Civil Resolution Tribunal

Date Issued: November 13, 2019

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Civil Resolution Tribunal

Indexed as: *Wong v. The Owners, Strata Plan VR 804*, 2019 BCCRT 1285

B E T W E E N :

YOKO WONG

APPLICANT

A N D :

The Owners, Strata Plan VR 804

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kate Campbell, Vice Chair

INTRODUCTION

1. The applicant, Yoko Wong, owns strata lot 3 (SL3) in the respondent strata corporation, The Owners, Strata Plan VR 804 (strata).

2. The strata is small, containing only 8 strata lots. The applicant, who is self-represented, says the strata has not been governed in accordance with the *Strata Property Act* (SPA), and should be ordered to hire a property manager. She also says the strata did not follow the proper process in amending its bylaws, and failed to investigate or repair the cause of the repeated water leaks into her strata lot. She says the strata is required to repair her deck, concrete pathway, bay window, and patio door, and must also complete concrete resurfacing work on the building's concrete patio.

3. The applicant says the owner of strata lot 4 (SL4) modified common property stairs without the necessary approval, and the modifications should be reversed. She also asks for an order that the strata hire an expert to determine what parts of the strata constitute the building envelope, building structures, and building exteriors, in order to identify whether the strata or individual owners are responsible for various maintenance and repairs.

4. The strata filed a Dispute Response Form denying all the applicant's claims. This document was completed by another owner in the strata. However, during case management, the case manager learned that the strata has no strata council, and has no representative in this dispute. For that reason, the strata provided no evidence or submissions in this dispute, other than the information in the Dispute Response Form.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims 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. The tribunal must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the tribunal's process has ended.

6. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.

7. 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 way it considers appropriate.

8. Under section 123 of the CRTA 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, or order any other terms or conditions the tribunal considers appropriate.

9. The applicant initially named 2 individual strata lot owners, and former strata council members, as respondents in this dispute. She subsequently withdrew her claims against them, so I do not consider their liability in this decision. I note that in general, an owner cannot successfully sue another owner for a breach of their duty as council member (see *Kornylo v. The Owners, Strata Plan VR 2628*, 2019 BCCRT 1215 at paragraphs 24-27).

ISSUES

10. The issues in this dispute are:

    a. Did the strata follow SPA requirements in amending its bylaws?

    b. Must the strata hire a property manager?

    c. Must the strata hire an expert to determine what parts of the strata are the strata's duty to repair?

    d. Must the strata investigate the cause of repeated water leaks into SL3?

    e. Must the strata reimburse the applicant for a $189.00 plumber's report?

f. Were the stairs leading to SL4 modified without proper approval, and if so, what remedy is appropriate?

g. Must the strata repair the applicant's bay window and patio door?

h. Must the strata repair the deck attached to SL3?

i. Must the strata repair the concrete on the pathway outside SL3 and on the patio above the parkade?

EVIDENCE AND ANALYSIS

11. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding like this one, the applicant must prove their claims on a balance of probabilities.

12. The strata was created in 1980 under the *Condominium Act,* a predecessor to the SPA. It consists of 8 residential strata lots. The strata lots are townhouses, located in 2 different buildings connected by a courtyard. There is a parkade underneath the courtyard and majority of the buildings.

Did the strata amend its bylaws correctly?

13. From January 2002 until January 2018, the strata's bylaws were the Standard Bylaws under the SPA, with no amendments. In January 2018, the strata filed a set of bylaw amendments with the Land Title Office (LTO). These amendments contained numerous changes and additions to the Standard Bylaws, but did not entirely replace them.

14. In October 2018, the strata filed a second set of bylaw amendments with the LTO. Bylaw 8, which is about repair and maintenance of property by the strata, was amended. Also, the filed amendment package included a consolidated set of bylaws, incorporating the new bylaw 8 and all the January 2018 amendments.

15. The applicant says the strata did not follow the proper process for obtaining ownership approval of the January 2018 bylaw amendments. She says the

proposed amendments included in the notice package for the annual general meeting (AGM) notice differed significantly from those voted on at the AGM.

