



# Civil Resolution Tribunal

Date Issued: August 2, 2019

File: ST-2019-001154

Type: Strata

Civil Resolution Tribunal

Indexed as: *Rezaizanjani v. The Owners, Strata Plan VR 2517*, 2019 BCCRT 932

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

MAHBOBEH REZAIZANJANI

**APPLICANT**

**A N D :**

The Owners, Strata Plan VR 2517

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

## **INTRODUCTION**

1. The applicant, Mahbobeh Rezaizanjani, is the owner of a strata lot in the respondent strata corporation, The Owners, Strata Plan VR 2517 (strata). The applicant claims that the strata has failed to complete necessary repairs to the applicant's balcony after there was a leak. The applicant asks for an order requiring the strata to complete the repairs recommended by the strata's roofing contractor

and an order that it comply with the *Strata Property Act* (SPA) and the strata's bylaws.

2. The strata says that it has done all of the repairs that were reasonably necessary to prevent future leaks. The strata says that it has therefore complied with the SPA and the bylaws and asks that I dismiss the applicant's claims.
3. The applicant is self-represented. The strata is represented by the current strata council president.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.
6. 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.
7. 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, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

## **ISSUE**

8. The issue in this dispute is whether the strata has reasonably repaired the applicant's balcony.

## **BACKGROUND AND EVIDENCE**

9. In a civil claim such as this, the applicant must prove her case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
10. The strata consists of 18 townhouse-style residential strata lots. Of the 18 strata lots, 16 have a deck or patio that is limited common property (LCP). This includes the applicant's strata lot, which has an LCP deck on its second floor.
11. The strata was built in 1989. The strata filed a complete set of bylaws in the Land Title Office on April 2, 2001, which replaced the Standard Bylaws under the SPA.
12. The applicant purchased her strata lot in June 2017.
13. On November 26, 2018, the applicant saw water damage in her living room and entrance area, which is below her deck. A plumber and restoration company attended. The plumber unclogged a blocked gutter and diverted water away from the strata lot. The restoration contractor began drying out the applicant's strata lot.
14. The applicant and the strata's property manager discussed the restoration and repair process via email over the next several weeks. The property manager said that the only issue was the clogged gutter but the applicant was concerned that there were other issues with the exterior of the balcony and roof. On December 14, 2018, the property manager agreed to have a roofing contractor inspect the balcony "just to be on the safe side".
15. A roofing contractor provided a report dated December 29, 2018 (inspection report). The inspection report said that there were 2 main issues that caused the water ingress. First, the balcony tiles were installed too close to the building, which meant

that if water accumulated on the deck it would enter the building envelope. Second, the flashing where the aluminum gutter meets the building was poorly installed, meaning that water could flow behind the cedar siding. The inspection report also raised a potential issue with the waterproof membrane under the balcony's tiles, although it was not conclusive on this point. The inspection report recommended repairs at a cost of \$7,400.00, plus GST.

16. On February 1, 2019, the property manager advised the applicant that the strata council believed that the clogged gutter caused the leak by allowing water to pool on the balcony. At the time, the strata was in the process of replacing the strata's gutters at a cost of \$22,858.00, plus GST. The strata therefore decided not to do any of the repairs that the roofing contractor recommended because it believed that the gutter replacement project would prevent further leaks.
17. In this dispute, the applicant provided a report and quote from a second contractor. This contractor also identified the lack of clearance between the tiles and the doorway as a problem. This contractor also said that the waterproof membrane under the tiles should be replaced. This contractor recommended completely redoing the deck at a cost of \$13,938.40 plus GST.
18. There is also a third contractor's report and quote in evidence, although it is unclear who arranged for this report. The third contractor agreed that the installation of the tiles created a risk of water ingress if there was any water buildup. In addition, this contractor said that the membrane was not designed to have tiles installed directly on top of it, meaning that "over time" the membrane would be dissolved. This contractor recommended repairs costing \$5,150.00 plus GST.
19. Therefore, all 3 contractors agreed that the tile installation would allow water ingress if there was standing water on the balcony. In contrast, neither the second nor the third contractor mentioned any problem with the aluminum flashing as a potential cause of leaks. It is unclear from the second and third quotes whether the scope of work included repairs to the aluminum flashing that the inspection report refers to.

