Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 2243 v. Cole*, 2018 BCCRT 823

B E T W E E N :

The Owners, Strata Plan NW 2243

APPLICANT

A N D :

Douglas Arthur E. Cole

RESPONDENT

A N D :

The Owners, Strata Plan NW 2243

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Sherelle Goodwin

INTRODUCTION

1. The applicant, and respondent by counterclaim, is a strata corporation comprised of 84 residential strata lots legally known as The Owners, Strata Plan NW 2243 (strata). The strata is represented by a member of the strata council.

2. The respondent, Douglas Arthur E. Cole (owner), co-owns strata lot 51 (SL 51), along with his son. The son is not a party to these disputes. The owner is self-represented.

3. The strata seeks an order that the owner's son move out of SL 51 and that the owner pay $3,500 in fines levied against him for breaching an age restriction bylaw. The owner disputes the bylaw contravention.

4. In his counterclaim the owner says the strata failed to provide requested documents, acted unreasonably in various ways, and was negligent in attending to a roof leak above SL 51.. He asks that the Civil Resolution Tribunal (tribunal) order the strata to pay him $2,000 to repair water damage to his unit, and $5,000 in nuisance for loss of enjoyment of his property. He also seeks an order compelling the strata and strata council to take certain actions.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the 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.

6. 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.

7. 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.

8. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

ISSUES

9. The issues in these disputes are:

   a. Did the owner contravene the strata's age restriction bylaw and, if so, must he pay the $3,500 in fines?

   b. Did the strata fail to produce documents requested by the owner under section 35 and 36 of the *Strata Property Act* (SPA) and, if so, should the strata's claim be dismissed?

   c. Is the strata responsible for repairing the water damage to the owner's unit and, if so, must it pay the owner $2,000?

   d. Has the strata, or the strata council, acted unreasonably in regard to the ¾ vote on the sliding glass door replacement project and, if so, should a new vote be held?

   e. Has the strata, or strata council, acted unreasonably in other ways and, if so, what is the appropriate remedy?

   f. Should the strata pay the owner $5,000 in nuisance for loss of enjoyment of his property?

BACKGROUND AND EVIDENCE

10. The strata's dispute is a discrete issue arising out of allegations that the owner's underage son has been residing with the owner in SL51, contrary to the strata's bylaws. The owner's dispute is a larger issue arising out of the manner in which the strata has approached the repair or replacement of the sliding glass doors in the strata complex, and other concerns about strata governance.

11. I have considered and reviewed all of the evidence and information put before me in these disputes. I will set out only the relevant information needed to give context to my decision.

12. The strata was created in January 1985 and consists of several buildings constructed in 5 phases. SL 51 is an end unit on the second floor of building F. It is part of Phase 4 of the strata, which was registered in October 1985. SL 51 is referred to as unit 201-13894 in strata council meeting minutes and correspondence.

13. On October 12, 2001 the strata filed new bylaws with the Land Title Office and repealed all the former bylaws of the strata. Bylaw 39 states that no person under the age of 45 shall ordinarily reside in a strata lot other than the spouse of an owner. Any other arrangements must have the prior written consent of the strata council.

14. The owner and his son purchased SL 51 as tenants in common in May 2015. The two moved into the unit in approximately May 2015.

15. In March 2016 the strata received a complaint that there was an underage resident living in SL 51. The strata property management company wrote to the owner, asking for written confirmation of all residents living in the unit. The management company sent a copy of bylaw 39 with the letter.

16. In his March 9, 2016 response the owner confirmed that his 30 year old son lived with him in the unit. According to the minutes of the April 7, 2016 strata council meeting, the strata had obtained a legal opinion on the matter.

17. On May 12, 2016 the owner attended a hearing with the strata council. On May 13, 2016 the property manager sent the owner a letter requiring the underage resident to vacate the premises by August 31, 2016. Nothing further occurred with regard to the owner's son for approximately 1 year.

18. In the meantime, the strata was looking at replacing, or repairing, the sliding glass doors and the windows in the strata complex.

19. It is unknown when, but a group of strata lot owners within the strata complex, including the owner, formed a homeowners group. It is clear that the position of those owners was that the doors and windows could be more economically repaired by replacing the glass within the existing frames, rather than replacing the entire door and window frames and glass.

20. The sliding glass door replacement project resolution was scheduled for the November 30, 2016 annual general meeting (AGM). The homeowners group requested a hearing with the strata council to propose delaying the vote on the sliding glass door replacement project until the issue could be further discussed. The strata council had already decided not to hold a vote on the door replacement project at the upcoming AGM. Instead, the sliding glass doors were tabled as an issue for discussion at the AGM.

21. Following the AGM, a patio door committee was formed, although it is unclear who was on the committee. In an undated notice to the owners the committee referred to questionnaires completed by strata owners and the committee members' conversations with many glass companies. They noted that there were a large number of strata owners with glass door and window issues, concerning both the glass and the frames. The committee set out three options: doing nothing, replacing only the glass, or replacing the glass and the frames. The notice set out the pros and cons of each option. It also set out 3 options for paying for the proposed work: through the contingency reserve fund (CRF), through a combination of the CRF and special levies, or through financing.

22. The homeowners group created a brochure explaining that replacing the glass only, rather than the whole door or window, would reduce costs significantly and would spread out the cost over time. In an undated letter to the strata council a glass company provided its opinion that the strata complex doors and windows could be repaired (by replacing the glass only) at less cost than replacing the entire door and window units.

23. In early January 2017 the roof above the owner's unit leaked. On January 8, 2017 a roofing company inspected the roof and made temporary repairs. The following day the roof company recommended further work to waterproof the work. At a January 23, 2017 council meeting the strata authorized the further repairs to be completed as soon as possible. It was noted that the owner's attic was inspected and was dry.

24. The strata council scheduled town hall meetings in both February and March 2017, to discuss the patio door replacement project. The proposed door and window contractor was present for at least one of the town hall meetings. The owner says that the homeowners group attempted to have another glass contractor attend the town hall meetings, but this was denied by the strata council.

