



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *McKay v. The Owners, Strata Plan KAS3488*, 2020 BCCRT 707

B E T W E E N :

KATHLEEN MCKAY

APPLICANT

A N D :

The Owners, Strata Plan KAS3488

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about repair and maintenance of common property (CP).
2. The applicant Kathleen McKay jointly owns strata lot 189 in the respondent strata corporation The Owners, Strata Plan KAS3488 (strata). Ms. McKay says the strata

has failed to repair and maintain the CP associated with the building (Building D) housing their strata lot, which is one of 4 buildings in the strata.

3. Ms. McKay seeks orders requiring the strata to “repair, maintain and renew” the Building D CP by:
 - a. addressing landscaping around Building D,
 - b. repairing carpet and installing stair treads or carpet guards to address tripping hazards, and
 - c. conducting pool maintenance to ensure safe testing and operation
 - d. repairing the Building D entranceway, which Ms. McKay says was damaged during earlier repairs, to the standard of the other strata buildings.
4. The strata denies the claims and says it has met its duty to repair and maintain the CP. On the landscaping front, it says Building D is due to be transitioned to a new type of landscaping shortly.
5. As for carpet and treading repair, the strata says a majority vote resolution was passed to spend up to \$225,000 from the contingency reserve fund (CRF) for carpet replacement in all 4 buildings. Once the project completes, the carpeting in the stairwell will be renewed.
6. The strata says the pool is safe but recognises a recent history of maintenance problems. The strata proposes to require the building manager to complete a Pool Operator course, to bring water testing logs to council meetings, to have all pool issues recorded in the building manager’s monthly activity log and to ensure the strata manager and strata council are provided with all pool inspections.
7. The strata denies damage to the Building D entrance and says the paint and walls have been maintained to the same or better standards than the other buildings.
8. Ms. McKay is self-represented. The strata is represented by strata council member GR.

JURISDICTION AND PROCEDURE

9. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
10. The CRT 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.
11. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
12. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUE

13. The issue in this dispute is whether the strata has met its repair and maintenance obligations regarding the following CP:
 - a. landscaping around Building D,
 - b. stairwell carpet and treads in Building D,
 - c. the strata pool, and
 - d. the entranceway to Building D.

EVIDENCE AND ANALYSIS

Background

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 2015, Ms. McKay wrote to the strata asking that it address repair and maintenance issues for building D including:
 - a. concerns that the front lobby wall paper and walls had been damaged by a contractor, that a 2nd contractor tried to fix it but that the lobby remained looking “terrible”, and
 - b. stairwell carpet runners were old, cracked and damaged, causing slip hazards.
16. For both issues, Ms. McKay attached photographs illustrating the problems.
17. The June 27, 2015 letter also mentioned several other maintenance and repair issues that are not subjects of this dispute.
18. From 2015-2020 the strata has addressed some repair and maintenance concerns. Ms. McKay submits that some aspects of Building D maintenance have been unreasonable. Below, I consider whether the strata met a reasonable standard in its duty to repair and maintain these areas.

Law on Common Property Repair and Maintenance

19. Under section 72 of the SPA, the strata must repair and maintain its CP.
20. It is undisputed and, as shown on the strata plan, I find that the common stairwells, pool, landscaping areas and the building D entranceway are CP that the strata is responsible to repair and maintain.
21. The strata must act reasonably in performing the duty of repair and maintenance: *Weir v. Owners, Strata Plan NW17*, 2010 BCSC 784. As the Court

put it in *Weir*, the starting point for analysis is deference to the repair and maintenance decisions of strata council, as approved by the owners.

