



Civil Resolution Tribunal

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File: ST-2020-005195

Type: Strata

Civil Resolution Tribunal

Indexed as: *A v. The Owners, Strata Plan XXX*, 2021 BCCRT 589

B E T W E E N :

J A, MA and J.A

APPLICANTS

A N D :

The Owners, Strata Plan NWSXXX

RESPONDENT

A N D :

J A, MA and J.A

RESPONDENTS BY COUNTERCLAIM

AMENDED REASONS FOR DECISION

INTRODUCTION

1. This dispute is about repair and maintenance of a strata building envelope. The applicants JA and MA jointly own strata lot 112 (SL112) in the respondent strata corporation The Owners, Strata Plan NWSXXX (strata). Their daughter, the applicant J A, lives with them in SL112.
2. The As say that the strata has failed to repair the 43-year-old building envelope, causing continued water leaks into the SL112 walls from common property (CP). The As seek \$35,000 in damages for nuisance and loss of quiet enjoyment of their strata lot and orders requiring the strata to complete certain maintenance, repair and investigation steps.
3. The strata says it has met its repair and maintenance obligations. The strata says that the As hosed water onto the building exterior prior to one inspection to “skew the water test results”.
4. The strata counterclaims for \$4,482.94 for expert opinions it says were made necessary by the As’ insistence that the exterior damage caused mould in SL112. The As deny attempting to skew the water test results and say the inspection reports were part of the strata’s repair and maintenance obligations under *Strata Property Act* (SPA) section 72.
5. The As are represented by primary applicant JA. I refer to JA by her full name in these reasons for clarity, without intending any disrespect. The strata is represented by a strata council member.
6. For the reasons that follow, I find the As have proven that the strata failed to meet some repair and maintenance obligations. I also find that the strata created a nuisance through its failures in 2020 and make the orders set out below.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.
9. 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.
10. 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.
11. CRT documents incorrectly show the name of the respondent as The Owners, Strata Plan, XXX. Based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan NWSXXX. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the strata's name above.

Anonymization

12. As a preliminary matter, the As ask that I anonymize the parties' names because one of them has a serious health diagnosis that they wish to keep private.

13. The CRT's decisions generally identify the parties because they are considered open proceedings. This practice promotes transparency of decision making and integrity in the justice system. The CRT only anonymizes decisions in limited situations, including in disputes that contain sensitive information, such as medical diagnoses.
14. I am satisfied that it is necessary to anonymize this decision to prevent disclosure of sensitive personal health information. I have therefore anonymized the published version of this decision.

Standing

15. SPA section 189.1(1) says that an owner or tenant may request the CRT resolve a dispute over any strata property matter over which the CRT has jurisdiction.
16. JA is not an owner of SL112. JA and her parents say that she is a tenant, by informal agreement, paying rent through financial contributions and services. The strata made no submissions on this point. The question is whether JA has standing as an applicant in this dispute
17. Under SPA section 1, a tenant is defined as a person who rents all or part of a strata lot. However, there is no requirement under section 1 that a tenant prove the details of financial transactions between themselves and their landlord.
18. Based on the applicants' evidence, I find that JA is a tenant as defined in SPA section 1 and has standing in this dispute. I make no other findings about JA's possible entitlements or responsibilities that may flow from her status as a tenant.

ISSUES

19. The parties reached an agreement on certain issues prior to the adjudication process. Those issues are not before me in this decision.
20. The remaining issues in this dispute are:

- a. Did the strata breach any obligation to repair and maintain the building envelope or exterior?
- b. Did the strata cause a nuisance to the As?
- c. What are the appropriate remedies?

POSITIONS OF THE PARTIES

21. The As say the strata has failed to repair and maintain the building envelope and exterior, causing water and moisture to enter SL112. The strata disagrees and says the building cladding does not yet need replacement.

22. Turning to remedy, the As seek an order requiring the strata to:

- a. conduct “maintenance, repairs and investigation of the building envelope” recommended in a March 26, 2020 report prepared by LDR Engineering Group (LDR), which I discuss below,
- b. make “any replacements, repairs or maintenance recommended in a Building Envelope Condition Assessment by a qualified building envelope engineer”, and
- c. pay them \$35,000 in damages for nuisance and loss of quiet enjoyment of SL112.