25. Following the town hall meetings 2 letters from strata council members were distributed to the owners along with strata council meeting minutes, setting out their personal support for replacing the sliding glass doors in their entirety.

26. The homeowners group published a newsletter entitled the Village Voice in April 2017 encouraging all strata owners to vote against the door replacement project until they had been provided with all their options. A few days later the strata council distributed a notice clarifying that the Village Voice did not originate from the council or the patio door committee. The strata council member referred to the homeowners group as a "rebel group of owners".

27. At a June 21, 2017 special general meeting (SGM) a resolution for a special levy to replace the sliding glass door units failed.

28. The owner detected a leak in his unit the night of Tuesday, June 6, 2017. The management company told the owner that nothing could be done until the following morning. The following morning a strata council member told the worker to wait until Monday morning (June 12, 2017). Shortly after that conversation the leak intensified and the owner contacted another member of the strata council. A roofing crew was called in and stopped the leak. The owner says that his ceiling and walls were damaged, mostly as a result of the intensification of the leak.

29. In a June 21, 2017 email a complainant described noise from guests arriving at the owner's unit around 1 am. At approximately 5 am the guests were escorted to their vehicle by the owner's son.

30. In a June 22, 2017 written complaint, someone saw the owner's son and a friend enter the owner's unit. The son had a key to the unit and was heard to say that he had just finished work. The complainant noted that the owner was not home at the time. They believed the owner's son was still living in the unit.

31. In a July 5, 2017 letter, someone described having had an interaction with an unknown individual. When asked if he lived in the strata complex the individual said that he lived with the owner and his son. The individual asked the complainant whether that was a problem. When the complainant replied that it was a problem the individual said that he had heard something about it being an issue.

32. The names of each of the complainants are blacked out from the letters and email.

33. In a July 5, 2017 letter, the management company advised the owner that the strata had received complaints that the owner was making excessive noise, and had an underage resident living with him, in contravention of the strata bylaws. The letter asked the owner to comply with the strata's bylaws and warned that bylaw contraventions could attract fines. If the owner wished to respond to the strata, or request a hearing to address the matter, he was invited to do so.

34. The strata received no response to their letter. The owner says that he did not respond to what he considered to be an invasion of the privacy of his own home.

35. In this dispute the owner provided a copy of a rental agreement between his son and a landlord, whose name is redacted. The rental is for a month-to-month rental of a basement suite, starting on September 1, 2016. The agreement could be terminated by the tenant with one month's written notice.

36. The owner says that his son moved out on September 1, 2016.

37. On July 27, 2017 the owner requested a hearing with the strata council for clarification on a number of issues that arose in the June 21, 2017 SGM. He referred to both the 2014 and 2017 depreciation reports.

38. In the 2014 depreciation report, the author set out that the windows and doors had a 40 year life expectancy, of which 12 years remained. The report noted the strata council's advice that approximately 44 units had the glazing in their windows replaced. Furthermore, some units had reported water leaking beyond the window frames. The report estimated a cost of $860,000 to replace all windows and doors. The 2017 depreciation report is not in evidence.

39. On August 1, 2017 the management company wrote to the owner advising that the strata had levied a fine against him in the amount of $100 for contravening the strata's age bylaw. The strata would continue to levy a $100 fine against the owner every 7 days, until such time as the owner notified the strata, in writing, that the underage resident was removed.

40. On August 17, 2017 the owner requested copies of all legal opinions requested by the strata council about bylaw 39 and adult occupancy, pursuant to sections 35(h) and 36 of the SPA. In a separate letter the owner also asked for copies of all the registered bylaws and rules.

41. On the same date the owner asked that the strata repair his bedroom sliding glass door and replace a pane of glass in the kitchen that had lost its seal. He also requested that the outside doors of his unit be repaired as they did not properly close all the time. The owner sent follow up letters to the strata council regarding these repairs, the last being on December 8, 2017.

42. Legal counsel for the strata wrote to the owner on August 30, 2017, demanding that the owner immediately cease breaching bylaw 39. The lawyer wrote that the owner was not entitled to any legal opinions or correspondence relating to his alleged bylaw contravention, due to solicitor-client privilege.

43. The owner has provided a copy of minutes from the March 10, 2015 strata council meeting which noted an allegation that the prior owner of the unit confirmed that there was an underage resident in the unit. The strata noted that it would seek legal advice before proceeding.

44. In September 2017 the owner requested copies of any complaint letters regarding his unit, copies of all records and documents relating to any arrangements approved by the strata for underage residents in the strata complex and information about the strata's compliance with the *Personal Information and Protection of Privacy Act* (PIPA).

45. On October 12, 2017 the strata council wrote in the meeting minutes that an owner had asked for criteria for exceptions to the adult occupancy bylaw which had been granted in the past. Based on precedents set by past strata councils, exceptions to the bylaw had been granted based on short-term hardship cases and to alleviate human rights issues.

46. On October 19, 2017 the owner complained to the strata that a strata council member had allowed her dog to defecate on the grass behind the owner's unit, and encouraged another strata owner to allow their dog to do the same. The minutes for the next strata council meeting noted that the owner had lodged a complaint about another strata lot owner. The minutes did not reflect that the alleged contravener was a member of the strata council nor note her strata lot number.

47. On November 10, 2017 the strata council member received a written reprimand about allowing her dog to defecate by the owner's unit and warned the council member to take all steps to comply with the strata bylaws in the future.

48. On behalf of the strata, legal counsel wrote to the owner on November 17, 2017 in answer to his questions about the strata's compliance with PIPA. The owner says it was not a full and complete answer.

49. In January 2018 the owner asked the council to retain an engineer to conduct a building envelope condition assessment (BECA), including an assessment of the sliding glass doors and windows.

50. The strata addressed the owner's correspondence at the February 22, 2018 strata council meeting. The strata noted that it had been working with a professional engineering company that was familiar with the strata complex and would thus not hire another engineer to conduct a building envelope assessment. The strata had developed privacy policies in accordance with PIPA with the assistance of legal counsel. Copies were provided as an attachment to the February 22, 2018 meeting minutes. The minutes noted that the owner had requested further correspondence that had been previously addressed by the strata. Throughout the minutes the owner was referred to by his civic address, and not his name.

