



# Civil Resolution Tribunal

Date Issued: December 9, 2020

File: ST-2020-002747

Type: Strata

Civil Resolution Tribunal

Indexed as: *Kabos v. The Owners, Strata Plan KAS977*, 2020 BCCRT 1391

B E T W E E N :

ERIK KABOS

**APPLICANT**

A N D :

The Owners, Strata Plan KAS977

**RESPONDENT**

A N D :

ERIK KABOS

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. The applicant, Erik Kabos, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan KAS977 (strata).
2. Mr. Kabos alleges the strata has failed to maintain the common property (CP) by not controlling rodents, repairing roofs, or maintaining drainage and roads. Mr. Kabos also says the strata has unfairly failed to enforce bylaws prohibiting bird feeding. Mr. Kabos also claims that the strata has failed to provide requested documents, including the depreciation report and insurance policies. Further, Mr. Kabos claims that his voting rights have been improperly revoked. Mr. Kabos also claims that the strata has improperly denied his right to a strata council hearing.
3. The strata denies Mr. Kabos' claims. The strata says it has properly maintained the strata property. The strata has filed a counterclaim against Mr. Kabos requesting compensation of \$441.19 for the cost of fencing materials Mr. Kabos allegedly removed.
4. Mr. Kabos denies the counterclaim and he asks the CRT to impose a fine against for the strata because the counterclaim is allegedly false and frivolous.
5. Mr. Kabos is self-represented. The strata is represented by a strata council member.

## JURISDICTION AND PROCEDURE

6. 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.
7. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find

I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions. 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.
9. After this dispute entered the CRT decision process, Mr. Kabos requested an order imposing a fine against the strata because Mr. Kabos says the strata's counterclaim is an allegedly false and frivolous claim. However, there is no authority in the *Strata Property Act* (SPA) or the bylaws for the CRT to order a fine against the strata for any reasons. Accordingly, I find that this claim is not within the CRT's strata property jurisdiction under section 121(1) of the CRTA and I refuse to resolve this claim under section 10 of the CRTA.

## ISSUES

10. The issues in this dispute are:
  - a. Must the strata hire rodent control services?
  - b. Must the strata enforce its bylaws relating to bird feeding?
  - c. Must the strata make roof repairs?
  - d. Must the strata repair the drainage and road?

- e. Did the strata improperly deny Mr. Kabos' right to a hearing? If so, what is the remedy?
- f. Must the strata give Mr. Kabos copies of the strata's documents relating to Lot A?
- g. Must the strata give Mr. Kabos copies of the strata's depreciation report?
- h. Must the strata give Mr. Kabos copies of the strata's insurance records?
- i. Did the strata improperly revoke Mr. Kabos' voting rights? If so, what is the remedy?
- j. Does Mr. Kabos owe the strata \$441.19 for allegedly removing fences?

## **EVIDENCE AND ANALYSIS**

- 11. In a civil claim such as this, the applicant, Mr. Kabos, must prove his case on the balance of probabilities. The strata has the same burden for its counterclaim.
- 12. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
- 13. The strata was created in 1991 and consists of 30 residential strata lots in 5 buildings. The strata operates under the SPA.
- 14. It is undisputed that the strata owns an adjacent, separate parcel of land (Lot A), where the owners operate gardens. The owners have built multiple structures on Lot A, including raised garden beds and compost bins. The owners also built fences around the perimeter of Lot A. The parties disagree about whether the fences were located on Lot A or on neighbouring land. Since Lot A is owned by the strata and is not included on the strata plan, I find that Lot A is a common asset (CA) according to section 1 of the SPA.
- 15. I find that the relevant bylaws are those registered at the Land Title Office (LTO) on July 11, 2008, including the following bylaws:

- a. Bylaw 3 says an owner must not use a strata lot, CP or CA in a way that causes a nuisance.
- b. Bylaw 8 says that the strata must repair and maintain all CA, CP and limited common property (LCP).
- c. Bylaw 15 says the strata must hold a hearing within one month of an owner's written request.
- d. Bylaw 17 says council meetings can be held electronically or telephonically.
- e. Bylaw 27(8) says an owner is not permitted to vote at an Annual General Meeting (AGM) or an Annual Special Meeting (SGM) if the strata is entitled to register a lien against their strata lot under section 116 of the SPA.
- f. Bylaw 34(7) says an owner cannot feed birds except for hummingbird feeders and birdfeeders mounted to the perimeter fence.

### ***Rodent control services***

- 16. Mr. Kabos says the CP and LCP are infested with rodents, including rats and mice. Mr. Kabos argues that the strata has breached its duty to maintain the CP by not eliminating the rodents. Mr. Kabos asks for an order requiring the strata to hire pest control services.
- 17. Mr. Kabos says the rodents are attracted by bird feeders and open compost bins. He provided photographs of approximately a dozen rodents captured or killed from October 2017 to January 2020. However, Mr. Kabos does not specify where the rodents are located. From his submissions, I infer that the rodents are outdoors and not inside strata structures or strata lots.
- 18. The strata says the strata corporation is located in a rural area surrounded by a field, bush and waterways. The strata says wildlife frequently travels through the property, especially at night. The strata says pest control services would be extremely expensive and ineffective. The strata also says other owners do not complain about rodents. The strata also says that there are no bird feeders on strata property. The

strata says that there are some bird feeders beyond the strata property but those feeders are now empty.

19. The strata also says that ospreys living in a nearby nest naturally control the rodent population. However, Mr. Kabos says ospreys do not eat rodents. Based on the limited evidence provided, I am unable to make any findings relating to the impact of natural predators on the rodent population at the strata.
20. The strata hired a pest control company to inspect for rodents near Mr. Kabos' strata lot. The pest control company provided a report dated June 23, 2020 which says it did not observe rodent droppings.
21. The strata's duty to maintain and repair CP and CA is set out in SPA section 72 and bylaw 8. 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.
22. In *Weir*, the court said the starting point for assessing a claim about whether the strata corporation fulfilled its maintenance and repair obligations is deference to the strata council, as approved by the ownership (paragraph 23). The reason for deference is that the strata council must act in the best interest of all owners, which requires it to balance competing interests and work within a budget that the owners can afford. With that in mind, the court found that it is not necessarily unreasonable for a strata corporation to decide not to choose the best repair option.
23. This means that the strata may prioritize between different maintenance projects and may choose a lower standard of maintenance for financial or practical reasons, as long as the decision is reasonable. The fact that an individual owner may be unhappy

with the strata's choices does not mean that the strata breached its duty under section 72 of the SPA.

24. In this case, I find that while bylaw 8 clarifies the areas of the strata's maintenance obligations, it does not set a higher standard for that maintenance than is set out in SPA section 72. In applying the reasoning from *Weir*, and for the reasons that follow, I find Mr. Kabos has not met the onus of establishing that the strata has failed to carry out its maintenance obligations such that the CRT should intervene.
25. Specifically, I find that Mr. Kabos has not proved that rodent control services are necessary for the CA or CP. Although Mr. Kabos has presented evidence of approximately a dozen dead rodents in recent years, Mr. Kabos has not provided evidence explaining whether this level of outdoor rodent activity requires pest control services. Further, Mr. Kabos has not provided any evidence that the rodents have entered any strata structures or strata lots, or caused damage. I am not satisfied that this level of outdoor rodent activity is unusual or concerning at a rural strata corporation located in this region. Mr. Kabos did provide several informational documents discussing rodent risks in general. However, I do not find this general information helpful in determining whether the strata acted reasonably in this matter. Overall, I am unable to conclude that the strata acted unreasonably by hiring a pest control company to inspect for rodent activity and by relying on natural predators to control rodent populations outdoors. So, I dismiss this claim.

