Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Ducharme et al v. The Owners, Strata Plan BCS 753*, 2018 BCCRT 262

B E T W E E N :

Catherine Ducharme and John Ducharme

APPLICANTS

A N D :

The Owners, Strata Plan BCS 753

RESPONDENT

REASONS FOR DECISION

Tribunal Member: J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicants, Catherine Ducharme and John Ducharme, own strata lot 90 in the respondent strata corporation, The Owners, Strata Plan BCS 753 (strata).

2. This dispute involves numerous claims relating to the provision of records, a Form B - Information Certificate (Form B), repairs and alterations to common property, unapproved expenses, meeting conduct and minutes content, and bylaw enforcement.

3. The applicants seek several orders in relation to their claims including orders that the strata reimburse fees and expenses paid, provide the applicants with an accurate Form B, compel it to repair and maintain certain areas of common property, remove unauthorized alterations, and comply with the *Strata Property Act* (SPA) and strata bylaws.

4. The strata says the applicants' claims are frivolous and unsupported by evidence and submissions. The strata seeks orders that the applicants' claims be dismissed and that it be reimbursed for legal fees.

5. The applicants are self-represented. The strata is represented by a lawyer, Anil Aggarwal.

6. For the reasons that follow, I largely dismiss the applicants' claims. I order the strata to comply with sections 45(4) and 97 of the SPA and any related regulations.

JURISDICTION AND PROCEDURE

7. 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.

8. 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.

9. 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.

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

11. 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

12. The issues in this dispute are:

    a. Did the strata provide the applicants with requested records and documents as required under sections 35 and 36 of the SPA? If not, are the applicants entitled to reimbursement of $542.51 for legal fees they say they paid to obtain the requested records and documents?

    b. Did the strata provide the applicants with an inaccurate Form B? If so, is the strata required to provide the applicants with a corrected Form B?

    c. Has the strata failed to perform repairs and maintenance required under the SPA or its bylaws? If so, what is an appropriate remedy?

    d. Has the strata improperly caused the applicants to pay for repair and maintenance that is the strata's responsibility? If so, are the applicants entitled to reimbursement of their expenses?

    e. Has the strata permitted alterations without proper approval? If so, what is an appropriate remedy?

f. Did the strata exceed its approved budget for an attic inspection and repair project (attic project)? If so, what is an appropriate remedy?

g. Has the strata conducted meetings, voting and recording of voting outcomes in accordance with the SPA and bylaws? If not, what is an appropriate remedy?

h. Has the strata enforced its bylaws in an unfair or inconsistent manner? If so, what is an appropriate remedy?

i. Should the applicants be reimbursed $225 for tribunal fees paid?

j. Should the strata be reimbursed for legal fees?

BACKGROUND AND EVIDENCE

13. I have read all of the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.

14. In this civil proceeding, the applicants bear the burden to prove their claims on a balance of probabilities.

15. The strata was built in 4 phases between 2004 and 2005 and is located in Langley, BC. It comprises 17 separate buildings, each building comprising 5 – 6 strata lots for a total of 100 residential strata lots. Each strata lot is 3 levels with a garage on the ground level. I would characterize the strata a residential townhouse development.

16. The strata plan shows each strata lot's garage forms part of the strata lot and that some strata lots have a limited common property (LCP) yard area to the rear of the strata lot. It is the strata lots within the buildings located on the perimeter of the common property that have the LCP yard areas, of which the applicants' strata lot is one.

17. The relevant strata bylaws are those registered in the land title office on July 29, 2011, summarized as follows:

Bylaw 2(1) – an owner must repair and maintain the owner's strata lot except for repair and maintenance that is the strata's responsibility under the bylaws.

Bylaw 2(2) – an owner who has the use of LCP must repair and maintain it except for repair and maintenance that is the strata's responsibility under the bylaws.

Bylaw 5(1) – an owner must obtain the strata's prior written permission before altering a strata lot, including doors on the strata lot's exterior o or that front on common property.

Bylaw 5(2) – the strata must not unreasonably withhold it approval under bylaw 5(1), but may require the owner to take responsibility for expenses relating to the alteration.

Bylaw 6(1) – an owner must obtain the strata's prior written approval before altering common property.

Bylaw 6(2) – the strata may require as a condition of its approval that the owner agree to take responsibility for any expenses related to the alteration.

Bylaw 8(1)(b) – the strata must repair and maintain all common areas.

Bylaw 8(2)(a) – the strata must repair and maintain LCP relating to the building's structure or exterior, chimneys, stairs and other things attached to the building exterior, and fences, railings and other similar structures that enclose patios and yards. For all other LCP, the strata is only responsible for repair and maintenance items that usually occur less often that once per year.

Bylaw 8(2)(b) – the strata is responsible for parts of a strata lot that relate to the building's structure or exterior, chimneys, stairs and other things attached to the building exterior, and fences, railings and other similar structures that enclose patios and yards.

