



# Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Newman v. The Owners, Strata Plan EPS 680*, 2017 BCCRT 122

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

Ken Newman

**APPLICANT**

**A N D :**

The Owners, Strata Plan EPS 680

**RESPONDENT**

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## **AMENDED REASONS FOR DECISION**

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Tribunal Member:

Jamie Bleay

## **INTRODUCTION**

1. The applicant, Ken Newman (owner) along with his wife own strata lot 5 in the respondent strata corporation, The Owners, Strata Plan EPS 680 (strata). The owner wants to know which of the following, if any, are common property:

- (i) The exterior heat pump component of a HVAC heat pump system (HVAC system) that service each of the strata lots;
  - (ii) Plumbing, wiring and ducting connecting the interior heat exchanger portion of the HVAC system and the exterior heat pump portion of the HVAC system; and
  - (iii) Interior gas fireplaces.
- 2. The owner also wants to know who is responsible to repair and maintain any of these items and if the heat pumps are determined to be common property can the strata dispose of the heat pumps to each strata lot owner.
- 3. The owner is self-represented. The strata is represented by a member of the strata council.

## **JURISDICTION AND PROCEDURE**

- 4. 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.
- 5. 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.
- 6. 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.

7. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
8. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make one or more of the following orders.
  - (a) order a party to do or stop doing something;
  - (b) order a party to pay money;
  - (c) order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

9. The issues to be decided are:
  - (a) Who is responsible to repair and maintain the heat pumps;
  - (b) Who is responsible to repair and maintain the plumbing, wiring and ducting that connect the exterior heat pumps to the interior heat exchanger portion of the HVAC system;
  - (c) Who is responsible to repair and maintain the fireplaces; and
  - (d) If the strata is responsible to repair and maintain the heat pumps can it dispose of the heat pumps to each strata lot owner?

## **BACKGROUND AND EVIDENCE**

10. While I have reviewed all of the evidence and submissions provided, I have only referred to the evidence and submissions necessary for the purpose of my decision.

11. Strata Plan EPS 680 (strata plan) was deposited in the Victoria land title office on June 13, 2013.
12. The strata plan shows the strata is comprised of 21 townhouse strata lots.
13. The strata plan identifies such things as limited common property, common property such as corridors, electrical rooms, elevator, etc. but does not identify the exterior heat pumps, the HVAC systems or the fireplaces.
14. The strata's bylaws are those filed by the owner developer in the Victoria land title office on June 13, 2013 under registration number CA 3177646 and are not the Schedule of Standard Bylaws under the *Strata Property Act* (SPA).
15. Bylaw 2(1) requires owners to repair and maintain their strata lot, except for repair and maintenance that is the responsibility of the strata under the bylaws.
16. Bylaw 2(2) requires owners with the use of limited common property to repair and maintain it except for repair and maintenance that is the responsibility of the strata under the bylaws.
17. Bylaw 16 sets out the strata's common property, limited common property and strata lot repair and maintenance obligations.
18. The parties do not dispute that:
  - (i) Each heat pump is an integral component of the HVAC system of a single strata lot, which is fully independent from the HVAC system of all other strata lots;
  - (ii) 18 of 21 heat pumps that comprise the HVAC systems are located on limited common property or common property situated around the periphery of blocks 1 to 3 of the strata. 3 heat pumps sit on metal shelves hung from the ceiling of the garage and serve the 3 strata lots in block 4;
  - (iii) The plumbing, wiring and ducting for the HVAC systems run beneath the interior heat exchanger in each unit and the exterior heat pump; and

- (iv) Each strata lot unit has its own gas fireplace which is independently operated by each unit owner/occupant. All fireplaces are fed gas through a common source with a single meter. The 21 strata lots are not individually metered for gas consumption.
19. The owner also has submitted into evidence a number of documents, including an excerpt from the disclosure statement provided to him for strata lot 5 that indicates that the heat pump will be included in the purchase price of each strata lot and an excerpt from the purchase and sale agreement for strata lot 5 which identifies, under paragraph 7, items included in the purchase price. Heating and air conditioning is noted as being including in the purchase price of strata lot 5.

## **POSITION OF THE PARTIES**

20. The owner asserts that the heat pump that serves strata lot 5 is his property and his responsibility to repair and maintain regardless of whether the exterior portion of it is located on common property or limited common property.
21. The strata asserts that it is responsible to repair and maintain the heat pumps that are on common property.
22. The owner asserts that the plumbing, wiring and ducting that connect the interior heat exchanger in each unit and the exterior heat pump are common property and the responsibility of the strata to repair and maintain. The strata requests clarification regarding who is responsible to repair and maintain these components.
23. The owner asserts that the gas fireplace is his property and his responsibility to repair and maintain. The strata has treated the gas fireplaces as common property and seeks clarification regarding who is responsible to repair and maintain the gas fireplaces.