16. Based on the evidence before me, I agree with the applicant that the SPA requirements for amending bylaws were not met at the time of the January 2018 AGM.

17. The documents show 2 dates for the January 2018 AGM. The amendment documents filed with the LTO say the AGM was on January 14, 2018. However, the documents from the strata say it was on January 13, 2018. However, I find this is not determinative of the issue before me.

18. Under SPA section 128, bylaw amendments must be approved by a ¾ vote resolution at an AGM or special general meeting (SGM). SPA section 45(1) says the strata must give at least 2 weeks' written notice of an AGM or SGM. Section 45(3) says the written meeting notice must include "**the proposed wording of any resolution requiring a 3/4 vote**" (emphasis added).

19. Based on the evidence before me, I find the strata did not provide notice as required in these sections.

20. GM, who was then the strata council vice-president, emailed the meeting notice, including a copy of the agenda, to the owners on December 30, 2017. SPA section 61(3) provides that a notice from the strata is "conclusively deemed to have been given" 4 days after it is emailed. Read together with SPA section 45(1), this means that an AGM notice must be emailed to the owners at least 20 days before the AGM.

21. Regardless of whether the AGM was on January 13 or January 14, the strata did not meet the required 20-day notice period.

22. Also, I find that the evidence before me establishes that that the strata did not provide the proposed wording of the bylaw amendments to the owners in writing before the January 2018 AGM. Instead, GM's December 30, 2017 email included a

copy of what she described as “simple by-laws I have drafted as they are in compliance with what we already know”.

23. These “simple” bylaws are a 9-point list, setting out general statements about whether owners or the strata are responsible for various aspects of maintenance, such as stairs, “the building”, landscaping, the garage, “membrane decks”, deck covers and railings, and gutters.

24. In contrast, the bylaw amendments filed at the LTO on January 26, 2018 contain entirely different wording from the bylaw package circulated by GM on December 30, 2017. While the general principles may be the same, the wording is not at all similar.

25. I find that this is contrary to SPA section 45(3), which requires that the proposed wording of the resolution must be including in the AGM notice package. This is to ensure that all owners understand, in advance, exactly what will be voted on at the AGM.

26. These notice requirements are mandatory. Since they were not met, I find that the bylaw amendments filed at the LTO on January 26, 2018 are unenforceable, and never took effect.

27. The second set of bylaw amendments were filed at the LTO on October 3, 2018. These amendments were voted on at an SGM held April 29, 2018.

28. The notice requirements for SGMs are the same as those for SGMs, which includes providing the wording of any ¾ vote resolution, such as a proposed bylaw amendment, 20 days in advance of the meeting.

29. I find the evidence before me does not establish that this occurred. Rather, the documents suggests that a strata council member circulated another general description of the type of bylaw amendment proposed, but not the actual wording of the change, or of the proposed new bylaw 8.

30. For these reasons, I also find that the bylaw amendments filed at the LTO on October 3, 2018 are unenforceable, and never took effect.

31. I find that the Standard Bylaws under the SPA continue to apply, since these were the strata's bylaws before the attempted amendments. It is open to the strata to propose and vote on new bylaw amendments, following the proper process set out in the SPA.

Must the strata hire a property manager?

32. The applicant says the strata is not governed in accordance with the SPA, and therefore should be ordered to hire a property manager.

33. Based on the evidence, I agree that there are at least some SPA requirements the strata is not following. For example, The communications with the tribunal case manager confirm that there is no elected strata council, which is contrary to SPA section 25.

34. The tribunal has ordered a property manager appointment in previous decisions, such as *Lawrence v. The Owners, Strata Plan VIS86*, 2017 BCCRT 58. However, I find such an order is not appropriate in the circumstances of this case.

35. In *Kornylo v. The Owners, Strata Plan VR 2628*, 2018 BCCRT 599, a tribunal member considered whether to order the strata to appoint a property manager, and concluded that it was not appropriate for 2 reasons. First, what the applicant actually sought was the appointment of an administrator to control the strata, which CRTA section 122(1)(i) says the tribunal has no jurisdiction to do. Second, appointing a property manager would not remedy the applicant's concerns about strata governance and operations, since property managers provide advice and guidance to strata councils but are ultimately instructed by them.

36. While *Kornylo* is not binding, I find its reasoning applies equally to this dispute, and I adopt it. What the applicant really seeks is a property manager to make decisions about strata governance and operations, instead of a strata council. This is contrary

to the SPA, and is essentially the role of an administrator appointed under SPA section 174, which the tribunal does not have authority to appoint.

37. For these reasons, I do not order the strata to hire a property manager, and dismiss this claim. Nothing stops the owners from agreeing to hire a property manager. To do so, the ownership must approve the expense in the manner set out in SPA section 97.

Must the strata hire an expert to determine what parts of the strata are the strata's duty to repair?

38. The applicant says the strata should be ordered to hire an expert to "clearly define the building envelope of the complex". The applicant's submissions seem to include 2 requests. First, she wants the expert to determine which areas are common property, which are limited common property (LCP), and which are part of each strata lot. Second, the applicant's correspondence indicates that she wants the strata to obtain a report on the condition of the building envelope.

39. The applicant says the owners have disagreed in the past about whether repairs to areas such as decks, deck enclosures, deck membranes, stairs, and interior drywall should be shared expenses, or borne by a particular strata lot owner. She says they have disagreed about what constitutes "building structure" or "building envelope".

40. The applicant says that as an example, the strata has paid for repairs to LCP decks, including and deck membranes, on the basis that they are part of the building envelope. She also says some outdoor stair rebuilding was paid for by the strata, but the strata required a strata lot owner to pay to rebuild a different set of stairs.

41. The applicant also says that in the years since the strata was built, there have been many alterations, such as added skylights and deck extensions. She says these alterations were not tracked or documented. She also submits the strata has said it does not know who is responsible to repair items not shown on the strata plan.

42. The applicant says the strata has been inconsistent and unfair by deciding to pay for some repairs and not others. She says that to avoid similar problems in the future, the strata should be ordered to hire a professional to provide clear definitions about what constitutes the "building envelope", "building structure", and "building exterior". I find what the owner really wants is a clear definition of the building components for which the strata has a duty to repair.

43. Under section 72 of the SPA, the strata has a general duty to maintain and repair common property, and an owner must maintain and repair their own strata lot, except as may otherwise be permitted under the strata's bylaws. Common property can also be designated as limited common property (LCP) for the exclusive use of one or more strata lots under sections 73 and 74 of the SPA. The strata may, by bylaw, make an owner responsible for repair and maintenance of LCP.

44. I accept the applicant's submission that there have been past disagreements among owners about what parts of the strata are common property, LCP or parts of a strata lot, and whose obligation it is to repair those areas. The type of professional who could offer the most useful opinion on that issue is not a contractor, engineer, or architect. Rather, the question of whether the strata must pay or not pay for certain repairs is a legal one. It requires an interpretation of the SPA, the bylaws, and the strata plan registered at the LTO. Common property and strata lots are all terms defined in section 1(1) of the SPA. The boundaries between common property and strata lots, or between 2 strata lots is set out section 68 of the SPA.

45. I do not order the strata to obtain a legal opinion on these issues, as such an opinion would not be binding in any event. However, in the future the strata or the applicant may wish to obtain an opinion from a lawyer with expertise in strata properties. Also, if the strata hires a property manager, that individual will likely offer helpful guidance on this issue.

46. For these reasons, I dismiss the applicant's claim for an order that the strata hire a professional to determine its common property.

47. As for the applicant's request for a building envelope report, I find that is also a matter for the ownership to decide. There is no evidence before me about whether the strata has obtained a depreciation report or passed a ¾ vote of the ownership to waive that requirement. I therefore make no finding about the depreciation report, but note that the strata must comply with section 94.

Water Leaks

48. The applicant says there have been repeated water leaks into the kitchen and 2nd floor hallway ceilings of SL3. She says the strata has failed to sufficiently investigate these leaks to determine their root cause, and she seeks an order that the strata do so now.