Bylaw 22(3) – the maximum amount of unapproved expenditures is $2,000 or 10% of the annual operating budget, whichever is greater.

18. The Dispute Notice for the applicants' claims was issued July 27, 2016.

19. Between May 2016 and May 2017, both before and after the Dispute Notice was issued, the applicants or their lawyer made several requests for records and documents of the strata. Initially, the strata's property manager did not provide some documents citing privacy reasons or that those documents were not required to be retained under section 35 of the SPA. Subsequently, some of the previously withheld documents were provided to the applicants.

20. The applicants retained a lawyer for the period of October 18 to November 14, 2016 and provided $542.51 in receipts showing fees paid to the lawyer.

21. The strata provided Form B certificates dated October 27, 2016 and May 23, 2017 to the applicants at the applicants' request.

22. The strata retains a landscape maintenance company under contract as well as a pest control company. The strata also contracts with other repair and maintenance companies on a regular basis.

23. Between May 2016 and May 2017, the parties exchanged correspondence about a paving stone walkway adjacent to the applicants' strata lot. The strata attended to repairs of the walkway on at least 2 occasions in January and May 2017.

24. The strata authorized repair and maintenance expenses, including walkway paving and replacement of rotted building components and fences in its annual operating budget. Between December 2014 and December 13, 2016, the strata authorized $30,000 for paving gravel walkways and completed the work in late 2016.According to the strata, the funds were budgeted under the heading of "concrete repairs."

25. Between November 2015 and December 2016, the strata held general meetings to discuss and approve attic ventilation repairs involving potential mould issues (attic

project). The details of the attic project were not provided to me, nor do I find those details are necessary given the dispute is over alleged over-expenditure of approved funds. Funds to pay for the attic project were raised by transfers from the contingency reserve fund (CRF) and prior years' operating surplus'. The strata addressed the attic project at the November 24, 2015 AGM, December 13, 2016 AGM, and February 18, 2017 SGM.

26. Prior to the November 24, 2015 AGM, the applicants voted by proxy and did not attend the strata's general meetings in person.

POSITION OF THE PARTIES

27. The applicants say the strata has failed to provide timely, requested records and has issued inaccurate Form B certificates.

28. They also say the strata has failed to perform repair and maintenance as required by the SPA and the strata's bylaws, carried out repairs contrary to the SPA and exceeded approved repair expenses.

29. Finally, the applicants say that the strata has not conducted meetings, voted on or properly recorded voting outcomes in accordance with the SPA and bylaws and is enforcing bylaws unfairly and in an inconsistent manner.

30. The applicants request orders that the strata:

    a. Provide the applicants with a complete and accurate Form B.

    b. Repair the applicants' paving stone sidewalk and paint the applicant's front door facing 66th Avenue.

    c. Complete various landscaping and fence repairs for strata lots facing 66th Avenue.

    d. Add a mole extraction service to its existing pest control service contract for all strata lots along 66th Avenue.

e. Remove unauthorized improvements at individual strata lot owners' expense where appropriate.

f. Enforce its bylaws.

g. Reimburse the applicants a total of $1,901.24 broken down as follows:

    i. $542.51 in legal fees expended to obtain strata records and documents,

    ii. $109.99 for the cost of 3 hard-wired smoke detectors,

    iii. $603.74 for repairs to the applicants' garage door,

    iv. $420.00 for the cost of extracting moles, and

    v. $225 for tribunal fees.

31. The strata says that it has acted in compliance with the SPA and the *Personal Information Protection Act* (PIPA).

32. The strata also says that the applicants' claims are frivolous, resolved and/or unsupported by evidence and submissions and that their conduct rises to the level of extraordinary such that it is worthy of reprimand.

33. The strata requests that the applicants' claims be dismissed and that it is reimbursed for legal fees in defending their claims.

ANALYSIS

Did the strata provide the applicants with requested records and documents, or access to them, as required under sections 35 and 36 of the SPA? If not, are the applicants entitled to reimbursement of $542.51 for legal fees they say they paid to obtain the requested records and documents?

34. The owners argue that it was necessary to retain legal counsel to obtain records and documents from the strata. As set out below, I disagree. I also note that a

Form B falls under section 59 of the SPA and is not a record or document related to section 35 of the SPA.

35. The evidence shows that the strata gave the applicants numerous records and documents they requested although it is unclear if the strata met the timelines set out in section 36 of the SPA in every instance. For example, in an email dated August 13, 2016, the applicants requested access to certain documents within a range of dates and the strata's property manager requested the applicants provide a specific date, which may have extended past the 2-week deadline under section 36. Although the evidence does not show the actual inspection date arranged, I find it was reasonable for the strata to request a specific inspection date given the number of records requested. Further, that not all requested records and documents were available for inspection does not mean the applicants required a lawyer.