## ANALYSIS

### (i) Who is responsible to repair and maintain the heat pumps?

24. For the purpose of this analysis the relevant sections of the SPA are:

Section 1 – This section defines a “strata lot”, “common property” and “limited common property”;

Section 68 – This section identifies the boundaries of a strata lot;

Section 72 – This section says the strata corporation must repair and maintain common property; and

Section 74 – This section deals with designation of limited common property.

25. As previously noted the strata plan does not show the location of any of the heat pumps. However the evidence confirms that there are 18 exterior heat pumps that are either placed on common property or limited common property and 3 heat pumps that sit on metal shelves hung from the ceiling of that portion of the parking garage identified on the strata plan as common property.

26. What the strata plan does show is the boundaries of the strata lots and those parts of the land and buildings that are denoted as common property or limited common property.

27. Dealing first with the boundaries of a strata lot there are two sections of the SPA to consider. Section 1(1) of the SPA defines a strata lot to be a lot shown on a strata plan. The legend for the strata plan refers to each of the strata lots by the initials “SL” which denotes a strata lot.

28. The strata plan identifies, by dimensional measurements, the interior areas of each strata lot. The strata plan also identifies where one strata lot ends and another begins; in other words the strata plan also identifies the boundaries of the strata lot.

29. Section 68 of the SPA provides more detail regarding the boundaries of a strata lot. Section 68(1) states unless otherwise shown on the strata plan, if a strata lot is separated from another strata lot, the common property or another parcel of land by a wall, floor or ceiling, the boundary of the strata lot is midway between the surface of the structural portion of the wall, floor or ceiling that faces the strata lot and the surface of the structural portion of the wall, floor or ceiling that faces the other strata lot, the common property or the other parcel of land. As there is nothing otherwise shown on the strata plan the strata lot boundaries are therefore governed by section 68(1).
30. Based on my review of the strata plan, the definition of a strata lot and the boundaries of the strata lot as described in section 68(1) of the SPA I find that anything outside the legally defined boundaries of the strata lots shown on the strata plan cannot be part of a strata lot shown on the strata plan.
31. I also find that the information disclosed in the disclosure statement or contained in the contract of purchase and sale cannot dictate what is or is not within the boundaries of a strata lot or what is or is not common property.
32. Based on my review of the strata plan I find that the heat pumps are not within the boundaries of any of the strata lots. In the result I find that the heat pumps, even though each one services a specific strata lot, are not part of a strata lot.
33. Are the heat pumps common property? Section 1(1) of the SPA defines “common property”. Section 1(1) of the SPA says common property is that part of the lands and buildings shown on a strata plan that is not part of a strata lot. The definition goes further to address other aspects of common property but for the purpose of my analysis any part of the strata plan that is not part of a strata lot is in some form or another common property.
34. The evidence submitted, including the strata plan and a marked up version of the strata plan indicating the approximate location of the heat pumps, shows 3 heat pumps that sit on metal shelves hung from the ceiling of the garage and serve the

3 strata lots in block 4 and 18 heat pumps located on areas identified on the strata plan as common property or limited common property.

35. While there is no evidence as to the manner of affixation of all of the heat pumps I find that they have all been installed and placed on common property or limited common property. It is evident that the heat pumps are placed or affixed to be part of the mechanical heating system of the development despite the fact that each heat pump services a particular strata lot.
36. The definition of “limited common property” means common property designated for the exclusive use of one or more strata lots.
37. All of the heat pumps are on common property. Based on my review of the marked up copy of the strata plan some of the heat pumps happen to be on a portion of the common property to which a limited common property designation is attached.
38. This limited common property designation permits owners of strata lots with the limited common property designation certain exclusivity when it comes to the use of the limited common property. However in my view this designation does not mean that the heat pumps that are part of the mechanical heating system of the development form part of the “limited” common property on which they are placed.
39. I find that the placement of any of the heat pumps on any common property designated as limited common property does not change the fact that the heat pumps form part of the common property rather than part of a strata lot.
40. Section 72 of the SPA says that the strata must repair and maintain common property. Based on my finding that the heat pumps are part of the common property of the strata I find that pursuant to section 72 of the SPA and bylaw 16(1)(d) that the strata is responsible to repair and maintain the heat pumps.



