



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Korpesio et al v. The Owners, Strata Plan K637*, 2019 BCCRT 996

BETWEEN:

Kenneth Korpesio and Sheila Schweigert

APPLICANTS

AND:

The Owners, Strata Plan K637

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. The applicants, Kenneth Korpesio and Sheila Schweigert, own strata lot 1 in the respondent strata corporation, The Owners, Strata Plan K637 (strata).

2. The owners claim the strata has failed to repair and maintain common property causing the value of their home to decrease. The owners also claim the strata is bullying and harassing them. The owners seek \$7,500 in compensation for the decrease in value of their home, \$2,000 compensation for harassment and an order for the harassment to stop, and an order requiring the strata to properly care for the common property.
3. The strata says the complex is well cared for by hired contractors and denies any harassment towards the owners.
4. The owners are self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

5. 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* (CRTA). 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.

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 10 of the CRTA, the tribunal must refuse to resolve a claim that it considers is not within the tribunal's jurisdiction. A dispute that involves one or more issues that are within the tribunal's jurisdiction and one or more that are outside its jurisdiction may be amended to remove those issues that are outside its jurisdiction.
9. Under section 123 of the CRTA, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. Order a party to do or stop doing something;
 - b. Order a party to pay money;
 - c. Order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Whether the strata failed to repair and maintain common property, and if so, what is the appropriate remedy, and
 - b. Whether the owners are entitled to compensation for harassment.

BACKGROUND, EVIDENCE & ANALYSIS

11. In a civil dispute such as this, the applicant owners bear the burden of proof. This means the owners have to provide evidence to prove each of their claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

12. The strata was created in 1986 and is a strata corporation comprising 11 residential strata lots: 10 single storey homes, and 1 two storey home. The applicants own strata lot 1, the only two storey home.
13. The strata was created under the predecessor to the *Strata Property Act* (SPA), the *Condominium Act* (CA). The SPA replaced the CA on July 1, 2000. On November 26, 2001, the strata filed bylaws under the SPA. The relevant bylaw to this dispute is:
 - a. **Bylaw 2(a):** The strata shall repair and maintain the original structure of the building, the exterior of the building, chimneys, balconies and other original attachments to the exterior of the building, doors, windows and skylights on the original exterior of the building... fences, railings etc.

Has the strata failed to repair and maintain common property?

14. The owners bought their strata lot in 2016. Since then, they say the care of the strata's property has decreased. Specifically, the owners say the strata has failed to repair or maintain common property, including allowing deficiencies in work done by a contractor on the owners' front entrance and deck (painting and filling nail holes), failing to properly weed in the common areas, failing to adequately repair a grass area near the owners' strata lot that was damaged by a contractor, failing to address the owners' concerns about their chimney, failing to repair a cracked sidewalk, failing to remove moss from roof shingles and failing to address leaky gutters. The owners say the property is unkempt and has resulted in their home being worth less.
15. Generally, the strata says it has addressed the issues the complained of and that it is proactive in updating, repairing and maintaining the grounds. For the reasons that follow, I find that the strata has acted reasonably and in accordance with bylaw 2(a) and section 3 of the SPA in repairing and maintaining the common property and common assets.

Front Entrance Area

16. The owners complain that after a third-party contractor, SD, completed repairs on their front entrance and deck, there were deficiencies in SD's work. The owners say SD failed to caulk gaps, fill nail holes and paint, and they say the strata improperly paid SD for the incomplete work.
17. In support of their position, the owners provided two photos of what I assume are deck or front entrance wood boards related to SD's work. The photos show newly painted wood boards, and one photo shows a depressed nail head that had been painted over. The strata said that SD returned to site and caulked the gaps and fixed the nail holes, and said the council checked the work themselves to confirm it was completed. It is unclear when the owner took the photos he provided. In any event, although one of the photos does show a nail hole, I find that the evidence does not establish that SD's work was substandard, or that the strata acted improperly in paying SD's invoice.

Weeding

18. The owners say that the complex has a weed problem that is not being addressed by the strata. The strata says it is making an effort to source more groundskeeping services to address the weed issue. In support of their position, the owners provided various photos of what they say show a weed problem. I find that although the photos produced do indicate some areas with weed growth, that it is not to such an extent to be considered unkempt or unruly.
19. The strata also advised that a rock area which showed weed growth was scheduled to be replaced with further landscaping in the spring of 2019. It is unclear whether this was done or not.
20. The strata's obligation to repair and maintain common property and common assets is measured by the test of what is reasonable in all of the circumstances (see: *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363). In considering what is

reasonable, the first thing to look at is the strata's decision. The strata council can consider various approaches to repair and maintenance, and the financial and practical impact each has on the owners and the strata's budget. The strata is not an insurer obligated to fulfil an owner's demand for maintenance, and is entitled to consider whether and how maintenance will be done.

21. Although the owners consider the weeds to be an eyesore, based on the evidence before me, I find the owners have not shown that the strata has failed to comply with its duty to repair and maintain the landscaping. The strata has acknowledged the weed issue and advised it is taking steps to remedy it. I am satisfied the strata has acted reasonably in this regard.

