



# Civil Resolution Tribunal

Date Issued: December 3, 2019

File: ST-2019-004462

Type: Strata

Civil Resolution Tribunal

Indexed as: *Rogers v. Briere*, 2019 BCCRT 1359

B E T W E E N :

LIZA ROGERS

**APPLICANT**

A N D :

KARL-ERIC BRIERE, CHRISTINE LIAO and The Owners, Strata Plan  
VIS 4438

**RESPONDENT**

A N D :

LIZA ROGERS and The Owners, Strata Plan VIS 4438

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. This is a dispute about common expenses and an alteration of common property within a 2-unit strata corporation.
2. The applicant, and respondent by counterclaim, Liza Rogers, co-owned strata lot B (SLB) in the respondent strata corporation, The Owners, Strata Plan VIS 4438 (strata). She sold SLB after she started this dispute. Ms. Rogers is self represented. The strata is also a respondent in the counterclaim.
3. The respondent, and applicant in the counterclaim, Karl-Eric Briere, co-owns strata lot A (SLA) in the strata with the other respondent, Christine Liao. I will refer to Mr. Briere and Ms. Liao collectively as the respondent owners. The respondent owners are represented by Mr. Briere. Ms. Liao is not a party in the counterclaim.
4. Ms. Rogers says that the respondent owners owe her “about \$4,000” for their portion of the strata’s insurance premium since 2016 and seeks payment from the respondent owners for that amount. The respondent owners disagree with the amount claimed by Ms. Rogers for various reasons that I describe below, and ask that her dispute be dismissed.
5. In his counterclaim, Mr. Briere says he paid Ms. Rogers \$737.52 for the respondent owners’ portion of the strata’s insurance premium for 2016 - 2017. He asks the tribunal to order that amount be repaid by Ms. Rogers. Mr. Briere alleges Ms. Rogers permitted SLB to be used for business use as an AirBnb, contrary to the terms of the strata’s insurance policy. Mr. Briere says Ms. Rogers voided the strata’s insurance policy and for that reason, he should not be responsible for any portion of the strata’s insurance premium.
6. Ms. Rogers asks that Mr. Briere’s counterclaim be dismissed.
7. The strata was not originally a party to this dispute. At my request, the tribunal administrator asked the appropriate parties to consider adding the strata as an unrepresented respondent in both claims. The parties agreed. As noted, there are only 2 strata lots in the strata. Under the strata’s bylaws, both strata lots are

represented on the strata council and the individuals in this dispute have opposing views. It is unlikely the new owners of SLB, who are now represented on the strata council, have been consulted. For these reasons, and in light of my orders below where I have not found the strata liable, I find it is not necessary to obtain submissions from the strata.

8. For the reasons that follow, I find the respondent owners must pay Ms. Rogers \$4,271.22 for their unpaid portion of the strata's insurance premium, interest and tribunal fees. I also find that Ms. Rogers must pay \$500.00 for the gate removal, but only if the strata determines the gate must be removed. I dismiss the remaining claims and counterclaims.

## **JURISDICTION AND PROCEDURE**

9. 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.
10. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email or other electronic means, 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.
11. 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.

12. 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, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

## **PRELIMINARY ISSUE**

13. I will first address the sale of SLB after the Dispute Notice was issued in Ms. Rogers' dispute and before the Dispute Notice was issued in the counterclaim. I note the Dispute Notice for Ms. Rogers' claims was issued June 18, 2019 and the Dispute Notice for Mr. Briere's counterclaim was issued August 7, 2019. Land Title Office documents show that the Ms. Rogers sold SLB about August 1, 2019.
14. Section 189.1 of the SPA permits only owners, tenants and strata corporations (and by inference separate sections of a strata corporation) to request dispute resolution under the CRTA. The owner was clearly an owner as defined under the SPA when she started her dispute.
15. The SPA does not have the same restriction for respondents named in a strata property dispute proceeding. There is also no restriction under the CRTA or SPA as to who may be named as a respondent in a strata property dispute, provided the dispute falls within the tribunal's jurisdiction under section 121(1) of the CRTA. For these reasons, I find the fact that Ms. Rogers sold SLB before the Dispute Notice was issued for the counterclaim does not restrict the tribunal from hearing Mr. Briere's counterclaim.
16. In *Kervin v. The Owners, Strata Plan LMS 3011*, 2017 BCCRT 146, I addressed a situation where the applicant owner sold her strata lot before the tribunal decision process was complete, such as is the case here. I found the tribunal has discretion under section 61 of the CRTA and rule 119(c) (now rule 7.1(1)(c)) to dismiss the dispute, refuse to resolve the dispute, or hear the dispute. I set out a number of factors the tribunal should consider in determining whether to continue the proceeding. One of the factors is whether the parties agree the tribunal should continue to hear the dispute.

