



# Civil Resolution Tribunal

Date Issued: November 4, 2019

File: ST-2019-003378

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR 1605 v. Diamond*, 2019 BCCRT 1253

BETWEEN:

The Owners, Strata Plan VR 1605

**APPLICANT**

AND:

FRAN DIAMOND

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about the removal of vines and the repainting of common property. The applicant, The Owners, Strata Plan VR 1605 (strata), says the respondent, Fran Diamond (owner), failed to keep her vines contained to her yard space and it therefore had the vines professionally removed. The strata also says the owner

repainted a section of the building's exterior common property wall to a different colour without strata approval, which had to be repainted to match the original paint colour. The strata claims \$52.50 for the removal of the vines and \$893.46 for repainting.

2. The owner says she is not responsible for the charges and asks that this claim be dismissed.
3. The strata is represented by a strata council member. The owner is self-represented.

## **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* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must act fairly and follow the law. It must also 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, 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.
6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in

court. The tribunal may also ask the parties and witnesses questions and inform itself in any other way it considers appropriate.

7. 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.
8. I note that in her submissions the owner raised concerns about the strata's enforcement of bylaws, governance, and maintenance obligations. As the owner did not file a counterclaim regarding these issues, I have not addressed them in this decision.

## **ISSUES**

9. The issues in this dispute are:
  - a. Whether the owner is responsible to pay for the removal of the vines, and
  - b. Whether the owner is responsible to pay for the repainting of the common property exterior wall.

## **BACKGROUND AND EVIDENCE**

10. In a civil dispute such as this, the applicant strata bears the burden of proof. This means the strata has to provide evidence to prove each of its 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.

11. The strata was created in December 1985 and is a strata corporation comprising 9 townhouse-style residential strata lots. The owner purchased strata lot 8 in 2010.
12. 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 January 23, 2015, under the SPA, the strata repealed all its bylaws and filed new bylaws. The relevant bylaws to this dispute are:
  - a. **Bylaw 3.1(f)**: An owner must not use a strata lot, the common property or common assets in a way that has the potential to cause damage to the common property (including limited common property), the common assets or any part of a strata lot that the strata corporation must repair or maintain under these bylaws...
  - b. **Bylaw 6.1**: An owner must obtain the written approval of the strata corporation before making an alteration to common property, including limited common property, or common assets.
13. By way of background, in 2011 the owner sought, and received, approval from the strata to make alterations to her limited common property backyard including, among other things, removing a wooden deck and replacing it with “broken concrete pavers” to create a concrete patio, and installing planter boxes and plant trellises provided they were kept away from the building envelope.
14. It is undisputed that the alterations took significantly longer than anticipated, leaving the owner’s yard in a state of disrepair over several years.
15. On September 16, 2016, the strata’s property manager wrote to the owner advising that complaints had been received about the unkempt appearance of the owner’s strata lot. Additionally, the owner was asked to remove all vegetation in contact with the common property or the strata would have it removed. The property manager also noted the owner had painted the exterior building walls in her backyard without strata’s approval. The owner was given until October 31, 2016 to bring her strata lot

into compliance, or the strata would arrange for the work to be done and invoiced back to her.

16. On October 12, 2016, a hearing was held for the above-noted issues. In an October 24, 2016 letter, the property manager noted that, further to the hearing, a site visit would occur on November 1, 2016, by which time the vines and other vegetation needed to be removed from the building envelope. The owner was given until April 30, 2017 to repaint the common property wall, due to weather considerations.
17. On October 31, 2016, the owner wrote to the strata stating that her “vegetation is kept clear of the building” and that the vines “are situated and maintained such that they do not come in direct contact with the building envelope” (emphasis in original). Regarding the wall, the owner admitted she repainted the exterior wall from light grey to dark grey, and that it did not occur to her that it constituted an alteration to common property.
18. On November 1, 2016, a site visit was conducted at the owner’s strata lot.
19. On February 3, 2017, the property manager sent a letter to the owner advising that after the inspection on November 1, 2016, the vines were still in contact with the common property building exterior, in breach of bylaw 3.1(f), and that the common property wall remained painted without approval, in breach of bylaw 6.
20. The property manager sent reminder letters about removal of the vines on March 6, March 17, and April 21, 2017. On April 25, 2017, the strata had the vines removed and was invoiced \$52.50 for the removal. This amount was charged back to the owner.
21. On August 22, 2017, the property manager sent a “final notice” advising the owner that the previously cut vines were again climbing the side of the common property exterior wall, and that if they were not removed and the exterior wall was not repainted to original by August 24, 2017, the strata would arrange for the work to be completed and charged back to the owner.