51. The strata council scheduled a SGM for March 21, 2018 to vote on the sliding door replacement project. The owner wrote to the strata council and requested that any vote taken at the SGM proceed by way of secret ballot and that the total votes be published in the meeting minutes. The owner required that scrutineers be chosen from those persons present at the meeting, and appointed by a majority of votes.

52. At the March 21, 2018 SGM the owners voted to proceed with replacing the sliding glass doors with funds from the contingency reserve fund. The owner wrote to the strata and disputed the validity of the vote as the procedure used at the SGM had not met the requirements of a secret ballot. The strata had not provided private locations to mark and submit ballots.

53. On May 13, 2018 the owner requested that the air leaks below his sliding doors be repaired, as air was entering into his unit.

54. A second SGM was held on May 31, 2018 to ratify the March 21, 2018 vote.The strata council determined that the March 21, 2018 voting procedures were not consistent with legal requirements for a private ballot. 68 owners were present in person, or by proxy, meeting the requirements for a quorum. A resolution was tabled to authorize the strata to spend up to a certain amount of money from the contingency reserve fund to replace the sliding doors, as set out in an April 19, 2017 proposal by the glass contractor. An owner requested that the vote be taken by secret ballot. Owners were called by their unit numbers to the front of the room, given a voting ballot and directed to the isolated voting booth to mark their ballot and place it in the provided ballot box. Following the vote, the strata property manager and legal counsel for the strata counted the votes. The owners voted to approve the resolution by more than ¾ of the votes present at the meeting (57 in favour, and 11 opposed).

55. The day following the SGM the owner wrote to the strata and said that the voting procedure used was not a truly secret ballot. He explained that calling the name of the owner revealed their voting preferences as the owner's proxy would identify themselves to obtain the ballot. The owner disagreed with the ballots being counted in a private room, as the individuals counting the votes had a vested interest in the outcome. The owner alleged that the vote was invalid as the strata council had not complied with procedures required by the bylaws in electing scrutineers and arranging for secret ballots.

56. In June 2018 the owner advised the strata council that a strata council member used profanity and called him a name. In a June 2018 letter, another strata lot owner stated that the same council member referred to the owner by another profane name.

57. On June 14, 2018 a painting company estimated that it would cost $1,462.13 to repair a section of the owner's drywall and paint his living room and hallway. The invoice did not indicate why the painting and drywall repairs were required.

58. At a June 29, 2018 SGM a vote was held to amend bylaw 28(7) regarding voting by secret ballot. The resolution passed by majority vote, with the number of "no" votes recorded at 17. After the meeting the owner wrote to the council to dispute the validity of the vote as it was not conducted by a truly secret ballot. Furthermore, based on the owner's audit of those committed to voting no, and those that voted no, the no vote totalled 19, and not 17 votes.

POSITION OF THE PARTIES

59. The strata says that the owner's son has been living in SL 51 since the strata lot was purchased in May 2015, contrary to the strata's bylaws. It says that the son should move out and that the owner should pay the $3,500 in fines that have been levied against him on a weekly basis for ongoing violations of the bylaw, since August 1, 2017.

60. The owner says that he did not contravene bylaw 39 and does not owe any fines. He says the strata failed to adequately investigate the complaints made against him. He argues that the strata's claim against him should be dismissed as it failed to provide requested documents and letters, contrary to the SPA.

61. In his counter claim the owner says that the strata acted negligently in failing to repair and maintain common property in a timely manner, including repairing the roof leak over his unit. The owner says that water damage in his unit resulted in damage to his ceilings and walls. He asks for an order that the strata pay him $2,000 to repair the damage.

62. The strata says that it is not responsible for repairs to the owner's strata lot, as it was not negligent in repairing the roof. It says it repaired the leaking roof immediately.

63. In his counterclaim the owner says that the strata council has acted in a grossly unfair manner and failed in its fiduciary duty to the owner's by proceeding with a vote on the sliding glass door replacement project while the matter was before the tribunal, without a truly secret ballot procedure, before obtaining a BECA report

and without informing strata lot owners of the options for the sliding glass doors. He asks that the ¾ vote resolution approving the replacement of the sliding glass doors be declared null and void and that the strata be ordered to hold a new vote. He also asks that the strata be ordered to obtain a BECA report.

64. The strata says that the ¾ vote resolution vote is valid. It also says that there is no indication that a BECA report is required to proceed with the project and that the strata has acted reasonably and in the interests of the strata lot owners in proceeding with the sliding glass door replacement project.

65. The owner seeks an order that the strata council terminate the contract with the property management company and legal counsel for the strata. He says the company and counsel have interfered with voting results and are not acting in the best interest of the strata lot owners. The strata says that there is no evidence supporting that claim and that the strata can only terminate the contract by way of a resolution of the owners.

66. The owner says that the strata council has used meeting minutes to further their own objectives, defame strata lot owners who oppose them, and published incorrect information in them. He asks that the strata be ordered to correct the information in the minutes, print certain information in the minutes about a strata council member, and desist from using the minutes to convey their personal objectives.

67. The strata says that there are little requirements for the contents of meeting minutes and that the strata has not acted unreasonably in its reporting.

68. The owner also asks for an order directing the strata to remove the strata council member in charge of hospitality and to direct the strata council not to interfere with the strata lot owners' use of the common room.

69. In his counterclaim the owner says that the strata was attempting to silence him, and some of the other strata lot owners, for actively opposing the replacement of the sliding glass door units. He says that he was unfairly accused of breaching a

bylaw, that he was defamed by a strata council member, bullied and harassed in meetings, ignored and harassed by other strata lot owners. He asks for an order that the strata pay him $5,000 in nuisance for loss of enjoyment of his personal property.