36. As earlier noted, some documents, such as the strata council contact information, were not initially provided for reasons of privacy, even though strata contact information is required to be provided under *Strata Property Regulation* 4.1(1)(a). However, the strata provided that information before the applicants hired their lawyer.

37. Additionally, the initial October 18, 2016 letter from the applicants' lawyer states his firm was retained "to attempt to resolve some serious issues which have arisen regarding the governance of the [strata]." While obtaining certain documents may have been important to the applicants, it appears their purpose of retaining a lawyer was not strictly to obtain documents.

38. Finally, the applicants did not previously request the information requested by the applicants' lawyer. I find that it was a new request, which further supports my conclusion that it was unnecessary for the applicants to retain a lawyer to obtain records and documents.

39. For these reasons, I find the strata reasonably met the SPA requirements and the applicants are not entitled to reimbursement of legal fees. I dismiss the applicants' claims in this respect.

40. Having found the applicants are not entitled to reimbursement of legal fees, I need not addressed the strata's argument that the applicants acted contrary to the Act and tribunal rules by not obtaining the tribunal's permission before retaining a lawyer to address this tribunal claim.

41. The applicants refer to a request for landscape tour notes and weekly inspection reports completed by the strata property manager in their claim for alleged failure to repair common property discussed below. The applicants' specific comments contained in their reply are:

> The strata manager has refused to produce these landscape tour notes, and weekly inspection reports which they have continued to insist are private property of the management company and not required to be produced under the strata property act. We recommend the [tribunal] compel the strata manager to produce these reports….

42. The strata did not rebut the applicants'' statement despite being given the opportunity to do so. Regardless, to the extent the tour notes and inspection reports are provided to the strata council, I find they are producible under section 35(2)(k) of the SPA as correspondence received by the strata.

Did the strata provide the applicants with an inaccurate Form B? If so, is the strata required to provide the applicants with a corrected Form B?

43. The applicants appear to have made 2 requests for a Form B before retaining their lawyer. However, they have not requested any remedy associated with the late production of the Form B but rather say it was inaccurate and seek a corrected copy

44. The applicants appear to have made 2 requests for a Form B before retaining their lawyer. However, they have not requested any remedy associated with the late production of the Form B but rather say it was inaccurate and seek a corrected copy.

45. As earlier noted, the strata provided 2 Form B certificates dated October 27, 2016 and May 23, 2017. The applicants argue the Form B dated October 27, 2016 contained inaccurate information and did not include the required attachments. In reply, they acknowledge that the strata provided a second Form B dated May 23, 2017 but specifically allege it is highly unlikely the strata did not have an updated depreciation report or was unaware it was over budget on 2017 snow removal expenses, both of which must be disclosed on the Form B and we not.

46. The strata says the updated depreciation report was not yet available when it issued the May 23, 2017 Form B. The strata did not reply to the applicants' claim the strata was over budget despite being given the opportunity to respond to new evidence provided in the applicants' reply.

47. As noted above, the applicants bear the burden of proof and here. I find the applicants have failed to prove their claim that the May 23, 2017 Form B contained inaccurate information. That the strata approved the expense for an updated depreciation report some 8 months earlier does not mean the updated report was complete on May 23, 2017 when the strata issued the Form B. Further, that the strata was over budget in snow removal expenses in May 2016, does not mean that the amount of expenses was expected to exceed the budgeted expenses for the fiscal year, which is what the Form B discloses.

48. Finally, in their submissions about the strata's alleged failure to properly repair and maintain common property discussed below, the applicants say, "If the last Form B we received is accurate…." I infer the last Form B is the May 23, 2017 Form B and, by the applicants' own admission, the Form B may be accurate.

49. For these reasons, I am unable to determine if the information contained in or attached to the May 23, 2017 Form B is accurate based on the evidence provided. I dismiss the applicants' claims about the Form B.

50. The applicants are free to ask the strata if the updated depreciation report is complete and request a current Form B under section 59 of the SPA at a future date.

Has the strata failed to perform repairs and maintenance required under the SPA or its bylaws? If so, what is an appropriate remedy?

51. The applicants' argument that the strata has failed to repair and maintain common property relates specifically to the following items:

    a. Mole extraction from lawn areas adjacent to the applicants' strata lot.

    b. Various landscaping concerns involving:

        i. Replacement of missing cedars,

        ii. Removal of boxwood plants and replacement with Azalea plants,

        iii. Planting of grass,

        iv. Replacing and painting of fence boards, and

        v. Replacing rhododendrons that were removed from the NW side of applicant's strata lot and replaced with other plants.

    c. Repair of paving stone walkway adjacent to the applicants' strata lot.

    d. Painting of the applicants' front entry door.

52. The applicants generally argue that the strata has failed to establish a routine maintenance plan and capital repairs plan, which they say is contrary to the SPA, the bylaws, the owner's manual and the 2013 depreciation report.

