



# Civil Resolution Tribunal

Date Issued: July 16, 2019

File: ST-2017-002350

Type: Strata

Civil Resolution Tribunal

Indexed as: *Collington v. The Owners, Strata Plan NW 2957*, 2019 BCCRT 853

BETWEEN:

Marilyn Collington

**APPLICANT**

AND:

The Owners, Strata Plan NW 2957

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. The applicant, Marilyn Collington (owner), owns strata lot 39 (SL39) in the respondent strata corporation, The Owners, Strata Plan NW 2957 (strata).

2. The owner claims the strata council has failed to remedy common property water ingress issues that affect her strata lot, including in the crawlspace below SL39 (crawlspace). She seeks the following remedies:
  - a. Repair of the drainage around SL39.
  - b. Repair of crack in foundation and crawlspace.
  - c. Remove and replace vapour barrier and insulation in the crawlspace.
  - d. Repair furnace, ducting and pipes, to include cleaning furnace ducting.
  - e. Complete building envelope assessment.
  - f. Replacement of exterior windows.
  - g. Replacement of hardwood floors within SL39.
  - h. Remediate potential mould contamination, including invisible contamination on furniture, clothes, carpet and walls.
3. The strata requests that I dismiss the owner's claims.
4. The owner is self-represented, and the strata is represented by a strata council member.
5. For the reasons that follow, I dismiss the owner's claims.

## **JURISDICTION AND PROCEDURE**

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

7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
8. The tribunal may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. 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.

## **ISSUES**

10. The issues in this dispute are;
  - a. Has the strata met its duty to repair and maintain common property (CP)?
  - b. What, if any, remedies are appropriate?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

11. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
12. In a civil proceeding such as this, the applicant must prove each of her claims on a balance of probabilities.
13. The strata is a residential strata corporation located in Surrey, B.C. It was created in 1989 and consists of 40 strata lots. The strata lots are all single level units and are either stand alone units or contained in a building comprising 2 units. The owner's SL39 is within a 2-unit building, attached on one side to strata lot 40.

14. The strata repealed and replaced all of its bylaws, except an age restriction bylaw, and filed a new set of bylaws at the Land Title Office on October 25, 2017. A subsequent bylaw amendment is not relevant to this dispute. The Standard Bylaws do not apply.

15. The relevant bylaws for this dispute are summarized as follows:

Bylaw 2(1) and (2): An owner must repair and maintain their strata lot, and limited common property (LCP) designated to their exclusive use, except for repair and maintenance that is the responsibility of the strata.

Bylaw 12(1)(a) and (b): The strata must repair and maintain the common assets and common property of the strata.

Bylaw 12(1)(c): The strata must repair and maintain LCP patios but the duty to repair is restricted to repair and maintenance that usually occurs less often than once per year.

Bylaw 12(d): The strata must repair and maintain a strata lot, but the duty is restricted to the structure or exterior of the building, doors, windows (including frames) on the exterior of the building or that front on common property.

16. It is undisputed that the crawlspace is CP. The strata plan confirms this.

17. A patio area adjacent to SL39 was designated as LCP in September 2005, which I infer is the patio the owner says has lifted.

18. It is also undisputed that the crawlspace is designed to be a heated space without venting to the exterior. This was the opinion of the owner's consultant/contractor, Caulus Consulting (Caulus), whom I understand is the owner's brother-in-law, and confirmed by the strata's engineer (WSP). I infer from the evidence that the crawlspace is designed to be heated by the owner's furnace.

19. The facts leading surround the investigation and repair of the crawlspace are also undisputed as I discuss below.

***Has the strata met its duty to repair and maintain CP?***

20. In order to find the strata responsible for some or all of the owner's requested remedies, I must find the strata did not meet its obligations with respect to repair and maintenance of its common property or acted in a negligent manner. For the reasons that follow, I do not find either.

21. The strata is obligated to repair and maintain common property under section 72 of the SPA and its bylaws, which includes the crawlspace as I have mentioned.

22. As the strata correctly points out, it must consider the interests of all owners when making decisions. When deciding whether to repair common property, the strata has discretion to approve "good, better or best" solutions to any given problem. The court (or tribunal) will not interfere with a strata's decision to choose a "good," less expensive, and less permanent solution, although "better" and "best" solutions may have been available. (*Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784 at paragraphs 28 and 29).

23. The owner purchased SL39 in October 2014 and first reported a "musty smell" in her crawlspace in December 2014. She wrote to the strata twice in December advising the strata, among other things, that she suspected a water problem in the crawlspace and asking of there were any records or legal issues, relating to prior drainage problems in SL39, other strata lots, or the common property.

24. The strata responded through its property manager that there were prior reports of standing water in the crawlspaces of "a couple of units" that the strata considered were minor. In response to the owner's question on how to confirm the extent of the suspected water problems, the property manager advised it was not able to recommend a contractor to investigate the potential concern.

