated it was already imposing on the owner, although I agree with the owner that the September 9, 2017 letter did not make that fact clear. There is no indication in the evidence and information before me that the strata provided the owner with a reasonable opportunity to answer the complaint (for which the owner's request for particulars had still not been replied to) or to have a hearing in relation to the new (as of the October 27, 2016) $100 fine which was to be imposed every seven days.

75. In summary, the strata determined that a fine would be imposed (a $50 every seven days fine in August 2016) on the owner prior to offering the owner a hearing. The owner subsequently was offered a hearing. Once offered that hearing, the owner requested further particulars of the complaint, and reserved her right to a hearing and to dispute the fine until she was provided with the same. Instead of providing those particulars, the strata issued a second decision imposing a larger fine, and did so without offering the owner a hearing in respect of that fine, having concluded that the owner had previously waived her right to a hearing (the October

27, 2016 letter). With all due respect to the strata, this is simply not the procedure envisioned by section 135 of the SPA.

76. I find that the strata did not comply with the procedures required by section 135 of the SPA prior to commencing to impose the $100 fine every seven days on the owner. The procedure in section 135 is mandatory. The strata did not at any point subsequent to October 27, 2016 take steps to remedy the fact that it had not offered the owner an opportunity to answer the complaint in relation to the imposition of the $100 fine. I find that the fines levied against the owner must be dismissed.

Should the strata council minutes be amended?

Should the owner be awarded monetary damages for treatment on the part of the strata that was frivolous, vexatious, and in a conflict of interest?

77. In her submissions and evidence the owner has provided a history of complaints she has regarding her treatment at the hands of the strata since approximately 2011.

78. In general terms, the owner has referred to issues relating to landscaping, front yard flooding, fence and fence post repair, and the length of time it has taken to get the strata to address repairs to her unit that are the responsibility of the strata.

79. Although the strata has noted that many of the items in the history of complaints provided by the owner date well beyond what would be the two year limitation period set out in the *Limitation Act* for bringing a complaint regarding those issues, I do not consider the owner to be seeking compensation for those issues. Rather, as the owner indicated in her submissions, she was bringing those issues to the tribunal's attention "as proof of the longstanding attempts by [the strata] to pursue their vendetta against me." In the owner's view, the culmination of that "vendetta" was the finding in 2016 that she had breached bylaw 5(1) and the imposition of fines associated with that breach.

80. I accept that the owner found, from 2011 on, many of her interactions with the strata frustrating, and that it may seem to her that incidents such as having her fence posts replaced at a later date than other strata lots fence posts were replaced suggests that the strata was intentionally not providing her with the services to which she was entitled.

81. I do not consider, however, that the various complaints that the owner has set out lead to a conclusion that the strata was engaged in some sort of "vendetta" against her.

82. I also do not consider that, even in the context of the determination that the owner breached bylaw 5(1) and the imposition of fines for that breach, it can fairly be said that the strata acted in bad faith or in pursuit of a vendetta against the owner.

83. Section 31 of the SPA requires that members of a strata council act in good faith with a view to the best interests of the strata corporation and that they exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

84. Here, as I have indicated above, I consider that it was reasonable for the council to have concluded that the owner had committed a breach of bylaw 5(1), and that the council had a duty to investigate, as a result of bylaw 9, whether the structure of the building was in order subsequent to the renovation being completed. I have difficulty, in those circumstances, finding that the strata was acting in bad faith when it undertook to investigate the circumstances of the renovation.

85. I acknowledge that the owner has provided an unsigned "witness statement" from what is apparently another owner in the strata (the witness). In that statement the witness appears to indicate that his view was that the strata only investigated the owner's renovation because the owner had done something to make an individual on the strata (Mr. G) angry.

86. In contrast, the strata has provided an email from Mr. G in which he has indicated that the decision to investigate the renovation was made when a complaint regarding the renovation was brought to the strata council's attention.

87. I do not consider it necessary to resolve which of the above descriptions of how the investigation into the renovation came about. Again, I consider the evidence to show that the renovation involved a structural change to the owner's strata lot building. Pursuant to the bylaws and section 69 of the SPA, the strata is responsible for the structure of the strata buildings, including buildings within a strata lot. To put it simply, the strata had a responsibility to, and did, investigate whether subsequent to the renovation being completed the owner's strata lot was structurally sound. Whether that investigation ought to have occurred at some earlier date or did eventually occur because a member of the strata council was angry with the owner is not, in my view, relevant. The strata had a duty to make sure that the structure of the building was sound. I do not consider that completing that duty can be said to show that the strata acted in bad faith.

88. Turning to the imposition of the fines, I again do not consider the evidence to lead to a finding of bad faith. There is no doubt, as I have found above, that the strata's attempts to impose fines on the owner for her contravention of section 5(1) were clumsy, and were not in accord with the procedures set out in section 135 of the SPA.

89. On the other hand, I accept that the strata may have felt, particularly early on in the months of July and August 2016, that the owner was not being forthcoming in providing the information the strata required in order to ensure the structure of the building remained sound. Similarly, it is obvious that the strata felt that the owner was being unreasonable when she did not provide access to her unit for inspection on November 28 (though I note that the strata did not issue any fines in relation to that issue).

90. In general, I consider that the evidence falls short of showing that the strata was acting in bad faith in its dealings with the owner. Rather, it strikes me that the

issues identified by the owner are the type of problem that can arise when a strata council, such as this one and most, are made up of lay people attempting to apply the SPA and the bylaws. Perfection is not demanded for a strata to be found to have been acting in good faith.

91. Given my findings that the strata acted in good faith, I do not consider that the owner is entitled to a monetary award for loss of enjoyment of amenities and life as she has requested.

92. With respect to the owner's request that various council meeting minutes be amended to reflect that she was not cooperating with council's requests for information, I do not consider that such an order is warranted in the circumstances. The minutes are intended to document what was discussed at the strata meeting. They document that the strata was of the view that the owner was not cooperating. I consider my findings above should provide sufficient closure on the matter of the renovation and the violation of section 5(1) for the parties to make any amendments of minutes unnecessary.

DECISION AND ORDERS

93. I find that in completing the renovation without prior written approval from the strata, the owner was in breach of bylaw 5(1). The strata's claim for payment of the expense of obtaining the May 26, 2017 engineer's report is allowed. The strata's claim for an order that the owner pay the fines levied against her strata lot in respect of her violation of bylaw section 5(1) is, however, dismissed.

94. The owner's counterclaim is dismissed. I find that the strata did not act in bad faith towards the owner.

95. I order that:

a) The owner reimburse the strata for the expense of the May 26, 2017 engineer's report in the invoiced amount of $2,461.43, plus pre-judgment interest of $8.12 pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79 , for a total of $2.469.55.

b) The strata reverse all fines applied to the owner's strata lot in respect of her failure to comply with bylaw 5(1) in completing the renovation.

96. The parties have had mixed success. I decline to order reimbursement for the expense of tribunal fees.

97. The strata is entitled to post-judgement interest under the *Court Order Interest Act*.

98. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

99. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently $35,000). Under section 58 of the Act, this final decision can be enforced by filing in the Provincial Court of British Columbia a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Andrew Pendray, Tribunal Member