



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Zolnierczyk v. The Owners, Strata Plan NW 1286*, 2020 BCCRT 553

B E T W E E N :

BRANDON ZOLNIERCZYK

APPLICANT

A N D :

The Owners, Strata Plan NW 1286

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute over repair and maintenance to common property.
2. The applicant, Brandon Zolnierczyk, owns a strata lot in the respondent, strata corporation, The Owners, Strata Plan NW 1286 (strata).

3. The applicant seeks an order that the strata replace the 40-year-old carpet in the strata's hallway and stairways. The strata disputes that it must replace the carpet.
4. The applicant is self-represented. The strata is represented by a strata council member.
5. For the reasons that follow, I dismiss the applicant's claims.

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. Is the strata required to maintain and repair the hallway and stairway carpet?
- b. If so, should I order the strata to replace the carpets in the hallway and stairways?

EVIDENCE AND ANALYSIS

Background

11. In a civil claim such as this, the applicant bears the burden of proving his claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. The strata plan filed in the Land Title Office (LTO), shows that the strata is a low-rise, 18 strata lot building. The strata lots are a mix of commercial and residential use, which I discuss in more detail below.
13. The strata's bylaws are the Standard Bylaws under the Strata Property Act (SPA), except for 4 amended bylaws filed in the LTO in 2019. I find the 2019 filed bylaw amendments are not relevant to this dispute and that only the Standard Bylaws apply. The filed bylaws do not create separate sections or different types of strata lots that distinguish the residential and commercial strata lots as permitted under the SPA. Sections are separate legal entities created under sections 192 or 193 of the SPA. The strata can also create different types of strata lots to apportion operating expenses differently than by unit entitlement under *Strata Property Regulation* (regulation) 6.4(2), but it has not done so here.
14. There is no dispute that the building is 40-years-old and the carpet is original. I find on the photographs in evidence that the carpet looks worn and threadbare in places, shows small tears, and looks dirty or stained. The carpet is undisputedly in the hallways and stairways of the strata building. According to the quote in evidence, it will cost the strata about \$10,000 to replace the carpet.
15. It is undisputed that the strata ownership voted on whether the strata should replace the carpet during a 2019 or 2020 Special General Meeting (SGM) and the resolution

was defeated. The meeting minutes are not in evidence and so, I do not have the specific date or information about the SGM. I also do not know the exact resolution or the vote results.

16. I understand from both parties' submissions that the resolution was defeated, at least in part, because the commercial owners do not believe they are responsible to pay for the carpet replacement. The strata also says that the majority of owners believe there is more urgent work to spend money on than the carpet. It says the strata is "severely underfunded" and it has to spend its limited funds on the most needed areas.
17. The applicant agrees the strata has several other common property repair projects that need to be done. He says it is due to "severe neglect to upkeep and maintain the building". However, the applicant asserts that the carpet replacement is a priority for health and safety reasons because he suspects it is moldy. The applicant says the strata building manager told him a carpet company said the carpet was moldy. Without explanation, the applicant provided no statement from the carpet company. I also have no statement from the strata building manager. The applicant provided no objective evidence such as mold testing to confirm mold exists. I find there is insufficient evidence that the carpet has mold.

Is the strata required to maintain and repair the hallway and stairway carpet?

18. The strata's duty to repair and maintain common property is set out in sections 3 and 72 of the SPA and Standard Bylaw 8. SPA section 3 says the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners. Section 72 and Standard Bylaw 8 both say that the strata corporation must repair and maintain the common property of the strata corporation. Common property is defined under the SPA to include that part of the land and buildings shown on a strata plan that is not part of a strata lot, plus other things not relevant here.