25. In January 2015, the owner wrote to the strata advising she suspected possible perimeter drainage issues, citing a number of visual concerns, including high levels of humidity and moisture in SL39, evidence of mould on the interior of her windows, efflorescence on the crawlspace floor, foundation cracks and lifting of her concrete patio slab. Two members of the strata council inspected the owner's crawlspace in February 2015.
26. In March and April 2015, the strata arranged for repair of a crack in the foundation wall below SL39 and had an extra downpipe installed on a roof gutter outside SL39.
27. Further correspondence was exchanged between the parties and in May 2015, the strata arranged for 2 vents to be installed in crawlspace. However, when the strata's contractor attempted to install the first vent, it cut the gas line servicing SL39. Fortis attended to turn the gas off. The strata retained a second contractor (SWR) to repair the gas line and water was found in crawlspace. The strata then arranged for SWR to flush and video inspect the perimeter drain lines outside the foundation wall of SL39. The description on the May 14, 2015 SWR invoice states the drain lines were coated in sediment but were "clear and flowing" after they were flushed.
28. SWR recommended to further flush all sumps and "storm mains" in the complex and to "install crawlspace vents ... to create air flow and vent stagnant air."
29. Relying on Caulus' opinion noted earlier that the crawlspace was designed to be heated and not vented, the owner refused access to allow the strata to install vents in the crawlspace. It is unclear if the vents were ever installed.
30. Between July 2015 and November 2016, the strata arranged and paid for flushing of the perimeter drains of SL39 on three separate occasions. In November 2016, rose bush roots were cleared from part of the drainage system. During this period the strata also had a pipe penetration through the crawlspace foundation sealed and added a downpipe from the roof to a ground drain that flows to a sump.

31. In July 2016, the strata arranged for thermal imaging of SL39 and moisture testing in the crawlspace that did not identify any issues although the strata acknowledged the work was done during warm weather.
32. In early November 2016, the strata arranged for a follow up investigation through thermal imaging and moisture testing that identified elevated moisture readings on the concrete floor and wetness on a support wall but could not identify a water source. The contractor also identified mould growth on the wood joists that was not evident in July.
33. Between November 2016 and March 2017, the strata arranged for mould abatement in the crawlspace
34. In July 2017, the strata retained WSP to further investigate the crawlspace. WSP reported that there were no visible signs of water in the crawlspace but that mold growth on the underside of cardboard placed on the concrete floor could be why the owner noticed a “musty smell”. WSP recommended the cardboard be removed and dislodged insulation on the foundation wall be replaced, with a further investigation “during the rainy season.”
35. In October 2017 the strata retained another contractor who confirmed a musty smell in the crawlspace after 3 days of heavy rain but did not identify any signs of leakage. The contractor noted on the invoice that one corner of the crawlspace was cold and damp with signs of condensation on the bottom of the floor joists in the same area. The contractor advised that turning on the furnace would create air movement and greatly improve the air humidity in the crawlspace and likely eliminate the musty odour.
36. On October 24, 2017, the strata requested WSP re-inspect the crawlspace, which it did with the representative from Caulus, the owner’s contractor/consultant. In an email, WSP confirmed the strata’s contractor’s earlier observations of water penetration and condensation on a floor joist. The engineer water tested a glass block window feature in SL39 and noted the glass block leaked on to the floor of SL39 but not into the crawlspace. WSP stated it believed the glass block issue was

separate from the crawlspace issue. I understand the strata subsequently repaired the glass block leak.

37. WSP also noted the owner's furnace was not operating and stated heating the crawlspace would reduce condensation and dry the crawlspace overtime.
38. On December 8, 2017, WSP inspected the crawlspace a third time at the request of the strata. Moisture probes were also taken of the "wood framing components" and found to be below 19% and "dry". There were no visible signs of water and no signs of condensation. WSP noted the furnace was not operating and the owner had advised it required repairs. It was suggested again that an operating furnace would be helpful.
39. I acknowledge the owner's concern with the length of time taken by the strata to address her concerns and a tardiness in keeping her or her contractor/consultant informed of its actions. However, the evidence is that the strata continually addressed the owner's concerns and I find the strata's actions were reasonable.
40. It is established law that the strata's standard of care in performing its duties is one of reasonableness. Therefore, if the strata acts in an unreasonable manner it could be found to be negligent. Given I have found the strata acted reasonably in its repair of the crawlspace, I do not find the strata to be negligent.
41. The evidence before me is almost entirely about the crawlspace. As I discuss below, there is no evidence to prove other water leaks into SL39. As a result, I find the strata has met its duty to repair and maintain common property.

***What, if any, remedies are appropriate?***

42. The owner requested a number of remedies flowing from her claim that the strata failed to remedy crawlspace water issues, as I have noted above.



43. I find the strata has either completed the requested repairs, such as the perimeter drainage and foundation cracks of SL39, or the owner has failed to prove her claim such that other remedies are required.
44. For example, there is no evidence to suggest the insulation or vapour barrier in crawlspace requires replacement. I acknowledge that WSP might have suspected water was wicking up through the concrete crawlspace floor and that the vapour barrier may have been damaged or non-existent, but the engineer's final inspection in December 2017 did not suggest any further action was required unless liquid water was discovered in the crawlspace.
45. There is also no evidence before me to suggest the exterior windows of SL39 are leaking, other than the glass block feature that I understand was repaired, or that a building envelope assessment is required. The interior window sills inside SL39 are not common property and are the owner's responsibility to repair and maintain.
46. As for the lifted patio slabs, no evidence has been provided to indicate the slabs were damaged by water or require repair at all. Similarly, the owner's request for floor and furnace repairs, and the existence of mould have not been established.
47. For all of these reasons, I dismiss the owner's claims.

## **TRIBUNAL FEES AND EXPENSES**

48. 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. Here, I find the strata was the successful party but did not pay tribunal fees or claim dispute-related expenses.
49. 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**

50. I dismiss the owner's claims and this dispute.

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J. Garth Cambrey, Vice Chair