



# Civil Resolution Tribunal

Date Issued: November 29, 2017

File: ST-2016-00538

Type: Strata

Civil Resolution Tribunal

Indexed as: *McKellar et al v. The Owners, Strata Plan LMS 3317*, 2017 BCCRT 123

**B E T W E E N :**

Angela McKellar and Stephen Thorne

**APPLICANTS**

**A N D :**

The Owners, Strata Plan LMS 3317

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## **INTRODUCTION**

1. The applicants, Angela McKellar and Stephen Thorne (collectively, the applicants), co-own strata lot 31 (#701) in the respondent strata corporation, The Owners, Strata Plan LMS 3317 (strata).

2. The applicants claim the strata has failed to properly repair and maintain a common property dryer vent associated with their strata lot resulting in damage to #701.
3. The applicants seek orders that the strata replace the booster fan the strata installed, permanently repair the dryer vent and damage resulting from dryer vent condensation in #701, and reimburse the owners for tribunal fees paid.
4. The strata says it previously installed a booster fan at its cost in order to resolve a prior dryer vent issue and that replacement of the booster fan is the owner's responsibility. The strata also says that the applicants failed to properly maintain the booster fan causing it to breakdown thereby creating the recurring problem with condensation in the dryer vent. As a result, the strata says the owners are responsible to replace the booster fan and repair the damage in #701.
5. The strata claims that the applicants should reimburse it for expenses related to researching the applicants' claims and participating in this proceeding.
6. The applicants are self-represented. The respondent is represented by a strata council member.
7. For the reasons that follow, I have allowed the applicants' claims in part and have dismissed the strata's claim for dispute-related expenses.

## **JURISDICTION AND PROCEDURE**

8. 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.

9. 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 that there are no significant issues of credibility or other reasons that might require an oral hearing.
10. 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.
11. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
12. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

## **ISSUES**

13. The issues in this dispute are:
  - a. Who is responsible for repair and maintenance of the dryer vent? To what level must the dryer vent be maintained and does it require repair?
  - b. Who is responsible for repair and maintenance of the failed booster fan? Is the booster fan replacement a permanent solution to the dryer vent issue?
  - c. Who is responsible for damage and mould remediation of the living room ceiling in #701?
  - d. Are the applicants entitled to reimbursement of tribunal fees paid?
  - e. Is the strata entitled to reimbursement of its claimed expenses?

## BACKGROUND AND EVIDENCE

14. Although I have read all of the evidence provided I refer only to the evidence I find relevant to provide context for my decision.
15. The strata was created on July 22, 1998 and comprises one 11 storey, mixed used building. There are 5 non-residential strata lots located on the lower 3 levels of the building and 60 residential strata lots located on the upper 8 levels of the building.
16. The owner developer filed bylaws to create separate sections on July 22, 1998, when the strata corporation was formed. However, subsequent bylaw amendments passed and filed by the strata have cancelled the separate sections. I say this only to confirm I am satisfied the correct parties are identified and have provided submissions in this dispute.
17. The relevant bylaws in place at the time of this dispute were those filed on May 31, 2010 (May 2010 bylaws).
18. In particular, the relevant bylaws that apply to this dispute are:
  - Bylaw 2.1:* an owner must repair and maintain the owner's strata lot except for repair and maintenance that is the responsibility of the strata under these bylaws.
  - Bylaw 8.1 b):* the strata must repair and maintain common property that has not been designated limited common property.
19. The strata has not passed bylaws requiring it to take responsibility for repair and maintenance to a strata lot.
20. The applicants purchased #701 in February 2004 and reside in the strata lot.
21. The dryer vent for #701 runs through the concrete slab that forms the boundary between #701 and the strata lot above it, beginning inside #701 and exiting in #701's balcony soffit.