49. On January 27, 2018, the applicant wrote to 2 members of the strata council. She included a table listing 4 incidents of water leaking into SL3 from August 2016 to December 2017. She wrote that 2 of the leaking incidents were resolved, as their cause was determined and fixed. The applicant said that in August 2016 water leaked through the light fixture on the SL3 bathroom ceiling "like a waterfall". She said that this particular leak had occurred intermittently before, since 2002, during periods of heavy rainfall. She said it was likely due to an ongoing problem with the building's roof.

50. The applicant also said that in December 2017, water leaked into the kitchen ceiling of SL3, and the plumber she hired, National Plumbing (National), reported the leak was due to a new deck that had just been constructed outside strata lot 4 (SL4), immediately above SL3.

51. I find that this is consistent with the copy of National's December 31, 2017 report provided in evidence. The report says a National technician visited the site December 201, 2017, and found a leak in the kitchen ceiling next to the light fixture. The report also contains the following information:

    a. There were 2 bubbles in the kitchen ceiling, which were soft.

    b. Water leak in SL3 kitchen not continuous, so not caused by pipe, and not discoloured, so not caused by drainage.

    c. Leak occurred about 4 days earlier, at the same time as a new deck with laminate flooring was installed above at SL4.

d. Technician saw big pools of water on laminate surface of SL4 deck, and no drain on deck.

e. Laminate flooring on deck went right to the exterior wall, with no seal between the flooring and the wall.

f. Technician measured the deck level, and found it sloped towards the building with no drain. Water travelling from new deck's flooring towards the wall, and because there was no seal between the flooring and the wall, the water travelled down the wall and onto SL3's ceiling.

52. The National technician took several photos of the new SL4 deck, including close-ups of its flooring and the area where it met the exterior wall. These were provided in evidence.

In her January 27, 2018 letter, the applicant asked that the strata identify and fix the root cause of the leaks into SL3. In a March 21, 2019 email, she requested that the new SL4 deck be inspected in relation to the leaks into the kitchen.

53. The applicant has provided photos showing areas of ceiling drywall with visible water damage.

Kitchen Leaks

54. I find National's report persuasive, and rely on it. The findings were documented in writing by a technician who visited the site at the time of the leak with the purpose of investigating its cause. The report is thorough and well-explained, and is supported by photographic evidence. I accept that the National report is expert evidence, as contemplated in the tribunal's rules. There is no contrary expert opinion in evidence indicating a different cause for the SL3 kitchen leaks in December 2017. I note that in his January 26, 2018 email, council member PM admits that while he disagrees with National's finding about the SL4 deck's slope, he is not a construction professional. Also, while PM noted that the leak had occurred before the new deck was installed, I find the National technician addressed that issue in the report, noting that the old deck had rotten, exposed wood.

55. For these reasons, I accept National's opinion about the cause of the SL3 kitchen ceiling leak.

56. As previously stated, under section 72 of the SPA the strata has a general duty to maintain and repair common property, and an owner must maintain and repair their own strata lot, except as may otherwise be permitted under the strata's bylaws.

57. I have found above that the Standard Bylaws have applied to the strata at all relevant times, without amendments. Under Standard Bylaw 8, the strata must repair and maintain all common property and common assets, as well as LCP where the maintenance or repairs ordinarily occur less than once a year. The strata must also maintain the repair the following, whether it is LCP or part of a strata lot:

    a. the structure of a building,

    b. the exterior of a building,

    c. chimneys, stairs, balconies and other things attached to the exterior of a building,

    d. doors, windows and skylights on the exterior of a building or that front on the common property, and

    e. fences, railings and similar structures that enclose patios, balconies and yards.

58. Thus, the strata must repair and maintain the structure and exterior of the building, as well as any stairs or balconies attached to the exterior of the building. I find that the means the strata must repair and maintain the exterior walls, and the SL4 deck. The strata may have an indemnity agreement that addresses this issue with the SL4 owner about the deck as it may have approved the deck repair under such an agreement. That agreement is not in evidence, so I make no findings about it.

59. Based on the SPA and Standard Bylaws, I find the strata must repair the problems identified in the December 31, 2017 National report. It is open to the strata to obtain an additional report from a building inspector or engineer before commencing this

work, in order to identify the best way to fix the water ingress problem identified by National.