17. At my request, the tribunal administrator contacted the parties to canvass their positions on this factor. Both parties agreed that I should continue to hear the dispute, so I find I need not consider other factors. Based on the parties' agreement, I find this dispute should be heard.

## **ISSUES**

18. The issues in this dispute are as follows:

- a. Is Ms. Rogers entitled to \$4,000 from Mr. Briere and Ms. Liao for insurance premiums she paid on behalf of the strata?
- b. Is Mr. Briere entitled to reimbursement of \$737.52 from Ms. Rogers for the strata's partial insurance premium that was paid to Ms. Rogers?
- c. Should I order a vehicle gate installed on common property by Ms. Rogers removed and, if so, who is responsible for the removal costs?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

19. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.

20. In a civil proceeding such as this, the applicant, Ms. Rogers, must prove each of her claims on a balance of probabilities. The applicant in the counterclaim, Mr. Briere, must also prove each of his claims on the same basis.

21. The strata was created in 1997 under the *Condominium Act* (CA), a predecessor to the *Strata Property Act* (SPA). The strata plan shows 1 building with SLB located furthest from the street and SLA located nearest the street. The unit entitlement for SLA is 213 and for SLB is 230, for a total unit entitlement of 443. The strata plan also shows the driveway is located on the far west property line running from the street to the rear of the building. The driveway is identified as common property on the strata plan.

22. The strata's general index at the Land Title Office (LTO) shows that the strata has never amended its bylaws. Therefore, under section 120(1) of the SPA and *Strata Property Regulation* (regulation) 17.11(3), the strata's bylaws are the Standard Bylaws under the SPA. I discuss bylaws relevant to this dispute below, as necessary.
23. LTO records also show that Ms. Rogers purchased SLB about April 29, 2016 and that Mr. Briere and Ms. Liao purchased SLA about June 16, 2016. Ms. Rogers, Mr. Briere and Ms. Liao generally agree to the timing of these purchase dates and I find the actual purchase dates identified on the LTO documents are not in dispute.
24. It is undisputed that "sometime before November 2017" Ms. Rogers installed a wooden gate across the common property driveway at a location near the division between the 2 strata lots. Ms. Rogers admits she did not get approval but simply told the respondent owners she was going to install the gate for reasons described below. It is agreed that Ms. Rogers paid for the cost of gate installation.

***Is Ms. Rogers entitled to \$4,000 from Mr. Briere and Ms. Liao for insurance premiums paid on behalf of the strata?***

25. The strata lot owners agreed that Ms. Rogers would purchase the strata's insurance in 2017 and that the respondent owners would reimburse her once they took possession of SLA. The parties do not dispute, and I find, the strata's insurance premiums are a common expense of the strata. I infer from the overall evidence that the strata has not operated in accordance with the SPA in that it does not collect strata fees for the payment of common expenses including insurance premiums. This is supported by the owners' agreement that Ms. Rogers pay for roof repairs of SLB and that the respondent owners would pay for roof repairs to SLA, even though the roof of the strata's building is common property under section 1(1) of the SPA.
26. As noted earlier, Ms. Rogers claims the respondent owners owe her \$4,000 for their portion of the strata's insurance premium, however she does not explain how she arrived at that amount.
27. The evidence shows the strata's insurance policy was first purchased on April 29, 2016 for a 1-year period at a total premium of \$1,921.00. There is no dispute Ms.

Rogers paid the full premium, although it appears she paid it on a monthly basis. Ms. Rogers says the respondent owners paid her \$450.00 for their portion of the insurance but the respondent owners provided copies of 2 cancelled cheques showing payment to Ms. Rogers totaling \$737.52. Based on the evidence, I find the respondent owners reimbursed Ms. Rogers \$737.52 by April 11, 2017 for the strata's April 2016 - 2017 insurance. I note the respondent owners deducted \$60.00 from the amount they said was due to Ms. Rogers for her use of their SLA for a period when she was renovating SLB.

