



Civil Resolution Tribunal

Date Issued: January 22, 2019

File: ST-2018-001463

Type: Strata

Civil Resolution Tribunal

Indexed as: *Neveaux v. The Owners, Strata Plan 259*, 2019 BCCRT 89

B E T W E E N :

Fred Albert Neveaux

APPLICANT

A N D :

The Owners, Strata Plan 259

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicant, Fred Albert Neveaux (owner), co-owns a strata lot (unit 403) in the respondent strata corporation, The Owners, Strata Plan 259 (strata).

2. This dispute involves the owner's allegations that the strata has failed to comply with the *Strata Property Act* (SPA) and bylaws concerning repairs to leaking windows of unit 403.
3. The owner seeks an order that the strata pay \$60,000 to replace all of the windows of unit 403 or, alternatively, that the strata pay \$30,000 to install "renovation windows" for unit 403.
4. The strata requests the tribunal dismiss the owner's claims.
5. The owner is self-represented. The strata is represented by a strata council member.
6. For the reasons that follow, I dismiss the owner's claims.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 121 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.
8. 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.
9. 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.

10. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator).
11. Tribunal documents incorrectly show the name of the respondent as The Owners, Strata Plan, VIS 259, whereas, based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan 259. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the style of cause above.
12. Under section 123 of the Act and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

13. The sole issue in this dispute is whether I should order the strata to pay for the replacement or retrofit all of the exterior windows of unit 403.

BACKGROUND, EVIDENCE AND ANALYSIS

14. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
15. In a civil proceeding such as this, the applicant owner must prove his claim on a balance of probabilities.
16. The strata was created in 1976 and consists of 122 strata lots located in Victoria, B.C.

17. The owner's strata lot is located in the 11-storey high-rise building of the strata, which he purchased in July 2017.
18. The owner says that he completed various repairs to unit 403, after purchasing but before occupying it, that included repairing window sills throughout unit 403.
19. There is no dispute that the strata is responsible for repair and replacement of the exterior windows.
20. The owner initially took the position that windows throughout the strata did not require replacement but could be repaired as he had done to his windows.
21. In a separate dispute involving another owner's strata lot, the strata agreed to replace their exterior windows and doors. Given this, the owner wants the strata to do the same for his windows.
22. The owner erroneously asserts that the strata's agreement in the other case is binding on the strata and sets a precedent that the strata must also replace his exterior windows. I disagree. The fact that the strata reached resolution on a window issue with another owner by consent, does not mean it must reach the same resolution with the owner in this dispute. The condition of that other strata lot's windows may have been different. What would be relevant here is the condition of the windows in unit 403 and whether they reasonably require repair or replacement. However, as discussed below, the parties reached a separate agreement that resolves the issue.
23. The owner filed his request for dispute resolution with the tribunal on February 26, 2018. The tribunal issued the Dispute Notice on April 19, 2018.
24. On May 4, 2018, the owner admits that he submitted an "Indemnity Agreement for Strata Lot and Common Property Alterations" to the strata seeking permission to install new windows in unit 403 at his cost in compliance with the strata's bylaws.
25. The agreement provided in evidence shows the original agreement provided by the owner was signed by the owner, his spouse (co-owner of unit 403) and the strata

council. The amended agreement has a hand-written notation that it was amended on July 13, 2018.

26. The parties agree that the owner's request to replace his exterior windows was granted by the strata council at its July 18, 2018 meeting. The owner has acknowledged receipt of the strata's approval letter and signed agreement.

27. I find the owner has agreed with the strata to replace his exterior windows, which are the subject of this dispute, at his cost. Given this agreement was reached after the Dispute Notice was issued, I find the owner has effectively withdrawn his request for dispute resolution.

28. For this reason, I dismiss the owner's claim.

TRIBUNAL FEES AND EXPENSES

29. 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. I see no reason in this case to deviate from the general rule. Given the owner was unsuccessful and the strata did not claim tribunal fees or expenses, I make no order in this regard.

30. 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.

ORDER

31. I order that the owner's claim and this dispute is dismissed.

J. Garth Cambrey, Vice Chair