60. I therefore order the strata to repair the problems identified in the December 31, 2017 National report within 90 days of this decision.

2nd Floor Leaks

61. The evidence shows that the applicant requested a hearing before the strata council about a number of issues, including the leaks. The hearing was held on April 27, 2019. The minutes indicate that at the hearing, the strata agreed to hire someone to investigate the leaks on the 2nd floor of SL3. The minutes also say that if the leaks were found to be caused by the roof or "other areas covered by the strata", the strata would pay for the repairs and any damage caused by the inspection, and if the leaks were caused by something in SL3, the applicant would pay for the repairs and any damage.

62. These minutes were signed by the council members present at the hearing, and by the applicant.

63. I find the agreement documented in the hearing minutes is consistent with the strata's obligation under Bylaw 8 to maintain and repair common property, as well as LCP where the maintenance ordinarily occurs less than once a year.

64. I note that the photos provided in evidence confirm ongoing leaks into the 2nd floor ceiling of SL3, and that there is no indication that these leaks are due to any problem originating within SL3.

65. I therefore order that if it has not done so already, within 60 days of this decision the strata must choose and hire, at its expense, a professional building inspector or engineer to investigate the cause of the leaks into the SL3 2nd floor ceiling and provide a written report. A copy of the professional's written report must be provided to the applicant.

66. I make no specific findings about the strata's obligation to fix any problems identified in the professional's report. However, if the source is from common property or LCP, the strata will likely be required to repair it, at its expense.

National Plumbing Invoice

67. The applicant requests reimbursement for National's December 31, 2017 report. The report is in the form of an invoice, and shows that the total charge was $189.00, including tax.

68. Since the strata had indicated the leaks were the applicant's responsibility, I find it was reasonable in the circumstances for her to hire National to inspect the leaking areas and provide an opinion about the cause. Since the applicant has been successful in her claims about the leaks, I order the strata to reimburse her $189.00 for National's report.

69. The applicant is entitled to pre-judgement in interest on this amount, under the *Court Order Interest Act* (COIA), from January 31, 2018.

SL4 Stairs

70. The photos provided in evidence show that at the same time that the strata's contractor installed the new SL4 deck, he also installed new stairs leading to the deck and the SL4 entrance door. Emails indicate that the old stairs were partially rotted.

71. The photos show that the old stairs ran in a straight line up against the wall, beside the patio door leading into SL3. Those stairs were shown on the strata plan.

72. The photos show that the configuration of the new stairs is very different. Rather than running in a straight line up along the wall, the new stairs run partway down the wall to a landing, and then turn 90 degrees and end directly in front of the SL3 kitchen window and the SL1 patio door. While the new stairs are far enough away they do not block the patio door, they are clearly visible from inside SL1 and SL3.

The photos show that the stairs partially block the view from the SL1's LCP patio, and significantly block the view from the SL3 kitchen window.

73. The applicant says the old stairs were shown on the strata plan, and the strata significantly changed their look and location without proper authorization. She says she was never notified that the stairs were being reconfigured. She says the new stairs block daylight and the view into the courtyard through the SL3 kitchen window, and partially enclose the alcove outside the kitchen window. She says it affects the privacy in SL3, as the occupants are now visible to others using the stairs.

74. From the email correspondence provided in evidence, it appears that the strata decided to reconfigure the stairs because the old stairs caused some damage and leakage on the exterior wall, where they or their railing were attached to the building. In its Dispute Response Form, the strata also said that after the walls were rebuilt, the stairs had to be reconfigured because the bottom stairs would end up in the "common area courtyard". There is a notation in the April 2018 SGM minutes that the Building Code had changed since the stairs were last rebuilt in 2012, and the slope would have to be decreased, so the bottom of the stairs would extend into the courtyard and cause a tripping hazard.

75. There is no evidence before me to establish that these concerns are accurate, or that the strata consulted with professionals about how to keep the rebuilt stairs in the same position.