22. In *Wright v. The Owners Strata Plan #205*, 1998 CanLII 5823 (BCCA), the British Columbia Court of Appeal considered repair estimates from 2 contractors, where the strata made the less expensive repair. The owner insisted the more expensive repair would have been better. The repair stopped the immediate leak, even though the leak recurred. The Court of Appeal found the strata had acted reasonably, which met the standard required under SPA section 72.
23. The standard is not perfection, but reasonableness in the circumstances. A reasonable repair and maintenance strategy may involve assessing whether a solution is good, better or the best. The strata can choose an approach considering the cost of each approach and its impact on the owners: *Weir* at paragraphs 23 and 28. A strata must consider overall repair and maintenance needs and prioritize repairs using a reasonable approach.
24. An individual owner cannot direct the strata about how to conduct its repairs, according to *Swan v. The Owners, Strata Plan LMS 410*, 2018 BCCRT 241. Although that tribunal decision is not binding on me, I find it relevant and consistent with the *Weir* framework.

Landscaping

25. Ms. McKay submits that the strata should complete the landscaping around Building 4 to the same standard as the remaining buildings in the complex. The photographs provided by Ms. McKay show areas where the landscaping around Building 4, while tidy, appears incomplete in places.
26. The strata says the landscaping on CP is being transitioned from bark mulch to xeriscaping to reduce water usage. The strata is conducting the transition in 2 stages, with Building D being part of the second stage. Once the transition is complete, Building D's landscaping will be consistent with that of the other buildings.

27. On October 30, 2019, the strata owners passed a $\frac{3}{4}$ resolution approving an expenditure of up to \$25,000 plus taxes from the CRF to complete Phase 2 transition from mulch to xeriscaping. Building D is scheduled in Phase 2 of this transition.
28. The 2019 Depreciation Report (2019 Depreciation Report) was completed following a July 24, 2019 inspection of the strata buildings by JH, a Certified Reserve Planner. In terms of landscaping, the 2019 Depreciation Report records that the landscape material appeared in “good condition” and was subject to “ongoing maintenance”.
29. Given that the landscape material is generally in good condition and given the strata’s plan to transition the type of landscaping around Building 4 shortly, I decline to order the relief sought by Ms. McKay. Ms. McKay cannot dictate to the strata the order in which the landscaping transition is completed across the complex. The landscaping funds from the CRF have been allocated to address landscaping. I find that the strata has met a reasonable standard in landscaping repair and maintenance.

Carpet and Stair Treads

30. Ms. McKay provided photographs showing wear and tear and some loose pieces on the stair carpet and treading areas in Building D. Based on the photographs, I agree with Ms. McKay areas of the Building D stairwell are in disrepair. The strata agrees that carpeting and treading in the CP stairwells is aged.
31. At the March 27, 2019 strata council meeting, council decided to start seeking quotes for carpet replacement in all buildings, for a carpet replacement project to be considered at the next AGM.
32. At the October 30, 2019 AGM, the strata owners passed a majority vote resolution to spend up to \$225,000 from the CRF for carpet replacement in all 4 strata buildings, with the project to proceed in 1 strata building per year over a 4-year period.

33. On January 21, 2020 the strata obtained a stairwell condition report from flooring contractor NuFloors. NuFloors reported no hazardous conditions observed during its site visit and recommended a more detailed assessment of each tread be performed, along with checking each tread and attaching any carpet corners and edges, sealing seams and re tufting carpet lines, for about \$1,800 per building.
34. The strata says that this NuFloors quote was obtained to consider the potential to repair problematic areas “as opposed to a full replacement”. The strata says the consideration of repair is due to “some budgetary uncertainty” resulting from an unexpected increase in insurance premiums.
35. The strata is obliged to conduct repair and maintenance to a reasonable standard, even where strata insurance premiums may independently use up available funds. The strata is permitted to chose between solutions for repair and maintenance that reasonably address the carpet and stair tread issue. Having said that, with the October 2019 AGM resolution for carpeting replacement, a lesser repair is not an option unless there is further vote. It may be that the repair would take place in addition to and pending replacement, to contain any safety issues. I will leave that to the strata to consider.
36. I decline to order the strata to repair and maintain the stairwell carpet, because doing so would only repeat the strata’s existing statutory obligation. I find that the strata has a reasonable plan to replace carpet in the Building D stairwell. Having said that, if, on walkthrough, the strata or its contractor determines that Building D stairwells are in the worst shape relative to the other buildings, the strata may direct that its contractor start replacements there first.

Pool Maintenance

37. On July 22, 2015, an inspector from the Interior Health Authority (IHA) inspected the strata hot tub and pool. Pool chemistry, signage and records were found to be inadequate.

38. On January 18, 2016 Ms. McKay emailed the strata manager concerned that the strata hot tub was not being maintained to health standards. Ms. McKay attached test strips showing the hot tub water was not meeting appropriate standards, with acidity too high and sanitation low. MDM from the strata's management company replied the same day writing: "Hi: Not good. I will get on it."
39. On March 15, 2016, MDM wrote to Ms. McKay to report that the strata council had discussed the pool and hot tub and other building maintenance issues at its February 25, 2016 meeting. The strata reported that it took these steps to address the pool and hot tub issues as follows:
- a. purchase of a test kit,
 - b. site manager set up a mini lab to conduct testing,
 - c. site manager to take the pool maintenance course to upgrade skills,
 - d. pool to be resurfaced that spring to prevent further algae outbreaks,
 - e. pool and hot tub water to be tested twice per day and results logged.
 - f. logged results to be reviewed by strata council and property manager,
 - g. a pool maintenance contractor retained to assist with opening and closing the pool and on a consulting basis as needed.
40. On June 27, 2017, the strata hot tub and pool were again inspected by the IHA. The IHA inspection report explained that although the pool was generally being maintained properly and in good repair, the pool water was not within legislated parameters, and the pool was lacking an on-site pool safety plan. Pool records were not being completed and maintained as required.
41. On June 26, 2019, the strata hot tub and pool were inspected by the IHA. The 2019 IHA report explained that the pool was again found to have issues with proper pool water chemistry. On June 26, 2019 a Microbiological Test Report conducted by the

IHA showed the pool at a pH of 6.8, free chlorine 0.13 mg/L and total chlorine 0.91 mg/L.

42. Ms. McKay filed excerpts from a pool maintenance manual which state that “optimum pH for pool water is 7.4”.
43. I find that the 2017 and 2019 IHA reports show that the strata fell below a reasonable standard in maintaining the pool water chemistry during those periods.
44. On November 27, 2019 strata council met and discussed the past IHA inspection reports. The council decided to request that the building manager take a Pool Operators course, to purchase a new hot tub cover, repair or replace the pool’s heat exchanger, and to otherwise ensure that the pool met regulations.
45. In late November and early December 2019, the property manager completed the BC Recreation and Parks Association Pool Operators Level 1 course.
46. In the 2019 Depreciation Report, at pages 53 and 54, the outdoor pool and hot tub were reported to be in good condition. I find that this was a physical assessment, not one involving pool water readings.
47. In January 2020, GR received an email from JM of King Pool, explaining that he had been monitoring the building manager’s reports for the strata and now believed “...he is making the effort to be on top of the chemistry and adjustments.” JM then indicated that it would cost the strata about \$120/week to have him continue to monitor the water sample analysis and offer corrective suggestions. From this email, I infer that the strata had JM monitoring the pool water readings for some period beforehand.
48. I find that the strata fell below a reasonable standard in maintenance of the pool up to the 2019 IHA report, because water chemistry was repeatedly identified as a problem in reports up to that point. As well, photographs and video footage provided by Ms. McKay show the pool was not being kept clean. As of early 2020, I find that having an outside pool contractor supervise the pool chemistry adjustments by the manager brought the issue of pool chemistry up to a reasonable standard, based on

JM's email to that effect. The physical pool structure is being maintained reasonably, according to the IHA reports.

49. Having said that, I find that the strata has not reasonably maintained the pool as far as cleanliness, activity logs and correcting chemistry issues or closing the pool when necessary.
50. I therefore order that the strata have the on-site building manager continue to provide water testing logs to strata council, record any pool issues arising in the building manager's monthly activity log, and ensure that the strata council is provided with all pool inspection reports,
51. I also order that the strata have JM, or another qualified pool contractor, review the chemistry readings for July and August 2020 to ensure they are within an acceptable range and report back to strata council.
52. I also order that the strata have the pool cleaned, either by the building manager or otherwise, on the frequency recommended by the pool contractor.

Building D Entranceway

53. Ms. McKay also claims that the strata's contractor damaged the Building D front entrance during repairs in 2015. Ms. McKay seeks a further order requiring the strata to repair the Building 4 front entrance to "the same standard and appearance as the other 3 buildings".
54. On March 1, 2017, Ms. McKay wrote to strata council requesting a hearing to discuss repair and maintenance issues, including those involving the entranceway.
55. On March 3, 2017 Ms. McKay observed a painter painting the front entrance to Building D.
56. On March 15, 2017, the strata council held a hearing. Ms. McKay urged the council to conduct walk throughs of Building D to itemize the concerns and make a plan to address them.

57. On December 16, 2018 Ms. McKay wrote to strata council to say that several repair and maintenance issues raised in March 2017 had yet to be resolved. These issues included repairs to front lobby walls had been damaged from moves and from original wallpaper tear down.
58. On January 16, 2019 strata council met and decided to implement quarterly building maintenance audits to be completed by the building manager and reported to strata council. I have reviewed the maintenance audits that were prepared following this meeting and find that they reveal reasonable attention to repair and maintenance issues including fixing door handles, and some move out damage repairs.
59. On January 25, 2019, the strata council wrote to Ms. McKay to say that it would implement a quarterly audit of the whole complex to be completed by the building manager, to address the remaining maintenance issues.
60. The 2019 Report includes a description and analysis of the CP including the observation that interior decorating and painting were generally in good condition and well-maintained. Minor repair and ongoing maintenance of CP is noted as being completed, which is consistent with my review the March – September Building Manager reports provided by the strata.
61. On October 28 and 29, 2019 the strata hired a contractor to repair and repaint the Building D lobby, and the painting contractor spent 8.5 hours on this work.
62. The strata denies that Building D's front entrance drywall has been destroyed or was not maintained to the same aesthetic standards as the other buildings.
63. While the strata agrees with Ms. McKay that the wallpaper was removed, it says that the paint and walls in Building D have been maintained at a level that meets or exceed that in the other buildings.
64. The standard for repair and maintenance is reasonableness. There is no requirement that the lobbies of all four buildings match exactly in aesthetics or interior design materials such as wallpaper, for example. Given the evidence that the strata has been addressing the repair and maintenance concerns involving the

entranceway, as reflected in the biweekly report documents provided by the strata for 2019, I find that Ms. McKay has not proven that the strata has fallen below a reasonableness standard. I decline to order that the strata address any remaining entranceway issues. Decisions about precisely how and when to address each item are within the strata council's discretion as guided by the owners.

Property Value

65. Ms. McKay submits strata lot sale prices since 2017 may have been reduced by CP repair and maintenance issues identified in this dispute. This submission is not supported by the evidence. Ms. McKay's chart summarizing the sales broken down by building does not take account of any market factors. The chart also shows that the 2nd and 3rd highest prices were achieved in sales of strata lots from Building D, which is contrary to Ms. McKay's submission, which I find speculative.

CRT FEES AND EXPENSES

66. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. McKay was only partly successful in this dispute. I therefore order the strata to reimburse Ms. McKay for ¼ of their CRT fees which is \$56.25. Ms. McKay did not claim dispute-related expenses.

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

ORDERS

68. I order that, starting no later than 30 days from the date of this order, the strata have the on-site building manager continue to provide water testing logs to strata council, record any pool issues arising in the building manager's monthly activity log, and ensure that the strata council is provided with all pool inspection reports.

69. I also order that the strata have JM, or another qualified pool contractor, review the chemistry readings for July and August 2020 to ensure they are within an acceptable range and report back to strata council.
70. I also order that the strata have the pool cleaned, either by the building manager or otherwise, on the frequency recommended by the pool contractor.
71. I also order the strata to pay Ms. McKay \$56.25 in tribunal fees, within 30 days of this decision.
72. Under sections 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. The order can also be enforced by the Provincial Court of British Columbia if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Julie K. Gibson, Tribunal Member