



# Civil Resolution Tribunal

Date Issued: December 11, 2019

File: ST-2019-003641

Type: Strata

Civil Resolution Tribunal

Indexed as: *Somerset v. The Owners, Strata Plan 558*, 2019 BCCRT 1391

**B E T W E E N :**

JANE SOMERSET

**APPLICANT**

**A N D :**

The Owners, Strata Plan 558

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell, Vice Chair

## **INTRODUCTION**

1. The applicant, Jane Somerset (owner) owns strata lot 5 (SL5) in the respondent strata corporation, The Owners, Strata Plan 558 (strata).

2. The owner says the strata has refused to install a new door, doorframe, and doorstep at SL5. She says this work is necessary, and recommended in the strata's depreciation report. She says repairs performed by the strata's carpenter in May 2018 were ineffective, and caused further damage. The owner says the strata is required to pay for effective repairs under its bylaws. She seeks an order that the strata pay her \$2,000 so she can have the work performed.
3. The strata says that in January 2016, the owner altered common property without the required permission, by adding a cement pad on top of the existing doorstep. The strata says this alteration caused the wooden doorsill to rot, and damaged the doorframe. The strata says that because of the alteration, the owner is responsible under strata bylaws for resulting repairs and maintenance.
4. The owner is self-represented in this dispute. The strata is represented by a strata council member.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims 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.

### ***Preliminary Issue – Claims in Dispute***

9. In a document provided in evidence, the owner says she has 2 separate claims. She says one claim is about the doorstep, and the other separate, claim is about the door and doorframe repairs. She says the strata has attempted to combine her 2 separate claims into 1 dispute, to which she objects.
10. I find that these 2 claims are interconnected. I note that the applicant has filed 1 dispute application. That application, which is set out in the tribunal's Dispute Notice, includes only 1 claim, that the strata "is refusing to put in a new steel door, frame and step in my unit as per Article 9 of the Bylaws and Depreciation report." She claims \$2,000 for all of this work.
11. For these reasons, I find it is appropriate to deal with the doorstep, the doorframe, and the door in this dispute. However, for clarity I have considered the door and doorframe separately from the doorstep, as set out below.

### **ISSUES**

12. The issues in this dispute are:
  - a. Did the owner alter common property?
  - b. Must the strata pay to repair the doorstep?
  - c. Must the strata pay to replace the SL5 door and doorframe?

## BACKGROUND AND EVIDENCE

13. 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.
14. The strata was created in 1977, under the former *Strata Titles Act*. The strata consists of 18 residential strata lots. The owner's strata lot, SL5, is located in the centre of a block of 9 attached townhouses.
15. The strata filed consolidated bylaws at the Land Title office in November 2003. I find that these are the bylaws applicable to this dispute. Subsequent amendments filed in December 2009 are not relevant to this dispute.
16. The evidence shows that on August 30, 2012, the owner emailed the strata's property manager. She said the doorstep was sloped toward the house, causing rain to run inside SL5. She asked that it be fixed.
17. The owner says that in January 2016, she hired a certified cement mason to fix the doorstep, so it sloped away from the door. She says this solved the water problem.
18. On May 12, 2018, the owner emailed the property manager and said her doorstep (meaning the doorsill) had "turned to mush", and that when she peeled off the paint her finger went through the wood. She wrote that she was worried that carpenter ants would enter SL5, and she asked to have it fixed as soon as possible.
19. The owner says that in mid-May 2018, a carpenter hired by the strata attempted to fix the step. She says the carpenter did not repair it properly, and the strata fired him.
20. In an August 25, 2018 email to the property manager, the owner said the doorstep was still not fixed, and that it was sloping toward the house so water entered when it rained.
21. In a November 6, 2018 email, the owner repeated that the door and doorstep were still not fixed. She said that due to the cold air entering the house, if the strata did

not do the work she would hire her own contractor and bill the strata. The strata president, GK, replied on November 8, 2018. He wrote as follows:

- a. GK and another owner, JR, who is a carpenter, looked at the door. They concluded that the door issues were a direct result of the owner's alteration (pouring concrete onto the entrance, which caused water to settle around the threshold, resulting in wood rot).
  - b. There was no alteration agreement submitted before the alteration. The bylaws state that an owner is responsible for repairs or maintenance to common property caused by an alteration.
  - c. The strata council agreed that JR would prepare a quote to fix the door. The strata would pay for half, and the owner would be responsible to pay the other half.
  - d. The owner could also obtain her own quote and present it to the council.
22. There is no evidence before me indicating that the owner responded to this proposal. Rather, in a January 23, 2019 email, the owner asked the strata to replace the door, doorframe, and doorstep. She said the door was totally warped, and she had to use cardboard to keep out the cold and rain. The request was discussed at the February 11, 2019 council meeting. The minutes state that the council decided to deny the request, as the strata's lawyer advised that under bylaw 3 alterations done by owners were the owners' responsibility to maintain and repair.
23. The strata's lawyer wrote to the owner on March 4, 2019, stating that the owner had altered the common property doorstep without the strata's consent, contrary to bylaw 7(1). The lawyer said the alteration was poorly done, leading to water damage which caused the doorsill and frame to rot. The lawyer wrote that the owner was therefore responsible for the repairs, under bylaw 3(2).