53. The strata says it has reasonably met its repair and maintenance obligations or has been prevented from doing so because it was unware of the matter or limited by its budget. For the reasons that follow, I agree with the strata.

54. I do not agree that the owner's manual applies to this claim. I find the undated manual provided by the applicants provides common sense and technical explanations of the various components of the common property and strata lots, which may be of interest to new owners. It is not a document to which the SPA or bylaws refer. The applicants did not point to any specific contraventions and I find there is nothing in the manual that is helpful to this claim. In any event, the manual is not binding like the SPA or the bylaws.

55. The 2013 depreciation report was prepared by a professional engineering firm in November 2013 and appears to comply with section 94 of the SPA and regulation 6.2. Briefly stated, a depreciation report estimates the repair and replacement cost for major items in a strata corporation and the expected life of those items. There is no requirement under the SPA or the bylaws that the strata must follow the depreciation report. It is simply a tool to assist the strata in identifying and budgeting for replacement of major items it is responsible to repair and maintain. For these reasons, I find there is nothing in the 2013 depreciation report that is helpful to the applicants' claim.

56. Section 72 of the SPA sets out the strata' s repair and maintenance duties and states the strata is responsible for common property and common assets of the strata. Section 72 also says the strata may, by bylaw, make an owner responsible for LCP or take responsible for specified portions of a strata lot. I have earlier summarized the relevant strata bylaws about repair and maintenance obligations.

57. It is undisputed that the strata is responsible for repairing and maintaining the specific areas of common property or LCP claimed by the applicants as I have listed above, even though the lawn area to the rear of the applicants' strata lot is LCP for their strata lot.

58. As the strata correctly notes, the test for whether a strata corporation has satisfied its statutory obligations is one of reasonableness. The strata must consider the best interests of all owners when making decisions. When deciding whether to fix or replace common property, the strata has discretion to approve "good, better or best" solutions to any given problem. The court will not interfere with a strata's decision to choose a "good," less expensive, and less permanent solution, although "better" and "best" solutions may have been available. In addition, the strata may take into account its budgetary constraints. (See *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784).

Mole extraction

59. The applicants request an order that the strata add mole extraction services to the strata's pest control service contract and the strata says those services are already part of the contract with extra services available on the request of an owner.

60. Contrary to the applicants' submission, based on my review of the evidence, I find the strata contracted with different companies for pest control services, including mole extraction services, as shown in service reports and strata council meeting minutes.

61. Further, there is no evidence to suggest there is an emergency mole problem in the strata. I do not agree with the applicants that the photographs provided show damage caused by moles. I find the strata has reasonably met its obligations with respect to attending to mole extraction.

Landscaping and fence repairs

62. The applicants argue the strata has not taken care of the common property landscaping nor taken steps to mitigate premature death of plants and hedges, including ensuring plants, lawn and shrubs are properly watered. The applicants provided numerous photos in an attempt to identify the landscaping shortcomings and required fence repairs.

63. The strata says that many of the applicants' common property repair concerns were not brought to the strata's attention until after the tribunal claim was started. It also says that the strata does not have the financial ability to attend to all repairs that are brought to its attention.

64. The applicants provided 38 photographs showing various landscaped areas and fencing. The photographs do not identify the locations they were taken within the strata property. While I agree the photographs show some dead and missing plants, I find they otherwise show the landscaped areas as being very well kept. The fences generally appear to be in good condition.

65. That the strata relies on volunteer owners to water landscaped and lawn areas does not mean it has not taken reasonable care of its common property. Further, the correspondence provided indicates the strata did not ignore the applicants' requests and in several cases instructed contactors to complete repairs and attend to the applicants' landscape concerns .

66. I agree the applicants added several landscape claims to their original dispute that were not part of the issued Dispute Notice. Therefore, it was not possible for the strata to address these concerns in advance of the tribunal process.

67. The strata did not specifically point me to financial constraints in addressing repair and maintenance issues nor was it argued by the applicants. I find I do not need to address this defence. Based on my review of the evidence overall, I find the strata has reasonably completed landscape and fence repairs and met its obligations in this regard. I dismiss the applicants' claims in this respect.

Repair of paving stone walkway adjacent to the applicants' strata lot

68. There is a paved walkway leading from the street to the applicants' front door.

69. The strata repaired the walkway in January 2017. Details of the repair and the reason why it was undertaken were not provided in evidence. The strata retained a contractor to repair the walkway again in early May 2017. The contractor's

emailed report shows that in May 2017, the paving stones were completely removed, a sand base installed, and the paving stones replaced between 2 wooden borders. The wooden borders consist of a 2x4 on edge. Prior to the walkway work in May 2017, the wooden borders were not present.

