



# Civil Resolution Tribunal

Date Issued: April 1, 2021

File: ST-2020-007084

Type: Strata

Civil Resolution Tribunal

Indexed as: *Springman v. The Owners, Strata Plan EPS1867*, 2021 BCCRT 361

**B E T W E E N :**

RACHEL SPRINGMAN and TYLER JUULSEN

**APPLICANTS**

**A N D :**

The Owners, Strata Plan EPS1867

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Rama Sood

## **INTRODUCTION**

1. This dispute is about repairs to the garage door of a townhouse. The applicants, Rachel Springman and Tyler Juulsen, owned a townhouse strata lot (townhouse) in the respondent strata corporation, The Owners, Strata Plan EPS1867 (strata). The strata charged the applicants a \$2,000 holdback for damage to the townhouse's garage doors when the applicants sold their townhouse. The applicants say they

repaired the damage before the sale completed and seek a refund of the holdback. The strata says that the repairs were inadequate, and it charged the applicants \$900 for the cost of 2 panels and paint. It is prepared to refund the applicants \$1,100.

2. The applicants are self-represented. The strata is represented by a strata council member.
3. For the reasons set out below, I find that the applicants are entitled to a refund of the \$2,000.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.
6. 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.
7. 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.

### ***Jurisdiction to hear dispute filed by a former owner***

8. The applicants sold their townhouse in June 2020 which was before they started this dispute on September 12, 2020. Section 189.1(1) of the *Strata Property Act* (SPA) says that only a strata corporation, owner or tenant may apply for dispute resolution with the CRT. So, I have considered whether the applicants, as former owners, were still owners under SPA section 189.1(1) when they applied for dispute resolution.
9. In *Downing v. Strata Plan VR2356*, 2019 BCSC 1745, the BC Supreme Court found that a former owner could be considered an owner under section 189.1 of the SPA. Also, in the non-binding but persuasive CRT preliminary decision in *Gill v. The Owners, Strata Plan EPS 4403*, 2020 BCCRT 228, a vice chair found that the court in *Downing* sent a clear message of its view that the CRT should resolve disputes involving former owners, where the dispute involves matters which arose when the applicant was still an owner. Further, I note that the subject of this dispute, the damage to the garage door and the repairs, occurred before the applicants sold the townhouse.
10. For these reasons, I find this dispute is not barred under section 189.1(1) of the SPA even though the applicants were no longer owners under the SPA when they applied for dispute resolution.

### **ISSUES**

11. The issue in this dispute is whether the applicants are entitled to a refund of a \$2,000 holdback charged by the strata for damage to the garage door.

### **EVIDENCE AND ANALYSIS**

12. I have read all the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding like this one, the applicants, Ms. Springman and Mr. Juulsen, must prove their claim on a balance of probabilities.

## ***Bylaws***

13. The strata was created in 2013 and is a phased development. It consists of 41 townhouse-style residential strata lots. The strata plan shows that each strata lot has a garage, which is part of each strata lot.
14. The strata filed bylaws at the Land Title Office (LTO) in February 2014. On May 4, 2018 the strata filed a set of consolidated bylaws. Additional amendments not relevant to this dispute were filed in 2019. I have summarized the bylaws relevant to this dispute as follows.
15. Bylaw 2.1 states that unless it is the strata's responsibility under the bylaws, an owner must maintain and repair their strata lot.
16. Bylaw 3.2 states that an owner, tenant, occupant, or visitor must not cause damage, other than reasonable wear and tear, to the common property, common assets, or parts of the strata lot that the strata must repair and maintain under the bylaws or insure under section 149 of the SPA.
17. According to bylaws 14.1(a), (b), and (c), the strata must repair and maintain common assets, common property, and certain limited common property. Bylaw 14.1(d) states the strata must repair and maintain the exterior of a strata lot, and doors, windows, and skylights on the exterior of a building or that front on the common property.

## ***Background***

18. The following facts are undisputed by the parties:
  - a. The applicants purchased the townhouse in August 2017. The townhouse had an enclosed attached garage with a retractable panelled garage door.
  - b. The applicants sold the townhouse on May 2, 2020 and notified the strata about the pending sale the next day. The completion date was on June 25, 2020.
  - c. The strata conducted a visual inspection of the townhouse, and, in a May 5, 2020 letter, notified the applicants that the garage door was common property

and was damaged. The strata cited bylaw 3.2 and asked the applicants to attend to the damage.

- d. The applicants attempted to remove dents in the garage door and repainted it.
- e. The strata inspected the garage door after it was repaired. It was not satisfied with the repairs and decided they were “unacceptable”. In a June 7, 2020 letter to the applicants, the strata stated that the garage door was not repaired to the strata council’s satisfaction and that it must be repaired before the sale completed. The strata also stated there would be a holdback if the repair was not completed.
- f. On June 7, 2020 the strata requested a \$2,000 holdback to “rectify” the garage door.
- g. On June 25, 2020 the townhouse’s sale completed and a holdback of \$2,000 was paid by the buyer’s notary to the strata.
- h. On July 8, 2020, the strata sent the applicants an invoice for \$900 for the cost of replacing 2 garage door panels and paint, and offered to refund the remaining \$1,100.