19. The applicant says that the hallway and stairways are common property and the strata must repair these areas by replacing the expired carpet. The strata does not dispute the carpet's condition but disagrees that it must pay for its replacement.
20. The strata says that the hallway and stairways are in "essence" limited common property (LCP) because only residential strata lots use it. It says that under section 11.2 of the regulation an operating expense or special levy related to limited common property designated to a section is only shared by strata lots who are entitled to benefit from it. The strata argues that the residential owners should have a separate vote on carpet replacement. I infer it is taking the position that only strata lot owners who have access to and benefit from the carpet should be responsible to pay for new carpet.
21. Section 1(1) of the SPA defines LCP as common property designated for the exclusive use of the owners of one or more strata lots. The strata plan shows that the hallway and stairways are common property. A strata corporation can designate common property as LCP under section 73 of the SPA. This includes a designation of LCP on the strata plan, an amendment to the strata plan under section 257 of the SPA to create LCP, and a $\frac{3}{4}$ vote under section 74. The strata's common property record at the LTO shows that the strata filed an amended strata plan designating the strata lot balconies as LCP in 1979. The amended plan does not identify the hallway or stairways as LCP and there are no $\frac{3}{4}$ vote resolutions under section 74 filed at the LTO related to the hallway or stairways. Therefore, I find the hallway and stairways are common property as that is what the strata plan shows.
22. I also find that section 11.2 of the regulation does not apply here because the strata does not have separate sections. Regardless of use, all the strata lot owners here are required to pay for the repair and maintenance of common property by unit entitlement under section 99 of the SPA, (section 100 does not apply). Without separate sections, the strata also cannot hold a separate vote on carpet replacement for just some strata lot owners. All strata lot owners are entitled to vote on a resolution related to common property.

23. Since the carpeted hallway and stairways are common property, I find that the strata has a duty to repair and maintain them under SPA section 72 and Bylaw 8. The strata corporation's obligation to repair and maintain is measured by the test of what is reasonable in all of the circumstances (*The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363 at paragraph 24). I find the strata's duty includes carpet replacement when and where reasonable.
24. I find the strata's repair and maintenance duty also includes the duty to investigate the need to repair (*Guenther v. Owners, Strata Plan KAS431*, 2011 BCSC 11). The duty to investigate is limited to what is reasonable in the circumstances. I find this includes inspecting the carpet for mold if the strata has some evidence that mold might exist. I say this because I find it is common knowledge that some types of mold can pose a potential health risk. Since I only have the applicant's assertion of mold, I have not ordered the strata to inspect the carpet for mold at this time. This does not negate the strata's ongoing obligation to repair and maintain common property, including reasonable inspections.

Should I order the strata to replace the carpets in the hallway and stairways?

25. The applicant says he is concerned that the commercial strata lot owners hold the majority of votes and could "swing" the vote to effectively veto any future resolutions to replace the carpet. I do not have the strata records on voting entitlement. However, the strata does not dispute that the commercial owners hold the majority of votes, so I infer they do.
26. Under section 123(2) the tribunal may make an order directed at the strata corporation, the council or a person who holds 50% or more of the votes, if the order is necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights. In *Reid v. Strata Plan LMS2503*, 2003 BCCA 126, the court described "significantly unfair" as burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable. (See also *Kunzler v. The Owners, Strata Plan EPS*, 2020 BCSC 576.)

27. Without minutes of the past Annual and Special General Meetings, I have insufficient evidence to make a finding that the past voting was unjust or inequitable. I also have insufficient evidence that the commercial owners might veto the vote in the future if the carpet replacement becomes a priority.
28. I also find the applicant has not proven on a balance of probabilities that carpet replacement is a necessary repair considering there is no objective evidence of mold. There is also no evidence that the carpet causes other safety issues, such as a tripping hazard or that it is compromising the underlying floor or stair treads. While it might be aesthetically displeasing, I find it is not burdensome, harsh or wrongful for the strata to determine the old carpet can remain. Again, the parties agree there are other outstanding common property repairs.
29. I find the strata is entitled to prioritize its necessary repairs within its budget, even if this puts some owners interests ahead of others. I find the fact that a minority of owners may be outvoted does not on its own justify tribunal intervention in democratic strata governance (see discussion in *Oldaker v. The Owners, Strata Plan VR 1008*, 2010 BCSC 776 and *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44 at paragraph 43). I find in the circumstances, it would be inappropriate to intervene in the strata's normal democratic process to order the strata to replace the carpet now or by some future date. I find the strata is entitled to consider whether and how maintenance and repairs will be done so long as it acts reasonably and in the best interest of all owners. Therefore, I decline to order the strata to replace the carpet.
30. I dismiss the applicant's claim.

TRIBUNAL FEES AND EXPENSES

31. As the applicant was not successful in this dispute, in accordance with the CRTA and the tribunal's rules I find he is not entitled to reimbursement of tribunal fees. The strata did not pay tribunal fees and no dispute-related expenses were claimed by either party.

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

ORDER

33. The applicant's claims and this dispute are dismissed.

Trisha Apland, Tribunal Member