



# Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Farrell et al v. The Owners, Strata Plan K 414 et al*, 2018 BCCRT 369

B E T W E E N :

Stacy Farrell, Richard Jager and George Howden

**APPLICANTS**

A N D :

The Owners, Strata Plan K 414 and Collette Cote

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. The applicants, Stacy Farrell, Richard Jager and George Howden, each own or co-own different strata lots in the respondent strata corporation, The Owners, Strata Plan K 414 (strata).



2. The respondent, Collette Cote (respondent owner), co-owns a strata lot (SL7) in the strata.
3. This dispute involves the addition of wooden septic tank cover on common property adjacent to the respondent owner's SL7 (cover).
4. The applicants say the cover approved by the strata is significant within the meaning of section 71 of the *Strata Property Act* (SPA) and that a  $\frac{3}{4}$  vote of the strata is required. They ask that that the cover be removed.
5. The strata denies the cover is significant and asks that the applicants' claims be dismissed.
6. The applicants are represented by Stacy Farrell. The strata is represented by a strata council member. The respondent owner is self-represented.
7. For the reasons that follow, I order the applicants' dispute dismissed.

## **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. 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.
12. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator). Tribunal documents incorrectly show the name of the respondent as The Owners, Strata Plan, KAS 414, whereas, based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan K 414. Given the parties operated on the basis that the correct name of the strata was as used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the style of cause above.

## **ISSUES**

13. The issues in this dispute are:
  - a. Did the cover involve a significant change in use or appearance of common property? If so, should I order the cover be removed?
  - b. Are the applicants entitled to reimbursement of \$225.00 for tribunal fees?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

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



15. In a civil proceeding such as this, the applicants must prove their claims on a balance of probabilities.
16. The strata is a 9-unit residential strata corporation located in Sicamous, B.C.
17. The relevant bylaws of the strata are the Standard Bylaws under the SPA, together with amendments filed on June 20, 2002 that are not relevant to this dispute.
18. Sometime in 2007, a septic tank cover was constructed over the septic tank adjacent to strata lot #1, owned by one of the applicants. It is undisputed, and photographs provided in evidence show the cover adjacent to strata lot #1 consists of a 4 piece removable cover that looks similar to a wooden deck.
19. The May 20, 2012 annual general meeting (May 2012 AGM), show “changes to unit 7 were discussed including a “septic tank cover with hinge (within building code) same as #1” and “install door similar to unit #5 (except single). The minutes also state “No vote held but all approved.” It is undisputed that the minutes were approved at the following 2013 annual general meeting. There is no evidence to suggest the strata council at the time provided written approval of the cover.
20. On July 17, 2017, the respondent owner started construction of the cover.
21. On July 20, 2017, the strata council president received an email complaint about the cover from Stacy Farrell suggesting the cover did not receive proper approval and needs to be removed.
22. On July 26, 2017, the council president sent an email to the applicants advising the council would not be taking any action regarding the cover installation because the cover was approved at the May 2012 AGM and the minutes of that meeting were approved at the following May 19, 2013 annual general meeting.
23. On July 27, 2017, the applicants requested a hearing with the strata council that was held on August 10, 2017 and which failed to resolve the applicants’ concerns.



24. On August 17, 2017, the strata council president sent an email to the applicants from the strata council stating the cover was approved at the May 2012 AGM and was constructed as approved.
25. Also on August 17, 2017, the strata council president, on behalf of the strata council, wrote to the respondent owner and co-owner, confirming SL7 “was approved to have constructed a septic deck cover at the back of unit #7 at the 2012 AGM. No time limit to build was imposed by Council.”

**Did the cover involve a significant change in use or appearance of common property? If so, should I order the cover be removed?**

26. The parties agree the cover is located on common property. It is also undisputed that the strata’s bylaw 6 permits an owner to alter common property, including limited common property, if it obtains the strata’s prior written permission.
27. The applicants say the strata wrongly allowed the respondent owner to construct the cover because the alteration is a significant change in use or appearance of common property.
28. 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  $\frac{3}{4}$  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 not been argued.
29. I find the wording of section 71 of the SPA also applies to the strata permitting a change to be made by an owner, which is the situation here.
30. Criteria for determining what is a significant change in use and appearance under section 71 of the SPA were clearly set out in *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333 at paragraph 19:
  - 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 to use?
  - d. Does the change impact on the marketability or value of the unit?
  - e. The number of units in the building may be significant along with the general use, such as whether it is commercial, residential or mixed-use;
  - 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.
31. Here, the altered property is to the rear of SL7 between the building and fence. The dimensions of the cover have not been provided but from the photographs, I would estimate the cover to be approximately 8 feet by 12 feet standing approximately 1 foot above the ground. The ground below the cover is relatively level and appears from the photographs to be covered in gravel and large flat rocks, except for the septic tank access. There is a hinged access through the cover to access the septic tank lid located at ground level.
32. Given the location of the cover and based on the photographs provided, I find it is visible to SL7 and likely from the bathroom window of strata lot 8.
33. Except for SL7, access to the common property would be from behind the building between the building and a fence. SL 7 has access to the cover because of another alteration approved for an exterior door that is not the subject of this dispute. I understand that SL7 is the only strata lot with a rear exterior door and therefore find the change benefits only SL7.
34. I do not find that the cover causes a direct interference or disruption given access to the rear of the building can be made by either walking beside the cover or over it.



35. The parties did not argue the impact on marketability or value but I suggest having a wooden, deck-like structure above ground is marginally preferable to gravel and flat rocks.
36. I find that there are a total of 9 residential strata lots in the strata is not significant.
37. In the past, the strata says it has put decisions about alterations and other matters before the general ownership. This is evident from the May 2017 AGM minutes and the May 1998 AGM minutes that were provided as evidence. Examples include the removal of trees and stumps from common property, cancelling cable channels, installation of copper piping extending an exterior hose bib, removal of cedar shrubs, pumping of septic tanks to name several. None of these decisions were voted on.
38. The May 2012 AGM minutes say all owners were present and all approved the requested alterations to SL7. The applicants say the SL7 alterations were not voted on. However, from the examples cited above, I find it was common practice for the strata to approve matters affecting common property and common expenses by owner agreement without a vote.
39. Applying the above criteria, I find the change in use or appearance of common property caused by the cover was not significant. In reaching this conclusion I have placed significant weight on the fact all owners, including some of the applicants, were present at the May 2012 AGM and approved the changes, and that it was not uncommon for decisions to be made by the general ownership rather than the strata council.
40. As a result, I dismiss the applicant's claims and I decline to order the cover removed.

**Are the applicants entitled to reimbursement of \$225 for tribunal fees?**

41. 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 dispute-related expenses. Given the applicants were not successful, I



find they are not entitled to reimbursement of tribunal fees. They did not claim dispute-related expenses.

## **ORDERS**

42. I order the applicants' dispute is dismissed.
43. Under section 189.4 of the SPA, an owner who brings a tribunal claim against the strata corporation is not required to contribute to the expenses the strata corporation incurs in defending that claim or in any monetary order issued against it. I order that the strata ensure that no expenses incurred by it in defending the applicants' dispute are allocated to either of the applicant owners.

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J. Garth Cambrey, Vice Chair