## ANALYSIS

20. Section 72 of the SPA requires the strata to repair and maintain common property, including LCP, subject to any bylaws placing the obligation to on an owner. Bylaw 8(c) places the general obligation on owners to repair and maintain their LCP, but says that the strata must repair and maintain the exterior of the building and balconies, among other things. The strata does not dispute that these provisions make it responsible to repair and maintain the balcony.
21. The applicant argues that the inspection report identifies multiple causes of the leak but the strata is intent on only fixing the gutters. The applicant argues that the strata is ignoring the other parts of the inspection report to save money, at the expense of her strata lot. The applicant therefore says that the strata's refusal to follow all the inspection report's recommendations is unreasonable.
22. To support her argument that the gutter repairs alone are insufficient to prevent further leaks, the applicant provided a video of the balcony when rain is falling. She says that it shows water pooling despite the gutter repairs, which I infer are now complete. In the video, there is plastic sheeting over the tiles, which the applicant has left in place from the restoration contractor. While the video does show water pooling on the balcony, I find that I cannot conclude from it that the gutter system is not functioning well enough to drain water away. I find that the plastic sheet could disrupt the proper functioning of the drainage system and, in any event, the plastic sheet appears to provide a place for water to pool.
23. The applicant relies on *Chapel v. The Owners, SP VIS 1517*, 2017 BCCRT 5. *Chapel* considered issues similar to this dispute, as the strata corporation wanted to defer repairs to an owner's perimeter drains. However, I find that the facts in *Chapel* were different than in this case in a crucial way. In that dispute, the building leaked every few years and the strata had known for years that the strata lot's drainage system needed repairs. In contrast, in this dispute, there is no evidence of any prior leaks.

24. The strata says that its legal obligation is to choose a reasonable repair and maintenance option, not necessarily the best or perfect option. The strata's submissions reflect the Court's reasoning in *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784.
25. In *Weir*, the Court found that the starting point for assessing whether the strata corporation fulfilled its obligations is deference to the strata council. The reason for deference is that the strata council must act in the best interest of all owners, which requires it to balance competing interests and work within a budget that the owners can afford. With that in mind, the Court found that it is not necessarily unreasonable for a strata corporation to decide not to choose the best repair option.
26. This means that the strata may prioritize between different maintenance projects and may choose a lower standard of maintenance for financial or practical reasons, as long as the decision is not unreasonable. The fact that an individual owner may be unhappy with the strata's choices does not mean that the strata breached its duty under section 72 of the SPA. See also *Warren v. The Owners, Strata Plan VIS 6261*, 2017 BCCRT 139.
27. Relying on these principles, the strata says that it should not be required to undertake all the repairs recommended in the inspection report. The strata argues that it is entitled to interpret its repair and maintenance obligations on the basis of necessity. The strata says that just because the repairs to the applicant's balcony will be needed at some point in the future, does not mean that they are not needed now.
28. To that end, the strata interprets the inspection report differently than the applicant. The strata focuses on the fact that without pooled water on the balcony, the issues with the tiles' installation will not result in a leak. The strata believes that the repairs to the gutter system should eliminate the potential for future leaks. The strata therefore says that the repairs in the inspection report can be safely deferred.
29. The strata recognizes that the new gutter system may not prevent all future water leaks. The strata says that if there are further water leaks, it will pay to repair them

and reassess whether it must undertake the recommended repairs. The strata essentially says that based on the cost of the recommended repairs, its current financial state and its belief in the new gutter system, it is a reasonable risk for the strata to take.

30. I find that the strata's interpretation of the inspection report is reasonable. As discussed above, the inspection report refers to 2 problems with the balcony. The first problem, related to proximity of the tiles to the door, is only an issue if there is pooled water on the deck. In other words, without standing water, this problem will not lead to leaks. I find that it was reasonable for the strata to decide that fixing the gutter system was sufficient to address this problem.
31. As for the second problem, which related to the way the aluminum flashing was installed, I find that it is reasonable for the strata to take a "wait and see" approach. Neither of the other 2 reports identify this as an issue. Furthermore, it does not appear that the aluminum flashing at issue was recently installed. Given that there is no evidence of any prior leaks, it is reasonable to infer that this issue is not an immediate cause for concern.
32. For these reasons, I find that the strata's decision not to immediately undertake the repairs recommended in the inspection report was reasonable. Given this finding, it follows that there is no basis for an order that the strata comply with the SPA and bylaws.
33. I dismiss the applicant's claims.

## **TRIBUNAL FEES AND EXPENSES**

34. 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. Because the applicant was unsuccessful, I dismiss her claim for tribunal fees and dispute-related expenses.

35. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the applicant.

## **DECISION AND ORDER**

36. I dismiss the applicant's claims, and this dispute.

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Eric Regehr, Tribunal Member