70. At the conclusion of the May 2017 repairs, the strata asked the applicants to confirm their satisfaction with the work. In a letter dated May 25, 2017, the strata acknowledged receipt of the applicants' email stating they were not satisfied with the work, although that email is not before me. In the same May 25, 2017 letter, the strata further advised the applicants the contractor had the lumber installed to "prevent future slipping on the paving stones." Based on the correspondence provided, I infer the strata's letter meant to say "prevent further slipping ***of*** paving stones."

71. In their reply, the applicants state they object only to the appearance of the wooden borders on the walkway, because wooden borders give the walkway "a shoddy appearance that is different from our neighbours paver pathways." They further state that they believe the wooden borders were installed deliberately to anger them and that the sunken pavers "are a direct result of the mole problem." The applicants provided no evidence to support these assertions.

72. The contractor's photographs of the new walkway show there are no sunken pavers. To the extent that sunken and shifting pavers formed the applicants' original complaint, I find the wooden borders have solved the problem. That the strata retained a contractor to complete the work and relied on the contractor's opinion that the installation of the wooden borders were necessary, indicates the strata took reasonable steps to repair the walkway. I do not find that the wooden borders detract from the walkway's appearance.

73. For these reasons, I find the strata has reasonably completed the walkway repairs and met its repair and maintenance obligations in this regard. I dismiss the applicants' claims in this respect.

Painting of the applicants' front entry door

74. The applicants claim the strata is responsible to repair and maintain their front entry door and, because the strata had not repainted it in over 10 years, the applicants completed the repair to hide chips and scratches. They say the paint they used is 2 shades lighter the original paint colour.

75. The strata relies on bylaws 5(1) and (2), noted above, that say an owner must obtain prior written permission before altering their strata lot, including an exterior door. Bylaw 5(2) says that if the applicants had requested permission to paint their door, which they did not, the strata could have required them to take responsibility for the expense.

76. I also note bylaws 6(1) and (2) which mirror the language of bylaws 5(1) and (2) except with reference to common property.

77. I find there is no doubt that painting the door a different colour is an alteration. There is no evidence that there were any communications between the parties on the condition of the door prior to the applicants taking it upon themselves to paint it.

78. Therefore, whether the front entry door is part of the applicants' strata lot or common property, the applicants were required to obtain the strata's permission before painting their entry door. Given they did not; the strata can rely on bylaws 5(2) or 6(2), or section 129(b) of the SPA to remedy the applicants' contravention of the strata's bylaw. In all cases, the applicants would be responsible for the costs of repainting the door.

79. Although, this claim was framed as a repair issue, it really is not. The applicants undertook the painting of the door because they decided it needed to be done. They did not request the strata's permission to do so and they did not ask the strata to paint the door.

80. For these reasons, I simply cannot find that the strata breached is obligations about repairing and maintaining the applicants' front entry door.

81. For all of these reasons, I find the strata did not fail to perform repair and maintenance required of it under the SPA or the strata's bylaws. I dismiss the applicants' claim.

Has the strata improperly caused the applicants to pay for repair and maintenance that is the strata's responsibility? If so, are the applicants entitled to reimbursement of their expenses?

82. As earlier noted, the applicants seek reimbursement for the following repair and maintenance expenses:

    a. $109.99 for the cost of 3 hard-wired smoke detectors,

    b. $603.74 for repairs to the applicants' garage door, and

    c. $420.00 for the cost of extracting moles.

83. The applicants argue that the strata is obligated to repair and maintain all areas of the common property. They also argue the strata has set a precedent by undertaking interior repairs to certain strata lots and not others.

Smoke detectors

84. The applicants claim reimbursement of the cost of 3 smoke detectors purchased in August 2013. Their claim is based on a March 31, 2015 invoice that appears to show the strata paid for smoke detectors in another strata lot.

85. The strata says the amount of the March 31, 2015 invoice was to be charged back to the owner of the subject strata lot but as the result of an administrative error by the strata property manager, the owner was never charged for the smoke detectors. The strata says that the strata property manager has since paid the strata $273.58, the amount of the March 31, 2015 invoice, which is supported by banking documentation before me. I accept the strata's position that the property

manager erred in 2015 and did not charge the invoice back to the owner at that time.

86. The applicants say that other strata corporations pay for annual testing of fire equipment such as sprinklers and smoke detectors as part of their common expenses and that because the strata paid for smoke detectors in 2015, it has set a precedent and should reimburse them for their smoke detectors.

87. The strata says the fire systems for the individual strata lots are self-contained and are not part of a common system. The applicants do not dispute this.

88. Further, the strata's bylaws do not require the strata to take responsibility for the cost of smoke detector replacement within a strata lot. On the contrary, the bylaws show owners are responsible for the cost of replacing smoke detectors, given they are not an express responsibility of the strata.

