



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Fraser et al. v. The Owners, Strata Plan LMS 1023*, 2018 BCCRT 423

B E T W E E N :

Julia Fraser and Kirk Fraser

APPLICANTS

A N D :

The Owners, Strata Plan LMS 1023

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Susan MacFarlane

INTRODUCTION

1. The applicants are Julia Fraser and Kirk Fraser (owners). They own a strata lot in the respondent strata corporation The Owners, Strata Plan LMS 1023 (strata).
2. The owners describe water ingress, mould, and ant infestation in their strata lot. They say the strata has failed to make proper repairs. The strata says that it made

adequate repairs. The strata agrees to pay for ant extermination, but not for other claims by the owner.

3. The owners are self-represented. The strata is represented by a council member.

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. 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

8. The parties agree that the strata will reimburse the owners \$104.75 for ant extermination. The parties did not agree on other issues prior to this adjudication.
9. There are 3 remaining issues in this dispute:

- a. Has the owners' strata lot been adequately repaired?
- b. Should the strata pay for the owners' engineering report?
- c. Should the strata reimburse the owners for damage to their carpet?

BACKGROUND AND EVIDENCE

- 10. The strata complex was built in 1993. It is wood frame construction.
- 11. There are relevant strata bylaws:
 - a. Bylaw 3.1 says owners must repair and maintain their strata lots, except for repairs that are the strata's duty.
 - b. Bylaw 11.1 says the strata must repair and maintain common property. The strata has a limited duty to repair strata lots where the repair affects the structure or exterior.
- 12. In May 2017 the owners noticed ants and damp sand in their strata lot. The owners removed drywall on an entire interior wall, uncovering mould, rot, and ants.
- 13. The owners also noticed that water ingress had damaged the flooring and carpet in the strata lot.
- 14. The owners reported their findings to the strata. The strata installed a dehumidifier and sent in pest control.
- 15. The strata tried to find a company to make repairs. In June 2017, 3 companies gave quotes for the repair. The strata found the quotes unreasonably high, and did not approve the work. The strata council minutes of June 27, 2017 say that the strata will develop a scope for the work, to solicit more accurate quotations.
- 16. The owners sought an engineering report in July 2017. It made several observations and recommendations, including the following:

- a. Wood siding was rotten at several siding joints. It should be replaced. Building paper still in good repair should be salvaged.
 - b. Some rotten sheathing on the lower corner of a wall should be replaced.
 - c. Water-stained wood that is not rotten should be chemically treated.
 - d. Sealant had failed on an earlier repair patch to an exterior wall. The holes needed resealing.
 - e. Gas meters installed on the exterior wall penetrated into the wall and were exposed to wind-driven rain. The interior wall of the strata lot showed wood deterioration around the gas-pipe penetrations. An overhang would shield the gas meters.
 - f. The interior wall of the owners' strata lot showed wood rot starting around studs in the wall. The report recommends repair as soon as possible to mitigate further damage.
 - g. Some exterior wood trim between the strata lot storeys was rotten. The report recommends renovations to remove this trim entirely.
 - h. A new rain-screen assembly with weather barriers should be installed. A building remediation permit will be required.
17. On July 27, 2017 the owners asked for a meeting with the strata council. They provided the strata council with a copy of the owners' engineering report. They insisted that they would not wait another month, and that the strata must make the repairs set out in the owner's engineering report.
 18. There were delays setting a meeting due to holidays and a new property manager taking over. On August 24, 2018 the strata council arranged a meeting with the owners for August 28, 2017.
 19. The owners filed this request for a resolution with the tribunal on August 25, 2017.