22. Since March 2002, and perhaps before, the strata has adopted a policy of cleaning all dryer vents in the building approximately every two years. The cost of the dryer vent cleaning is a common expense of the strata.
23. In approximately November 2004, the strata retained National Air Technologies (National Air) to investigate dryer vents associated with 6 strata lots. The 6 strata lots investigated did not include #701.
24. In a letter dated November 22, 2004, National Air provided the strata an opinion (2004 National Air opinion) based on the results of its investigation. The opinion provided was that all 6 of the strata lots investigated had similar problems and identified:
  - The dryer vent runs were too long for the dryer to push the air to the outside causing water buildup in the vents.
  - The exterior grills were too restrictive causing back pressure.
  - That regular annual maintenance needs to be completed on the dryer vents to avoid the problems continuing to occur.
25. National Air's letter further recommended the installation of a booster fan for each unit's dryer vent to "ensure that there is enough airflow to reach the outside."
26. December 2004 strata council meeting minutes indicate discussion of the 2004 National Air opinion. The March 14, 2005 strata council meeting minutes state the strata council discussed the recommendation for the installation of a booster fan, concluding that the installation of booster fans are "individual units' issues."
27. The December 14, 2005 strata council meeting minutes confirmed dryer vent cleaning was completed at the beginning of the month and that some owners made "their own arrangements to have the recommended booster fan installed at their own cost." The applicants did not install a booster fan in #701.

28. A number of items of correspondence were exchanged between the applicants and the strata between January 2008 and November 2009 regarding the applicants' dryer vent issues. Although not entirely clear from the evidence, I infer from the correspondence provided that the dryer vent issues raised by the applicants involved the same issues identified in the 2004 National Air opinion. It is clear that the applicants believed it was the strata's obligation to pay for the installation of a booster fan for the dryer vent associated with #701 and for resultant ceiling damage in #701 they claimed was from water leaking from the dryer vent. I reference this information to provide relevant history of this dispute. As discussed below, the ceiling damage in #701 that was evident in 2009 was repaired by the strata and is not the subject of this dispute.
29. On February 11, 2008 at the request and expense of the strata, National Air inspected the dryer vent of #701 and reported its findings in a letter dated February 12, 2008 to the strata (2008 National Air inspection). The letter stated that National Air inspected the dryer duct by video camera and found that:
- Only the first 2' of ducting is wet. That is due to the restrictive grill that covers the vent. It does not allow enough airflow to escape and causes moisture to back up. The leak in the ceiling lines up with a joint in the duct. The duct does not appear to be damaged though. It could be [the duct] was not sealed or it could be that the moisture has run back to where the first crack in the concrete is.
30. It is not clear from the report if the reference to "the first 2' of ducting" was from the inside of #701 near the dryer or the outside at the dryer vent grill location. Based other evidence regarding the ceiling damage in #701, I infer the reference is to the distance from the exterior balcony soffit vent grill.

31. The 2008 National Air inspection recommended the #701 dryer vent be cleaned, the exterior grill be changed and that a booster fan be installed.
32. Between February 2008 and November 2009, the parties exchanged correspondence but no further work was undertaken with respect to National Air's recommendations.
33. In September, 2009, Ms. McKellar exchanged email with the then strata council president thanking him for arranging the electrical work in #701 for the booster fan and for his assistance in resolving the issue. The president responded by defending previous actions of the strata's property manager stating "...it was only the unique configuration of [#701's] dryer vent run that made it possible for [the strata] to enlist the strata corporation's R&M funds for the remediation of your suite.'
34. On November 18, 2009, National Air installed a booster fan for and changed the exterior vent grill of the #701 dryer vent at the strata's cost. I infer from the evidence that the booster fan was installed in the strata lot at some point along the dryer vent hose between the clothes dryer and the beginning of the dryer vent inside #701. The evidence also shows that repair of the moisture damage in the living room ceiling of #701 was completed by the strata at its cost. No explanation was provided by the strata as to why it repaired the ceiling damage in #701.
35. On December 18, 2014, 5 years later, Ms. McKellar sent an email to the strata's property manager advising, among other things, that "the ceiling/dryer vent issue has become a problem again." She questioned if the booster fan was still working and said she believed it needed to be repaired. I accept this date as the date the cause of action for this dispute arose and note the tribunal issued the Dispute Notice November 16, 2016 within the basic 2-year limitation period.
36. On December 29, 2014, the property manager wrote an email to the applicants and requested they confirm if the booster fan was working, advising it was the applicants' responsibility to repair and maintain the booster fan. The property

manager further advised that “if [the booster fan] failed and there was a buildup [of lint], then it would not be the strata responsibility.” On February 2, 2015, the property manager wrote a letter to the applicants advising that the council had reviewed their comments about dryer vent problems, that the booster fan was their responsibility to maintain and repair and that its operation should be confirmed.