70. The strata says that it is not responsible for the actions of other strata lot owners. Furthermore, the actions of the strata council have not, objectively, unreasonably and substantially interfered with the owner's use and enjoyment of his property.

REASONS AND ANALYSIS

Adult Occupancy Bylaw Contravention

71. In a civil case such as this the applicant bears the burden of proof, on a balance of probabilities.

Production of Complaint Letters

72. Section 35(2)(k) of the SPA and section 4.1 of the *Strata Property Regulation* require the strata to retain copies of all correspondence sent or received by the strata and council for at least 2 years. I find that letters (or emails) of complaint fall within that section. Section 36 of the SPA sets out that a strata must, upon receiving a request from an owner, provide copies of records referred to in section 35, within 2 weeks of the request, except for requests of bylaws and rules, which must be provided within 1 week. As such, there is an obligation for the strata to provide copies of the complaint letters to the owner, as he requested them. Section 36 does not provide for refusal or redaction of the documents.

73. PIPA sets out how private organizations, such as the strata, can collect, use or disclose an individual's personal information. Section 18(1)(o) says that an organization may only disclose personal information about an individual, without consent, if the disclosure is required or authorized by law.

74. The tribunal has previously considered this issue and determined that a strata may not refuse to provide copies of requested complaint letters on the grounds that

they contain private information (see *Mason v. The Owners, Strata Plan BCS 4338,* 2017 BCCRT 47, and *Bertuzzi v. The Owners, Strata Plan 350*, 2017 BCRT 6). The tribunal members reasoned that, as the information was required to be produced by law (section 36 of the SPA) then any personal information contained therein could be disclosed by the strata under section 18(1)(o) of PIPA.

75. Although prior tribunal decisions are not binding on me they do provide guidance on statutory interpretation and promote consistent decision making. I adopt the reasoning in the tribunal decisions noted above and apply it to this dispute. I find that the strata is required to provide unredacted copies of the complaint letters to the owner, pursuant to section 36 of the SPA. This is consistent with the position of the Officer of the Information and Privacy Commissioner, as set out in the Privacy Guidelines for Strata Corporations and Strata Agents (June 22, 2015).[1] I allow the owner's claim regarding the complaint letters and order the strata to produce unredacted copies of the four separate complaint letters to the owner. The strata is entitled to receive payment of $0.25 per page before providing the documents.

Production of Legal Opinions

76. The owner also requested copies of all legal opinions obtained by the strata in regard to adult occupancy and bylaw 39. The strata refused to produce any opinions, or confirm whether they had obtained any, on the basis that any legal opinion obtained in relation to the owner's alleged infraction of bylaw 39 was protected by solicitor-client privilege.

77. Section 35(2)(h) of the SPA requires the strata to retain, permanently, any decision of an arbiter or judge in a proceeding in which the strata was a party, and any legal opinions obtained by the strata. Section 169(1)(b) of the SPA says that any owner who sues the strata does not have a right to information or documents relating to the suit, including legal opinions kept under section 35(2)(h). Section 169 applies to a tribunal claim under section 189.4(d) of the SPA. When litigation has been

[1] Found at www.oipc.bc.ca

contemplated, but not yet commenced, a claim for privilege may still apply (see *Azura Management (Kelowna) Corp. v. Strata Plan KAS 2428,* 2009 BCSC 506, varied on another point in 2010 BCCA 474 and *Pritchard v. The Owners, Strata Plan VIS3743*, 2017 BCCRT 69).

78. I find that litigation privilege applies to any legal opinions the strata obtained in regard to this owner's alleged breach of bylaw 39, even if the opinion was obtained prior to these disputes being commenced. The owner is thus not entitled to any such legal opinion. However, such privilege does not apply to any other legal opinions obtained by the strata in regard to bylaw 39. The owner is thus entitled to production of any other legal opinions the strata may have obtained in regard to bylaw 39, including in regard to the March 2015 complaint, if such opinions exist. I allow the owner's claim, in part, and order the strata to produce to him copies of any legal opinions regarding bylaw 39, but for any opinion obtained during, or in anticipation of, the dispute with this owner. The strata is entitled to receive payment of $0.25 per page before providing the documents.

Production of Documents Related to Bylaw 39 Exceptions

79. The owner is not entitled to "all documents and records" relating to any approved arrangements for underage residents, as not all documents and records of the strata are required to be produced under the section 36 of the SPA. He is, however, entitled to documents and records relating to bylaw 39 exceptions granted, or denied, by the strata council that are also documents that section 35 of the SPA requires the strata to retain. Such documents might include correspondence to and from the strata council or meeting minutes.

80. I recognize that such documents may no longer exist, if they existed at all. Regulation 4.1 sets out retention periods for the various documents listed under section 35 of the SPA. Legal opinions are to be retained permanently, meeting minutes are to be kept for 6 years and correspondence is to be kept for 2 years. The owner is only entitled to copies of those documents and records that the strata has in its possession.

81. I allow the owner's claim for documents and records relating to bylaw 39 exceptions, in part. I order the strata to provide copies of any correspondence to and from the strata or its council, meeting minutes, or any other documents listed under section 35 of the SPA relating to bylaw 39 exceptions considered by the strata council.

Dismissal of the Strata's Claim

82. I am not persuaded that the strata's claim should be dismissed for failure to provide the requested documents. Denial of information surrounding any exceptions to the bylaw, or legal opinions about the bylaw, would not render the owner incapable of answering the strata's claim against him.

83. Neither am I persuaded that the strata's redaction of the names of the complainants meant that the owner was unable to properly defend himself against the allegations made against him. This is particularly so given that the owner determined who made the complaints and provided argument about why the complaints should not be believed. The proper remedy to the strata's denial of records and documents is to order the production of the same, as I have done, not to dismiss the claim.

Did the owner breach bylaw 39?

84. The owner says that he did not breach bylaw 39 as his son had not been living with him since September 1, 2016. He relies on the August 31, 2016 tenancy agreement in his son's name. He acknowledges that his son has a key to the unit, which he says was recommended by the strata for emergency purposes.