89. Finally, I am not persuaded by the applicants' argument that the strata set a precedent in paying for smoke detectors based on the single invoice of March 2015 as described above, which I have accepted was always intended to be the individual owner's responsibility.

90. For these reasons, I find the strata is not responsible for the applicants' smoke detector cost of $109.99. I dismiss this claim.

Garage door repairs

91. The applicants claim reimbursement of the cost of replacing their garage door hinge and door spring in October 2016. Their claim is based on a November 4, 2013 letter from the strata property manager to a contractor accepting a quotation for "door replacement and post fascia replacement" at another strata lot.

92. The strata says the issue in November 2013 related to a deck door that required replacement as it "was being warped by wood rot" from pillars for which the strata was responsible to repair and maintain.

93. As noted earlier, the strata plan shows the garages of all strata lots to be part of each strata lot.

94. The strata's responsibility relating to common property is set out in bylaw 8(1)(b), which requires the strata to maintain all common areas, and 8(1)(d) which includes the exterior of the buildings but expressly excludes garage doors included in a strata lot.

95. The strata's responsibility relating to strata lot repairs is set out in bylaw 8(2)(b), which restricts the strata's responsibility to:

    a. the structure or the exterior of the building,

    b. chimneys, stairs and other things attached to the exterior of the building, and

    c. fences, railings and other similar structures that enclose patios and yards.

96. Based on the strata's bylaws, I find the strata is not responsible to replace hinges or springs on individual garage doors that are part of a strata lot. That it replaced a deck door in 2013 does not mean it must replace garage door hinges or springs now.

97. For these reason, I find the strata is not responsible for the applicants' garage door repairs of $603.74.

Has the strata permitted alterations without the proper approval? If so, what is an appropriate remedy?

98. Based on the tribunal decision plan before me, the applicants' argue the strata carried out major changes without appropriate approval when it:

    a. Paved gravel walkways,

    b. Replaced patio posts, and

    c. Replaced rotted fences.

99. The applicants advance two arguments about the strata's authority to complete the alterations at issue. The first is that the alterations were significant changes within the meaning of section 71 of the SPA. The second argument is that the expenses were not properly approved by the strata owners.

100. I will first address the issue of significant change.

101. Under section 71 of the SPA, the strata must not make a significant change in the use or appearance of common property unless the change is approved by a ¾ vote resolution or there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage. Here, the requirement of an immediate change has been argued by the strata in the alternative, which I will address below. In addition, based on my review of the photographs, I find there has been no change in use of the walkways.

102. Criteria for determining what is a significant change in use and appearance under section 71 of the SPA was clearly set out in *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333 at paragraph 19 (citing *Chan v. The Owners, Strata Plan VR677*, 2012 BCSC 1725):

    a. A change would be more significant based on its visibility or non-visibility to residents and its visibility are non-visibility towards the general public;

    b. Whether the change to common property affects the use or enjoyment of the unit or number of units or an existing benefit of all unit or units;

    c. Is there a direct interference or disruption as a result of the change of use?

    d. Does the change impact on the marketability or value of the unit?

    e. The number of units the building may be significant along with the general use, such as whether it is commercial, residential or mixed-use; and

    f. Consideration should be given as to how the strata corporation has governed itself in the past and what it is followed. For example, has it permitted similar

changes in the past? Has it operated on a consensus basis or has it followed the rules regarding meetings, minutes and notices as provided in the SPA.

103. In *Foley*, the court also noted that the Court of Appeal in *Reid v. Strata Plan LMS 2503*, 2003 BCCA 128 found that the placement of potted plants, cedars, bushes and other shrubs in a common property entrance area did not constitute a significant change to the use or appearance of the common property under section 71 of the SPA.

104. The walkways at issue are quite extensive and contained within the strata development. Based on the criteria set out in *Foley*, I find the change from a gravel walkway to an asphalt walkway is not a significant change in appearance. Specifically, I find the visual change is not significant, the use and enjoyment of strata lots has not been affected, and there is no direct disruption as a result of the change. The matters of strata lots' marketability and past governance of the strata were not argued.

105. As for the patio posts, the applicants say the repairs were made for aesthetic reasons only and not because of rot. They rely on April 19, 2016 strata council meeting minutes to confirm this. I have reviewed the referenced minutes and do not agree the work was done for strictly appearance reasons. At that meeting the property manager provide the strata council with a revised quotation for wood rot repairs relating to the "pillars behind the units" which I understand to be cladding of the actual patios posts. I say this because the minutes note the pillars are not structural. My interpretation of the description in the minutes is that during the course of providing a quotation to repair rotted pillars, the contractor suggested a minor redesign of the pillars' base that "would prevent additional costs in the long term."

106. I also do not find the post redesign to be significant in either use or appearance. The use of the pillars did not change. Based on the applicants' photographs, I could not see any discernable difference in the different designs. The application

of the test in *Foley* leads me to conclude there was no significant change in the pillars, or patio posts as the applicants' allege.

