



# Civil Resolution Tribunal

Date Issued: December 30, 2019

File: ST-2019-006128

Type: Strata

Civil Resolution Tribunal

Indexed as: *Laatsch v. The Owners, Strata Plan K173*, 2019 BCCRT 1445

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

CARA LAATSCH

**APPLICANT**

**A N D :**

The Owners, Strata Plan K173

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

### **INTRODUCTION**

1. The applicant Cara Laatsch owns strata lot 8 (SL8). She says she asked the respondent strata corporation The Owners, Strata Plan K173 (strata) to replace the door to her limited common property (LCP) patio, but the strata refused.

2. The applicant says the door cannot be repaired and poses a fire hazard. The applicant seeks an order that the strata replace her sliding patio door.
3. The strata agrees that the applicant raised the issue of her patio door, and says that an inspection by a glass door company concluded that it could not be repaired.
4. The strata says the other owners do not agree to fund the replacement of the patio door for SL8 because (a) other owners replaced their patio doors at their own cost and (b) the damage may have been caused by the applicant
5. The applicant/owner is self-represented. The strata is represented by Morgan Elander, who is a lawyer but acts here in his capacity as a strata council member.

## **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.

## **ISSUE**

10. The issue in this dispute is whether the strata is responsible to replace the patio door that opens onto the applicant's LCP patio.

## **EVIDENCE AND ANALYSIS**

### ***SPA and Bylaws***

11. Section 72(1) of the SPA says the strata corporation must repair and maintain all common property and common assets, including LCP. Section 72(2) of the SPA says the strata corporation may, by bylaw, make an owner responsible for the repair and maintenance of LCP that the owner has a right to use.
12. The relevant bylaws are as follows:
  - a. **Bylaw 2** – an owner must repair and maintain LCP that is for their use, except where that repair and maintenance is the strata's responsibility under the bylaws.
  - b. **Bylaw 8** – the strata must repair and maintain LCP and the strata lot where the components needing repair are “doors, windows and skylights on the exterior of a building or that front on the common property.”
13. Having reviewed the strata plan, I find that strata lot 8's patio door faces onto the LCP patio. The patio is marked “EU”, meaning for “exclusive use” on the plan document.
14. Based on the SPA section 68, I find the patio door is common property and therefore the strata's responsibility to repair and maintain. Even if the door is

considered part of the strata lot, Bylaw 8 makes the strata responsible for its repair and maintenance.

15. On December 6, 2017, strata council met and noted that Century Glass had inspected the SL8 patio door and reported that it could not be repaired.
16. The strata raised the issue of whether the applicant “slamming” the door caused it to require replacement. The applicant admits slamming the door on occasion. There was no expert opinion proving that slamming the door caused damage to it. While it may be advisable for the applicant not to slam her patio door, I find that the door requires replacement due to its age and regular wear and tear, like many other patio doors in the strata.
17. The strata admits that two strata council members who examined the door in May 2019 found it “difficult to open” and “inoperable”, respectively.
18. Based on photographs of the door, the strata’s evidence and the minutes of the December 6, 2017 strata council meeting, I find that the SL8 patio door reasonably requires replacement.
19. Motions to authorize and fund patio door replacement for strata lot 8 were defeated at the following meetings:
  - a. January 30, 2018 AGM,
  - b. July 24, 2018 SGM, (as part of resolutions to replace as many as 10 patio doors in the strata) and
  - c. July 16, 2019 SGM.
20. According to the strata’s submission, one reason that owners voted against the motions to replace the SL8 patio door was that other owners had replaced their patio doors at their own cost.
21. On June 27, 2019, Century Glass provided quote of \$2,520.98 to replace the patio door.

22. On September 18, 2019, AALL Glass Ltd. provided the applicant a quote of \$2,659.65, including GST, to replace the SL8 patio door.
23. A strata is not held to a standard of perfection in its maintenance and repair obligations. The strata only has a duty to make repairs that are reasonable in the circumstances: *Wright v. The Owners, Strata Plan #205*, 996 CanLII 2460 (S.C.), aff'd (1998), 43 B.C.L.R. (3d) 1, 1998 CanLII 5823 (C.A.). Determining what is reasonable may involve assessing whether a solution is good, better, or best: *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. The strata is also entitled to prioritize its repairs: *Warren v. The Owners, Strata Plan VIS 6261*, 2017 BCCRT 139. While prior tribunal decisions are not binding precedents, I find their reasoning persuasive and rely on it.
24. I find that replacing the SL8 patio door is reasonable in the circumstances. The strata did not argue that prioritizing other repairs precluded replacing this patio door. I have considered that the patio door is one emergency exit, and that the applicant has some arthritis in one thumb that makes it difficult to move a poorly operating door. Also, the strata admits the door has been damaged since at least 2017.
25. Section 99 of the SPA says that owners must contribute their strata lots' shares of the total contributions budgeted for in the operating fund and contingency reserve fund (CRF) through strata fees calculated in accordance with this section and the regulations based on unit entitlement. For this reason, the fact that other owners repaired their patio doors at their own cost does not alter the strata's obligation under the Bylaws nor the obligation of owners to contribute to the CRF or a special levy based on unit entitlement.
26. I order the strata to replace the patio door at SL8. Based on the quotes, the approximate cost appears to be in the \$2,500-\$3,000 range. The strata may pay for the replacement either by special levy or using the CRF. The applicant must grant reasonable access for the replacement to proceed.

## TRIBUNAL FEES and EXPENSES

27. 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. I see no reason in this case not to follow that general rule. I therefore order the strata to reimburse the applicant for tribunal fees of \$225. The applicant did not claim dispute-related expenses.
28. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicant owner.

## ORDERS

29. I order that, within 90 days of the date of this decision, the strata,
- a. replace the patio door that opens onto the patio from the applicant's strata lot, and
  - b. pay the applicant \$225 in tribunal fees.
30. The strata may fund the replacement either through the CRF or via special levy.
31. 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.
32. 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.

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Julie K. Gibson, Tribunal Member