



Civil Resolution Tribunal

Date Issued: May 2, 2018

File: ST-2017-002955

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VAS 63 v. Montagut* 2018 BCCRT 165

BETWEEN :

The Owners, Strata Plan VR 63

APPLICANT

AND :

Nicolas Montagut

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. The applicant, the Owners, Strata Plan VR 63 (strata), is a strata corporation consisting of 23 residential strata lots in Vancouver, British Columbia. The strata is represented by a strata council member.

2. The respondent, Nicolas Montagut (owner), is the registered owner of strata lot 4 (SL4), a ground floor unit with a patio. The owner is self-represented.
3. The sliding glass patio door, door frame and parts of the patio of SL4 need repairs and replacement. This dispute is about who is responsible for paying for the needed repairs and replacement, and in what amount.

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 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

9. The issues in this dispute are:
 - a. Should the owner pay \$7,350 for needed repairs to his patio door, door sill, and patio?
 - b. Should either party reimburse the tribunal fees of the other party?

BACKGROUND AND EVIDENCE

10. I have reviewed and considered all of the evidence and information put before me in this dispute. I will set out only the relevant information needed to give context to my decision.
11. The strata was created in 1972 under the *Strata Titles Act*, a predecessor to the current *Strata Property Act* (SPA).
12. The strata plan shows the patios for all ground level strata lots, including SL4, to be part of the strata lot. The strata plan also shows that balconies of other upper level strata lots are part of those strata lots.
13. Under section 17.11 of the Strata Property Regulation the standard bylaws set out in the SPA came into force in 2002, for any strata created under prior legislation. However, a bylaw that is contrary to the standard bylaws will be given effect, if that bylaw has been filed in the registry, either before or after the standard bylaws came into effect. To the extent that any filed bylaw conflicts with Parts 1 to 17 of the SPA, that part of the bylaw cannot stand.
14. The owner has produced copies of Schedule 1 and Schedule 2 of the strata's bylaws. Schedule 2 appears to have been amended in 2006. It contains Bylaw 8, which sets out that an owner is responsible for maintenance and repair of his own strata lot, including windows and doors. There is no indication as to whether the amended Schedule 2 was filed with the registry.

15. Schedule 1 of the bylaws is not dated and does not indicate whether it has been filed with the registry. Schedule 1 contains the following relevant bylaws:

Bylaw 2.2(j): The strata shall maintain and repair the exterior of the building and all fences on the property.

Bylaw 7.1: The limited common property (LCP) consists of that portion of the common property designated in the prospectus as being assigned for the exclusive use of the owner and occupier of a particular strata lot.

Bylaw 7.2: Maintenance and repair of the LCP of a unit, including but not limited to all decks, patios, planters and plantings, is the responsibility of the owner of that unit.

16. The owner purchased SL4 in June 2014. In 2015 he started renovations. In the fall of 2015 he discovered water entering SL4. In January 2016 the owner advised the strata of the water ingress.
17. In February 2016 a contractor determined that the wooden door sill for the patio door was rotten and would need to be replaced. He proposed a temporary fix of applying a torch-on membrane to seal the frame, for an approximate cost of \$700. He also proposed a more permanent solution of removing and rebuilding the door and the door frame and rebuilding the deck on the patio, in a manner to prevent water ingress. The estimated cost for the permanent fix was \$5,700.
18. The strata paid the contractor \$735 to carry out the temporary repair so that the owner could continue with his renovations. After the temporary repair was completed the owner asked the strata council to move forward with carrying out the permanent solution.
19. According to the February 2016 strata council meeting minutes, the strata council was unsure whether the owner or the strata was responsible for the patio and patio door repairs needed at SL4. The council agreed to seek legal advice.

20. At a special general meeting (SGM) held in May 2016 the owner requested that the strata move forward with permanent repairs at SL4, including rebuilding the patio door and sill, and applying the torch-on membrane to seal the frame, as proposed by the contractor in the February 2016 email. The strata voted to discuss and consider the matter further.
21. The minutes of the September 2016 annual general meeting (AGM) indicate that the strata paid for balcony membrane waterproofing in unit #203, balcony repairs in unit #303 and balcony painting in other units. Strata council meeting minutes from September 2014 indicate that the strata paid for balcony repairs to units #203 and #204 and agreed to repair a patio fence at unit #105.
22. At the February 2017 strata council meeting the strata set out its plan to amend its bylaws by adopting the standard bylaws under the SPA. The strata council intended to clarify, in the new bylaws, that the strata would be responsible for the repair and upkeep of LCP.
23. The owner says that the door sill for his patio door is rotten, that water pools by the rotten sill on his patio as the patio slopes toward the building, and that water is coming into his suite through the rotten sill and membrane. He says that, on January 13, 2018, the strata's building manager used roof sealer to temporarily seal the patio membrane. The owner again requested that the strata council move forward in permanently repairing the patio door and sill.