37. Between December 2014 and November 2015, the parties exchanged some correspondence but no repairs to the booster fan or dryer duct were completed by either party. The evidence does not show that the applicants confirmed the booster fan operation until November 2015.
38. On November 10, 2015, the applicants wrote the property manager advising that the #701 dryer vent “is now so full of condensation that it is running back down through the vent, into my dryer, and dripping down into my laundry closet.... We believe the water shorted out the booster fan. All dryer vents were emptied out only a few months ago during the building-wide service, and we were told by the service people that there was a large amount of water in the vent, and that they would make a note of that for the building. There has been no follow-up whatsoever.”
39. The strata arranged for National Air to attend #701 on November 18, 2015 and on November 20, 2015 National Air wrote to the strata to advise of its findings (2015 National Air inspection). The letter states that the technician found #701’s dryer duct “full of water”, the booster fan “caked with lint and full of water and not operational”, and water in the applicant’s dryer. In the letter, National Air also recommended that a new booster fan be installed in addition to completing a full cleaning of the dryer vent to get rid of the water and a video inspection of the dryer vent to see if the ducting had been compromised in any way given the #701 dryer vent had been a “progressive” issue.
40. On December 17, 2015, the strata's property manager advised that National Air would contact the applicants to arrange an appointment for the following week to complete a camera inspection, cleaning of the dryer vent, and installation of a new



booster fan. From the evidence submitted, it appears several unsuccessful attempts were made by National Air to attend #701 to complete such work. The reason why the work was not completed is unclear.

41. On March 31, 2016, the applicants wrote to the strata saying they had reviewed the case with their insurance providers, lawyers, and contractors and were advised to allow the strata to replace the booster fan. The applicants requested the strata have National Air contact them for an appointment.
42. The strata's property manager replied on April 7, 2016 advising the strata's offer to replace the booster fan had been withdrawn. The reasons given were because Ms. McKellar stated the applicants' inspector would be submitting a report and that no report was provided. In a follow-up email on April 8, 2016, the strata's property manager further stated the strata's offer to replace the booster fan was withdrawn unless the applicants pay the costs if it is found the strata is not responsible for the failure of the unit. The property manager also advised that the strata would complete another camera inspection to determine if there was any defect in the vent.
43. There is no evidence to support that National Air has attended #701 to complete any work or that any work has been completed to the #701 dryer vent since November 2015.

## **POSITION OF THE PARTIES**

44. The applicants request that I order the strata to:
  - a. install a new booster fan,
  - b. permanently repair and maintain the dryer vent in a manner that will prevent condensation from leaking into #701,
  - c. repair all resulting damage to #701 including related mould remediation, and
  - d. reimburse the applicant for tribunal fees paid.

45. The strata says the booster fan's maintenance is the applicants' responsibility. The strata argues that the applicants failed to properly clean the booster fan at regular and frequent intervals which caused the booster fan to fail thereby creating a recurring problem with condensation from the dryer vent leaking into the owners' strata lot.
46. The strata requests that I dismiss the applicants' claim and order the applicants' pay its expenses of \$2,665.00 related to research and participation of the strata's council member in this proceeding.

## **ANALYSIS**

### **Who is responsible for repair and maintenance of the dryer vent? To what level must the dryer vent be maintained and does it require repair?**

47. The applicants say the dryer duct is common property of the strata because of its location in the concrete slab between #701 and the strata lot above.
48. The strata does not expressly disagree with the applicants and by its action of cleaning the dryer ducts on a biannual basis, appears to agree. However, for clarity, I find that the definition of common property under section 1(1) of the *Strata Property Act* (SPA) includes the #701 dryer duct.
49. Under section 72 of the SPA the strata must repair and maintain common property. This obligation is subject to a bylaw which requires a strata to take responsibility for repair and maintenance of specified portions of a strata lot. The strata has no such bylaw. Therefore, I find the strata is clearly responsible to repair and maintain the dryer vent.
50. What level of maintenance is required for the dryer vent? As previously stated, the strata has a policy of cleaning dryer vents on a biannual basis. I accept the strata's position that this policy was followed within reason at all material times during the time the applicants have owned #701. In their submissions, the applicants argue that bi-annual cleaning of the dryer vent of #701 is not adequate and say that annual cleaning of the dryer duct is appropriate.

