



Civil Resolution Tribunal

Date Issued: May 15, 2020

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Collier v. The Owners, Strata Plan VIS 4903*, 2020 BCCRT 536

B E T W E E N :

DIANNE COLLIER and BRIAN COLLIER

APPLICANTS

A N D :

The Owners, Strata Plan VIS 4903

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This strata property dispute is about whether the strata corporation is responsible to pay to replace a garage door.
2. The applicants Dianne and Brian Collier own strata lot 12 (unit 18) in the respondent strata corporation The Owners, Strata Plan VIS 4903 (strata).

3. The applicants say the strata should reimburse them for replacing their garage door attached to their strata lot, as it is an exterior part of the strata building.
4. The strata says that garage door replacement is the applicants' responsibility.
5. The strata says the applicants failed to properly maintain the garage door, leading to its failure. The strata says its bylaws make the applicants responsible for the cost of replacing the garage door. The strata also says the applicants replaced their garage door, without the strata's advance approval to fund the replacement.
6. The applicants are self-represented. The strata is represented by strata council member FM.
7. For the reasons set out below, I find the strata must reimburse the applicants \$1,920.45 for the garage door replacement.

JURISDICTION AND PROCEDURE

8. 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.
9. 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.
10. 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.

11. 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.
12. The applicants seek reimbursement for an invoice paid in June 2016. The Dispute Notice was issued on December 20, 2019. Neither party raised a limitation issue. Based on the correspondence between the strata and applicants, I find that the applicants did not discover their claim until they received the strata's formal decision denying their request for reimbursement, in December 2019. Therefore, I find the applicants started this dispute within the 2-year period for doing so under the *Limitation Act*.

ISSUES

13. The issues in this dispute are:
 - a. What are the relevant bylaws?
 - b. Are the applicants entitled to reimbursement of \$1,920.45 for garage door replacement?

EVIDENCE AND ANALYSIS

14. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
15. In a civil proceeding such as this, the applicant applicants must prove each of their claims on a balance of probabilities.
16. The strata plan shows that unit 18's garage forms part of the strata lot. The exterior of the garage fronts on common property (CP).
17. Section 68(1) of the Strata *Property Act* (SPA) defines the boundaries of a strata lot and states:

Unless otherwise shown on the strata plan, if a strata lot is separated from another strata lot, the common property or another parcel of land by a wall, floor or ceiling, the boundary of the strata lot is midway between the surface of the structural portion of the wall, floor or ceiling that faces the strata lot and the surface of the structural portion of the wall, floor or ceiling that faces the other strata lot, the common property or the other parcel of land.

18. The applicants' strata lot is separated from CP by the garage's front wall where the garage door is located. The strata plan does not show otherwise, so I find the strata lot boundary is midway between the structural portion of the wall and the outside: see *Keating v. The Owners, Strata Plan LMS 2486*, 2018 BCCRT 454 at paragraphs 13 and 14. There is no evidence to suggest that the garage door is set inside of the wall's centre, so I find it is not. On this basis, I find that the garage door is CP.

Bylaws

19. The applicable bylaws were filed at the Land Title Office (LTO) on December 5, 2001, subject to relevant amendments filed June 20, 2014, and other amendments that do not bear on this dispute.
20. Bylaw 3 says an owner must repair and maintain the strata lot and limited common property (LCP) of which the owner has use, except for repair and maintenance that is the strata's responsibility under the bylaws.
21. Bylaw 3(4) makes an owner responsible for any damage to CP, LCP or their strata lot if the damage is caused by the owner's act or neglect.
22. Bylaw 10(b) says the strata must repair and maintain all CP.
23. Bylaw 10(d)(iv) says that the strata must repair and maintain the strata lot where it includes "doors" on the exterior of the building or that front on CP "if recommended after inspection by a qualified professional or tradesperson or by the strata depreciation plan or if they fail, causing damage to the building."

24. Bylaw 33 (3) says an owner must reimburse the strata for the expense of any repair, maintenance or replacement and any loss or damage to the owner's strata lot, CP or LCP if the owner is responsible for the loss or damage or the loss or damage arises out of or is caused by or results from the owner's "act, omission, negligence or carelessness."

Background

25. The strata was formed in 1999.

26. In August 2011, the applicants bought unit 18. It is uncontested, and I find, that the garage door was original to the strata lot when the applicants bought it.

27. Service records from Harbour Door, a garage door business of over 30 years' experience, reveal that the unit 18 door was serviced on the following dates, before it failed in 2016:

a. November 25, 2010 – residential service to put the cables and roller back in place and check for proper operation

b. November 17, 2014 – general service to door and operator, replace broken spring, "door in poor condition and needs replacement"

28. In April 2016, the door failed. The garage door was over 16 years old by then. The applicants had Harbour Door close the door to secure their belongings in the garage.

29. The strata agrees that the applicants contacted the then strata president, who told them that replacing the garage door was their responsibility.