85. The strata says that the tenancy agreement is insufficient to prove that the owner's son was no longer residing at SL 51 in the summer of 2017. It argues that an adverse inference should be drawn from the lack of evidence from the owner's son about his current living situation.

86. The owner says that the strata failed to adequately investigate the allegation. He says that the June 22 and July 5, 2017 complaints were both made by the strata council member who called him profane names. The owner says that strata council member was biased against him and that he exaggerated and/or falsified the information in the complaint letters.

87. Section 135 of the SPA states that a strata must not impose a fine for contravening bylaw unless it has first received a complaint about the contravention, and given the owner particulars of the complaint (in writing) and a reasonable opportunity to answer the complaint, including a hearing if requested. There is no other complaint procedure set out in the SPA and a strata council is permitted to deal with complaints of bylaw violations as they sit fit, so long as it complies with the principles of procedural fairness and is not "significantly unfair" to any person who appears before the council (*Chorney v. Strata Plan VIS 770*, 2016 BCSC 148).

88. The strata acts though the strata council. Section 31 of the SPA provides the standard of care that a council member must exhibit in exercising the powers and performing the duties of a strata corporation, including enforcing bylaws. It sets out that a council member must act honestly and in good faith with a view to the best interests of the strata, and exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances. That being said, strata councils are made up of volunteers, and mistakes will be made. Within reason, some latitude is justified when scrutinizing its conduct (see *Hill v. The Owners, Strata Plan KAS 510*, 2016 BCSC 1753).

89. I am satisfied that the strata council exercised the care, diligence, and skill of a reasonably prudent person in comparable circumstances when it determined that the owner had breached bylaw 39 in June/ July 2017. Firstly, the owner had previously acknowledged that his underage son was living with him. Although the strata had required the son to move out by August 31, 2016, there is no indication that any proof of such an event was provided to the strata. The complaints that were received by the strata in 2017 must be considered within this context.

90. Secondly, the facts as set out in the complaints suggest that the owner's son was, in June and July 2017, residing at unit 51. The son has his own key to the unit, was seen with guests at the unit on two occasions, and escorted guests away from the unit at 5 a.m. These actions are more those of a resident than a visitor. I do not accept that the son had a key for emergency purposes only, as he clearly used it to gain entry to the unit, with another individual present, in a non-urgent manner after finishing work. I accept that, based on these facts, a reasonably prudent person would conclude that the owner's son was residing in the unit in June or July 2017.

91. I am not persuaded that 2 of the 3 complaints should be discredited because they were made by a strata council member. As strata lot owners, strata council members are entitled to file complaints of bylaw contraventions. I accept the owner's assertion that he was called names by that particular strata council member in June 2018. However, that does not indicate that the strata council member was biased against the owner 1 year prior, in June or July 2017.

92. Nor am I persuaded that the strata council only acted against the owner in retaliation for his vocal opposition to the sliding glass door replacement project. Under section 27(2) of the SPA, the strata council must enforce the bylaws of the strata.

93. The procedure as set out in section 135 of the SPA provides an opportunity for an owner to respond to an allegation of bylaw contravention. The owner was provided this opportunity by the management company but did not exercise it. There is no indication that the owner ever told the strata that his son moved out or provided to the strata a copy of the August 31, 2017 tenancy agreement. As such, I find that the strata council acted reasonably in finding that the owner contravened bylaw 39 in allowing his underage son to reside with him in 2017.

94. For the sake of completeness, I do not find the tenancy agreement persuasive evidence that the owner's son was not living in SL 51 in the summer of 2017. The agreement started in September 2016 and was a monthly agreement, to be

terminated with one month's notice. It does not prove that the son was residing elsewhere in June or July of 2017. Furthermore, I do not accept the owner's statement that his son moved out in August 2016 as proof that he was not living at the unit nearly 1 year later, in June and July 2017. On the evidence before me I find it more likely than not that the owner's son was a resident of SL 51 as of August 1, 2017.

Fines and ongoing Contraventions

95. The strata council decided to levy a fine of $100 against the owner for contravening bylaw 39 as of August 1, 2017, and to continue fining him $100 every 7 days the contravention continued. As required by section 135(2) of the SPA, the strata provided the owner with written notice of this decision. Bylaw 23 sets out that the strata may fine an owner $100 for each contravention of a bylaw, and may impose a fine for a continuing contravention every 7 days. This fine does not exceed the maximum fine for bylaw contraventions set out in section 7.1(3) of the regulations.

96. Bylaw 24 says that if an activity, or lack of activity, that constitutes a contravention of a bylaw continues, without interruption, for longer than 7 days, a fine may be imposed every 7 days. Section 135 of the SPA states that, once the strata has complied with the procedural requirements in respect of a bylaw contravention, it may impose a fine for a continuing contravention of that bylaw or rule without further compliance with the section. Having an underage person residing in a strata unit is clearly an ongoing contravention that continues without interruption.

97. I find that the strata has met the procedural requirements of section 135 of the SPA and that the initial $100 fine levied against the owner is valid.

98. The strata has claimed $3,500 in fines but provided no evidence supporting that such fines have been levied against the owner. The evidence before me indicates that a $100 fine has been levied. Notice that fines would continue to accrue is not evidence that the fines were levied. There is no invoice, account statement, correspondence or other document showing that ongoing fines have been levied

against the owner. The strata has failed to prove that it is owed $3,500 in outstanding fines.

99. I allow the strata's claim in part and order the owner to pay $100 in fines to the strata, within 30 days. . I also grant the strata's request and order that the owner's underage son vacate SL 51 within 30 days. The owner shall provide written confirmation to the strata upon his son moving out of SL 51.

Failing to Maintain and Repair / Water Damage

100. The owner says that the strata has failed to effect repairs and/or maintain common property at his unit, including the front doors, cracks in the sills around his sliding doors, and his leaking roof. The owner says that he had to write 3 letters to the council to get his sliding doors serviced and other owners had theirs fixed sooner. He says he continues to wait on the front doors being fixed so they secure properly.

