



# Civil Resolution Tribunal

Date Issued: August 10, 2018

File: ST-2017-007619

Type: Strata

Civil Resolution Tribunal

Indexed as: *Edgar v. The Owners, Strata Plan LMS 2207*, 2018 BCCRT 439

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

Tracy Edgar

**APPLICANT**

**A N D :**

The Owners, Strata Plan LMS 2207

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell

### **INTRODUCTION**

1. The applicant, Tracy Edgar (owner) owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 2207 (strata).
2. This dispute involves payment for balcony repairs. The owner says the strata failed to repair balconies in the strata complex, which are limited common property

(LCP), and failed to follow its bylaws in dealing with balcony repairs. She seeks various orders relating to balcony repairs, including reimbursement of \$18,828 she paid for repairs to the balcony attached to her strata lot and \$12,000 for costs related to LCP.

3. The strata admits that it failed to repair the balconies and failed to follow its bylaws, but disagrees about the appropriate remedies.
4. The owner is self-represented. The strata is represented by the strata council president.
5. For the reasons set out below, I find that the owner is entitled to reimbursement of \$246 for balcony repairs.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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.
8. 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.

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

### **Further Repairs and Flashing Installation**

11. The owner seeks an order that the strata repair remaining balconies and garages, and an order that the strata choose and install flashing. The strata says that work has been completed since the owner filed her dispute with the tribunal, and the owner has not provided contrary evidence. Accordingly, I find it is unnecessary to order further repairs or flashing installation, and I decline to do so.

### **ISSUES**

12. The issues in this dispute are:
  - a. Is the owner entitled to reimbursement of \$18,828 for balcony repairs she paid for?
  - b. Is the owner entitled to reimbursement of \$12,000 in "LCP costs"?

### **BACKGROUND**

13. I have read all of the evidence provided, but refer only to evidence I find relevant to provide context for my decision.
14. The strata complex consists of 7 townhomes. The parties agree that the balconies attached to the front of each strata lot are LCP. Sometime before December 2016, balcony damage was discovered. According to documents from the strata, water was seeping into the balcony structures, resulting in mold and mildew spreading to the adjacent garage ceiling.

15. At an annual general meeting (AGM) in December 2016, the owners voted on a resolution to approve a \$70,000 special levy to pay for balcony repairs. The resolution did not obtain the necessary  $\frac{3}{4}$  vote, so it failed.
16. According to the AGM documents, the strata was concerned that the leaking water would spread to a wooden support beam in the garage, requiring more costly repairs. After the special levy vote failed in December 2016, general discussion occurred. The owners of strata lots 1, 4, 5, & 6, which include the owner, wanted repairs to occur in 2017, and the remaining owners wanted to defer such repairs.
17. In January 2017, the strata created a document (the waiver) stating that individual strata lot owners would be responsible for maintaining and repairing the balconies attached to their strata lots. The waiver said that all construction defects resulting from the original builder would still be maintained by the strata. The owner signed this document on January 29, 2017.
18. In 2017, the owner paid Keen construction to repair the balcony attached to her strata lot 4.
19. The owners of strata lots 1, 5, and 6 also paid to have the balconies attached to their strata lots repaired.
20. At a January 2018 AGM, the owners approved a special levy of \$45,500, to be used to replace flashings on all balconies. The meeting documents indicate that the flashings had deteriorated and required replacement to prevent water leaks under the balconies.
21. In April 2018, the strata held a special general meeting (SGM), to vote on a resolution to approve a \$45,000 special levy to pay for repairs to the remaining 3 unrepaired balconies. The resolution said this special levy would only be assessed against the 3 strata lots with unrepaired balconies. The resolution passed with unanimous approval.

## REASONS & ANALYSIS

22. The owner says the January 2017 waiver is invalid. I agree. Section 72(1) of the *Strata Property Act* (SPA) says that the strata corporation must repair and maintain all common property and common assets, including LCP. Section 72(2) of the SPA says the strata corporation may, by bylaw, make an owner responsible for the repair and maintenance of LCP that the owner has a right to use. However, in this case, the strata has not enacted such a bylaw.
23. The strata's bylaws are the standard bylaws set out in the Schedule to the SPA. Bylaw 8(c)(ii)(C) specifically states that the strata corporation has a duty to repair and maintain chimneys, stairs, balconies and other things attached to the exterior of a building. Thus, the strata was required under the SPA and its bylaws to repair and maintain the balconies. Any waiver of that duty is invalid.
24. The strata admits that it breached its bylaws in dealing with the balcony repairs. The question is what remedies the owner is entitled to, following this breach.