30. On June 1, 2016, Harbour Door installed a new garage door and hardware.

31. On June 27, 2016, the applicants paid Harbour Door paid \$2,417.60. Of those expenses, the applicants claim that the strata was responsible to pay \$1,920.45, broken down as:

- a. garage door \$1439,
 - b. garage door hardware \$150,
 - c. removal of existing door \$120,
 - d. weather strip for door \$120,
 - e. subtotal \$1829, and
 - f. GST on the above \$91.45
32. The applicants do not ask to be reimbursed for the motor drive belt operator, garage door opener or wireless digital entry unit.
33. On May 15, 2017, the applicants emailed the strata requesting reimbursement for their garage door replacement. The applicants pointed out that they had initially been told the replacement costs were their responsibility. The applicants noted that Cornerstone, the strata property manager, had more recently told them that the replacement was a strata responsibility.
34. In March and June 2018, the applicants again emailed the strata requesting reimbursement for their garage door replacement.
35. On June 13, 2018, the strata held a strata council meeting. The strata council minutes report that council made no decision, opting to wait to determine a set of guidelines for garage door replacement before deciding if the strata was responsible for unit 18's garage door replacement.
36. Following a December 18, 2019 strata council hearing with the applicants, the strata wrote to the applicants denying their request for reimbursement. Strata council relied on Bylaw 3(4), which says an owner is responsible for any damage to CP, LCP or their strata lot that is caused by their own act or neglect. Strata council wrote that the applicants had not provided any records to show annual or regular servicing of the garage door since buying unit 18. The strata acknowledged that the applicants had the door serviced when it exhibited specific problems.

Responsibility for Garage Door Replacement

37. The strata submits that the applicants are responsible to pay for the garage door replacement because they failed to reasonably maintain the door and its mechanisms, as required by Bylaw 33(3) and contrary to Bylaw 3(4).
38. The strata also submits that maintenance of the garage door mechanism is an owner responsibility and the repair or replacement of the “actual door” is a strata responsibility.
39. The strata suggests that the door may have been intact until the interior mechanism failed, perhaps meaning the applicants were responsible to replace the door.
40. The applicants submit that the garage door was maintained as needed. I agree with the applicants’ submission that maintenance is not defined nor do the Bylaws require a specific maintenance schedule for garage doors or mechanisms to operate them.
41. I find that the failed garage door was not damage caused by the applicants’ act or neglect, under Bylaw 3(4). There is no evidence that the applicants’ maintenance schedule, or lack of maintenance, caused the door’s failure. In 2014, Harbour Door reported that the garage door needed replacement. In the 2014 invoice, Harbour Door did not suggest that a repair service would have avoided the need for replacement. The door worked for 2 more years.
42. Given the door’s 16-year age, Harbour Door’s note that the door needed replacement, and the strata’s garage door survey showing that some other garage doors in the strata were failing at roughly the same age, I find that the unit 18 garage door failed due to normal wear and tear.
43. Bylaw 33 requires an owner to reimburse the strata for loss or damage, whether to the strata lot, CP or LCP, where it arises out of or is caused by or results from the owner’s “act, omission, negligence or carelessness.”

44. The garage door failed due to usual wear and tear over 16 years. I find this was not a failure arising out of an owner's act, omission, negligence or carelessness. To find otherwise would be akin to requiring applicants to replace CP pipes because the applicants use the water than runs through them. That cannot be the effect of Bylaw 33. Such an interpretation would also contradict to the strata's Bylaw 10 repair and maintenance obligations.
45. Because I have found that the garage door is CP, I find the strata is responsible for its replacement under Bylaw 10(b).
46. Even if I had found that the garage door was part of the strata lot, the language in Bylaw 10(d)(iv) also suggests strata responsibility, because it is an exterior door fronting on CP and Harbour Door, a qualified professional, recommended its replacement in 2014.
47. Because the strata initially informed the applicants that they had to pay for the replacement, I find that it was unnecessary for the applicants to seek strata approval before having the door replaced.
48. I find the strata must pay the applicants the claimed \$1,920.45 for garage door replacement.

TRIBUNAL FEES, EXPENSES AND INTEREST

49. 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 strata to reimburse the applicants for tribunal fees of \$225. The applicants did not claim dispute-related expenses.
50. The *Court Order Interest Act* (COIA) applies to the tribunal. The applicants are entitled to pre-judgement interest on the \$1,920.45 from June 27, 2016, the date they paid the garage door replacement invoice, to the date of this decision. This equals \$97.24.

51. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDERS

52. I order that, within 30 days of this decision, the strata pay the applicants a total of \$2,242.69, broken down as:

- a. \$1,920.45 as reimbursement for the garage door replacement,
- b. \$97.24 in interest under the COIA, and
- c. \$225 in tribunal fees.

53. The applicants are also entitled to post-judgement interest under the COIA.

54. 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.

55. 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 applicants 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.

Julie K. Gibson, Tribunal Member