### ***Bird feeding***

26. In his submissions, Mr. Kabos requested an order requiring the strata to enforce its bylaws to prevent bird feeding on the strata property and on neighbouring land even though this claim was not described in his Dispute Notice. Since the strata provided responsive submissions and evidence, I am satisfied that the strata was aware of this claim and the strata had an opportunity to respond. So, I will consider Mr. Kabos' claim for relating to bird feeding.
27. Section 119 of the SPA authorizes strata corporations to make bylaws to provide for the control, management, maintenance, use and enjoyment of the strata lots, CP and

CA and for the administration of the strata corporation. However, the SPA does not authorize the strata to regulate the owners' conduct outside of these locations. So, I find that the strata does not have the authority to prevent bird feeding on neighbouring lands and I dismiss this claim. However, I will consider Mr. Kabos' request to prevent bird feeding on strata property.

28. Mr. Kabos complains that owners' excessive bird feeding is a nuisance which is prohibited by bylaw 3. Bird feeding is also prohibited by bylaw 34(7), except for hummingbird feeders and perimeter fence-mounted bird feeders. Mr. Kabos argues that bird feeders placed near his strata lot are attracting a large number of birds which interferes with his use of his back patio. Mr. Kabos also says bird feeding is attracting rodents. Although Mr. Kabos' Dispute Notice does not specifically say this, I find that Mr. Kabos is generally claiming that the strata is treating him significantly unfairly by not enforcing its bylaws, specifically bylaws 3 and 34(7).
29. Section 26 of the SPA says that a strata corporation must enforce its bylaws and rules, subject to some limited discretion, such as when the effect of the breach is trivial (see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holdings Inc.*, 2016 BCSC 32). The strata council has some discretion over whether to enforce its bylaws in certain circumstances, but that discretion is limited, particularly in circumstances where the strata owners have a reasonable expectation that the bylaw will be consistently enforced. A strata corporation need not enforce a bylaw, even if there is a clear breach, where the effect of the breach on other owners is trifling (see *Ranchod v. The Owners, Strata Plan KAS 2112*, 2019 BCCRT 1001).
30. A strata may investigate bylaw contravention complaints as it sees fit, provided it complies with the principles of procedural fairness and is not significantly unfair to any person appearing before the council (see *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148). The standard of care that applies to a strata council is not perfection, but rather "reasonable action and fair regard for the interests of all concerned" (see *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74 at paragraph 61). Further, section 27(2) of the SPA states that the owners may not interfere with council's discretion to determine, based on the facts of a particular case, whether a



person has breached a bylaw, whether a person should be fined, or the amount of the fine.

31. The CRT has jurisdiction to determine claims of significant unfairness because the language in section 164 of the SPA is similar to the language of section 123(2) of the CRTA (formerly section 48.1(2)), which gives the tribunal authority to issue such orders. (See *The Owners, Strata Plan LMS 1721 v. Watson*, 2018 BCSC 164 at paragraph 119.)
32. The courts and the CRT have considered the meaning of “significantly unfair” in a number of contexts, equating it to oppressive or unfairly prejudicial conduct. *In Reid v. Strata Plan LMS 2503*, 2003 BCCA 128, the British Columbia Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith and/or unjust or inequitable.
33. The British Columbia Court of Appeal has also considered the language of section 164 of the SPA in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44. The test established in *Dollan* was restated in *The Owners, Strata Plan BCS 1721 v. Watson*, 2017 BCSC 763 at paragraph 28:

The test under s. 164 of the Strata Property Act also involves objective assessment. [*Dollan*] requires several questions to be answered in that regard:

- a. What is or was the expectation of the affected owner?
  - b. Was that expectation on the part of the owner or objectively reasonable?
  - c. If so, was that expectation violated by an action that was significantly unfair?
34. I find Mr. Kabos had an expectation that the strata would investigate his complaints to determine whether bird feeding was creating a nuisance or violating bylaw 34(7). I find that this expectation was objectively reasonable given the strata’s duty to investigate complaints of possible bylaw contraventions. However, for the reasons provided below, I find that the strata did not treat Mr. Kabos significantly unfairly.