51. The position of the applicants with respect to annual cleaning of #701's dryer vent is not disputed by the strata. I find that the evidence provided supports the position of the applicants. Specifically, the 2004 National Air opinion recommends annual maintenance of the 6 problem dryer ducts it inspected all of which had long dryer vent runs similar to that of #701. In its argument supporting the installation of a booster fan below, the strata agrees that the dryer vent run of #701 is long, similar to #901 two floors above. Given the strata's own expert, National Air, has advised annual dryer vent cleaning for at least the problem dryer vents, of which in my view #701 is one, I find the dryer vent of #701 must be cleaned on an annual basis and order the strata to do so.
52. I turn now to the repair of the dryer vent.
53. The applicants have not submitted evidence to support their position that the dryer vent is need of repair and National Air have not recommended any repairs. The 2008 National Air inspection of the dryer vent expressly states that the duct does not appear to be damaged but does note water accumulating in the duct near its exit on in the balcony soffit. National Air states the water accumulation is due to the restrictive grill on the dryer vent and notes the leak in the ceiling of #701 lines up with a joint in the duct and that the duct does not appear to be sealed. These observations were provided following a video inspection of the dryer vent and do not support the applicants position that there is a structural flaw causing several units to experience water damage issues stemming from the dryer vent problem. Further, in the same report, National Air does not recommend repair of the dryer vent but rather recommends cleaning of the vent, alterations to the exterior grill to allow better air flow and the installation of a booster fan.
54. According to the strata, only one other owner installed a booster fan at the time of the recommendation by National Air. That was the owner of #901 which the strata says is has a dryer vent similar in configuration to #701 which continues to work without issue. The applicants appear to agree that the dryer vent in #901 is configured similarly to the #701 dryer vent, do not dispute the #901 booster fan continues to operate and that #901 does not experience the same dryer vent

issues as the applicants. The applicants say circumstances in #901 support their position in that the #701 dryer vent is either damaged or has a leak which requires repair. I disagree. The applicants do not account for the fact that the booster fan is working in #901 and is not working in #701.

55. For these reasons, based on the evidence before me, I find the dryer vent is not currently in need of repair. It may be that the dryer vent will require repair at a future date which I note is the strata's obligation to complete as necessary, acting reasonably.

**Who is responsible for repair and maintenance of the failed booster fan? Is the booster fan replacement a permanent solution to the dryer vent issue?**

56. The applicants say that the strata is responsible for replacing the booster fan and the strata says the applicants are responsible. There is no evidence before me that expressly states the strata takes responsibility for repair and maintenance of the booster fan it installed nor is there evidence to support the applicants take such responsibility. The correspondence exchanged by the parties at the time the booster fan was originally installed in 2009 does not address ongoing repair and maintenance of the fan. The strata's bylaws do not assist.
57. From the outset of it discovering dryer vent problems in 2004, when the strata obtained the 2004 National Air opinion, until approximately December 2014, the strata maintained that the installation of booster fans is an individual owner's expense. However, the strata did install the original booster fan in #701 in 2009. In its submissions, the strata essentially states that it conceded to the installation of the booster fan in #701 at its expense only after protracted discussions with the applicants. I find this is not supported by a statement made by the strata council president in a September 2009 email to Ms. McKellar saying it was the unique configuration of #701's dryer vent that made it possible for the strata to use its funds to "remediate" #701.
58. As indicated in the president's September 2009 email, the strata originally paid for the installation of the booster fan because of the "unique" configuration of the dry

vent. There is no evidence to show the configuration of the dryer vent has changed since the booster fan was installed in 2009. Absent any bylaw requiring the owner to take responsibility for the repair and maintenance of the booster fan, or its replacement if it fails, I find the strata is responsible to repair and maintain the booster fan that it installed.

59. Further, the strata's contractor, National Air, essentially says the dryer vent cannot perform properly without a booster fan because of its length. I have found earlier that the dryer vent is common property and that it is not in need of repair. The strata has not offered to re-design or otherwise modify the dryer vent to allow proper performance but has relied on National Air's recommendation to install a booster fan. It is not unreasonable for the applicants to expect a common property dryer vent to perform properly. If the strata chooses to install a booster fan to meet that expectation, rather pursuing some other means of achieving proper performance of the dryer vent, it follows that the strata should be responsible for the installation, repair and maintenance of the booster fan.
60. For these reasons, I find the strata must replace the failed booster fan and take responsibility to repair and maintain it.
61. Nothing in this decision prohibits the strata from considering a bylaw regarding responsibility for the future installation, repair and maintenance of booster fans.
62. I note that neither party advanced arguments regarding whether the booster fan is a common asset as defined by the SPA and I find there was insufficient evidence for me to consider that possibility. That said, if the booster fan is a common asset, it would only support my decision.
63. I turn now to the issue of whether the booster fan is a permanent solution to the issue.
64. Although the applicants request I order the strata to replace the failed booster fan, the applicants also argue that the booster fan is not an adequate or permanent

solution. Yet, they provide no evidence to suggest the booster fan is not a permanent solution to the dryer vent issue.