23. The strata denies causing the As any nuisance or loss of quiet enjoyment and says that, if it occurred, it was “self inflicted”. In terms of specific investigation and repairs, the strata says that LDR’s recommendations do not supersede the most recent depreciation report. The strata says it will attend to building envelope maintenance and repair as required on a schedule that it considers reasonable.

BACKGROUND, EVIDENCE AND ANALYSIS

24. In a civil proceeding such as this one, the As, as applicants, bear the burden of proof on a balance of probabilities. The strata bears this same burden to prove its

counterclaim. Although I have reviewed all the evidence and submissions, I only address them to the extent necessary to explain my decision.

25. The strata is made up of 12, 3-storey wood framed townhouse buildings, with 134 townhouse units in total. The buildings were constructed in about 1977.
26. Based on the LDR Engineering report, discussed below, I find that the exterior wall cladding is primary original horizontal cedar siding along with localized stucco cladding. The cedar siding is an original face seal design, not a rain screen wall assembly.
27. It is uncontested that a face seal wall assembly is one where the exterior cladding, here the cedar siding, is expected to shed most of the rain. By contrast the 2018 BC Building Code requires a new building to have what is called a rainscreen wall assembly, which means a cladding system with 2 separate weather barrier surfaces and a drainage cavity between the weather barrier of the exterior sheathing and the outer cladding.

SPA and bylaws

28. On March 17, 2009, the strata filed a complete set of bylaws at the Land Title Office (LTO), repealing and replacing any earlier bylaws. I find those are the applicable bylaws, subject to subsequent amendments that I find are not relevant to this dispute.
29. Under bylaw 3.1, the As are responsible to repair and maintain SL112, except for repair and maintenance that is the strata's responsibility under the bylaws.
30. Bylaw 3.3(k) expressly provides that owners are responsible for "interior moisture control" and "mould that is not the result of building envelope failure". The bylaws provide that owners should maintain relative humidity between 30 and 45.
31. Bylaw 11.1(b) provides that the strata must repair and maintain "common property that has not been designated as limited common property" but with the duty to repair and maintain restricted to fences, railings and similar structures that enclose patios, balconies and yards except for some fences.

32. SPA sections 3 and 72(1) provide that the strata must repair and maintain CP.
33. Under section 72(2) the strata may, by bylaw, make an owner responsible for repair and maintain of CP other than limited CP (LCP), only if identified in the regulations and subject to prescribed restrictions. No regulation has been passed under section 72(2) and so this subsection has no effect: see *CLE-BC Strata Property Practice Manual* at Chapter 4.7. As a result, the strata may not enforce a bylaw to make an owner responsible for CP repair and maintenance, other than LCP.
34. SPA section 121 provides that a bylaw is not enforceable to the extent that it contravenes the SPA. To the extent that bylaw 11.1(b) limits the strata's obligation to repair and maintain CP by excluding the building exterior and envelope, I find that it has no effect because it is contrary to SPA section 72.
35. Based on the strata plan and section 1 of the SPA, I find that the building envelope and structure, including the external walls, roof and waterproofing layers are CP and the strata's responsibility to repair and maintain.

2018

36. In January 2018, the As identified mould at the base of a wall in their third-floor primary bedroom along the building's northern elevation. The As reported the mould to the strata.
37. The As retained Belfor Restoration Services (Belfor) to review the mould and determine the source of the moisture issue.

Belfor Restoration Services

38. On March 6, 2018, Belfor completed a report for J A (Belfor Report). The Belfor Report's author is JK, a Project Manager who I find is qualified to comment on the likely source(s) of mould contamination in SL112.
39. In January 2018, Belfor observed that water was coming into the wall cavity from the bedroom's exterior wall "where there appeared to be bird or rodent damage evident."

Belfor installed a poly barrier over top of the physical mould growth and provided an estimate for selective demolition and remediation.