**(ii) Who is responsible to repair and maintain the pipes, wires and ducting that connect the heat pumps to the interior heat exchanger in each strata lot?**

41. The evidence does not include mechanical or as-built drawings that might indicate the exact location of all of the pipes, wires and ducting that connect the heat pumps to the interior heat exchanger in each strata lot. I am not therefore not able to determine if these components fit squarely within the definition of common property found in section 1(1)(b)(i) of the SPA which says that a wire, pipe, duct or other part of a system or service located in the wall or the floor/ceiling that forms a boundary between two strata lots, between a strata lot and the common property or between a strata lot or common property and another parcel of land is common property.
42. I am however prepared to acknowledge that these components pass under a portion of the common property and also pass through the building envelope where they would connect to the heat exchanger in a strata lot. Based on my review of the strata plan and the definition of common property in section 1(1) of the SPA I find that the building envelope is also part of the common property of the strata.
43. I also find that these components are integral to the operation of the heat pumps as part of the mechanical heating system of the development and are common property.
44. I therefore find that pursuant to section 72 of the SPA and bylaw 16(1)(d) that the strata is required to repair and maintain these components.

**(iii) Who is responsible to repair and maintain the fireplaces?**

45. The fireplaces are located within the boundary of each strata lot. Section 72 of the SPA requires the strata to repair and maintain common property and that the strata may, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot.

46. Bylaw 16(1)(d), which deals with what parts of a strata lot the strata is required to repair and maintain, states that the strata has a duty to repair and maintain the structure of the building, the exterior of the building, chimneys, stairs, balconies and other things attached to the exterior of the building, doors, windows and skylights on the exterior of a building or that front on the common property and fences, railings and similar structures that enclose patios, balconies and yards. No mention is made of the duty to repair and maintain a fireplace within a strata lot.
47. On the other hand bylaw 2(1) requires an owner to repair and maintain the owner's strata lot except for repair and maintenance that is the responsibility of the strata corporation under these bylaws.
48. I therefore find that the strata is not responsible to maintain the fireplaces in the strata lots.

**(iv) If the heat pumps are common property can the strata dispose of them to each strata lot owner?**

49. The heat pumps are part of the common property of the strata. They are part of the mechanical heating system of the development and I have found that the strata is required to repair and maintain them.
50. The owner wants to know if these common property heat pumps can somehow be disposed of by the strata to each strata lot owner. Presumably the rationale behind this request is to find out whether the repair and maintenance obligations can somehow be shifted to the owners once the heat pumps are disposed of.
51. I begin by restating that section 72(1) of the SPA requires the strata to repair and maintain common property subject to subsection (2). Section 72(2)(b) says the strata may by bylaw make an owner responsible to repair and maintain common property other than limited common property only if identified in the regulations and subject to prescribed conditions.

52. The regulations do not identify any common property which can, by way of a bylaw, be the responsibility of an owner to repair and maintain. I find that the strata cannot rely on section 72(2)(b) to pass any bylaws that would effectively allow it to “dispose” of the common property heat pumps and pass on the repair and maintenance obligations of the heat pumps to each strata lot owner.
53. I note that section 80 of the SPA refers to dispositions of common property. Section 80(1) refers to disposition of common property which, under section 253(1) of the SPA, would be a **subdivision of land** (emphasis added).
54. Section 80(2) of the SPA says that to dispose of common property in a way not set out in section 253(1), certain requirements must be met. These requirements include getting the consent of financial charges noted on the common property record to the proposed disposition and filing certain documents in the land title office to give effect to the disposition.
55. I find that these requirements, while not specifically referring to the disposition of land that is common property, are not meant to allow a strata corporation to dispose of a part of its common property mechanical heating system to strata lot owners who, pursuant to section 66 of the SPA, already own the common property as tenants in common.
56. I therefore find that there is no authority under the SPA or the bylaws to dispose of the common property heat pumps to each strata lot owner.

## DECISION AND ORDERS

57. I order that:
- a. The strata is responsible to repair and maintain the heat pumps and the pipes, wires and ducting that connect the heat pumps to the heat exchangers;
  - b. The strata is not responsible to repair and maintain the fireplaces in the strata lots;

- c. The strata cannot dispose of the heat pumps to each strata lot owner.
58. Under section 49 of the Act and tribunal rule 129, 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. In these circumstances there is divided success. I therefore make no order for the strata to reimburse the owner for tribunal filing fees.
59. 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.



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Jamie Bleay, Tribunal Member