35. In October 2014, Mr. Kabos emailed the strata complaining that his neighbours' excessive bird feeding interferes with his use of his back patio. The strata responded saying that they would speak with his neighbour. The strata emailed Mr. Kabos on January 28, 2018 saying that they spoke with his neighbours and they agreed to stop feeding birds after the neighbours used up their existing bird feed supply. Mr. Kabos sent an email to the strata on June 1, 2018 saying that his neighbour had 10 bird feeders. Mr. Kabos provided a photograph showing the bird feeders beyond the strata's perimeter fence. However, Mr. Kabos says the bird feeders are on CP because the strata's land extends beyond the perimeter fence.
36. The strata says Mr. Kabos' neighbours' bird feeders are not on CP so it cannot regulate the them. The strata also says the bird feeders are now empty and it provided confirming photographs dated June 21, 2020.
37. Based on the limited evidence provided, I am unable to determine whether Mr. Kabos' neighbours' bird feeders were located on CP or neighbouring land. The photographs show that the bird feeders were located beyond the strata's perimeter fence, but there is insufficient evidence to determine whether the CP extends beyond the perimeter fence to the location of the bird feeders. As discussed above, the strata does not have the authority to regulate conduct beyond the strata's property. Since Mr. Kabos has the onus of proving his claim, and since I am not satisfied that Mr. Kabos has proved that the bird feeders are located on CP, I cannot conclude that the strata has not treated Mr. Kabos significantly unfairly by not enforcing bylaws. So, I dismiss this claim.

### ***Roof repairs***

38. Mr. Kabos says the strata failed to properly maintain and repair the strata roofs. Since the buildings are included on the strata plan and the roofs are not designated as part of any strata lots, I find the strata roofs are CP under sections 1 and 68(1) of the SPA. The strata has a duty to maintain and repair the CP roofs under section 72 of the SPA and bylaw 8.

39. In his submissions, Mr. Kabos requested an order to repair and inspect the roofs even though this claim was not described in his Dispute Notice. Since the strata provided responsive submissions and evidence, I am satisfied that the strata was aware of this claim and the strata had an opportunity to respond. So, I will consider Mr. Kabos' claim relating to the roof despite the fact that it was not described in his Dispute Notice.
40. Mr. Kabos says the March 2012 strata council minutes note the roof was leaking at the gutters and this repair was not completed. The strata says all repairs are completed and it provided invoices showing that the strata had the gutters repaired and inspected in June and July 2019 for a total cost of \$1,200. Based on these invoices, I am satisfied that the strata has completed the gutter repairs.
41. In addition, a roofing inspection was performed by a roof consultant who inspected the strata's roofs and provided a report dated May 5, 2019. The consultant says the inspection was performed to assess the current condition of the roof and report any deficiencies requiring maintenance or repair. Since the report was prepared by a certified roof inspection consultant, I find the consultant had sufficient training and expertise to make the roofing report. So, I find that the roofing report meets the criteria for an expert report under CRT rule 8.3.
42. The report says the roof shingles were about 10 years old and in good condition, with little to no signs of aging. The report did however identify some issues including unsealed shingles, poor nailing, cracked vents and some minor deficiencies. The report recommends multiple repairs to protect the roof. However, the report does not say that the suggested repairs are urgently needed. The strata says these repairs are unnecessary and were only recommended to solicit roofing services.
43. Mr. Kabos notes that the August 2019 minutes say a roofing contractor will inspect the roof to ensure all defects are repaired. Mr. Kabos says this has not happened. Mr. Kabos also notes that the January 20, 2020 strata council minutes say the May 5, 2019 roofing report outlines multiple roofing issues, with the major issue being a

failure to ensure sufficient overlapping of the eaves. Mr. Kabos wants an order requiring the strata to finish the roof repairs and get a professional roof inspection.