40. Belfor then performed selective demolition, remediation and disinfecting. This involved removing the affected 4 feet of drywall and insulation 2 feet beyond the last visible sign of mould contamination.
41. Exterior repairs were then completed by others before a final inspection by Belfor on February 28, 2018. Belfor noted a minor amount of moisture on the exterior sheathing where the drywall had been removed from the exterior wall and minor mould staining on the plywood sheathing.
42. Belfor recommended that a water test be completed to the exterior prior to the As installing new drywall finishes inside, to ensure that the envelope repairs completed by others were effective.
43. Belfor offered its opinion that “water was entering the wall cavity from the exterior wall” in an informal email to J A dated February 26, 2018.
44. In the Belfor report, Belfor wrote that water ingress from the building exterior was the source of the moisture resulting in mould growth in building materials within the wall assembly.
45. On August 28, 2018, JK emailed J A to clarify his opinion about whether there had been a water leak from the building exterior. JK wrote, in part:

When the vapour barrier and batt insulation are pulled back we can see the moisture trapped on the exterior sheathing on the interior of the wall cavity. There was not much in the way of physical growth on the studs or sheathing however there is **most definitely water coming from the exterior**. (my emphasis added)

46. Based on the Belfor Report and JK’s emails, I find that, in 2018, water leaking through the building exterior caused moisture to enter SL112.

Mountain Grove Home Services (ML)

47. In January 2018, ML of Mountain Grove Home Services (Mountain Grove) attended at SL112 at the request of J A and observed a small area of mould growth in the corner of one room.
48. ML tested the exterior around a woodpecker hole on the corner of the building and found “no signs of water penetration and no signs of building envelope failure.”
49. ML’s work included removing an area of exterior siding and conducting testing during heavy rains.
50. On April 3, 2018, ML found that the building sheathing had elevated moisture levels (17-19%). ML wrote that several areas of exterior siding were moisture tested and one had elevated moisture readings. He acknowledged that the reading in one area “indicated a possible failure”. However, ML attributed this moisture to a report “by another owner” that J A had been spraying the wall with a hose the previous evening.
51. In submissions, the strata asserts that J A sprayed the building exterior with a hose to “skew” the water test results. ML wrote that another owner, who has not provided a statement in this dispute, saw J A spraying the wall with a garden hose before ML’s April 3 meeting with her.
52. J A admits that she sprayed water on the building exterior for about 5 minutes on March 15, 2018, thinking that might work as the water test recommended by Belfor. Given that there is no evidence directly from the owner who allegedly observed J A spraying the building, I accept J A’s explanation and find that she sprayed the building on March 15 to see if water went through the envelope, but not immediately prior to testing on April 3 and not for a wrongful purpose.
53. In any event, I find there was further testing and assessment of the building for several months thereafter that was not impacted by Ms. A’s actions. I base my decision on that further assessment.

54. On April 5, 2018, ML described the removal of a large area of siding around an area of staining on the exterior sheathing showing that a knot had come out of the siding when it was installed 35 or more years earlier. ML wrote that the white staining was a result of about 35 years worth of moisture getting into that “one small area” and hitting the house paper behind it. ML recorded “very minor staining” but “no rot or actual damage”. On this basis he concluded that the defect did not cause the moisture inside SL112.
55. On April 6, 2018, ML tested sheathing and siding during heavy rains. ML noted that the areas of siding and sheathing he tested were showing lower moisture content than previously and were all in the dry range (12-17%). ML provided his opinion that previous results showing moisture were “directly effect by the exterior of the building being sprayed with the hose” by J A.
56. On April 11, 2018, ML recorded higher moisture readings inside SL112 than outside.
57. After conducting a series of tests on different days, ML offered his opinion that the mould was due to condensation from warm moist air in the bedroom meeting the cold exterior wall, along with accumulation of contents (a dresser) against the cold exterior wall. ML did not think that there was water leaking through the envelope into SL112.
58. I do not accept ML’s opinion that the mould was due only to moist interior air rather than water coming through the building envelope. I say this because (a) his report is internally contradictory and (b) ML did not explain how he is qualified to offer an opinion about the cause of the mould. In terms of the contradiction, ML finds there was moisture hitting the house paper and staining around a “knot” that came out of the siding, but then discounts the idea that this actual defect caused water to enter the building envelope. I find the knot and some siding defects causing water and moisture to come through the building envelope to the interior more consistent with Belfor’s evidence and later reports by Spanish Banks Contracting, Anderson First-Rate Contracting and LDR Engineering, which I discuss below, than with ML’s theory that the strata lot was too moist and warm inside. Because I am not placing weight on ML’s opinion about the cause of the mould due to these contradictions, I find it

unnecessary to make further specific findings about the nature and currency of his qualifications to offer the opinion.