24. The owner requested a hearing about the matter, which was held on April 8, 2019. In an April 15, 2019 decision letter, the council wrote as follows:
- a. It accepted that the owner complained about water entering SL5 in 2012, and that the strata did not resolve the issue.
  - b. Nonetheless, the owner was still required to get approval before the concrete work in 2016, and did not do so.
  - c. The concrete work enabled rain to contact the doorsill and doorframe, and caused or contributed to its failure.
  - d. The strata was willing to pay for half of the cost of the door and frame replacement, but before that occurred the owner was required to remove and repair the doorstep alterations at her own cost.
25. The owner did not accept the strata's offer, but instead filed this dispute with the tribunal in May 2019.

## **REASONS AND ANALYSIS**

### ***Did the owner alter common property?***

26. The photos in evidence show that the disputed doorstep is a concrete pad immediately in front of the main door into SL5. The concrete abuts the wooden doorsill, and the door and doorframe sit on top of the sill.
27. Based on the strata plan and section 68(1) of the *Strata Property Act* (SPA), I find that the doorstep is common property. This is not disputed by the parties.
28. The owner admits that in January 2016, her contractor performed work on the doorstep. She says that before these repairs, the doorstep sloped toward SL5, causing rain to run into her front hall. The owner says the contractor fixed the problem by adding additional cement, so the doorstep sloped away from the building.

29. I find that the January 2016 cement work was an alteration to the common property doorstep. In particular, the owner admits that her contractor added concrete to the doorstep, and changed its slope.
30. Bylaw 7(1) says that an owner must obtain the strata's written approval before making an alteration to common property. The evidence the doorstep work was performed without the strata's approval. While the owner says the work was performed outside, took a week, and was not commented upon, I find this is not sufficient to establish that the strata consented to the work. Bylaw 7(1) requires written approval in advance of the work, and the evidence establishes that the owner did not request or obtain that approval.
31. I accept, based on the correspondence in evidence, that in August 2012 the owner told the strata that the SL5 doorstep was sloped toward the house, causing rain to run inside SL5, and that she asked that it be fixed. However, there is no indication that the owner made further requests for repairs in the 3.5 years before her contractor performed the January 2016 repairs. Therefore, I find her previous request for repairs does not waive the requirement in bylaw 7(1) for written approval of the alteration.
32. For these reasons, I conclude that the owner altered common property, and did so without the required approval.

***Must the strata pay to repair the doorstep?***

33. Under the SPA and strata bylaw 9(1)(b), the strata is generally responsible to maintain and repair common property. However, bylaw 3(2) says that owners are responsible for the maintenance, repair and replacement of all additions, alterations, modifications they make to their strata lot or common property, and shall indemnify and save harmless the strata for any such costs now or in the future.
34. Since I have found that the owner altered the doorstep, I find that under bylaw 3(2) she must pay to repair it.

35. I note that bylaw 7(2) allows the strata to require, as a condition of approval for an alteration, that an owner take responsibility in writing for any expenses relating to the alteration and any potential damage to the building. I agree with the owner that she signed no such indemnity agreement, since she did not seek strata approval before performing the repairs. However, I find that no written agreement is required in order for the strata to rely on bylaw 3(2), which also makes the owner responsible for repairs to the altered doorstep. I also agree with the strata that it would be unreasonable for the owner to be exempted from liability because she performed an alteration without the required approval.
36. In conclusion, I find that based on bylaw 3(2), the owner is responsible for the cost of repairing the doorstep. I further address the question of remedy below.

***Must the strata pay to replace the door and doorframe?***

37. The parties agree that the doorframe is rotted and the door is warped and does not shut properly. This is confirmed by the photos in evidence. However, the parties disagree about who should pay for these repairs.
38. Bylaw 9(1) says the strata is responsible to repair and maintain all common property, as well as doors and windows on the exterior of a building or that front on common property. The door in question is on the building's exterior and it fronts on common property, so normally the strata would be responsible to repair it under bylaw 9(1). I find that the doorframe is part of the door's structure, so the strata would normally be responsible to repair it also.
39. As previously stated, bylaw 3(2) says owners are responsible for the maintenance, repair and replacement of all additions, alterations, modifications they make to their strata lot or common property, and shall indemnify and save harmless the strata for any such costs now or in the future.
40. The strata says the owner is responsible to pay for the door and doorframe repairs, since the unapproved doorstep alteration caused or contributed to the damage. The strata relies on the affidavit of JR, the strata's buildings director. The evidence



shows that JR is a contractor and certified carpenter. JR wrote that he investigated the SL5 door in November 2018, and noticed that the owner had installed a raised concrete alteration in front of the door by pouring concrete on top of the existing foundation landing. JR said that as a result, the doorsill no longer sat on top of the concrete pad, and the new cement butted up against and partially covered the wooden doorsill. He said the raised concrete allowed additional water to pool between the alteration and the wood doorsill, and caused the sill to rot.