22. A September 6, 2017 invoice indicates the strata paid \$735 for painting and plant trimming. An August 25, 2017 invoice indicates the strata paid \$158.46 for paint supplies. The total amount, \$893.46, was charged back to the owner.

## **POSITIONS OF THE PARTIES**

23. The \$52.50 for vine removal and \$893.46 for painting and plant trimming remain unpaid. The strata says these charges were rightfully incurred due to the owner's breaches of bylaws 3.1(f) and 6 and her failure to remedy the breaches. The strata says it was entitled to have the work done and charged back to the owner further to section 133 of the SPA.

24. The owner says she is not responsible for the charges.

## **ANALYSIS**

### ***Is the owner responsible to pay \$52.50 for the removal of the vines?***

25. As noted above, the strata argues the vines were encroaching on common property and therefore had the potential to cause damage to common property, which it says has several wood components. Therefore, it had the vines removed. In contrast, the owner said the vines did not come in contact with the building envelope.

26. Other than providing numerous letters written to the owner stating that the vines were on common property, the strata did not produce any evidence, such as photographs, supporting that the vines were, in fact, outside the boundaries of the owner's strata lot. What is left is the strata saying the vines were on common property, and the owner stating they were not. Without more, I am unable to determine which account is correct.

27. As the burden of proving its case rests with the strata, I find it has not met its burden of showing the vines had encroached onto common property and therefore had to be removed. As a result, I dismiss the strata's claim for reimbursement for removal of the vines.

***Is the owner responsible to pay \$893.46 for the repainting of the common property exterior wall?***

28. Unlike the vines, the owner admitted she changed the colour of the exterior common property wall without approval, but advised she did not know that it constituted a violation of the bylaws. Ignorance as to the contravention of a bylaw does not excuse an owner from liability.
29. Once the owner was notified of the bylaw contravention, she was given several opportunities to return the common property to its original state. She failed to do so.
30. The SPA sets out a number of provisions for enforcing a strata corporation's bylaws. Those provisions include section 133(1), which enables a strata corporation to do "what is reasonably necessary" to remedy a contravention of bylaws, including doing work on or to a strata lot or common property. Section 133(2) provides that the strata corporation may require that the reasonable costs of remedying a bylaw contravention be paid by the person who may be fined for the contravention.
31. In this case, given the owner's admission she repainted the common property exterior wall without permission, I find she breached bylaw 6, which requires strata approval before altering common property. After being given multiple extensions to remedy the issue, the owner failed to bring the common property wall back into its original state. I find the strata acted reasonably in having the wall repainted.
32. Section 135 of the SPA says a strata corporation cannot require an owner to pay the costs of remedying a contravention unless it has received a complaint, given the owner written particulars of the complaint, and a reasonable opportunity to answer the complaint, including a hearing (see: *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449 and *The Owners, Strata Plan NW 3075 v. Stevens*, 2018 BCPC 2). I find the strata met these requirements, as it notified the owner of the complaint and offered and held a hearing about the issues. The strata also provided several warnings to the owner that if she did not bring the common property exterior wall

back to its original state by certain deadlines, the strata would pay for the work to be done and charge the owner for those costs.

33. For these reasons, I find the owner must reimburse the strata \$893.46 for painting, which includes \$735 for labour costs and \$158.46 for supplies.
34. The strata is also entitled to pre-judgment interest on this amount, further to the *Court Order Interest Act* (COIA). Calculated from September 6, 2017, the date of the labour invoice, this amounts to \$28.55.

## **TRIBUNAL FEES AND EXPENSES**

35. 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 strata has been mostly successful in its claims, I order the owner to reimburse the \$225 it paid in tribunal fees. No dispute-related expenses were claimed.
36. 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.

## **DECISION AND ORDERS**

37. Within 30 days of the date of this decision, I order the owner to pay the strata a total of \$1,147.01, broken down as follows:
  - a. \$893.46 for labour and supplies chargeback,
  - b. \$28.55 in pre-judgment interest under the COIA, and
  - c. \$225 in tribunal fees.
38. The strata is also entitled to post-judgment interest, as applicable.
39. The strata's remaining claim is dismissed.



40. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing a validated copy of the attached order in the Supreme Court of British Columbia (BCSC). Once filed, a tribunal order has the same force and effect as a BCSC order.
41. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia (BCPC). However, the principal amount or the value of the personal property must be within the BCPC's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the CRTA, the strata can enforce this final decision by filing a validated copy of the attached order in the BCPC. Once filed, a tribunal order has the same force and effect as a BCPC order.

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Andrea Ritchie, Vice Chair