44. The strata says all the outstanding roof repairs have been completed, costing \$20,000. However, the strata did not say when the roof repairs were performed or provide any supporting documents proving that repairs have been completed. Based on the strata submission that the roof was replaced in 2009, I infer that the strata's \$20,000 in roof repairs relates to the 2009 roof replacement.
45. The strata also says that the roof was inspected in October 2018 and the strata was advised that the roof was in good shape with 10 to 12 years of life expectancy. However, the strata did not provide this report. Without being able to review this report, or determine whether this report qualifies as an expert report under CRT rules, I have not considered this report in my decision.
46. Based on the limited evidence provided by the parties regarding the roofs, I find that the roof was replaced in 2009 and the gutters were repaired in 2019. Further, I find that the roof was professionally inspected in May 2019 and found to generally be in good condition with some minor issues.
47. In considering the standard in *Weir*, I find that Mr. Kabos has not proved that the strata has acted unreasonably by not performing further maintenance or repairs to the roof at this time. As noted above, the standard of care that applies to a strata corporation with respect to the maintenance of common property is reasonableness (see *Weir*). Based on Mr. Kabos' evidence, and the minor nature of the deficiencies identified in the May 2019 inspection report, I cannot conclude that the strata's maintenance of the roofs was unreasonable despite Mr. Kabos' argument that further maintenance and repairs would be better.
48. I note that in *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74, at paragraph 61 the BC Supreme Court found that short of deliberate "foot-dragging", slowness in repairs by a strata is reasonable. I find no evidence to support the strata has intentionally delayed roof repairs.

49. For the above reasons, I dismiss Mr. Kabos' claims regarding the roof repairs.

***Drainage and road repairs***

50. In the Dispute Notice, Mr. Kabos describes a claim relating to drainage and road issues but he does not request drainage or road repairs in his request for resolutions. I infer that Mr. Kabos is requesting an order to repair the alleged drainage and road issues. Since the strata made submissions opposing the need for drainage and road repairs, I am satisfied that the strata understood that Mr. Kabos requested this relief and it had an opportunity to respond. So, I will consider Mr. Kabos' drainage claims.

51. Mr. Kabos says there are problems with drainage and the strata's roads. Mr. Kabos says the roads are poorly paved and the storm drains are not properly maintained. He says surface water accumulation creates flood risks. Mr. Kabos says that during heavy rainfalls, water accumulates on the roads, his driveway and lawns. Mr. Kabos notes that another strata lot was recently flooded causing over \$9,000 in water damage. Mr. Kabos also says his strata lot was also flooded before he purchased it in 2011. Mr. Kabos also says water is pooling in front of his strata lot causing cracks and potholes in the road and creating a risk of underground basement leaks. Mr. Kabos asks for an order requiring the strata to seal crack, repair potholes, clean out the drains and sealcoat the asphalt.

52. Mr. Kabos provided several photographs showing water accumulation of 2 to 4 inches on the roads and lawns. Mr. Kabos also provided a photograph of drain almost completely clogged with soil. Mr. Kabos also provided photographs showing large cracks in the road. Mr. Kabos says water is penetrating through the cracks and risks damaging the owners' basements.

53. The strata says Mr. Kabos is exaggerating drainage issues. The strata says that water does pool on the road at times during heavy rain but it quickly drains after the rain stops. The strata says the drains work properly. The strata says the recent basement flooding was caused by a sump pump failure that was unrelated to surface water.

54. The strata says it plans to repave the roads in 2034 and the cracks are patched every second year. The strata also provided documents showing that they sealcoated the roads in 2012.
55. Based on the photographs of the clogged storm drain and the water accumulations on the property during heavy rains, I find the strata's failure to clear the storm drains is not reasonable. So, I order the strata to inspect and clear debris from its storm drains within 90 days.
56. However, I find that Mr. Kabos has not proved that the strata has otherwise unreasonably failed to maintain the strata roads. Although Mr. Kabos asks that the road be sealcoated, Mr. Kabos has not provided expert evidence or a contractor's report showing that this is necessary or that the sealcoating from 2012 is no longer adequate. In addition, I do not find that Mr. Kabos established that the strata's plan to repair cracks every second year is unreasonable because there is insufficient evidence showing that the roads need urgent repair. Although Mr. Kabos argues that the cracks could cause water damage to the strata lots, in the absence of supporting evidence, I find this argument speculative.
57. For the above reasons, I dismiss Mr. Kabos' claims relating to drainage and road repairs, other than my order to clear the storm drains within 90 days.