***Can the strata charge a holdback?***

- 19. The applicants say they are the third owners and that the garage door was not in perfect condition when they purchased the townhouse, although they did not describe its imperfections. They say approximately 80% of the strata lots have similar damage. The applicants admit they are responsible for repairing the garage door.
- 20. Although the parties say the garage door is common property, I do not agree. Rather, I find the garage door is within the applicants’ strata lot. My reasons are as follows.
- 21. Common property is defined under section 1(1) of the SPA to include that part of the land and buildings shown on the strata plan that is not part of a strata lot. Garage doors are not shown on the strata plan, but as I have noted, all garages are shown on the strata plan to be part of a strata lot.

22. Section 68(1) of the SPA defines the boundaries of a strata lot and states that 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.
23. In this case, the townhouse is separated from common property by the garage wall. The strata lot boundary is the midpoint of the structural portion of the garage wall because the strata plan does not show otherwise.
24. Photographs submitted by the applicants confirm the garage door is on the inside of the garage, and so I find it is part of the strata lot. Therefore, given the garage door and hardware are not shown as common property on the strata plan, and are located entirely within the townhouse, I find the garage door is not common property. Rather, I find the garage door is part of the townhouse.

***Did the applicants adequately repair the garage door?***

25. Under the SPA a strata corporation is responsible for the repair and maintenance of the common property, while a strata lot owner is responsible for the repair and maintenance of his or her own strata lot, subject to the SPA regulations, and the strata bylaws. I find that under bylaw 3.2, the applicants were responsible for any damage they caused to the townhouse's garage door. As mentioned above, the applicants admit they were responsible for repairing the garage door and made attempts to do so.
26. The applicants say the strata failed to notify them of what repairs were needed even though they asked. They say around May 24, 2020, Ms. Springman's father, who is a mechanic, fixed the dents to the best of his ability and they repainted the entire garage door.

27. The applicants say the definition of repair is to restore a damaged, broken device to its original intent. They say they should not be held to a standard of perfection. They also say the damage to the garage door was minor and their repairs were adequate to satisfy any responsibilities they had under the bylaws.
28. The applicants' photographs of the garage door before it was repaired showed noticeable dents in the bottom 2 panels on the right side. Close up photographs also showed chipped paint.
29. The applicants' photographs of the garage door after it was repaired showed there was still a dent that formed a slight space between the bottom 2 panels. Aside from this I did not see any other dents or scratches. However, the photographs showed slight variations in the paint's shade on different parts of the garage door. I find the paint's unevenness is irrelevant since the strata did not raise this as an issue.
30. The strata says the garage door's damage is more than just minor dents or scratches. It says it charged the holdback because the garage door's condition after it was repaired was "unacceptable" and that there were still dents. It says the 2 bottom panels need to be replaced.
31. The strata says that after charging the holdback it discovered the panels had been discontinued and so the entire garage door needs to be replaced, which would cost \$1,300 plus tax and the cost of paint. The strata also says it was told that panels cost \$400, although it did not provide the source of this information. The strata did not explain how it could replace the panels since they have been discontinued, which I infer means they are no longer available to purchase.
32. The strata says it only charged the applicants \$400 for each panel and \$100 for paint for a total of \$900 instead of the cost of a new garage door. It says it is prepared to refund the applicants the remaining \$1,100.
33. The strata says while it is not currently planning on replacing the townhouse's garage door, the \$900 would instead be used to cover the cost of replacing garage doors on other strata lots in the future. The strata also says it has charged other strata lot

owners in the same manner for damaged garage doors and submitted a copy of an invoice it sent to another owner.

34. The strata submitted 2 photographs of the garage door it says were taken after the sale completed that showed dents in the bottom 2 panels. The applicants deny these are photographs of their garage door. They say in the strata's photographs, the exterior facing around the garage door is brick whereas their townhouse has siding. Since the strata did not respond to this allegation, I find the strata's 2 photographs were not of the applicants' garage door and give them no weight.
35. In determining if the applicants' repairs were adequate, I considered the standard that strata corporations are held to when fulfilling their duty to perform repairs. When assessing the extent of a strata corporation's duty to repair under the SPA, the standard is not perfection, but reasonableness. The court in *Weir v. The Owners, Strata Plan NW 17*, 2010 BCSC 784 stated that determining what is reasonable may involve assessing whether a solution is good, better, or best while taking into consideration the cost of each approach and its impact on the owners.
36. I find an owner should not be held to a higher standard than a strata corporation. While the best solution may be to replace the garage door, I find the repairs were reasonable. I find the photographs show nominal damage to the garage door and there is no evidence that it is not functioning properly. Since the strata did not dispute that other strata lot garage doors also have some minor damage, I find that the applicants' repairs would not adversely affect other owners.
37. Based on my reasons above, I find the applicants are entitled to a refund of the \$2,000 holdback.

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

38. 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.



I therefore order the strata to reimburse the applicants for CRT fees of \$225. The applicants did not claim dispute-related expenses.

39. The *Court Order Interest Act* (COIA) applies to the CRT. The applicants are entitled to pre-judgement interest on the \$2,000 from June 25, 2020, the date of holdback, to the date of this decision. This equals \$7.40

## **ORDERS**

40. I order that within 21 days of this decision, the strata must pay the applicants a total of \$2,232.40 broken down as follows:

- a. \$2,000 in damages,
- b. \$7.40 in pre-judgment interest under the COIA, and
- c. \$225 as reimbursement of CRT fees.

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

42. 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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Rama Sood, Tribunal Member