28. Over the next 3 years, the strata's annual insurance premiums were as follows:

- |                      |            |
|----------------------|------------|
| a. April 2017 – 2018 | \$2,506.00 |
| b. April 2018 – 2019 | \$2,602.00 |
| c. April 2019 – 2020 | \$2,809.00 |

29. There is no dispute that Ms. Rogers paid the strata's full insurance premiums for the 3-year period. The respondent owners admit they did not reimburse Ms. Rogers their portion of those premiums for the following reasons:

- a. Ms. Rogers requested they pay one-half the expenses, whereas they say the expenses should be divided based on the square footage of the 2 strata lots,
- b. Ms. Rogers made a water damage insurance claim against the policy involving SLB that caused the insurance premium to increase and the respondent owners should not be required to pay the increased premium because the claim only benefitted Ms. Rogers and SLA, and
- c. Ms. Rogers permitted SLB to be used through AirBnb and in doing so, invalidated the strata's insurance policy as it does not allow for strata lots to be used for business purposes. They also say Ms. Rogers operated an AirBnb contrary to the bylaws of the City of Victoria (city).

30. For the following reasons, I find the respondent owners owe Ms. Rogers \$3,900.12 for their unpaid portion of the strata's insurance premium.

31. Under section 99 of the SPA, common expenses are to be divided by unit entitlement, unless a different method is approved by a unanimous vote under section 100 of the SPA. There is no evidence before me that suggests a section 100 resolution was passed. Although unit entitlement is based on the size of each strata lot, it is a figure set out on the strata plan and may not equal the exact square footage of the strata lot.
32. Part 9 of the SPA deals with insurance. Specifically, section 149 of the SPA requires the strata to carry property insurance on common property, common assets, buildings shown on the strata plan, and fixtures as defined in regulation 9.1(1).
33. The fact that an insurance claim was made about a roof leak that affected only SLB does not mean SLB is responsible for any increased insurance premium as a result of the claim. Rather, it is the strata that carries the insurance and it is the strata that must pay the premiums. In other words, both strata lots have coverage under the strata's insurance policy and both strata lots are responsible to pay the premium as it is a common expense. It does not matter who benefits more from any particular insurance claim.
34. As for the respondent owners' assertion that the insurance policy was voided by Ms. Rogers using SLB through AirBnb, there is no evidence to support this position. The insurance policies do not expressly state this. Further, there is no evidence before me that supports the respondent owners' assertions that Ms. Rogers' use of SLB as an AirBnb was contrary to the city's bylaws. Accordingly, I find the policy was not voided and Ms. Rogers' use of SLB as an AirBnb had no legal effect on the strata or the respondent owners.
35. I set out in the table below the strata's insurance premium allocation between SLA and SLB for the strata's policy based on unit entitlement for the 4 years in question. I note that the premium for SLA for April 29, 2016 – 2017 for the full year equals \$929.94 ( $\$1,91.00 \times 213/440$ ). However, this amount must be pro-rated given the respondent owners did not purchase SLA until June 16, 2016 or 49 days after Ms. Rogers purchased SLB. I have therefore prorated SLA's premium based on

ownership for 316 days (365 days – 49 days) to be \$805.10 ( $\$929.94 \times 306/365$ ). The balance of the \$1,921.00 premium or \$1,115.90 is mostly the responsibility of SLB. A small portion would have been the responsibility of the previous owners of SLA but for convenience purposes only, I have attributed the \$1,115.90 expenses to SLB in the table below.

| <u>Strata<br/>Lot</u> | <u>Unit<br/>Entitlement</u> | <u>April 29,<br/>2016 -<br/>2017</u> | <u>April 29,<br/>2017 -<br/>2018</u> | <u>April 29,<br/>2018 -<br/>2019</u> | <u>April 29,<br/>2019 -<br/>2020</u> | <b><u>TOTAL</u></b> |
|-----------------------|-----------------------------|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|---------------------|
| SLA                   | 213                         | 805.10                               | 1,213.13                             | 1,259.60                             | 1,359.81                             | <b>\$4,637.64</b>   |
| SLB                   | 230                         | 1,115.90                             | 1,292.87                             | \$1,342.40                           | 1,449.19                             | <b>\$5,190.36</b>   |
| <b>TOTAL</b>          | <b>433</b>                  | <b>\$1,921.00</b>                    | <b>\$2,506.00</b>                    | <b>\$2,602.00</b>                    | <b>\$2,809.00</b>                    | <b>9,828.00</b>     |

36. Based on my calculations, I find the respondent owners owed Ms. Rogers \$4,637.64 for their portion of strata' insurance premium paid by Ms. Rogers. Given they paid \$737.52 of the April 2016 – 2017 premium, the remaining unpaid amount is \$3,900.12 ( $\$4,637.64 - \$737.52$ ).