### ***Hearing request***

58. Mr. Kabos says the strata breached the SPA by not providing a requested hearing. On March 18, 2020, Mr. Kabos requested a hearing by email to discuss the strata's revocation of his voting rights at the March 18, 2020 AGM. On March 19, 2019, the strata said that hearings were being postponed because, as a result of exceptional circumstances, the strata council could not book hearing rooms. I infer the strata was referring to COVID-19 related restrictions.
59. Section 34.1 of the SPA says that when an owner requests a council hearing in writing, the strata must hold a hearing within 4 weeks. Further, if the owner is

requesting a council decision, section 34.1(3) says the council must provide a written decision within a week of the hearing.

60. The strata emailed Mr. Kabos on March 20, 2019 saying he could have a telephonic hearing at the March 23, 2020 council meeting. The strata council met in person and instructed Mr. Kabos to participate by calling a council member's cellphone during the council meeting. It is undisputed that Mr. Kabos did not call into the hearing. This is confirmed in the March 23, 2020 council meeting minutes.
61. While I accept that the strata council may not have been able to conduct in-person hearings at that time because of the COVID-19 pandemic, I note that although bylaw 17 allows the strata council to conduct meetings electronically and telephonically, Strata Property Regulation 4.01 says a hearing under section 34.1 of the SPA must be held in person. BC Ministerial Order M114 allows electronic meetings, including hearings requested under section 34.1 of the SPA. However, Ministerial Order M114 did not become effective until April 15, 2020, after the March 23, 2020 council meeting. I find that when the meeting was scheduled for March 23, 2020, the strata was required by regulation 4.01 to hold the hearing in-person.
62. I find the strata's breach of section 34.1 and regulation 4.01 is not a significantly unfair action, as contemplated in CRTA section 123(2) and SPA section 164. Applying the test set out in *Dollan*, I find that Mr. Kabos had a reasonable expectation that the strata would provide an in-person hearing as required by the SPA. However, I find that, because of the COVID-19 pandemic, the strata council did not Mr. Kabos significantly unfairly by scheduling a telephonic hearing. So, I dismiss Mr. Kabos' claim relating to his request for a hearing.

### ***Document requests relating to Lot A***

63. Mr. Kabos requests an order requiring the strata to provide documents requested in hearings and emails. Mr. Kabos does not specify the documents he is referring to. However, based on the emails exchanged between the parties in January and March 2018, I infer that Mr. Kabos is asking the strata for copies of documents allegedly granting owners permission to build structures on Lot A. The strata sent Mr. Kabos

an email on February 20, 2018 say that these documents do not exist because the strata has not granted this permission.

64. Section 35(2)(k) of the SPA requires the strata to retain copies of correspondences sent by the strata, which I find would include permission to use Lot A, if such written permission exists. Section 36(2) of the SPA requires the strata to provide the documents within 2 weeks of a request. So, I find that the strata was required to provide the requested documents, if such documents existed.
65. I find that the strata complied with Mr. Kabos' document request by stating in writing that the documents did not exist. Mr. Kabos has not provided evidence establishing otherwise. So, I dismiss Mr. Kabos' claim for delivery of documents relating to Lot A.

### ***Depreciation report***

66. Mr. Kabos also requested a copy of the strata's 2020 depreciation report in February 2020. The strata sent an email on February 14, 2020 saying that Mr. Kabos could borrow a copy of the report upon paying a \$20 deposit which would be refunded after the depreciation report was returned.
67. Section 35(2)(n.1) and section 36(1)(a) requires the strata to make the strata's depreciation reports available for inspection and provide copies to owners on written request. Section 36(2) says the strata must provide the documents within 2 weeks. Section 36(4) and regulation 4.2 says the strata may charge up to 25 cents per page for the copies. However, neither the SPA nor the bylaws authorize the strata to demand a deposit before providing the depreciation report.
68. I find that the strata has breached section 36 of the SPA by demanding the payment of a deposit before delivering a copy of the depreciation report. Section 36 provides for mandatory disclosure of the documents specified in section 35 of the SPA. I find that the strata does not have discretion under the SPA or the bylaws to impose restrictions to access to documents specified under section of 35 of the SPA by demanding a deposit. Under CRTA section 123(2), I order the strata to permit Mr. Kabos to view or obtain copies of the strata's 2020 depreciation report within 2 weeks



of this decision. However, if Mr. Kabos wants a copy of the depreciation report, he is still required to pay the strata up to 25 cents per page for the copies under section 36(4) of the SPA, upon the strata's request