101. The strata says that the water leak and the owner's doors were repaired in a timely manner and that the proposed fix for the front doors would not solve the issue. The owner says that the strata has been looking for a solution for the front doors for over 1 year.

102. Bylaw 8 sets out the strata's obligation to maintain and repair common property, including the exterior of a building and all exterior doors, windows, and skylights. I accept that the exterior of the building referred to in this bylaw includes the roof. The strata appears to have repaired all of the items requested by the owner, but for the outside doors. It appears that the strata is in the process of finding a solution for the door issue and is finding room in its budget. I acknowledge the owner's complaint that it has been approximately a year with no solution. However, I am not persuaded that the strata, in continuing to investigate a reasonable solution to the problem, is acting unreasonably.

103. The strata is not an insurer. The courts have held that a strata corporation is not held to a standard of perfection. Rather, it is required to act reasonably in its

maintenance and repair obligations (see *Kayne v. LMS 2374*, 2013 BCSC 51, *John Campbell Law Corp. v. Strata Plan 1350*, 2001 BCSC 1342, and *Wright v. Strata Plan No. 205*, 1996 CanLII 2460 (BCSC), affirmed 1998 Can LII 5823 (BCCA).

104. The strata is not liable for any water damage to the owner's unit unless the owner shows that the strata was negligent in its duty to repair and maintain the roof and that such negligence resulted in the water damage at issue.

105. In order to be successful in an action for negligence, the owner must demonstrate that the strata owed a duty of care, that the strata's behaviour breached the standard of care, that the owner sustained damage, and that the damage was caused by the strata's breach of care (see *Mustapha v. Culligan of Canada Ltd*., 2008 SCC 27). As noted above, the standard of care owed by the strata is one of reasonableness. In determining whether the strata was negligent, I must consider what is reasonable in these circumstances. Again, the standard is not one of perfection.

106. I find that the strata acted reasonably in repairing leaks in the owner's roof in both January and June 2017. In January the strata sent a roofing company, which made temporary repairs. Within a few weeks the strata authorized more permanent repairs be made.

107. The owner argues that both the property management company, and the strata council, delayed in instructing the roofing company to repair his leaking roof in June 2017. I note that, at the time, the owner says he "discovered a leak" and that it was only after he spoke with the strata council member, and learned that the roofing company would not be coming immediately, that the leak turned into a "torrent" of water. I take the owner to mean that, if the strata had arranged for repairs of the leaking roof immediately, the water damage from the torrent would have been avoided.

108. When the property management company, and the strata council president, decided not to immediately dispatch a roofing company the roof had a leak that

was discovered. There was no torrent and no flood or instant damage was reported. As such, I do not find it was unreasonable for the strata to hold off on repairing the leak at the time. I note that, when the owner reported a torrent of water, the leak was repaired very quickly. Ultimately, the roof was fixed the day after the leak was initially discovered. Given those facts, I am not persuaded that the strata was negligent in the manner in which it repaired the June 2017 roof leak.

109. Even if the strata was negligent in failing to immediately (within one day) repair the owner's leaking roof, the owner has failed to prove that any potential negligence on the part of the strata resulted in water damage to his unit. There is no indication on the June 2018 invoice that the drywall repair and painting work is required to repair water damage. The strata is not responsible for any potential water damage in SL 51 arising from the January or June 2017 roof leaks. I dismiss the owner's claim for $2,000 for the cost of repairing water damage to his unit.

110. The owner also requested an order that the strata apologize to him, and other owners, for taking so long to repair their doors and other common property. I am not persuaded that the owner's doors were ignored while others were repaired. There is no evidence before me indicating that the owner had to wait longer than anyone else in the strata complex for his repairs. I note that, in the case of urgently needed repairs to the leaking roof, the strata's response was very timely. As such, I decline to grant the owner's request for an order requiring an apology.

Sliding Glass Door Replacement Project

Resolution to replace the sliding glass doors

111. The owner requests that the March 21, 2018 vote approving the sliding glass door project should be voided and a new vote should be held. The March 21, 2018 vote has now been ratified in by a ¾ vote at the May 31, 2018 SGM. It is clear that the owner continues to dispute the passing of the resolution. For the sake of completeness, I will address the May 31, 2018 vote as well.

112. The owner says it was inappropriate for the strata to call the vote while this matter was before the tribunal. Delivery of a dispute notice does not act as a stay, requiring the strata to stop its activities *(Lipton v. The Owners, Strata Plan VIS 4673*, 2017 BCCRT 73). There is nothing in the Act, or the SPA, that requires a strata to await the outcome of a tribunal decision.

113. The owner also says that the vote on the resolution is null and void as the strata council failed to take the vote by way of secret ballot and failed to properly appoint scrutineers for the vote.

114. Bylaw 28 sets out the procedures for voting at an AGM or SGM. If an owner requests a precise count of votes, the method of counting is determined by the president of the strata council. The results of the vote must be announced at the meeting and recorded in the minutes. If an eligible voter requests that a vote proceed by way of secret ballot, then it must proceed in that manner. The bylaw does not set out how a secret ballot must be held. Nor does it address the appointment of scrutineers to count the vote. The SPA does not address voting procedures or secret ballots.

115. A private vote must be held in a manner that provides for a private location for the voter to mark, and deposit, the ballot. A private ballot is not private when others can easily see responses marked on voting cards (see *Imbeau v. Owners Strata Plan NW 971*, 2011 BCSC 801). I accept that the March 21, 2018 voting procedure did not allow for each owner and/or proxy to vote and deposit their ballots in private. I do not make the same finding for the secret ballot procedures at the May 31, 2018 SGM.

116. At the May 31, 2018 AGM the strata lot owners had private voting screens with deposit boxes. As such, no other individual could possibly see the manner in which each owner or proxy voted. The owner says that, by calling the unit number forth to vote, the proxies for each unit were identified which, in turn, revealed the unit owner's voting preferences. I consider that this could only be the case if persons present at the meeting were already aware of that proxy's voting intentions. This

would also be the case for any owner, if his or her voting intentions had been voiced prior to the meeting. I further note that the persons present at the meeting may know the voting intentions of any owner or proxy who voted, if previously voiced by that person, but would not know the actual vote cast by that owner or proxy. The vote cast, not the intended voting preference, is that which is to be kept secret in a secret ballot.