65. As noted earlier, National Air has not recommended any repairs be completed to the dryer vent nor has it recommended modifications to the dryer vent. The only outstanding recommendation is to install a booster fan. Further, the applicants have not provided any opinion on what a permanent solution would be.
66. For a period of approximately 5 years from the time the booster fan was installed until the applicants brought the matter of recurring ceiling damage and possible failure of the booster fan to the strata's attention, the applicants had no issues. This supports the position of the strata that the booster fan did indeed resolve the #701 dryer vent issues, at least for the life of the particular booster fan until it needed replacement.
67. As a result, I find there is insufficient evidence for me to conclude that the installation of a booster fan is not a permanent solution. Bearing in mind my conclusion above that found the strata responsible to repair and maintain the booster fan, I dismiss the applicants' claim that the strata find another solution to make the dryer vent operable.

### **Who is responsible for damage and mould remediation of the living room ceiling of #701?**

68. In or about November 2009 when the strata installed the booster fan in #701, the strata also attended to repair the damage to the ceiling of the living room. The reason the strata repaired the living room ceiling of #701 at that time is unknown. That the strata previously repaired the ceiling as a result of condensation leaking from the common property dryer vent does not mean it must do so again in similar circumstances.
69. Under the strata bylaws, the applicants are responsible to repair and maintain the interior ceiling of #701. Neither the SPA nor the bylaws address claims by owners for damage caused by the strata or others, such as contractors, associated with it.

70. There is no evidence to suggest the damage is covered by the strata's insurance.
71. The strata is not an insurer. In the absence of negligence, the strata would not be responsible for the ceiling damage in #701.
72. As noted in my earlier decision in *Tam v. The Owners, Strata Plan BCS 282*, 2017 BCCRT 93, the courts have found that a strata corporation, when repairing and maintaining common property, is not held to a standard of perfection but is required to act reasonably when fulfilling its obligations. If the strata or its contractor failed to carry out work effectively, the strata should not be found negligent if the strata acted reasonably in the circumstances. The strata has no liability to reimburse an owner for expenses an owner incurs in carrying out repairs to an owner's strata lot that are the owner's responsibility under the bylaws, unless the strata has been negligent in repairing and maintaining common property. (See *Kayne v. LMS 2374*, 2013 BCSC 51, *John Campbell Law Corp v. Strata Plan 1350*, 2001 BCSC 1342, and *Wright v. Strata Plan No. 205*, 1996 CanLII 2460, aff'd 1998 CanLII 5823 (BCCA)).
73. In order for me to find the strata negligent, the applicants must demonstrate that the strata owed a duty of care, that the strata's behaviour breached the standard of care, that the applicants' sustained damage and that damage was caused by the strata's breach. (See *Mustapha v. Culligan of Canada Ltd*, 2008 SCC 27)
74. Given the dryer vent is common property; I agree the strata owed the applicants a duty of care to maintain it. The standard of care in maintaining the dryer vent is one of reasonableness. I also agree that the applicants sustained damage to their strata lot as a result of condensation accumulating in the dryer vent.
75. The question then remains: Was the strata unreasonable in responding to the condensation issue and was the damage to #701 caused by the strata being unreasonable?