76. In any event, I find the strata was not entitled to reconfigure the stairs because it did not obtain the proper authorization from the ownership. The stairs are shown on the strata plan, in their original location and configuration. They are marked as a "common facility" on the strata plan. In the current version of the SPA, "common facility" is a term that only applies to phased strata plans (built in phases) under Part 13 of the SPA, which this strata is not. This strata was created under the *Condominium Act* (CA). Under the CA, "common facility" was defined as a facility available for the use of all owners, such as a laundry room, playground, swimming

pool, recreation centre, clubhouse or tennis court. The CA and the SPA both define "common property" as any part of the land and buildings in a strata plan that is not part of a strata lot. Since the stairs are identified as a common facility and not part of a strata lot, I conclude that they are common property.

77. Under SPA section 71, the strata must not make a significant change in the use or appearance of common property unless the change is approved by a ¾ vote resolution passed at an AGM or SGM, or there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage.

78. Based on the photos provided in evidence, and changes in views and traffic patterns due to the new stairs, I find the stair reconfiguration was a significant change in the use and appearance of common property. They are significantly different in both their look, and in the resulting location of foot traffic in front of SL1 and SL3. Although I accept that the stairs required repair due to rot, I find an immediate change to their configuration was not necessary to protect safety or to prevent damage or loss.

79. Thus, the strata was required to get a ¾ vote resolution in favour of the change at an AGM or SGM. The strata admits it did not do so before building the stairs. While the strata attempted to have a vote on the matter at the April 29, 2018 SGM, it did not provide the wording of the proposed ¾ resolution to the owners in advance of the meeting, as required in SPA section 45(3). It also did not give notice before or during the meeting that a ¾ majority was required for the vote to pass.

80. The applicant submits that a unanimous vote was required, because moving the stairs effectively converted the SL1 LCP patio area to common property. Based on the information on the strata plan, I do not agree. While the new stairs partially block the view from the SL1 patio, I find they do not encroach it, and therefore there was no conversion of LCP to common property. The stair reconfiguration does not fit with any of the circumstances set out in the SPA requiring a unanimous vote.

81. However, since the strata did not obtain a properly executed ¾ vote of the ownership in order to significantly change the use and appearance of common property, I find it did not have authorization to reconfigure the stairs.

82. For the following reasons, I also find that strata's reconfiguring the stairs without giving the owners proper notice of the change and obtaining the required authorization was significantly unfair to the applicant, as submitted by the applicant.

83. Under CRTA section 123(2), the tribunal may make an order directed at the strata corporation, the council or a person who holds 50% or more of the votes, if the order is necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights. This is similar to the Supreme Court's power under SPA section 164.

84. The BC Court of Appeal considered the language of section 164 of the SPA in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44. The test established in *Dollan* was restated by the BC Supreme Court in *The Owners, Strata Plan LMS 1721 v. Watson,* 2018 BCSC 164 at paragraph 28:

    a. What is or was the expectation of the affected owner or tenant?

    b. Was that expectation on the part of the owner or tenant objectively reasonable?

    c. If so, was that expectation violated by an action that was significantly unfair?

85. 42. Applying the test to the facts before me, I find the applicant had an objectively reasonable expectation that the strata would not significantly change common property without following the mandatory process in the SPA. The strata violated that expectation, by building the stairs without proper authorization or notice (or a building permit, which was only obtained retroactively).

86. Typically, I would find that the proper remedy for a breach of voting procedure is to order the strata to re-hold the vote. However, I find the evidence, including the April 2018 SGM minutes, shows that since the owners already paid a large sum to build

the stairs, most are likely unwilling to pay to remove and relocate them. Since only 2 of the 6 strata lot owners are particularly affected by the re-routed stairs, I find that referring the matter to a ¾ vote for retroactive approval would be unfair.

87. For these reasons, I find that it is more appropriate in the circumstances to order the strata to remove and re-route the stairs. If they cannot be moved to their exact original location due to building code changes, the strata must consult a building professional to redesign the stairs in a manner that does not block the views from SL1 or SL3. The strata must also obtain a ¾ vote of the ownership to approve of any change from the original stairs as shown on the strata plan.