### ***\$18,828 for Balcony Repairs***

25. The owner says the costs of balcony repairs should be shared equally among all 7 owners. In principle, I agree. However, I find she has not provided evidence to support reimbursement of \$18,828.
26. The owner says her total LCP repair costs were \$21,966, and she claims reimbursement of 6/7 of those costs, which equals \$18,828.
27. To support her claim for repair costs, the owner provided a May 2017 invoice from Keen Construction in the amount of \$14,196, and an October 2017 invoice from Keen Construction for \$1,050. The owner also provided a copy of a January 2013 cheque she wrote to another contractor for \$6,720. The "memo" line on the cheque states, "patio paver replacement".
28. These three claimed amounts total \$21,966.

29. I decline to order reimbursement of the \$6,720 for patio paver replacement. First, there is no evidence before me to establish that the patio pavers were purchased for the purpose of LCP maintenance or repairs (as opposed to redecorating, for example). Second, the cheque was written in January 2013, but the owner did not file her dispute with the tribunal until December 2017. The *Limitation Act* applies to tribunal disputes. A limitation period is a specific time period within which a person may pursue a claim. If the time period expires, the right to bring the claim disappears. The statutory limitation period in this case is 2 years, which I find expired before the owner filed her dispute. For that reason, I find her claim for reimbursement of \$6,720 for patio pavers is barred under the *Limitation Act*.
30. The owner's remaining invoices for balcony repairs total \$15,246.
31. The strata says it would be unreasonable to order reimbursement of the owner's repair costs, as it would then require another special levy to re-allocate the repair costs following the reimbursement. The strata also says it had few options after the first special levy to pay for repairs failed to gain the necessary approval in December 2016. I agree with this submission. While the strata proceeded incorrectly and breached the SPA and the bylaws, there was an impasse after the December 2016 vote. Some owners wanted balcony repairs to proceed quickly, and the strata did not have authorization or funding to proceed with full repairs.
32. The April 2018 SGM minutes show that the owners approved a \$45,000 special levy for balcony repairs, to be paid only by the 3 strata lot owners whose balconies had not yet been repaired. The schedule included in the Strata Plan shows that each of the 7 strata lots has almost the same unit entitlement, so each of the 3 strata lots subject to the April 2018 special levy paid about \$15,000. This is almost the same as the \$15,246 paid by the owner.
33. In the circumstances, I find that it is reasonable for the strata to reimburse the owner \$246 for balcony repairs. This makes her contribution to balcony repairs equal to the contributions of those owners who did not repair their balconies in 2017. The remaining 3 strata lot owners who paid to repair their own balconies in

2017 have not filed claims, and the evidence before me does not establish what they paid. Thus, I find their costs are not determinative of this dispute.

**\$12,000 for “LCP Costs”**

34. The owner says she is entitled to “reimbursement of my LCP costs minus \$10,000 (average of 4 repaired units) totalling \$12,000.” It is unclear from the owner’s evidence and submissions what this claimed \$12,000 relates to. She has not provided invoices or receipts to support another \$12,000 in balcony repairs (or anything else). She was not required to pay the April 2018 special levy, and her contribution to the January 2018 special levy for flashings was only \$6,504.
35. As the owner has not provided particulars or receipts to support her claim for reimbursement of \$12,000 in LCP costs, I decline to order any remedy. This claim is dismissed.

**Summary**

36. The strata must reimburse the owner \$246 for balcony repairs performed in 2017. The owner’s claims for reimbursement “LCP costs” is dismissed.
37. The owner is entitled to interest on the \$246 under the *Court Order Interest Act* (COIA), as set out below in my order.
38. The tribunal’s rules provide that the successful party is generally entitled to recovery of their fees and expenses. The owner was only partially successful, so I order that the strata reimburse half of the \$225 she paid in tribunal fees (\$112.50).

## DECISION AND ORDERS

39. I order that within 30 days of this decision, the strata pay the owner a total of \$360.72, broken down as follows:
- a. \$246 as reimbursement for balcony repairs,
  - b. \$2.22 as prejudgment interest under the COIA, and
  - c. \$112.50 for tribunal fees.
40. The owner is also entitled to post-judgment interest under the COIA.
41. 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 respondent to ensure that no expenses incurred by the respondent in defending this claim, are allocated to the applicant owner.
42. 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.
43. 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.

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Kate Campbell, Tribunal Member