POSITION OF THE PARTIES

24. The strata requests an order that:
 - The owner pay \$7,350 for the patio door repairs,
 - The strata's bylaws are upheld,
 - The owner pay the strata's tribunal fees of \$125.

25. The strata argues that, under their unique bylaws, the owner is responsible for repairs to his patio, including his patio door. The strata acknowledges that it made repairs to other balconies, and says that those repairs were voted on by the strata owners at an AGM, despite the bylaws that were in place at the time.
26. The owner requests an order that:
 - The strata undertake the patio door repairs,
 - The strata pay the owner's tribunal fees of \$100.
27. The owner argues that, in carrying out the temporary fixes in February 2016 and January 2018, the strata acknowledges it had an obligation to fix the water leak issue on the patio of SL4. The owner submits that the strata has previously repaired the patios and balconies of other strata lots, as set out in strata council meeting minutes.
28. The strata argues that the owner is not entitled to reimbursement of \$100 in tribunal fees, as a final decision from the tribunal was not necessary to resolve the claim. The strata says that it is in the process of adopting new bylaws which, they say, will make the strata responsible for maintaining and repairing patios and patio doors.

ANALYSIS

Should the owner pay \$7,350 to repair his patio, patio door, and door frame?

29. As in any civil dispute the applicant bears the burden of proving his claim on a balance of probabilities. In other words, the strata must show that it is more likely than not that the owner is responsible for carrying out the needed repairs and that he should pay \$7,350. I find that the strata has failed to meet that burden, for the reasons set out below.

30. The permanent repairs proposed in February 2016 included repairs to the patio door, the door frame and sill, and the wooden deck on the patio. Patios and decks are addressed by bylaw 7.2, but the bylaw refers to LCP. I do not find that bylaw 7.2 applies to the patio and wooden deck of SL4, as it is not LCP. The strata plan clearly indicates that the patio of SL4 forms part of the strata lot, not common property.
31. Bylaw 8 makes an owner responsible for the repair and maintenance of his strata lot, including windows and doors. Although the bylaw does not specifically refer to patios and decks, I find that it implies that an owner is responsible for any patio or deck that is part of his strata lot. This is particularly so, given that bylaw 8 refers to areas allocated to the exclusive use of a strata owner, which a patio is.
32. That being said, the strata has not established that either bylaw 7.2 or bylaw 8 was filed in the registry. The same is true of the other bylaws relevant to this appeal. Although under bylaws 7.2 and 8 the owner would be responsible for carrying out the needed repairs, the strata has not shown that the bylaws were in effect at the relevant time.
33. I have considered whether I ought to exercise my discretion under section 42(1)(c) of the Act and seek further information relating to the strata's bylaws. Given that the strata has filed no evidence with the tribunal and is in the process of resolving this issue outside of the tribunal I have decided that it is not necessary to seek further information to make a decision on this dispute.
34. I find that the strata has failed to prove, in this dispute, that the owner is responsible for the needed repairs.
35. The permanent repairs have not yet been undertaken. I note that the February 2016 estimate for the permanent repair was \$5,700 while the estimate for temporary repairs, which were carried out, was \$700. It is unclear where the \$7,350 number comes from. It is also unclear who the strata wants the owner to pay the money to.

36. As the permanent repairs have not yet taken place it is not clear what the exact cost will be. Even if the owner is responsible for the repairs, the strata has failed to prove the cost of those repairs.
37. The owner seeks an order requiring the strata to undertake the repairs to his patio, patio door and door sill. He has not filed a counterclaim asking for that relief. As such his participation in this dispute is limited to defending the strata's claim against him. It is open to the owner to start a new dispute with the tribunal and ask for such an order, should he choose to do so.

Should either party reimburse the tribunal fees of the other party?

38. 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.
39. Although the strata is unsuccessful in this dispute, I find that the worker was also unsuccessful. As such, I decline to make any order for tribunal expenses. Each party shall pay their own tribunal fees.

DECISION AND ORDERS

40. The the strata's claims are dismissed.
41. I make no order for tribunal fees.

Sherelle Goodwin, Tribunal Member