20. After meeting with the owners, the strata agreed to make repairs. In September 2017 a contractor was selected. The minutes of the September 6, 2017 strata council meeting say that the contractor will repair the envelope and exterior wall, including where gas lines penetrate the envelope. The strata lot interior wall will be repaired up to the primer, but the flooring is excluded.
21. On October 2, 2017 the strata provided a more detailed scope of the work to the owners. It includes these repairs:
 - a. Replacing siding on the bottom exterior wall up to 6 feet in height.
 - b. Replacing rotten wood trim and sheathing.
 - c. Installing new building wrap.
 - d. Repairing failed sealant and caulking around holes.
 - e. Spraying wood that is not rotten.
22. In October and November 2017 the strata performed repairs to the external and internal walls of the owners' strata lot. The repairs stopped the leaking in the strata lot.
23. The owners say the repairs were not as complete as they should be. Although one wall was mostly repaired to their satisfaction, the owners say they have not completed flooring and painting in their strata lot while they await further repairs. In particular, they say that another wall needs to be opened to inspect it for mould. Their engineering report identified wood rot emerging around studs in that wall, which has not yet been repaired. They also point to flaws in the exterior painting.
24. The strata sought its own report in April 2018. Contractors performed visual inspections of the siding in the entire strata complex. They looked at the owners' strata lot. The owners gave them photographs of the damage and a copy of the owner's engineering report. The contractors prepared a report identifying and prioritizing siding and gable repairs throughout the entire complex.

25. The April 14, 2018 contractors' report identifies, for each strata lot, some high-priority and some low-priority repairs to siding and window trim. It identifies several high-priority repairs to the owners' strata lot.
26. The high-priority repairs identified for the owners' strata lot are nearly identical to the high-priority repairs required in most strata lots in the complex. Some lots have more, or larger, needs. The report does not mention an overhang to shield the gas meters from rain.
27. At the AGM of April 17, 2018 the strata council proposed a special resolution for financing envelope repairs throughout the entire complex. It was approved.
28. The owners filed their complaint with the tribunal before the strata had made any repairs. The strata made repairs, but the owners remain unsatisfied with the scope of those repairs.

POSITION OF THE PARTIES

29. When the owners filed this dispute in August 2017 they said that the strata's proposed repair was to cut two holes. They said this was inadequate. At that time, the strata had not met with the owners to discuss the repair.
30. The repair that the strata performed in October 2017 was much more extensive than what the owners described in their original tribunal claim.
31. The owners take the following position:
 - a. The strata should "properly" repair their strata lot. The owners insist that they want their strata lot to be repaired in the manner set out in the owners' engineering report.
 - b. The owners also say that the strata should reimburse them for costs related to the water ingress:
 - i. \$104.75 for ant extermination.

- ii. \$1,383.00 for damage to the carpet.
 - iii. \$630.00 for the engineering report.
- 32. The owners also ask that I order the strata to reimburse them as follows:
 - a. \$225.00 for CRT fees; and
 - b. \$9.61 for expenses related to bringing this claim.
- 33. The strata agreed to reimburse the owners \$104.75 for ant extermination. The strata disagrees with the owner's description of the repair.
- 34. The strata has also offered to paint three interior walls in the owners' strata lot.
- 35. The strata opposes the owners' other claims, and gives reasons:
 - a. the exterior wall of the owners' strata lot was adequately repaired;
 - b. the engineering report was not sought by the strata, and the strata need not pay for it;
 - c. the owners are asking the strata to pay for interior repairs that should be covered by the owners' insurance; and
 - d. the strata is making repairs throughout the complex on a priority basis.
- 36. Strata asks that I dismiss the rest of the owners' claim.

ANALYSIS

Has the Owners' Strata Lot Been Adequately Repaired?

- 37. The strata has a duty under the SPA sections 3 and 72, and its bylaws, to repair common property.
- 38. There is no dispute that the exterior walls of the strata lot are common property.