117. The owner has not provided any authority for his position that scrutineers should be elected from the eligible voters at the meeting. He says that the property manager and legal counsel had a vested interest in the outcome of the votes and should not have acted as vote counters. I fail to see how this is so. There is no evidence before me showing that either individual would benefit from the strata's decision to replace the sliding glass doors.

118. The owner has failed to show any deficiencies with the May 31, 2018 voting procedures. I decline to order that the results are null and void. I find the decision made by the strata owners on May 31, 2018 to approve the sliding glass door replacement project is valid. I dismiss the owner's claim about the ¾ vote resolution vote in this regard.

BECA Report

119. The owner argues that the strata has failed in its fiduciary duty by failing to obtain a BECA report. He says that a BECA report is a requirement prior to such a large project but has not provided any opinion or authority setting out that requirement. While he says that this is the opinion of 3 engineers, no such reports or letters from any engineer, or anyone else, containing that opinion are before me.

120. The strata corporation does not have a fiduciary duty to owners with respect to repairs and maintenance of common property (see *Peterson v. Proline Management Ltd*., 2007 BCSC 790, affirmed 2008 BCCA 541). The standard to which the strata is obligated to maintain and repair common property, such as sliding glass doors and windows, is measured by what is reasonable in all of the

circumstances (see *Wright v. Strata Plan No. 205*, [1996] B.C.J. No 381 (S.C.), aff'd (1998) 43 BCLR (3d) 1032).

121. I accept that the strata's duty to repair includes the duty to investigate and determine what repairs are necessary. On the evidence before me, I am not satisfied that the strata is in breach of this duty by declining to obtain a BECA report. There is no evidence to support that such investigation is in the best interests of the strata lot owners, other than the owner's opinion and hearsay about the opinions of unknown individuals.

122. As note in *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784 (CanLII), disagreements between strata councils and some owners are not infrequent. Courts, and by implication the tribunal, should be cautious before inserting itself into the process, particularly where the issue is the manner in which necessary repairs are to be affected. I dismiss the owner's claim regarding the BECA report.

Failing to Inform the Strata Lot Owners

123. The owner says the strata breached its duty to the strata lot owners by failing to inform them of all the choices for repairing or replacing the sliding glass doors. I take the owner to mean that the vote to replace the sliding door units in their entirety cannot stand, as it was not an informed vote of the strata lot owners.

124. He says that, although the strata's glass contractor was permitted to provide his opinion to the strata lot owners as a whole, the homeowner's group was not permitted to bring their chosen glass contractor to a town hall or general meeting to present his opinion to the strata lot owners, as a whole. It is unclear to me how, or why, the strata council disallowed a second glass contractor to provide an opinion on the sliding glass doors, particularly given that a town hall meeting was called to discuss that very issue. However, I am satisfied that the strata lot owners were provided with ample information on the sliding glass door project and their options.

125. At the very heart of these disputes is the conflict between the owner's opinion (that the sliding glass doors can be repaired) and the proposed action of the strata through its council (that the best option is to replace the sliding glass doors and their frames). I note that, throughout this process, a committee was formed to investigate and report on the matter. In its report the committed considered and discussed the option of replacing only the glass in the sliding door units, the same option proposed and supported by the owner and the homeowners group. The matter was discussed at the town hall meeting. Pamphlets and letters of opinion were provided by both the strata council members, and the homeowners' group members. I am not persuaded that the strata lot owners, as a whole, were not provided with information about the options for dealing with the sliding glass doors. I do not find that the strata council acted unreasonably in this regard.

126. It is important to note that a strata choosing a "good" solution, rather than a "best" solution does not render that approach so unreasonable that judicial, or tribunal, intervention is warranted (see *Weir*, supra). Even if the owner is correct in his opinion that replacing only the glass in the sliding glass doors is the better option, it does not mean that replacing the entire sliding glass door units is an unreasonable one. Deference should be made to decisions of the strata council, as approved by the owners (see *Browne v. Strata Plan 582*, 2007 BCSC 206 (CanLII)).

Governance

Management Company and Legal Counsel

127. The owner says that there were voting irregularities during a vote administered by the management company, legal counsel and the president of the strata council. I take the owner to be referring to the June 19, 2018 SGM vote results. As noted above, I find the strata council's secret ballot procedure sufficient for its purpose. The owner disputes the accuracy of the vote count at the June 19, 2018 AGM, based on his audit of strata lot owners. I prefer and accept the counted votes taken by secret ballot at the SGM over the owner's statement about the results of his

discussions with eligible voters both before and after the meeting. The owner has failed to prove voting irregularities at the June 19, 2018 SGM.

128. The strata says that both the management company and legal counsel act at the direction of the strata council, who are charged with acting in the best interests of the strata lot owners as a whole. It says there is no indication that either the company, or counsel, has not acted in the best interests of the strata. Furthermore, as neither the management company or legal counsel are named parties in this proceeding, it would be inappropriate to provide the relief sought by the owner.

129. I see no reason to order the strata to terminate its contract with either the property management company or legal counsel. The owner has failed to show that either party has acted contrary to the strata's interests, as a whole. I pause here to note that such a concept does not mean acting in the best interests of each sole strata owner, but acting toward the greatest good for the greater number of owners (see *Gentis v. Strata Plan VR 368*, 2003 BCSC 120).

130. I dismiss the owner's claim in relation to the strata property management company and legal counsel.

Meeting Minutes

131. The owner says that the strata council uses the meeting minutes to further their own objectives by sending personal letters of opinion, printing distorted facts pertaining only to those strata lot owners who disagree with the council, and with the intention to under or misinform strata lot owners generally. He says the strata council should be ordered to print corrections in their minutes and cease using the minutes for their own personal opinions. One of the corrections requested was to print the address and strata lot of the strata council member who was the subject of the bylaw 40 contravention complaint filed by the owner.