107. As for the replacement of rotted fences, I do not see that a significant change occurred, based on the applicants' submissions and photograph evidence. There was no change in use and a change in appearance was not argued.

108. Turning now to the approval of the expenses for the items listed, the strata argues all expenses were approved by the ownership in the operating budget. The applicants say such approval was unclear and that the expense for the walkways' paving was properly a CRF expense and not an operating fund expense. The applicants rely on sections 96, 97 and 98 of the SPA.

109. Simply put, the SPA requires expenses to be paid from the operating fund if the expenses usually occur once a year or more often than once a year and from the CRF if the expenses usually occur less often that once per year. There are exceptions regarding CRF expenses and unapproved expenses that do not apply here.

110. It is undisputed that the expenses relating to paving the gravel walkways, and replacing rotted patio posts or "pillars" and fences were paid from the operating fund. I agree that expenses relating to replacing rotted patio posts and wooden fences would usually occur more often than once per year. Replacement of rotted wood is an ongoing maintenance requirement of the strata that appears to be completed every year based on my review of the evidence provided. I see no reason to address these expenses further and I find proper authority was given the strata when the owners approved the applicable operating budgets.

111. I disagree with the applicants' argument that using operating surplus to reduce the next fiscal year's strata fees has any relevance here.

112. As for the paving of the walkways, section 97 states that a strata corporation must not spend money from the operating fund unless:

    a. the expense usually occurs once per year or more often, ***and***

b. is approved by the owners passing a ¾ vote at a general meeting, ***or***

   i. is authorized in the budget, or

   ii. meets the exception qualifications set out in section 98 of the SPA for unapproved expenses.

113. It is clear to me that the strata's expenses relating to paving walkways do not normally occur annually of more often. The minutes show, and the parties agree, the paving expense was not approved by a ¾ vote resolution.

114. The remaining question then is did the paving expense meet the exception qualifications under section 98? I find the answer is yes.

115. The first exception relates to whether the expense, together with all other unapproved expenses for the same fiscal year, is less than the threshold set out in the strata bylaws. As earlier noted, bylaw 22(3) sets the threshold at 10% of the annual operating budget. Based on the approved 2015 operating budget totaling $240,490 as shown in the December 2, 2014 AGM minutes, the threshold for 2015 is $24,049.

116. The approved budget shows the paving expenses to be $15,000, which are less than the threshold set out in the budget. The strata submits that a further $10,000 and $5,000 were budgeted for 2016 and 2017 respectively, and notes the paving work was completed in late 2016. The applicants do not dispute this.

117. While I do not have all of the minutes, all of the budgets and all of the financial details concerning paving expenses, I find from the evidence before me, it is more likely than not, the strata has complied with section 97 of the SPA. I find the applicants have not proved the strata improperly paid the paving expense.

118. In light of my conclusion, I do not need to consider the strata's alternate defence that the expense was necessary to ensure safety or prevent significant loss or damage.

119. As far as the applicants' argument that the paving expenses were presented as concrete repairs, I note the minutes of the December 2, 2014 AGM include a statement from the strata council president that the strata "hoped to… complete the paving of common areas." That the applicants were not present in person at the meeting is irrelevant.

120. For these reasons, I find the strata had proper approval before completing alterations to common property and paying the expenses relating to paving the walkways, and repairing rotten wood components of the building and fences. I dismiss the applicants' claims in these respects.

Did the strata exceed its approved budget for an attic inspection and repair project (attic project)? If so, what is an appropriate remedy?

121. It appears that potential mould issues identified through a home inspection of one the strata lots was brought to the strata's attention in late 2014. As detailed below, the evidence shows the strata raised $101,000 for the attic project. The amount raised and the dates it was raised are shown in the strata's January 27, 2016 notice to owners that formed part of the February 18, 2016 SGM notice package, which shows the following:

Transfer from the CRF	November 24, 2015	$58,000
	February 18, 2016	20,000
Operating Fund (roof attic)	November 24, 2015	23,000
		$101,000

122. The applicants concede they do not know the total amount spent by the strata on the attic project but are convinced the cost is approximately $140,000 to $150,000. They seek an order compelling the strata to comply with the SPA and obtain approval before exceeding approved budget expenses.

123. As noted above, the applicants bear the burden of proof. Their claim is based on unsupported speculation based on the evidence before me, and I find they have not proved their claim. I dismiss it.

124. It seems the applicants' real issue is that they do not know the total amount spent on the attic project and distrust the strata. It is open to the applicants to review the strata's records and documents or give the strata direction through a majority of vote of the owners at a general meeting to determine the amount actually spent.

Has the strata conducted meetings, voting and recording of voting outcomes in accordance with the SPA and bylaws? If not, what is an appropriate remedy?