76. For the reasons that follow, I find the strata was negligent in addressing the applicants' dryer vent issues but that the applicants contributed to the damage by their inaction.
77. The applicants brought the matter of recurring ceiling damage to #701 to the strata's attention In December 2014. In November 2015, the strata arranged for National Air to investigate the dryer vent issues in #701, one year after being advised of the issue.
78. Given I have earlier found the strata responsible to replace the booster fan, I find it was unreasonable for the strata to wait a year to address the applicants' concerns regarding the dryer vent. Further, the strata's contractor, National Air, recommended that all dryer vents be cleaned annually yet the strata adopted a policy to only clean the dryer vents bi-annually. I find it was unreasonable for the strata, knowing #701's dryer vent was problematic, to not follow National Air's recommendation to clean the dryer vents annually.
79. Did the strata cause damage to the applicants' strata lot as a result of the strata not reasonably attending to the condensation issue? I find the answer to that question is yes.
80. Some photographs were provided that show the condition of the applicants' living room ceiling where the leak occurred which clearly indicates damage has occurred. The photographs provided do not show any gradual deterioration of the ceiling.
81. I am satisfied, based on the evidence, that the ceiling damage was caused from condensation accumulating in the dryer vent.
82. As a result, I find the strata was negligent in addressing the dryer vent issues of the applicants.
83. I turn now to the applicant's actions since December 2014.



84. In December 2014, when the applicants brought the matter of recurring water damage to #701 to the strata's attention, they were advised it was important to determine if the booster fan was operating before taking further steps and for reasons not entirely clear to me, I find they chose not to do for approximately 1 year.
85. Further, the applicants admit that they were told by the National Air service person at the time all dryer vents in the building were being cleaned in approximately May 2015 that there was water in their dryer vent and chose not to bring this to the attention of the strata until several months later in November 2015.
86. The evidence shows the applicants have taken little action, if any, to address the issue, including the booster fan operation for a period of 2 to 3 years since they first reported the recurring problem. I find that identifying the issue with the strata in December 2014 with nothing further for at least a year, in the face of the May 2015 advice from National Air, is a failure to mitigate their loss. Moreover, the applicant's did not permit National Air to complete a further cleaning and inspection of the dryer vent in December 2015.
87. In other words, the inaction taken by the applicants regarding the condition of the dryer vent allowed the damage to worsen and I find the applicants' conduct has contributed to the damage. The precise extent to which further damage could have been avoided had action been taken or permitted within a reasonable time is unknown.
88. I have found the strata chose not to address the issue when first notified by the applicants in December 2014. I have also found that the applicants failed to address the booster fan operation in a timely manner, failed to notify the strata of water in the dryer vent in May 2015 as advised by National Air and failed to permit National Air to inspect the dryer vent in December 2015.
89. In assessing responsibility, I find it is more likely than not that the actions of the applicants to have caused a greater amount of damage than actions of the strata.

90. As a result, I find that the applicants are responsible for 75% of the damage and mould remediation of #701 and the strata is responsible for 25%. In my order below, I address remediation steps and payment.

**Is the owner entitled to reimbursement of tribunal fees paid?**

91. Under section 49 of the Act and the tribunal rules, 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. I see no need to deviate from this general rule. The applicants have primarily been the successful party. In the circumstances, I order the strata to reimburse the applicants \$225.00 for tribunal fees paid.

**Is the strata entitled to reimbursement of dispute-related expenses?**

92. The strata claims dispute-related expenses totalling \$2,665.00 for time spent by a strata council member to research strata records and documents and participate in this dispute. This claim was advanced by the strata in the event the applicants were not successful. The applicants have been the more successful party so I am not inclined to order reimbursement of the strata's expenses. Further, while I agree that strata council members are typically unpaid volunteers and time required to participate in this tribunal proceeding goes beyond the normal course of a strata council member's duties, no evidence was provided to support the time spent or hourly rates claimed of \$41 to \$82. The time spent and hourly rates are speculative in nature. Moreover, tribunal rule 132 states the tribunal will only award one party to pay to another party any fees charged by a lawyer or another representative in the tribunal dispute process in extraordinary cases. I do not find the circumstances here to be extraordinary and decline to award the expenses sought by the strata.

## DECISION AND ORDERS

93. I order that the strata, within 30 days of the date of this order:
- a. install a new booster fan for the dryer vent in #701 and repair and maintain it for as long as it is required for the proper performance of the dryer vent;
  - b. arrange for damage and mould remediation of the living room ceiling of #701 (ceiling remediation) to be completed at the strata's expense; and,
  - c. reimburse the applicants \$225.00 for tribunal fees paid.
94. I further order that the strata provide the applicants with a copy of the paid invoice for the ceiling remediation within 15 days of the remediation being completed and that the applicants reimburse the strata 75% of the paid invoice within 30 days of receiving the invoice.
95. The strata's claim for reimbursement of dispute-related expenses is denied.
96. 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.
97. 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, the Applicant can enforce this final decision 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.

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J. Garth Cambrey, Vice Chair