Spanish Banks Contracting

59. On April 23, 2018, Spanish Banks Contracting (Spanish Banks) conducted a “leak investigation” involving a visual inspection of the affected areas.
60. In April 28, 2018 letter, Spanish Banks offered its opinion that the problem was due to “lack of proper waterproofing around the (relatively) newly installed windows.”
61. Spanish Banks wrote that the windows did not have “proper header end dams on the flashing”, no visible “S.A.M. boot” on the window sill, and that old, cracked and rotten siding was re-installed around the windows after installation.
62. Spanish Banks recommended that siding flashing and building paper in the area be removed, and proper waterproofing and new siding be installed.
63. Based on Spanish Banks’ report, I find that a lack of proper waterproofing around the newly installed windows, including the cracked siding reinstalled around them, was one likely source of water ingress into SL112 in 2018.

Anderson First-Rate Contracting

64. On March 23, 2018, Anderson First-Rate Contracting (Anderson) attended and inspected the three possible points of water ingress into the SL112 primary bedroom. Anderson found the gutters were “in good condition” and “likely not a source of water ingress.”
65. Anderson concluded that the cedar siding at the north elevation below and around the upper north bedroom window of SL112 was likely a point of water ingress. At some point that spring, Anderson removed and disposed of about 90 square feet of siding that was showing signs of failure and removed and disposed of wallpaper and wall sheathing and repaired and replaced it. Anderson installed new building paper and new cedar siding.

66. The Anderson report supports my finding that there were some siding defects causing some water to enter the building envelope near SL112.

Hammerhead Inspection Services

67. On May 29, 2018, Hammerhead Inspection Services (Hammerhead) prepared a depreciation report for the strata.

68. Hammerhead's depreciation report notes water ingress had been reported by the strata around some suite entry doors, and that damage to the structural wood framing "may be uncovered" during exploratory openings or during remediation.

69. The building's original cedar siding was listed as "nearing the end of its life expectancy", with an estimate of 6 years left before action would need to be taken.

70. The strata seeks to rely on the Hammerhead depreciation report to establish that the building envelope does not yet need replacement. However, I find that the depreciation report is a budgeting tool, not a document that mandates a timeline for building envelope repair or replacement. As well, the Hammerhead report suggests that damage from water ingress might be uncovered during exploratory openings but Hammerhead did not undertake those openings and reports that the siding is now within 3 years of the end of its service life. Even considering Hammerhead's observations in isolation, I find that the building envelope should be a repair and maintenance priority for the strata.

71. In summer 2018, Mountain Grove Home Services replaced some localised sections of the cedar siding and sheathing membrane on the building exterior.

72. The As did not notice any further leaking or mould in SL112 until January 2020.

January 2020

73. In January 2020, the As notified the strata that they had a water leak in the SL112 primary bedroom, coinciding with rainy and windy weather.

74. The strata sent ML to inspect SL112. ML reported to the strata that the bedroom plywood was “reading high for moisture throughout the exterior”. ML suggested that the moisture was “suspicious” because moisture readings were higher in the area photographed by the As than at the exterior. The property manager, MB, replied that his “bet” was that this water complaint was “not an outside leak at all, but water applied to that piece of sheathing.” I do not accept MB’s speculation. I find it very unlikely that the As intentionally applied water to an area of sheathing to prompt a building envelope inspection.
75. Despite the high moisture readings, based on ML’s assessment that there was no leak in the area where new siding and building paper had previously been applied, the strata council took the position that there was no leak from the building envelope. The strata also noted its concern that the inside bedroom wall had not been covered with insulation and drywall, which may have created condensation problems. On January 23, 2020, strata council wrote to the As asked that the wall be closed with insulation and a vapour barrier.
76. As discussed earlier, I found ML’s initial opinion unreliable due to its internal contradictions. I find ML’s January 2020 assessment to be inconclusive about the cause of the new leak.
77. After subsequent correspondence, in February 2020, the strata and the As agreed to have a “building envelope specialist” conduct a “building envelope assessment”. The parties agreed that LDR Engineering (LDR) would complete this work.
78. In letter dated February 21, 2020, the strata agreed to pay for the initial assessment and report, on the condition that if the assessment found “no water ingress and no water moisture content over what one would expect to be normal for a “dry building”, the As would reimburse the strata for the cost of the assessment and the report.