37. For these reasons, I find that the respondent owners must pay Ms. Rogers \$3,900.12, and I so order.

38. Under section 48(3) of the CRTA, the *Court Order Interest Act* (COIA) applies to the tribunal. I find Ms. Rogers is entitled to pre-judgement interest under the COIA as I describe in detail below.

***Is Mr. Briere entitled to reimbursement of \$737.52 from Ms. Rogers for the strata's partial insurance premium paid to Ms. Rogers?***

39. In his counterclaim, Mr. Briere says he is entitled to reimbursement of the amount he paid Ms. Rogers for the April 2016 – 2017 insurance premium. He relies on his arguments that Ms. Rogers used SLB as an AirBnb, which invalidated the strata's

insurance policy. He also says Ms. Rogers lied to the insurance company about the AirBnb operation and about the need for her to obtain a permit from the city.

40. I have already decided that there is no proof the strata's policy was invalid or that Ms. Rogers required a permit from the city to operate her AirBnb. In any event, the permit requirement is unrelated to the strata's insurance premium. Also, as previously explained, the insurance premium is a common expense of the strata, so Ms. Rogers would not be personally liable to repay Mr. Briere for it in any event.
41. For these reasons, I find Mr. Briere is not entitled to reimbursement of \$737.52 paid to Ms. Rogers for SLA's portion of the strata's April 2016 - 2017 insurance premium.
42. I make no finding about the \$60.00 that was deducted from the amount Mr. Briere says Ms. Rogers owes him for use of SLA when renovations were being completed in SLB as I find that issue is not before me.

***Should I order the wooden vehicle gate installed on common property by Ms. Rogers removed and, if so, who is responsible for the removal costs?***

43. Mr. Briere says Ms. Rogers installed a wooden vehicle gate across the common property driveway. Ms. Rogers admits this. It is undisputed that Ms. Rogers installed the gate sometime before November 2017 and paid the entire cost of the installation.
44. Mr. Briere says he was not consulted about gate and asked Ms. Rogers to remove it several times. This is supported by a November 8, 2017 email from Mr. Briere to Ms. Rogers asking Ms. Rogers to remove the gate since it was on Common property and he was not consulted. Ms. Rogers says she told Mr. Briere she was going to install the gate for security reasons and that it does not impede the use of "his property". She also says she had a small dog before she sold SLB and that the new owners of SLB have a small child. For these reasons, she says it would be unreasonable to remove the gate. I find the fact that Ms. Rogers had a small dog before she sold SLB is now moot. There is also no evidence from the new owners of SLB about what they think should be done with the gate.

45. I find the gate installation was an unauthorized alteration of common property contrary to the strata's bylaws. Strata bylaw 6(1) requires an owner to obtain the written permission of the strata before altering common property. Ms. Rogers did not do that, so I find she was in breach of bylaw 6(1).
46. The strata is responsible for the repair and maintenance of common property. Therefore, whether the gate should be removed is a decision of the strata because the gate involves common property. Had Ms. Rogers not sold SLB, I would have found that the gate should be removed at her cost, given the makeup of the strata council and the submissions provided. However, since there is a new member of the strata council, it may be that the strata would allow the gate installation to continue under bylaw 6(1) if the new owner of SLB makes such a written request.
47. I find Mr. Briere's estimated cost of \$500.00 to disassemble and dispose of the gate and related hardware to be reasonable. If the gate is to be removed, I find it reasonable for Ms. Rogers to pay for its removal as she did not obtain appropriate approval to install it. Therefore, I find that Ms. Rogers must pay Mr. Briere \$500.00 for the estimated gate removal cost and I so order.
48. Since the decision to remove the gate rests with the strata, I order Mr. Briere to pay the \$500.00 he receives from Ms. Rogers to the strata. In the circumstances of this case, and because Ms. Rogers has sold SLB, I find it is practical and appropriate for Mr. Briere to deduct the \$500.00 gate removal cost from the outstanding \$3,900.12 he owes Ms. Rogers and I so order.
49. It would not be fair to Ms. Rogers to pay for the gate removal if the strata decides to keep it. Therefore, I find the strata must consult with the new owner of SLB and decide on whether the gate should be removed. Specifically, I order within 15 days of the date of this decision, the strata must provide the new owner of SLB with a copy of this decision and request the owner provide their written position on the installed gate within 30 days. If the new owner of SLB makes a written request that the gate remain, the strata must decide on the request within 30 days of receiving it. The strata may approve the gate on terms and conditions acceptable to it, in which case