### ***Insurance records***

69. Mr. Kabos emailed the strata on May 13, 2019 asking for a complete copy of the strata's insurance policy. It is undisputed that the strata did not provide this document.
70. Section 35 of the SPA and Strata Property Regulation 4.1(4) requires the strata to keep copies of insurance policies for at least 6 years. Section 36 of the SPA says the strata must provide these documents to owners within 2 weeks of a written request. SPA section 36(4) and regulation 4.2 says the strata may charge up to 25 cents per page for the copies.
71. The strata argues that Mr. Kabos does not need the insurance documents because a proof of insurance is delivered to all of the owners each year with the AGM documents. The strata also says that Mr. Kabos' document requests are excessive and burdensome on strata council members who are volunteers lacking the time to process his requests.
72. However, section 36 of the SPA says that this disclosure is mandatory upon an owner's written request. The strata does not have discretion to deny document requests under section 36 of the SPA because the strata council believes the requests are unnecessary or the council members do not have time to do so. Mr. Kabos does not need to prove that he needs the insurance documents. As an owner, Mr. Kabos is entitled to request a copy of the insurance records and the strata must comply.
73. For the above reasons, I order the strata to permit Mr. Kabos to view or obtain copies of the strata's proof of insurance documents within 2 weeks. However, if Mr. Kabos wants a copy of the insurance policy, he is still required to pay the strata up to 25 cents per page for the copies under section 36(4) of the SPA, upon the strata's request.

## ***Voting rights***

74. It is undisputed that Mr. Kabos was not permitted to vote at the March 9, 2020 SGM. The strata says it has suspended Mr. Kabos' right to vote under SPA section 53(2) because it claims that Mr. Kabos owes a debt to the strata for the cost of allegedly removing a fence from Lot A.
75. The strata sent Mr. Kabos a letter on May 18, 2019 saying he owed the strata \$446.19 for fence materials it alleges that Mr. Kabos removed from Lot A. The strata also provided an invoice dated March 24, 2020 for this amount. Further, the strata provided a statement dated June 20, 2020 showing that Mr. Kabos owed \$451.83 on his strata lot account.
76. Section 53(2) of the SPA says the strata may make a bylaw preventing an owner from voting if the strata is entitled to register a lien against that strata lot under section 116 (1).
77. Bylaw 27(8) says an owner cannot vote at general meetings if the strata is entitled to register a lien against the strata lot under section 116 of the SPA. Section 6(1) says the strata may register a lien against an owner's strata lot if the owner fails to pay the strata fees, a special levy, reimbursement of the cost of work, or the strata lot's share of a judgment against the strata. However, section 116(1) does not authorize the strata to register a lien for a bylaw fine or civil law damages such as Mr. Kabos' alleged debt for removing the fence. So, I find that the strata was not entitled to register a lien against Mr. Kabos' strata lot for removing the fence. As such, I find the strata accordingly was not entitled to prevent Mr. Kabos from voting at the SGM.
78. Based on the above, under CRTA section 123, I order the strata to reinstate Mr. Kabos' right to vote at AGMs and SGMs as entitled by section 53(1) of the SPA.

## ***Strata's counterclaim for removal of fences***

79. The strata requests damages of \$441.19 from Mr. Kabos' strata lot for allegedly removing fencing from the north and south perimeters of Lot A. The strata says the fencing was CP because it was built by the owners who gave the fencing to the strata.

Mr. Kabos says the fencing was improperly placed beyond Lot A, on neighbouring land not owned by the strata. Both parties provided substantial evidence about the fences' history. However, before I address the ownership of the fence, I need to determine whether the strata's counterclaim was too late.