88. The applicant is not required to pay money for the stair rebuilding project.

Repairs to Bay Window and Patio Door

89. The applicant says the strata must repair the bay window and patio door in SL3. She sent the strata a written request to perform this work on April 6, 2019.

90. The applicant provided photos showing that the glass in the bay window and one half of the patio door are cloudy, with water or fog between the layers of glass.

91. In its Dispute Response Form, the strata says that under its bylaws, all owners pay to repair their own doors and windows.

92. As previously explained, I have found that the Standard Bylaws apply. Under Standard Bylaw 8, the strata must repair and maintain "doors, windows and skylights on the exterior of a building or that front on the common property". The photos show that the bay window and patio door front on common property, so they are the strata's duty to maintain and repair.

93. However, the strata is entitled to prioritize its repairs: *Warren v. The Owners, Strata Plan VIS 6261, 2017 BCCRT 139.* In assessing the extent of the strata's duty to repair, the standard is not perfection, but what is reasonable: *Weir v. The Owners, Strata Plan NW 17, 2010 BCSC 784.* Also, an owner cannot direct the strata how to conduct its repairs: *Swan v. The Owners, Strata Plan LMS 410,* 2018 BCCRT 241.

94. Based on the photos, I find that the applicant's bay window and patio door are damaged and unsightly. However, there is no indication of any security, structural, or heating problem due to their cloudiness. Since the strata is entitled to prioritize its repairs, I order that the strata must repair them at some point within 24 months of this decision. If the strata changes its bylaws, that will not relieve the strata of its obligation under this order.

Deck Repairs

95. The applicant says the strata must repair the deck attached to SL3 (SL3 deck), including its railings, support post, beams, decking boards, and vinyl membrane.

96. The strata says it is not required to repair the deck under its bylaws. It also says other owners have repaired their own decks except where the vinyl membrane forms part of the strata's roof.

97. On January 30, 2018, a strata council member emailed the applicant (who lives elsewhere) requesting that she repair the SL3 deck railing, as the beam holding the glass railing in place had broken, and the glass had slipped. The parties continued to correspond, and on March 11, 2018 the applicant asserted that the strata was responsible to repair the SL3 deck.

98. The applicant admits that the SL3 deck is not shown on the strata plan. According to strata correspondence, it was added after the strata was built, but before the applicant bought SL3 in 2002. The applicant provided a copy of the Form B Information Certificate she obtained at the time of purchase, and it says there were no agreements for alterations affecting the owner of SL3.

99. Under Standard Bylaw 8, which applies to this dispute for the reasons explained previously, the strata must maintain and repair all common property, as well as all "balconies and other things attached to the exterior of a building" and all "fences, railings and similar structures that enclose patios, balconies and yards".

100. I find that the SL3 deck is a “balcony”, for the purposes of Standard Bylaw 8. This means the strata must maintain and repair it.

101. I find that the photos in evidence and the correspondence from council member PM confirm that the SL3 deck requires repairs, particularly to its glass railing system. The applicant says it also requires repairs to its posts, decking boards, and membrane. I find I cannot assess that from the photos provided, although they do show signs of wear.

102. Since the strata is obligated to maintain and repair the SL3 deck and its railings, I order it to do so, to bring them to a safe condition. This may require an inspection by a building inspector, engineer or contractor to assess the extent of repairs needed.

Concrete Repairs

103. The courtyard between the strata lots and the ground floor patios and pathways have an aggregate concrete surface. In July 2018, the strata decided to resurface the pathways and courtyard with a produce called “sierra stone”. The email notice of a July 8, 2019 meeting says the resurfacing was done because the pathways and courtyard were showing signs of aging and needed a “refresh”.

104. The strata appears to have imposed and collected a special levy to pay for this work. The evidence before me suggests that this special levy was not approved by the ownership through a ¾ vote resolution at an AGM or SGM with proper written notice. These are the SPA requirements for approving a special levy. However, the validity of the special levy is not an issue in this dispute, so I make no specific findings about it.

105. The applicant says that although she paid her share of the levy based on unit entitlement, the strata failed to resurface the entrance area and patio in front of SL3

106. The strata says these areas are LCP, so they are the individual owners’ responsibility to maintain and repair, and to pay for aggregate if they wish.