132. Section 35(1) says that the strata must prepare minutes of AGMs, SGMs, and strata council meetings, including the results of any votes. The strata's bylaws do not address the content required in minutes. Generally, the purpose of meeting

minutes is to inform owners of decision made by either the strata council or the owners, and money spent on their behalf. Minutes must contain records of decisions taken by council, but may or may not report in detail the discussions leading to those decisions (see *Kayne v. Strata Plan LMS 2374*, 2007 BCSC 1610).

133. There is no requirement that the strata council minutes include the strata lot number, or address, of an alleged bylaw contravener. Nor is there any requirement that letters from strata council members not be attached to the minutes. Having reviewed the minutes submitted by both the owner and the strata, I do not find any indication that they contain any incorrect information regarding the owner, or his correspondence with the strata council. In my opinion, the correspondence coming from, or about, the owner's strata lot is reported in the meeting minutes in the same manner as other correspondence received by the strata council. I am not persuaded that the strata council has acted unreasonably in this regard. I see no reason to interfere with how it has chosen to keep its minutes. For this reason, I dismiss the owner's claim as to the content of the strata's minutes.

134. I pause here to note that the owner has provided argument and evidence that the strata council's minutes contain erroneous information regarding other strata lot owners. Those other owners are not parties to these disputes. While I do not see anything untoward concerning those other owners in the council meeting minutes, I make no specific findings in that regard in these disputes.

Other

135. The owner has also requested an order dismissing the strata council member in charge of hospitality and to restrain the strata council from denying strata lot owners use of the common room. The owner has not provided any submissions supporting these claims. Nor do I see any evidence that the hospitality strata council acted in an unfair manner against the owner, or that the owner was denied use of the common room. I dismiss the owner's claims in this regard.

Nuisance

136. The owner says that he has suffered harassment in the strata complex. He has alternately been called names and ignored by strata council members. He says he is the constant source of derision at council meetings, to which the council gives "silent approval". He says that he has been harassed by other strata lot owners since he reported that the council member's dog had defecated near his unit. The owner says that he has been blamed, by strata council, for the high cost of the strata's legal fees. The owner says that the result of such behaviours is that he has lost his sense of peace, he is guarded in his encounters with other strata residents, and his home no longer feels like a home.

137. Other than the letter provided by a strata lot owner setting out that a council member used a profane name to refer to the owner, there is no evidence of when and how the owner was subjected to such behaviours, or by whom (other than the strata council member).

138. A private nuisance is a substantial and unreasonable interference with the use of enjoyment of land, in light of all the surrounding circumstances (see *St. Pierre v. Ontario (Minister of Transportation & Communications)* 1987 CanLII 60, SCC). As set out at paragraph 23 of *Boggs v. Harrison*, 2009 BCSC 789, the interference complained of must be substantial, and far beyond mere inconvenience or discomfort. The test is an objective one, requiring proof that the interference is of a kind and extent that would not be tolerated by the ordinary occupier. The court set out that factors to consider include the kind and severity of the interference, the frequency and duration of the acts complained of, whether there was any legitimate objective of the conduct, and whether the conduct was intended to interfere with the owner.

139. In this case I accept that a strata council member may have called the owner a profane name, both to his face and to a fellow strata lot owner. I also accept that there may be a certain degree of conflict and tension that has arisen in the strata complex over opposite positions taken by strata lot owners on the sliding glass door replacement project. I accept that such conflict and tension could result in

slights being offered by other strata lot owners, and even council members, to others in the complex. I accept that receiving such comments could be unpleasant. I do not, however, accept that such behaviours, or conduct, would result in more than mere inconvenience and discomfort.

140. The strata is not responsible for the conduct of other strata lot owners. I find that the behaviours attributed by the owner to strata council members (ignoring him, staying silent during meetings, or calling him names) do not rise to the level of behaviour that would not be tolerated by the ordinary occupier. While it may be unpleasant, it does not constitute a substantial interference with the owner's use and enjoyment of his property.

141. For all these reasons, I find that the owner has not established that the conduct of the strata has unreasonably interfered with the use and enjoyment of his own property. I dismiss the owner's claim in nuisance.

TRIBUNAL FEES, EXPENSES AND INTEREST

142. The strata claims reimbursement of $250 in tribunal fees and $10.50 in dispute-related expenses. The owner claims reimbursement of $125 in tribunal fees and $100 in dispute related expenses.

143. 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. Neither party has provided any submissions or evidence supporting their respective claims for dispute related expenses. The parties' success in these disputes is divided. In these circumstances I find it reasonable for each party to bear the cost of their own tribunal fees and dispute related expenses. I therefore make no order in this regard.

144. I have found the owner owes the strata $100 in bylaw fines. Under the *Court Order Interest Act* (COIA), the strata is entitled to prejudgment interest on this amount, from August 1, 2017, when the bylaw fine was assessed. I calculate the pre-judgement interest to be $1.42.

145. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner, unless the tribunal orders otherwise.

DECISION AND ORDERS

146. I order that, within 30 days of the date of this order, the owner shall:

    a. pay the strata a total of $100.00 in bylaw fines and $1.42in pre-judgment interest under the COIA,

    b. ensure that his underage son vacates SL 51, and

    c. provide written confirmation to the strata upon his son moving out.

147. The strata is also entitled to post judgment interest under the COIA.

148. The remainder of the strata's claims are dismissed.

149. I order that, within 14 days of the date of this order, the strata provide to the owner:

    a. Unredacted copies of the March 2016, June and July 2017 complaint letters,

    b. Copies of legal opinions obtained by the strata about bylaw 39, with the exception of any legal opinions obtained during, or in anticipation of, litigation or this tribunal proceeding with the owner, and

    c. Copies of any correspondence to and from the council, meeting minutes, or any other section 35 documents relating to bylaw 39 exceptions considered by the strata council.

150. The remainder of the owner's claims are dismissed.

151. 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.

152. 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.

Sherelle Goodwin, Tribunal Member