80. The *Limitation Act* applies to disputes before the CRT. The *Limitation Act* sets out limitation periods, which are specific time limits for pursuing claims. If the time limit expires, the right to bring the claim disappears, and the claim must be dismissed. I gave both parties an opportunity to make further submissions regarding the *Limitation Act*, which I have reviewed and considered.
81. Section 6 of the *Limitation Act* says that the basic limitation period is two years, and that a claim may not be commenced more than two years after the day on which it is discovered. I find that this 2 year limitation period applies to the strata's counterclaim.
82. Section 8 of the *Limitation Act* says a claim is "discovered" on the first day that the person knew or reasonably ought to have known that the loss had occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate means to seek to remedy the loss.
83. In this matter, the strata sent Mr. Kabos an email on February 20, 2018 asking him if he knew anything about the missing fences. The strata wrote a letter on April 3, 2018 saying that Mr. Kabos admitted removing the fence at the February 26, 2018 strata council meeting. Based on these documents, I find that the strata suspected that Mr. Kabos had removed the fences by February 20, 2018 when it asked Mr. Kabos about it. Further, I find that the strata's suspicions were confirmed at the February 26, 2018 council meeting when it says Mr. Kabos admitted to removing the fences. So, I find that the strata had discovered that Mr. Kabos allegedly removed the fences by February 26, 2018.
84. The strata argues that the counterclaim was filed on time because it asked Mr. Kabos to replace the fence on April 3, 2018 and it gave Mr. Kabos one month to do so. However, although the strata may have attempted to resolve this issue by giving Mr.

Kabos an opportunity to replace the fence, the strata reasonably should have known that a court or tribunal proceeding would be an appropriate means to seek compensation when they discovered that Mr. Kabos allegedly removed the fence on February 26, 2018.

85. For the above reasons, I find that the strata discovered its claim against Mr. Kabos on February 26, 2018 and the strata was required to start to claim within 2 years of that date. In this matter, the strata's counterclaim was filed on May 5, 2020, more than 2 years after the date of discovery. Under section 22(1) of the *Limitation Act*, a counterclaim filed more than 2 years after the discovery is still considered timely if the original dispute was filed on time and the counterclaim is related or connected to the original dispute. However, the original claim was filed on March 31, 2020, more than 2 years after the date of discovery on February 26, 2020. So, I find that the strata's counterclaim is barred under the *Limitation Act* and it is therefore dismissed. Based on this finding, I do not find it necessary to determine the ownership of the fence.

## **CRT FEES AND EXPENSES**

86. 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. I see no reason in this case not to follow that general rule. Since Mr. Kabos was partially successful in his claims, I therefore order the strata to reimburse Mr. Kabos one-half of his CRT fees, being \$112.50. Since the strata was unsuccessful in its counterclaim, I find it is not entitled to any reimbursement of its CRT fees for the counterclaim. There were no requests for reimbursement of dispute-related expenses, so none are ordered.
87. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Kabos.

## ORDERS

88. I order that the strata to pay Mr. Kabos \$112.50 for reimbursement of CRT fees within 30 days.
89. Mr. Kabos is entitled to post-judgement interest under the *Court Order Interest Act*.
90. I order the strata to inspect and clear debris from its storm drains within 90 days.
91. I order the strata to permit Mr. Kabos to view or obtain a copy of the strata's 2020 depreciation report within 2 weeks. if Mr. Kabos wants a copy of the depreciation report, he may must pay the strata up to 25 cents per page for the copies under section 36(4) of the SPA, upon the strata's request.
92. I order the strata to permit Mr. Kabos to view or obtain a copy of the strata's proof of insurance documents within 2 weeks. if Mr. Kabos wants a copy of the proof of insurance documents, he must pay the strata up to 25 cents per page for the copies under section 36(4) of the SPA, upon the strata's request.
93. I order the strata to reinstate Mr. Kabos's right to vote at AGMs and SGMs as entitled by section 53(1) of the SPA.
94. I dismiss Mr. Kabos' claim for an order requiring the strata to hire rodent control services.
95. I dismiss Mr. Kabos' claim for an order requiring the strata to enforce its bylaws relating to bird feeding.
96. I dismiss Mr. Kabos' claim requesting a hearing.
97. I dismiss Mr. Kabos' claim for an order requiring the strata to provide document relating to Lot A.
98. I dismiss the strata's counterclaim.
99. I refuse to resolve Mr. Kabos' request for a fine against the strata.

100. 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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Richard McAndrew, Tribunal Member