125. The applicants' concerns about recording the outcome of votes as unanimous (rather than listing votes for and against), recording transfers of operating fund surplus without a clear explanation of the purpose, and that the general meeting notice packages are lacking budget information, are ill founded. I find the strata has generally conducted itself in accordance with the SPA and its bylaws.

126. There is however, 1 allegations raised by the applicants with which I agree. The strata, at least with respect to the December 13, 2016 AGM notice, did not comply with section 45(4) in that the financial statement distributed with the AGM notice did not comply with *Strata Property Regulation* (regulation) 6.9.

127. Regulation 6.9 requires the financial statement distributed with the AGM notice package to be within the 2-month period of the date of the meeting and to contain specific information. The information missing from the September 30, 2016 financial statements was all of the information relating to income and expenditures of the strata for the fiscal year up to and including September 30, 2016. Specifically, details of the strata's income from all sources and details of expenditures out of the operating fund and CRF including unapproved expenditures under section 98 of the SPA.

128. That the proposed operating budget included year to date expenses and estimated year end expenses is not sufficient, in my view, to meet the requirements regulation 6.9.

129. I turn now to the applicants' desired remedies, which I decline to order. In essence, the applicants seek orders that the strata comply with the SPA requirements but the remedies sought are either not SPA requirements or are requirements that the strata complies with.

130. For example, there are no requirements for the strata to distribute actual financial statements to all owners or to record discussions on general meeting resolutions in its minutes. The strata correctly notes the court's conclusion in *Kayne v. The Owners Strata Plan LMS 2374,* 2007 BCSC 1610, which found the SPA does not set out any degree of detail that must be contained in strata minutes beyond recording the outcome of the vote.

131. I will however address the strata's breach of sections 45(5), including regulation 6.9, and 96 of the SPA and order the strata to comply with these sections of the legislation in the future.

Has the strata enforced its bylaws in an unfair or inconsistent manner? If so, what is an appropriate remedy?

132. The applicants' allegations of the strata's unfair or inconsistent manner in which it enforces its bylaws are numerous. I will not repeat them here nor will I go into any detail about the allegations. My reason is that I agree with the strata that it has the flexibility to enforce its bylaws without input from its owners and the examples provided by the applicants do not indicate unfair or inconsistent enforcement. There is no evidence before me to support a conclusion the applicants have been treated significantly unfairly within the meaning of section 48.1(2) of the Act.

133. I have previously addressed a strata corporation's discretion to enforce its bylaws and found that under section 133 of the SPA a strata may do what is reasonably necessary to enforce it bylaws, and, in some cases, may not need to enforce a

bylaw, even though there is a clear breach, where the effect of the breach on others is trifling. (See *Curtain v. The Owners, Strata Plan VIS 4673*, 2018 BCCRT 100 at paragraphs 44-51)

134. I find the same reasoning applies here and, based on the evidence before me, I do not agree the strata acted unreasonably or in an unfair or inconsistent manner. I dismiss the applicants' claims in this respect.

Should the applicants be reimbursed $225 for tribunal fees paid?

135. 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. I see no need to deviate from this general rule. The applicants have not been successful with respect to the vast majority of their claims. Accordingly, I decline to order the applicants be reimbursed for tribunal fees paid.

Should the strata be reimbursed for legal fees?

136. Tribunal rule 132 says that except in extraordinary cases, the tribunal will not order one party to pay another party's legal fees. This follows from the general rule in section 20(1) of the Act that parties are to represent themselves in tribunal proceedings.

137. The strata argues that it is entitled to an order for reimbursement of legal expenses, as the applicants' claims are frivolous, resolved or largely unsupported. It also says the applicants have unreasonably maintained their claims, either in whole or in part, and in doing so, have required the strata to unnecessarily incur legal costs. For these and other reasons, the strata says the applicants' actions rise to the level of extraordinary such that I should order the strata be reimbursed its legal fees.

138. On the other hand, the applicants argue that without their dispute being brought before the tribunal, their walkway, among other things, would not have been attended to.

139. It is my view that the applicants' real issue is that the strata has not met the applicants' repair and maintenance standards, which appear to be of a higher standard than the strata is required to provide. It is also my view that the applicants may have misunderstood the strata's obligations. I do not find that the claims were frivolous.

140. Therefore, I do not find the applicant's actions rose to the level of extraordinary such that I should order the strata's legal fees be reimbursed, given the tribunal's general mandate that parties be self-represented.

ORDERS

141. I order the strata to comply with sections 45(4) and 97 of the SPA and any related regulations.

142. The applicants' remaining claims are dismissed.

143. Under section 189.4(b) of the SPA, an owner who brings a tribunal claim against the strata corporation is not required to contribute to the expenses of bringing that claim. I order the strata to ensure that no part of the strata's expenses with respect to this claim are allocated to the applicants.

144. 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.

145. 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.

J. Garth Cambrey, Vice Chair