107. I agree with the strata that the entrance area and patio in front of SL3 are LCP. They are shown on the strata plan as LCP for the exclusive use of SL3.

108. As previously explained, Standard Bylaw 8 applies to the strata. Bylaw 8(c)(i) says the strata must repair and maintain LCP where the repairs and maintenance ordinarily occur less than once a year. I find that this applies to the concrete resurfacing.

109. I also find that the strata's communication about which areas would be resurfaced was unclear. In a July 17, 2018 email to owners discussing the proposed resurfacing, council member PM wrote that the contractor's estimate was $23,360.40 to resurface approximately 12,243 square feet, "covering the common pathways and shared patio area". The email said the applicant's payment for this, based on unit entitlement, would be $2,730.83. From that communication, I find it was unclear whether or not the applicant's LCP patio and entrance area would be resurfaced. The applicant says she voted in favour of the resurfacing project based on her understanding that the SL3 LCP area would be included as that was her understanding of the council member's communication.

110. The applicant requests an order that the strata must impose another special levy and resurface the SL3 patio and entrance areas. I decline to make this order, because I find the matter is not sufficiently urgent to require immediate action. Although the applicant provided photos showing puddles and some unevenness between the old and new concrete surfaces, I find that these do not establish an urgent safety or structural issue. There is also no evidence before me to confirm her assertion that the old surface causes leaks into the parkade underneath.

111. I find the resurfacing of the SL3 LCP area is the strata's responsibility under Standard Bylaw 8(c)(i). I also find the applicant's interpretation of the July 17, 2018 email was reasonable, as it did not clearly state that the LCP areas would not be included. For these reasons, I order that the strata must resurface the LCP area outside SL3, to match the adjoining concrete, within 24 months of this decision. The

strata will likely have to consider whether to resurface other LCP areas that were not included in the original resurfacing project, but I make no findings about that.

TRIBUNAL FEES AND EXPENSES

112. I find the applicant was substantially successful in this dispute. Therefore, in accordance with the CRTA and the tribunal's rules I find she is entitled to reimbursement of $225.00 in tribunal fees. She also claimed $9.50 for the cost of serving the Dispute Notice on the strata. I find this expense is reasonable circumstances, and so I order the strata to reimburse it.

113. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the applicant.

DECISION AND ORDERS

114. I order the following:

a. The bylaw amendments filed on January 26, 2018 and October 3, 2019 are unenforceable, and never took effect. The strata's bylaws are the Standard Bylaws under the SPA.

b. The strata must repair the problems identified in the December 31, 2017 National Plumbing report within 90 days of this decision.

c. If it has not done so already, within 60 days of this decision the strata must choose and hire, at its expense, a professional building inspector or engineer to investigate the cause of the leaks into the SL3 2nd floor ceiling and provide a written report. A copy of the professional's written report must be provided to the applicant.

d. The strata must re-route the stairs to SL4. If they cannot be moved to their exact original location due to building code changes, the strata must consult a building professional to redesign the stairs in a manner that does not block the views from SL1 or SL3. The strata must also obtain a ¾ vote of the

ownership to approve of any change from the original stairs as shown on the strata plan. The applicant is not required to pay money towards the stair rebuilding project.

e. The strata must repair the applicant's cloudy bay window and patio door within 24 months of this decision. If the strata changes its bylaws, that will not affect its obligation under this order.

f. The strata must repair the SL3 deck and its railings, in order to bring them to a safe condition.

g. Within 24 months of this decision, the strata must resurface the LCP area outside SL3 to match the adjoining concrete.

115. I also order that within 30 days of this decision, the strata must reimburse the applicant a total of $429.00, broken down as follows:

a. $189.00 for National Plumbing's December 17, 2017 report, plus $5.50 in pre-judgement interest under the COIA, and

b. $234.50 for tribunal fees and expenses.

116. The applicant is entitled to post-judgement interest under the COIA, as applicable.

117. The applicant's remaining claims are dismissed.

118. 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.

119. 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 applicant 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.

Kate Campbell, Vice Chair