LDR Engineering Group Report

79. Based on this agreement, LDR completed a “targeted water ingress investigation” and produced a report (LDR Report) dated March 26, 2020.

80. Although in submissions the strata suggested that J A might have a business relationship with LDR through her employment, I find it did not prove that such a relationship existed or impacted LDR's objectivity. As well, the strata agreed LDR was a suitable engineering firm to conduct this water ingress investigation. In the circumstances, I find LDR qualified to review conduct the investigation and make recommendations relating to repair, maintenance and further inspection of the building envelope.
81. The LDR Report describes that LDR conducted a site visit on March 16, 2020. Exploratory openings were made in the building envelope, with assistance from ML. At three out of four exploratory opening sites LDR inspected, the plywood sheathing inside the building exterior was found to have some minor water staining.
82. At one of the exploratory openings, LDR found the building paper from the original construction was "severely damaged" in places, indicating "signs of water ingress", particularly below the window sill to jamb interface on the north elevation outside the SL112 third floor bedroom wall. LDR observed that no self-adhered waterproofing membrane had been used when the original windows were replaced with vinyl framed windows in around 2015. LDR commented that "Good practices requires self-adhered waterproofing membrane to be installed at the window sub-sill rough opening." (quote reproduced as written) In part, LDR found that water ingress might be due to a lack of self-adhered waterproofing membrane when new windows were installed.
83. In the course of the inspection, LDR found that the relative humidity in the SL112 primary bedroom was within a normal range that I find is compliant with the bylaws.
84. The LDR Report comments that although the building envelope was dry in some locations, in others there was elevated moisture content at the plywood sheathing indicating that there may be some degree of moisture entering behind the cladding into the wall assembly and wetting the plywood sheathing. There were no signs of deteriorated wood framing within the wall assembly and the plywood sheathing was noted to be in adequate condition.
85. In conclusion, LDR made the following recommendations:

- a. Water staining at plywood sheathing be treated with wood preservative to prevent potential of mould/fungal growth.
 - b. Damaged building paper be repaired/replaced.
 - c. “Consideration be made to eventually replace the face-sealed wall assembly with rainscreen wall assembly.” LDR wrote that “The urgency of this would depend on the overall condition of the building envelope assembly throughout the complex. Until time of replacement, monitor the performance of the wall assembly by conducting routine moisture content survey.”
 - d. “Contract a qualified building envelope consultant to conduct a Building Envelope Condition Assessment (BECA) in order to assess the overall performance of the building envelope throughout the complex. This would help in understanding whether there is water ingress occurring and any resultant damage to building components, and the extent at other locations.”
86. After the LDR report was prepared, the strata took the position that LDR had found a “dry” building, meaning the As must pay for the cost of the report. I disagree. I find that the LDR report includes findings of moisture entering the building through the envelope at some locations including severely damaged building paper with signs of water ingress. In part, as noted above, LDR found that water ingress may be due to a lack of self-adhered waterproofing membrane around new windows.
87. On May 13, 2020, the council held a hearing with the As and their legal counsel. The As asked that the strata comply with LDR’s recommendations for repairs and further investigations.
88. The strata decided that there was no water ingress into SL112 from the exterior and did not comply with LDR’s recommendations.
89. In summer 2020, the strata completed some localized repairs to areas inspected by LDR.

Did the strata breach any obligation to repair and maintain the building envelope or exterior?

90. As noted above, the strata must repair and maintain the CP and common assets, under SPA sections 3 and 72.
91. In performing that duty, a strata corporation must act reasonably in the circumstances. Repairs may involve “good, better or best” solutions. