



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Wilkie v. The Owners, Strata Plan VR 2024*, 2018 BCCRT 902

B E T W E E N :

Andrew Wilkie

APPLICANT

A N D :

The Owners, Strata Plan VR 2024

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Ashley Syer

INTRODUCTION

1. This is a dispute about repairs to the ceiling of a strata lot, damage done to the exterior of a strata lot, and repair and access to a limited common property balcony.

2. The applicant, Andrew Wilkie (owner) is self-represented. The respondent strata corporation, The Owners, Strata Plan VR 2024 (strata), is represented by a council member.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. 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

7. The parties reached an agreement on certain issues prior to this adjudication, and those issues are not before me in this decision.
8. The issues in this dispute are:

- a. Is the strata responsible for making further repairs to the ceiling in the owner's strata lot?
- b. Is the strata responsible for fixing window seals and hinges in the owner's strata lot?
- c. Is the strata responsible for fixing or replacing awnings attached to the exterior of the strata building that shaded the owner's strata lot?
- d. Is the strata responsible for replacing or repairing the roof deck that is the limited common property for the owner's strata lot (roof deck)?
- e. Is the fencing on the roof deck preventing the owner from accessing part of the roof deck? If so, should I order the strata to remove the fencing?

BACKGROUND AND EVIDENCE

- 9. The owner must establish his positions on each claim based on evidence, on a balance of probabilities. I have considered all the evidence submitted by the owner and the strata, even if I do not refer to it in this decision.
- 10. The bylaws that apply to the strata are the bylaws that were filed at the Land Title Office on May 28, 2014 (bylaws). While the strata has separate sections, the sections do not have separate bylaws.
- 11. The previous owner of the strata lot obtained the strata's permission to redo the roof deck in 2009. In 2013, the strata fixed a portion of the deck that had been covered by astroturf. The parties provided various photographs of the roof deck. The strata also provided a report from its engineer, with recommendations about repairs that should be done to the roof deck.
- 12. It is not in dispute that in or around November 2014 there was a water leak from the strata lot above the owner's strata lot, that caused some water damage to the strata lot ceiling. The water was from a shutoff valve in the strata lot above.

13. The strata did some initial repairs to the owner's ceiling. There was a lot of correspondence between the owner and the strata about whether or not the strata would make an insurance claim or fix the owner's ceiling. The strata decided not to make an insurance claim, and declined to do further work to the owner's ceiling. The parties provided emails and letters outlining this decision.
14. It is not in dispute that in or around 2015, the strata building had its siding replaced. During the project, awnings attached to the exterior of the building were removed. The strata paid a company to remove and replace the awnings before and after the project. The owner has provided photographs and correspondence about the awnings. The strata has provided correspondence and invoices relating to the awnings.
15. Neither party submitted photographs, quotes, or other documentation relating to the windows and hinges that are part of this claim.
16. While I have considered all evidence submitted, I have not considered the without prejudice correspondence between counsel for the parties. I have also not considered the commentary in the parties' arguments that are not applicable to the claims the owner has made.

POSITION OF THE PARTIES

17. The owner argues that:

- The strata failed to properly repair the owner's strata lot ceiling, which had been damaged by a leak from the strata lot above.
- The strata failed to properly repair window seals and hinges that the owner says were damaged during building envelope repairs, and that the strata is responsible for replacing the window seals and hinges.
- Six awnings attached to the exterior walls of the strata lot were damaged during building envelope repairs.

- The roof deck that is limited common property for the strata lot is in poor condition and is a safety risk.
- Fencing around the roof deck restricts the owner's access to all of area designated as limited common property.

18. The owner requests that I order:

- The strata to hire the company that provided a quote to fix the strata lot ceiling to repair and replace the strata lot's textured ceiling.
- The strata to hire a window company to repair window seals and hinges in the strata lot.
- The strata hire a qualified company to repair and reinstall the awnings to their original condition.
- The strata fix the roof deck.
- The strata remove the fencing that restricts the owner's access to the entire roof deck.

19. The strata argues that;

- The strata is not responsible for the damage to the owner's ceiling.
- The strata is not responsible for replacing the window seals and hinges in the strata lot because they are not common property, and the bylaws specifically state that owners are responsible for replacing windows due to seal failures.
- The strata is not responsible for the awnings, because they are owner improvements.
- The strata is not responsible for the replacement of the owner's deck.

20. The strata requests that I dismiss the applicant's claims.

ANALYSIS

Is the strata responsible for making further repairs to the ceiling in the owner's strata lot?

21. Section 3 of the *Strata Property Act* (SPA) says that a strata is responsible for managing and maintaining common property and common assets of the strata corporation for the benefit of the owners.
22. Common property means, in part, that part of the land and buildings shown on a strata plan that is not part of a strata lot.
23. Section 72 of the SPA says that a strata corporation is responsible for repairing common property and common assets. A strata corporation may adopt bylaws that make an owner responsible for some limited common property that the owner has a right to use, or common property that is specifically set out in the SPA regulations. This section also says that a strata corporation may take responsibility for the repair and maintenance of certain parts of a strata lot.
24. The relevant parts of the bylaws are section 3.1 and 10.1. Section 3.1 says that an owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the responsibility of the strata under the bylaws. Section 10.1 describes the repairs the strata is responsible for. Ceilings of strata lots are not included in section 10.1.
25. The parties do not dispute that the water damage in the owner's strata lot came from a shutoff valve in the strata lot above. I find that the shutoff valve is not common property.
26. Neither the SPA nor the bylaws make the strata corporation responsible for repairing water damage to a strata lot.
27. The strata conducted some repairs to the owner's ceiling. The strata describes these repairs as gratuitous. I agree. The strata did more than it was required to do to repair the owner's ceiling.

28. The strata is not obligated to reimburse an owner for expenses that the owner incurs in carrying out repairs to their strata lot, which is the owner's responsibility under the bylaws, unless the strata has been negligent in repairing and maintaining common property (See *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231).
29. I recognize the owner's frustration in attempting to obtain information from the strata with regard to this dispute and especially concerning the varied responses provided by the strata as to why it felt the owner was responsible for the damage related to the repair of the strata lot ceiling. However, there is insufficient evidence before me to persuade me that the strata is responsible for further repairs to the strata lot ceiling.
30. I dismiss this claim.

Is the strata responsible for fixing window seals and hinges in the owner's strata lot?

31. As noted above, section 3 of the SPA says that a strata is responsible for managing and maintaining common property.
32. Common property means, in part, that part of the land and buildings shown on a strata plan that is not part of a strata lot.
33. The strata argues that, as in *Silva and Amadeo v. The Owners, Strata Plan NW58*, 2017 BCCRT 7 (*Silva*), the exterior windows of the strata lot are not common property, and are therefore not the responsibility of the strata. However, in *Silva*, the strata plan described the boundaries of each strata lot to be the exterior finish of the building. Here, the boundaries of each strata lot are not described that way.
34. Section 68 of the SPA says that, unless shown otherwise on the strata plan, the boundary of a strata lot is midway between the surface of the structural part of the wall, floor, or ceiling between the strata lot and the other strata lot, common property, or other land. Here, the strata plan does not specifically show where the boundaries are between the strata lot and common or limited common property. Therefore, section 68 of the SPA applies.

35. For this reason, I find that the reasoning in *Silva* does not apply here. I find that the exterior windows of the strata lot are common property.

36. The strata says that bylaw 10.1(c)(ii)F makes the owner responsible for replacement or repair of the strata lot windows. Bylaw 10.1 states as follows:

The strata corporation must repair and maintain all of the following:

- a. common assets of the strata corporation;
- b. common property that has not been designated as limited common property;
- c. limited common property, but the duty to repair and maintain it is restricted to
 - (i) repair and maintenance that in the ordinary course of events occurs less often than once a year, and
 - (ii) the following, no matter how often the repair or maintenance ordinarily occurs:
 - A. the structure of a building;
 - B. the exterior of a building;
 - C. patios, chimneys, stairs, balconies and other things attached to the exterior of a building;
 - D. doors, cracked or broken windows and skylights on the exterior of a building or that front on common property;
 - E. fences, railings and similar structures that enclose patios, balconies and yards;
 - F. owners shall be responsible for replacement of windows damaged by condensation and/or seal failure.

d. a strata lot, but the duty to repair and maintain it is restricted to

(i) the structure of a building,

(ii) the exterior of a building,

(iii) patios, chimneys, stairs, balconies and other things attached to the exterior of a building,

(iv) doors, windows and skylights on the exterior of a building or that front on common property, and

(v) fences, railings and similar structures that enclose patios, balconies and yards.

37. The SPA regulations do not identify windows as a type of common property that a strata can make owners responsible for the repair of by passing a bylaw, under section 72(2)(b). Therefore, I find that, bylaw 10.1(c)(ii)F is not enforceable. Also, bylaw 10.1(d)(iv) makes the strata responsible for repairing and maintaining strata lot windows on the exterior of the building that front on common property. Because of both bylaw 10.1(d)(iv) and my finding that bylaw 10.1(c)(ii)F is not enforceable, I find the strata is responsible for fixing or replacing the seals and hinges on the owner's strata lot windows.

38. The owner has requested the name of the company the strata intends to use to do window repair work so that the owner may "vet" the contractor. I decline to make this order.

Is the strata responsible for fixing or replacing awnings attached to the exterior of the strata building that shaded the owner's strata lot?

39. The owner claims that 6 awnings were damaged when they were removed and later reinstalled. The owner provided photographs of what appears to be one awning before it was removed, and after it was reinstalled. A photograph shows 2 small tears in the fabric of the awnings after being reinstalled, and they appear to be dirty.

40. The owner and the strata provided emails between them that say 2 of the awnings removed from the exterior of the strata lot had been reinstalled some time after the others. The owner complained to the strata about the condition of 2 awnings, but there was no evidence of complaints about the condition of the other awnings. It is unclear from the evidence which of the awnings the owner says are damaged.
41. Based on the evidence provided to me, I find that 1 awning was damaged. There is insufficient evidence before me to find that the other awnings were damaged.
42. The owner and the strata have provided conflicting evidence about when the awnings were installed. I am not convinced, on a balance of probabilities, that the awnings were originally intended to form part of the strata lot, or were a part of the common or limited common property of the strata lot. In coming to this conclusion, I have particularly considered the evidence of the strata that the awnings were not part of the original disclosure statement, and that permission was given to a different strata owner in 2008 to install the same type of awning. I find that the awnings are an approved addition to common property.
43. Bylaw 10.1(c)(ii)C states that the strata is responsible for the repair and maintenance of “other things attached to the exterior of a building”. However, the bylaws also say that owners are responsible for additions and improvements. Bylaw 6.5 says that if an owner modifies a strata lot or common property, any expense incurred by the strata to repair damage directly or indirectly from the alteration is the responsibility of the current owner. Bylaw 7.3(d) says that the strata may require the owner receiving the benefit of the additions to common property may be responsible for all present and future maintenance, repairs and replacements of the addition.
44. In the event that I am incorrect and the awnings are not improvements or additions, I am not convinced, on a balance of probabilities, that the tears to the awning were caused by the strata or its contractor. In any event, as discussed above, a strata is not an insurer, and is not responsible for negligent acts of its contractors, as long as the strata acted reasonably, which I find to be the case here.
45. I dismiss this claim.

Is the strata responsible for replacing or repairing the roof deck that is the limited common property of the owner (roof deck)?

46. The strata says it is not responsible for the wooden decking on the owner's roof deck. However, there is evidence before me that the strata undertook a special project using a special levy to replace all wooden decking in the building.
47. Bylaw 6.5 says that if an owner modifies a strata lot or common property in a way that is approved by council, any expense that arises from that modification is the responsibility of the current owner of that strata lot. I find that the roof deck, as it currently is, is not a modification to common property that would engage bylaw 6.5.
48. The strata is responsible for repair and maintenance of common property, including limited common property. Bylaw 10.1(c) sets out limits on the strata's responsibility. Bylaw 10.1(c)(ii)C says that the strata is responsible for repairing and maintaining patios, chimneys, stairs, balconies and other things attached to the exterior of a building. Bylaws 10.1(c)(ii)A and B say that the strata is responsible for repairing and maintaining the structure of a building and the exterior of a building.
49. I find that, for the purposes of Bylaw 10.1(c)(ii)C, the roof deck is a patio. Alternatively, I find that the roof deck falls within the meaning of the exterior of the building, because it makes up a portion of the roof of the building. The roof deck is limited common property, and is the responsibility of the strata. However, the strata is not required to make the best, most expensive, or most attractive repairs, as long as it is acting reasonably. The courts have found that a strata corporation, when repairing and maintaining common property, is not held to a standard of perfection but is required to act reasonably when fulfilling its obligations.
50. The owner has provided a letter from a decking company that describes some problems with the deck and gives a quote for a new deck.
51. The strata's engineering report shows that there are some repairs to the deck that are necessary for safety, but does not recommend replacing the entire deck. I find the more modest steps of repairing the deck, rather than replacing it, are appropriate. I order the strata to make the repairs identified as necessary for safety

in its engineer's report, including curled and non-level boards, re-positioning of the insulation to prevent raising, and any other repairs that the strata's engineering report advises are necessary for either safety or proper maintenance of the deck.

Is the fencing on the roof deck preventing the owner from accessing part of the roof deck? If so, should I order the strata to remove the fencing?

52. The strata agrees to remove the fence railing, extend the decking, and raise the perimeter guard wall to meet current building code standards. Since the strata has agreed to this work, it is not necessary for me to make a further decision.
53. I order the strata to remove the current fence railing, extend the wood decking to the edge of the limited common property, and raise the perimeter guard wall to a level consistent with current building code requirements as recommended by the strata's engineer.

TRIBUNAL FEES AND EXPENSES

54. 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. The parties have each been successful in some parts of the dispute. For this reason, I order that each party pay their own tribunal fees and dispute-related expenses.
55. 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

56. I order that the strata:

- a. at its cost, fix, or replace if necessary, the window seals and hinges in the owner's strata lot;
- b. make the repairs identified as necessary for safety in its engineer's report, including curled and non-level boards, re-positioning of the insulation to prevent raising, and any other repairs that the strata's engineer advises are necessary for either safety or proper maintenance of the deck; and
- c. remove the current fence railing, extend the wood decking to the edge of the limited common property, and raise the perimeter guard wall to a level recommended by the strata's engineer.

57. The owner is not exempt from paying their proportionate share of these common expenses

58. 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.

59. 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.

Ashley Syer, Tribunal Member