there will not be any cost incurred to remove the gate. I acknowledge that the strata's decision must be unanimous given there are only 2 votes on the strata council.

50. If the strata does not approve the gate installation, or if the new owner of SLB does not request the strata keep the gate, I find the strata must remove the gate and related hardware at its cost as soon as possible, and I so order.
51. If the strata decides to allow the gate, I order it to immediately pay \$500.00 to Ms. Rogers.
52. I also order the strata to inform Ms. Rogers on whether the vehicle gate will remain or be removed as soon as possible.
53. In summary, I order the respondent owners to pay Ms. Rogers \$3,400.12, being \$3,900.12 for their portion of the strata's insurance premiums less \$500.00 for the estimated cost of the gate removal. I also order Mr. Briere to pay \$500.00 to the strata. The strata must consult with the new owner of SLB to determine if the vehicle gate should remain and inform Ms. Rogers of the strata's decision on the gate. If the strata decides to keep the gate, I order the strata to pay Ms. Rogers \$500.00. If the strata decides to remove the gate it must do so as soon as possible at its costs.

## **TRIBUNAL FEES, EXPENSES AND INTEREST**

54. 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. Here, I find Ms. Rogers was the most successful party so I order the respondent owners to pay her \$225.00 for tribunal fees. Ms. Rogers also claimed dispute-related expenses for bank interest but did not provide any evidence to support her claim, so I order none.
55. As earlier noted, Ms. Rogers is entitled to pre-judgement interest under the COIA for the strata's insurance premiums. Except for the April 2016 – 2017 premium, I find she is entitled to pre-judgement interest from the date each annual premium was due to the date of this decision. For the April 2016 – 2017 premium, I find pre-judgement

interest is due only on \$67.98, which is the difference between what the respondent owners paid (\$737.12) and what they should have paid (\$805.10). I also note the evidence is that Ms. Rogers paid the premium by monthly instalments and the respondent owners made their 2 instalment payments by April 17, 2017.

56. I calculate the pre-judgement interest due to Ms. Rogers to be \$96.60.

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

## **DECISION AND ORDERS**

58. I order the respondent owners to pay Ms. Rogers a total of \$3,721.72 within 30 days of the date of this decision broken down as follows:

- a. \$3,400.12 for their unpaid portion of the strata's insurance premium from April 29, 2016 to April 29, 2020 less \$500 for the gate removal,
- b. \$225.00 for tribunal fees, and
- c. \$96.60 for pre-judgement interest under the COIA.

59. I order Mr. Briere to pay the strata \$500.00 for the gate removal cost within 30 days of the date of this decision.

60. Ms. Rogers is entitled to post judgement interest under the COIA, as applicable.

61. Within 30 days of the date of this decision, I order the strata to provide the new owner of SLB with a copy of this decision and request the owner provide their written position on the installed vehicle gate. If the new owner of SLB makes a written request that the gate remain, I order the strata to decide on the request within 30 days of receiving it.

62. If the strata does not approve the installed gate, or if the new owner of SLB does not request the gate remain, I order the strata to remove the gate and related hardware at its cost as soon as possible.

63. If the strata decides to allow the gate, I order it to immediately pay \$500.00 to Ms. Rogers.
64. I order the strata to inform Ms. Rogers on whether the gate will be removed as soon as a final decision is made.
65. Ms. Rogers' remaining claims are dismissed.
66. Mr. Briere's remaining counterclaims are dismissed.
67. 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.
68. 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, a party 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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J. Garth Cambrey, Vice Chair