39. The strata's duty to repair is limited. The strata only has a duty to make repairs that are reasonable in the circumstances: *Wright v. The Owners, Strata Plan #205*, 1998 CanLII 5823 (BC CA). In *Wright* the British Columbia Court of Appeal considered repair estimates from 2 contractors, where the strata had made the less expensive repair. The owner insisted the more expensive repair would have been better. The repair stopped the immediate leak, even though the leak recurred. The Court of Appeal said the strata had acted reasonably.
40. The standard is not perfection. Determining what is reasonable may involve assessing whether a solution is good, better, or the best: *Weir v. The Owners, Strata Plan NW 17*, 2010 BCSC 784. In that case the court found the strata was complying with its duty to repair under SPA section 72, and the owners had not established any need for the court to intervene.
41. The owner cannot direct the strata how to conduct its repairs, according to *Swan v. The Owners, Strata Plan LMS 410*, 2018 BCCRT 241. Although that decision of the tribunal is not binding in this matter, it is helpful and directly relevant.
42. The strata is entitled to prioritize its repairs: *Warren v. The Owners, Strata Plan VIS 6261*, 2017 BCCRT 139. Again, that decision of the tribunal is not binding in this matter, but it is directly relevant.
43. The strata performed a repair in response to the owner's concerns about water ingress. The strata considered the owners' engineering report.
44. In the owners' strata lot, the strata repaired the lower part of the north exterior wall. The owners are concerned that the repair might not prevent deterioration or damage in the future. Nothing in these reasons prevents the owners from reporting to the strata in the future if their strata lot needs repair then.
45. The strata also obtained its own report and is prioritizing repairs in the strata complex as its budget permits.
46. For the reasons discussed above, I find that the strata has made adequate repairs in the owners' strata lot. The strata need not perform the specific repairs

demanded by the owners to comply with the owners' engineering report. I dismiss this aspect of the owners' claim.

Should the Strata Pay for the Owners' Engineering Report?

47. Section 49 of the Act allows the tribunal to order a party to reimburse the other for reasonable expenses that directly relate to the conduct of the proceeding.
48. When the owners first brought the water ingress issues to the strata's attention, the strata tried but was unable to get a satisfactory quote for the repair. In June 2017 the strata decided to clarify the scope of work to solicit better estimates.
49. In July 2017 the owners saw there was a dispute about the repairs, and sought an engineering report. That report provided details about the scope of the work, details the strata said were needed.
50. The owners presented the report to the strata by July 31, 2017 and filed their claim with the tribunal August 25, 2017. I find that the report was a reasonable expense directly related to the proceeding.
51. I find that the owners obtained their engineering report to try to resolve the dispute with the strata over their repairs. The report helped clarify the repair problem. It helped the strata solicit more accurate estimates and proceed with the repair. For those reasons, I order the strata to reimburse the owners \$630.00 for the cost of their report.
52. The owners are entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) calculated from July 31, 2017 for the cost of the report.

Should the Strata Pay the Owners for Damage to Their Carpet?

53. The owner's carpet is not common property. The carpet is not part of the strata lot structure. The strata has no responsibility under the SPA or the bylaws for interior repairs to the strata lot that are cosmetic and not structural.

54. Carpet damage is typically a loss that would be covered by an owner's home insurance. The owners have not established that the loss was caused by any fault or negligence of the strata. The strata agreed to repair the drywall and paint it, but takes no responsibility for the carpet.
55. I find that the owners have not established that the strata should reimburse them for any loss or damage to their carpet. I dismiss that claim.

DECISION AND ORDERS

56. I order that:
 - a. If the strata has not already done so, they reimburse the owners \$104.75 for ant extermination.
 - b. The strata reimburse the owners \$630.00 for the engineering report.
 - c. The strata pay the owners pre-judgment interest under the COIA of \$6.41.
 - d. The rest of the owners' claims are dismissed.
57. 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. Success is divided in this case, but I find that it was reasonable for the owners to bring the dispute claim. I therefore order the strata to reimburse the owners \$100.00 for a portion of the tribunal fees and \$9.61 for dispute-related expenses.
58. Under section 189.4 of the SPA, an owner who brings a tribunal claim against a strata corporation is not required to contribute to any monetary order issued against the strata corporation or to any expenses the strata corporation incurs in defending the claim. I order the strata to ensure that no expenses incurred by the strata in defending this claim are allocated to the owners.
59. The owners are entitled to post-judgment interest, as applicable.

60. 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.
61. 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.

Susan MacFarlane, Tribunal Member