Back and Side Yards

22. The owner says that when repairs of some kind were completed on a neighbouring strata lot, the back and side yards around their strata lot were damaged. The owners provided a photo showing construction materials and mounds of dirt along the side of the owners' home. In December 2018, the strata informed the owner that repair of the grass areas and property line would be completed in the spring. The strata says regrowth of grass takes time.
23. In evidence, the strata provided an updated photo of the side yard area, which shows that the construction materials and dirt removed, and grass and soil and a small "retaining wall" in place. Additionally, a photo shows that along the side of the home, decorative rock was placed. The owner says that the repairs are inadequate, and new sod should have been placed to bring the yard back to its original condition. No "before" pictures were produced, therefore I am unable to determine whether the yards have reasonably been repaired. However, I am satisfied that the areas were adequately cleaned and re-landscaped. I find the strata's repair of the area was reasonable in the circumstances.
24. The owner further says that the "retaining wall", if permanent, should be replaced as the wood is warping from the weather. No submissions were made by either party

about the purpose of the retaining wall, or whether it is meant to be temporary or permanent. However, the strata advised the property line would be rebuilt, which, from the photos, appears to include the area with the “retaining wall”. Given the lack of evidence as to the purpose of the “retaining wall”, I make no findings about it.

Sidewalk Repair

25. The owners say the sidewalk in front of their strata lot is cracking / chipping and may present a safety hazard. The strata informed the owners that there were several other concrete areas that require repair, and that they would all be done as part of a larger project. The strata said it received quotes for the work, but the cost was high and because it was considered a lower priority repair it would be revisited the next year. The strata advised that due to the high cost, the repairs may need to be approved by all owners through a vote.
26. The strata is entitled to consider the owners’ maintenance and repair requests as it is able, and with a view to the financial circumstances of the strata and its capacity to manage the strata’s overall maintenance needs. The owners raised the sidewalk crack as a safety issue, but the strata deemed the repair a low priority. I agree with the strata’s assessment of the repair. Based on the photo evidence, the crack appears minor in nature. I find the strata has acted reasonably in its decisions regarding the sidewalk repair.

Chimney

27. In their submissions, the owners make a vague reference to their chimney needing to be “resurfaced or repainted” and stated council has failed to address the issue. The owners did not provide any evidence as to the condition of the chimney, or why it requires resurfacing or repainting. I appreciate bylaw 2(a) requires the strata to repair and maintain chimneys, but I find the owners have not shown the strata has failed to act with regard to a chimney issue.

Moss

28. The owners produced a photo showing moss growing on the edge of some roof shingles and say the moss is on their unit and neighbouring units. They say it is visible from their kitchen and deck. The owners say they raised the issue and were told it would be looked at in the spring. The strata says moss treatment is an ongoing maintenance activity and is addressed in the spring.
29. The photos provided by the owners show what I consider minimal moss growth on the roof shingles. I find the presence of the moss is not itself an issue that requires immediate repair, and will reasonably be dealt with by the strata in its annual maintenance.

Gutters

30. The owners say their gutters leak and the issue has not been addressed by the strata. They said that although they were told the gutters had been cleaned twice in the previous year, they did not believe theirs had been done. The strata said that it hired a roof inspector to assess the building and, at his recommendation, hired a contractor to remove the leaf guards from the leaky gutters. The strata advised this is likely not a complete fix to the problem, but was the only option available to them. In the circumstances, I find the strata acted reasonably in assessing and addressing the leaky gutters.
31. In summary, I find the strata has not breached its obligations under bylaw 2(a) or section 3 of the SPA. I find that in relation to the owners' above-noted complaints, the strata has acted reasonably in its repair and maintenance decisions. Given my conclusions, I also find the owner is not entitled to compensation for loss in fair market value.

Are the applicants are entitled to compensation for harassment?

32. The owners seek compensation of \$2,000 for personal harassment by the strata and an order that the strata stop harassing them. The strata denies any harassment has taken place.
33. Apart from vague assertions that the strata is trying to “steam roll” them, and that they have been “harassed... about a little garden area”, the owners have provided no evidence in support of their claims of harassment, or for the amount of damages they seek as a result of the harassment. The burden of proof is on the owners to prove their claim on a balance of probabilities. I find they have not met that burden. I dismiss the owners’ claims regarding harassment by the strata.

Strata Fees

34. Although the owners did not make a specific claim about strata fees, much of their submissions dealt with what they see as an unfair apportionment of strata fees to their strata lot. As noted above, the owners have the largest strata lot (the only two storey unit), having nearly double the unit entitlement of each of the 10 single storey units.
35. The owners say they proposed a change in the strata fee calculation, which was to be heard at a special general meeting (SGM) on January 5, 2019. The minutes from that meeting indicate that the owners requested to postpone presenting the proposal to the next annual general meeting (AGM). The owners say they want all owners present to vote and that voting by proxy should not be permitted. They also say the vote should be a majority vote.
36. The strata says it has repeatedly advised the owners about the SPA requirements for changing the basis of strata fee calculations, and that a unanimous vote is required. The strata further says the owners are unwilling to follow the guidelines set out in the SPA.

37. As no remedy was specifically sought, I make no findings as to the calculation of strata fees. However, given the tribunal's mandate that includes recognizing the ongoing relationship between parties, I offer the following comments.
38. In order to consider a change in the calculation of strata fees, the parties must follow sections 99 and 100 of the SPA. Section 99 of the SPA states that owners must contribute to the operating fund and contingency reserve fund based on unit entitlement. Section 99 also states that it is "subject to section 100". Section 100 states that a different formula for calculating strata fees can be used if passed by a **unanimous** vote at an SGM or AGM. This means if the parties want to use a basis to calculate strata fees other than by unit entitlement, they must first pass a resolution by unanimous vote, not a majority vote.
39. There is also no requirement that all votes must be cast in person, contrary to the owners' submission. Owners may attend an SGM or AGM by proxy and have that proxy vote on their behalf.

TRIBUNAL FEES, EXPENSES & INTEREST

40. Under section 49 of the CRTA, 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. As the owners have been not successful, I dismiss their claim for reimbursement of tribunal fees. No dispute-related expenses were claimed.
41. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owners.

DECISION AND ORDERS

42. I order the owners' claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair