



# Civil Resolution Tribunal

Date Issued: November 16, 2020

File: ST-2020-001532

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NES126 v. Lamb*, 2020 BCCRT 1283

BETWEEN:

The Owners, Strata Plan NES126

**APPLICANT**

AND:

ANNA LAMB

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. The respondent, Anna Lamb, co-owns a strata lot in the applicant strata corporation, The Owners, Strata Plan NES126 (strata). The strata is a side-by-side residential

duplex with 2 strata lots. The strata is represented by the owner of the other strata lot, Charmaine Hornseth.

2. The strata says Ms. Lamb refuses to pay her share of the strata's insurance costs for the 2019-2020 year. The strata claims \$564.90, which is half the yearly insurance cost.
3. Ms. Lamb says the duplex is not managed as a strata. She says she has obtained her own personal insurance policy and that Ms. Hornseth can do the same.
4. Ms. Lamb represents herself.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
7. 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.
8. 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.

## PRELIMINARY ISSUE– Prior Decision

9. I first issued a decision in this dispute on October 15, 2020 (prior decision). In the prior decision I identified the issue to be decided as whether Ms. Lamb must pay half the cost of the strata's insurance for the 2020-2021 year. On October 23, 2020 the strata raised a concern with the tribunal staff that the prior decision did not address the primary issue.
10. Upon reviewing the matter, I found that the issue on the Dispute Notice was whether Ms. Lamb must pay half the strata's insurance costs for the 2019-2020 year, and not the 2020-2021 year. I find the prior decision addressed an issue not properly before the CRT and failed to address the primary issue raised in the proceedings. I find this is a jurisdictional defect, which must be cured.
11. In reaching my conclusion, I relied on section 51(3) of the CRTA that permits the CRT to reopen a dispute to cure a jurisdictional defect, on the request of either party. I also relied upon the decision in *Chandler v. Assn. of Architects (Alberta)*, [1989] 2 SCR 848, where the Supreme Court of Canada held that a tribunal may reopen a dispute to discharge the function committed to it, if the tribunal has failed to dispose of an issue fairly before it, and where the legislation indicates that the dispute may be reopened. *Chandler* also says that where there is a denial of natural justice that makes the proceeding ineffective, the tribunal must start afresh. The court's finding in *Chandler* is also consistent with the reasoning of the courts in *St. George's Lawn Tennis Club v. Halifax (Regional Municipality)*, 2007 NSSC 26, and *Fraser Health Authority v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2014 BCCA 499, appeal upheld on other issues at 2016 SCC 25.
12. I issued reasons to the parties by email on October 30, 2020 explaining that the prior decision was a nullity (meaning of no effect) because, through inadvertence, I had not addressed the primary issue in the prior decision. I provided both parties with the opportunity to provide any final submissions they might have on the primary issue.
13. This is the fresh and final decision about this dispute, which I have made after reviewing the final submissions from both Ms. Lamb and the strata.

## ISSUE

14. The issue in this dispute is whether Ms. Lamb must pay half of the strata's insurance costs for 2019-2020.

## EVIDENCE AND ANALYSIS

15. In a civil claim such as this, the strata must prove its case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

16. Ms. Hornseth purchased a one-year commercial liability insurance policy on behalf of the strata in September 2018. Ms. Lamb refused to pay for half that cost and so Ms. Hornseth obtained a July 26, 2019 CRT order, by default, requiring Ms. Lamb to pay for half the strata's insurance cost. Ms. Lamb reimbursed Ms. Hornseth for the strata's 2018-2019 insurance costs in August 2019. None of this is disputed.

17. The parties agree that Ms. Hornseth asked Ms. Lamb to contribute to the strata's insurance costs for the 2019-2020 year but Ms. Lamb refused. According to the December 6, 2019 invoice, Ms. Hornseth obtained insurance for the strata from September 24, 2019 to September 24, 2020, for a total of \$1,129.80, paid monthly over the course of 12 months.

18. Ms. Lamb says that, although the duplex is on a strata lot, it is not managed as a strata and there is no strata corporation. It is undisputed the parties have never held any strata meetings. However, as explained below, I find there is a strata corporation.

19. The strata plan was deposited in the Land Title Office in September 1993. According to section 2 of the *Strata Property Act* (SPA), the strata corporation was established when the strata plan was deposited. Even though the owners of this duplex have not managed their homes as strata lots, the strata does exist, and it must follow the SPA.

20. Ms. Lamb says that she and Ms. Hornseth can each obtain their own insurance policies to fully insure their respective halves of the duplex. Based on an email from Ms. Lamb's insurer, I find Ms. Lamb obtained homeowner's insurance from August

30, 2019 to August 30, 2020 for her half of the duplex. For reasons set out below, I find Ms. Lamb's homeowners insurance policy does not replace the strata's need to obtain its own insurance coverage.

21. It is undisputed that the strata has not filed any bylaws in the Land Title Office. So, under section 120(1) of the SPA and *Strata Property Regulation* (Regulation) 17.11(3), the strata's bylaws are the Standard Bylaws.
22. Under section 149 of the SPA, the strata is required to carry property insurance on common property, common assets, buildings shown on the strata plan, and fixtures as defined in Regulation 9.1(1). Section 1 of the SPA says common property includes such things as common wires, pipes, and cables, buildings and land not party of a strata lot, and limited common property (LCP). The strata plan shows that the duplex's stairs and side yards are LCP.
23. Under section 150 of the SPA, the strata must also carry liability insurance. Section 151 makes the strata corporation a named insured on the strata's insurance policy.
24. Section 91 of the SPA says that the strata is responsible for paying common expenses. Common expenses are defined under SPA section 1 as those expenses relating to the strata's common property or required to meet the strata's purposes or obligation. As the strata is required to carry property insurance, I find the insurance premiums are a common expense of the strata.
25. Under section 99 of the SPA, common expenses are to be divided by unit entitlement, unless a different method is approved by a unanimous vote under SPA, section 100. As there is no suggestion that these owners have unanimously agreed on a different method, I find they must divide the strata's insurance cost by unit entitlement. According to the strata plan, each strata lot has equal unit entitlement. So, I find the owners must divide the cost of the strata's insurance policy equally.
26. Ms. Lamb says that she should not have to pay for Ms. Hornseth's insurance policy. I agree. However, I find Ms. Lamb must pay half the cost of the strata's mandatory insurance policy for property damage and liability insurance coverage.

27. Ms. Lamb says she should not have to pay financing costs for the insurance policy and that Ms. Hornseth should not be able to decide on the type and cost of insurance obtained. I disagree. Given the urgent need for strata insurance coverage and Ms. Lamb's refusal to obtain and pay for strata insurance coverage, I find Ms. Hornseth was entirely within her rights to decide on the strata's insurance policy for September 2019 to September 2020. I further find Ms. Hornseth is entitled to be reimbursed for half that cost, which equals \$564.90.
28. Strata approval in a duplex means that both parties need to agree. This is because both parties make up the strata council under standard bylaw 9(2), and each owner has one vote under section 29 of the SPA. So, going forward, it is up to Ms. Lamb and CH to jointly decide on the type and cost of strata property insurance, so long as the insurance coverage meets the SPA requirements set out above.
29. I encourage Ms. Lamb and Ms. Hornseth to follow the SPA and standard bylaws in the future, which includes holding strata meetings, paying strata fees and setting up an operating fund for the strata's common expenses, such as insurance premiums.
30. I note that Ms. Lamb is a co-owner of 1 of the 2 strata lots in the strata. Ms. Lamb's co-owner is not a party to this dispute so I cannot order them to do anything.

## **CRT FEES, EXPENSES AND INTEREST**

31. 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. In this case, although the dispute was filed in the strata's name, the strata has no operating account and so I find it likely that Ms. Hornseth paid the CRT filing fee. I find Ms. Hornseth is entitled to reimbursement of \$225 she paid in CRT fees. Ordinarily I would order Ms. Lamb to pay Ms. Hornseth that amount. However, in her request for a reopening, Ms. Hornseth says she has already received reimbursement of the \$225 in CRT fees from Ms. Lamb. So, I find no further order is needed.

32. The *Court Order Interest Act* applies to the CRT. Ms. Hornseth is entitled to pre-judgment interest on \$564.90 of insurance costs from August 17, 2020, the date of the final payment, to the date of this decision. This equals \$0.65.
33. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Lamb.

## **ORDERS**

34. Within 15 days of this order Ms. Lamb must pay Ms. Hornseth a total of \$565.55, consisting of:
  - a. \$564.90 for half the strata's 2019-2020 insurance costs, and
  - b. \$0.65 in pre-judgment interest, and
35. Ms. Hornseth is also entitled to post-judgment interest under the *Court Order Interest Act*.
36. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court 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.

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Sherelle Goodwin, Tribunal Member