41. The strata also provided an affidavit from CW, who said he visited SL5 earlier in 2018, to respond to the owner's complaints about a rotting doorsill. He said he noticed the concrete addition at the front door, and saw that the concrete was sloped towards the door so that water would drain towards the door into a crevice by the doorsill. CW said the doorsill abutted the concrete, and was not protected by any membrane or waterproofing. He said that in his opinion, the doorsill rot was caused by water draining off the concrete addition onto the sill, and that fixing the door would not solve the problem. CW said that to solve the immediate problem of the rotten sill, the strata's carpenter cut out the rotten sill and replaced it with a 2-piece treated sill.
42. CW said that he is familiar with wood and rot through his experience as an industrial arts teacher, and his experience as a long-term owner of wooden boats.
43. The strata also submits that the conclusions of JR and CW are supported by the fact that all the strata lots have similar doorsteps to that originally in SL5, and do not have rot or warping problems.
44. The owner says that JR and CW are not certified cement masons, and that the cement mason who did the January 2016 repairs told her during a May 2018 telephone call that the problem with doorstep rot was happening before he fixed the doorstep.
45. The owner did not provide any information about the cement mason, such as his name or proof of his certification. She also provided no statement from him about the work he performed, or the previous condition of the door and doorsill. For these

reasons, I place no weight on the hearsay evidence about what he told the owner and pre-existing wood rot. Rather, I prefer the opinions of JR and CW. I accept, based on his certification, that JR is an expert in carpentry. His opinion is clearly explained, and is based on a visual inspection of the site in November 2018, as well as a general familiarity with the strata's buildings. JR's opinion is also consistent with and supported by CW's statement.

46. I therefore accept that the January 2016 concrete alteration caused or contributed to the doorsill rot. However, I find the evidence does not establish that the concrete alteration contributed to the damage on the upper portion of the doorframe, and the warped door. The damage is not clearly explained by the statements of JR and CW, and the photos show that show the door does not sit on the doorsill and that there is a plastic "trim" piece affixed to the base of the door. I also note the photos show the door is well protected from the weather.
47. For these reasons, while I accept that the concrete alteration contributed to the wood rot on the doorsill, I find the evidence does not confirm the strata's assertion that the alteration contributed to the rest of the door and doorframe damage.
48. The strata's depreciation report indicates a plan to replace the existing doors in the strata with metal doors in 2019. I infer this work has not yet been scheduled, and I note that the forecast of repairs set out in the depreciation report is not mandatory or binding. However, the inclusion of this item in the depreciation report supports the conclusion that the door and doorframe are at the end of their functional life.
49. For all these reasons, I find the strata is responsible to replace or repair the existing door and doorframe. Specifically, I find the evidence, including the photos, suggests that the door would have warped regardless of the concrete alterations.
50. Since the door and doorframe are common property, and the strata's responsibility to repair under bylaw 9 and SPA section 72, I find the strata (or its contractor) must perform this work. However, I agree with the strata that the concrete alterations should be removed before a new door is installed.

51. The usual remedy for unauthorized alterations is for the strata to ask the owner to remove them, or to have the strata remove them at the owner's cost. The strata has not filed a counterclaim in this dispute seeking that order, and has not specifically requested that the doorstep be remediated. However, I have found above that any doorstep repairs that are performed must be at the owner's expense.
52. For all the above reasons, and in order to provide a final resolution to this dispute, I order that the owner must pay the entire cost of having a contractor selected by the strata remove and repair the concrete alteration. I also order that the strata must replace the doorsill, doorframe, and door. The owner must reimburse the strata for the concrete remediation within 30 days after the door and doorframe replacement are complete.

## **TRIBUNAL FEES AND EXPENSES**

53. As the owner was partially successful in this dispute, in accordance with the CRTA and the tribunal's rules I find she is entitled to reimbursement of half of her tribunal fees, which equals \$125.00. Neither party claimed dispute-related expenses, so none are ordered.
54. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the owner.

## **ORDERS**

55. I order the following:
- a. The owner must pay the entire cost of having a contractor selected by the strata remove and repair the concrete alteration. The strata must replace the doorsill, doorframe, and door. The owner must reimburse the strata for the concrete remediation within 30 days after the door and doorframe replacement are complete.

b. Within 30 days of this decision, the strata must reimburse the owner \$125.00 for tribunal fees.

56. 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.

57. 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 owner 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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Kate Campbell, Vice Chair