



# Civil Resolution Tribunal

Date Issued: November 14, 2019

File: ST-2019-000777

Type: Strata

Civil Resolution Tribunal

Indexed as: *Ng v. The Owners, Strata Plan 1059 et al*, 2019 BCCRT 1286

**BETWEEN:**

RICKY CHEUK KAN NG

**APPLICANT**

**AND:**

The Owners, Strata Plan 1059 and Rheanan Robertson

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Kathleen Mell

## **INTRODUCTION**

1. The applicant, Ricky Cheuk Kan Ng (owner), owns a strata lot in the respondent strata corporation, The Owners, Strata Plan 1059 (strata). The respondent, Rheanan Robertson (Ms. Robertson), owns the strata lot, unit 205, above the owner. Ms. Robertson purchased unit 205 in September of 2018.
2. The owner says that the previous owners of unit 205 installed laminate flooring in the summer of 2018 in breach of the bylaws. The owner requests an order that the strata and Ms. Robertson uphold the bylaws and that Ms. Robertson remove the laminate and replace it with carpeting.
3. The owner also submits that the strata did not properly investigate his complaint. The owner requests \$5,000.00 in compensation for the loss of the value of his property as well as for the hardship and emotional distress he says he suffered. The owner is self-represented.
4. The strata says it properly investigated the owner's complaint. It submits that the laminate flooring was installed in 2005 with the approval of the strata and in accordance with the bylaws. The strata notes that this was before the owner purchased his strata lot in 2015 and therefore nothing has been done to alter the value of the owner's property. The strata submits that Ms. Robertson is entitled to keep the flooring. The strata is represented by the strata council president.
5. Ms. Robertson says that the strata assured her before she bought unit 205 that the laminate was installed before any bylaws were put in place about laminate flooring and that the laminate would not have to be removed. Ms. Robertson represents herself.

## **JURISDICTION AND PROCEDURE**

6. 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.

7. 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.
8. 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.
9. 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.

## **ISSUES**

10. The issues in this dispute are:
  - a. Did the strata properly investigate the owner's complaint?
  - b. Did the installation of the laminate flooring breach the bylaws and, if so, what is the appropriate remedy?

## **EVIDENCE, FINDINGS AND ANALYSIS**

11. In a civil dispute such as this, the applicant must prove his claims. He bears the burden of proof on a balance of probabilities.
12. While I have reviewed all of the material provided, I have only commented below on the evidence and submissions necessary for this decision.



***Did the strata properly investigate the owner's complaint?***

13. On August 31, 2018, the owner emailed one of the strata council members that unit 205 had been sold and that the previous owners installed laminate flooring prior to the sale in breach of the bylaws.
14. The council member emailed the rest of the council that day, as well as the property management company, and noted that a prompt response was necessary. He said that if new laminate flooring had been installed, the previous owners and the prospective new owner Ms. Robertson, needed to be told that the laminate flooring would have to be removed.
15. The strata told the owner that they checked the real estate listing and it did not state that new laminate had been installed. They asked the owner if he was sure the laminate was new. The owner responded by sending the strata an alleged picture of unit 205 on September 4, 2018 which showed laminate flooring but did not indicate when it had been installed.
16. The strata informed the previous owners of the complaint who said that the laminate flooring was installed just after they bought the unit in 2007 and that they obtained the proper approval from strata at the time. The strata checked their files and found a signed alteration agreement between the previous owners and the strata that, among other things, authorized the installation of laminate flooring (to replace carpeting) in the entrance hallway of unit 205 (alteration agreement). The strata told the previous owners on September 7, 2018 that there was no evidence to support the owner's complaint and the matter was closed.
17. The owner wrote to the strata on November 6, 2018 that it had been two months since he made his complaint and nothing had been done. The strata told the owner that there was no evidence that the previous owners had installed new laminate flooring in violation of the bylaws. The owner then filed this dispute on January 26, 2019.

18. Based on the overall evidence, I find the applicant has failed to prove that the strata did not take reasonable steps to investigate his complaint. The strata checked the real estate listing, spoke to the previous owners, and provided a copy of the signed alteration agreement. They also gave the owner an opportunity to provide evidence to support his claim that the flooring was new, but he did not do so.
19. Therefore, having decided that the strata properly investigated the owner's complaint, I will consider the merits of the owner's claim.

***When was the laminate flooring installed?***

20. In order to determine whether a bylaw was breached, I need to first decide which bylaws were in effect when the laminate flooring was installed.
21. The freehold transfer form from the Land Title Office is in evidence and says that title was transferred from Mr. L to both the new owners on January 15, 2007. The previous owners say that laminate already existed in the unit when they bought it in January of 2007. They say they received approval to alter the strata lot by extending the laminate flooring through the hallway and entryway.
22. Some confusion arises because the alteration agreement dealing with the laminate flooring is dated August 5, 2005. It is unclear if this is because an old form was re-used or somebody accidentally filled in "05" because these are the last digits of the number of the unit. In any event, the alteration agreement is clearly signed by the previous owners who only purchased the unit after 2005. Also, the other evidence indicates the alteration agreement was approved in 2008. The information form attached to the alteration agreement showing what materials the laminate company was going to use for insulation and protection against sound transmission is dated July 21, 2008.
23. Further, the alteration agreement itself has a handwritten note at the top indicating that the alteration agreement was approved on August 8, 2008. In contrast to this, the owner has not provided evidence to support his claim that the laminate flooring was installed in 2018. He has provided two pictures of what he says the unit looked

like when it was put up for sale. This does not establish that the laminate was newly installed. Therefore, I accept that the laminate flooring was installed by the previous owners in the hallway and entryway and it was to extend and match the laminate that already existed in unit 205 in 2007.

### ***The relevant bylaws***

24. The bylaws in existence in 2002 did not have any prohibition against laminate flooring. However, bylaw 7.1(g) required the owner to get prior written approval of a strata lot alteration that affected parts of a strata lot the strata must insure under section 149 of the SPA, which includes the floor coverings.
25. In 2007 the strata filed amended bylaws in the Land Title Office which replaced the 2002 bylaws. Bylaw 6.0 of the 2007 bylaws deals with the need to obtain approval before altering a strata lot. Bylaw 6.1(h) states that an owner must obtain the written approval of the strata before installing any and all flooring, except for carpeting.
26. As noted above, I have found the alteration agreement shows that the previous owners abided by this bylaw and therefore the installation of the additional laminate was not an infraction.
27. Since that time the strata amended the bylaws in 2011 to specifically say in bylaw 52 that replacement of existing flooring with laminate is prohibited except as approved by the strata. It does not say anything about the need to remove existing flooring before the sale of a unit if laminate is already installed.
28. Based on the evidence, I find that the owner has not proved on a balance of probabilities that there has been an infraction of any bylaw regarding flooring.
29. I note that Ms. Robertson provided evidence that the owner is now claiming she is breaching the bylaw against nuisance because she is making an unreasonable amount of noise. The owner did not bring up this claim in this dispute so I find it is not properly before me. Also, the strata has not had an opportunity to fully investigate this allegation. Therefore, it would be premature for me to make a

finding about whether Ms. Robertson is breaching a bylaw about unreasonable noise coming from her unit and I decline to do so.

## **TRIBUNAL FEES**

30. Under section 49 of the Act, and the tribunal's rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The owner was unsuccessful in this dispute and therefore he is not entitled to have his tribunal fees reimbursed.
31. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

## **DECISION**

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

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Kathleen Mell, Tribunal Member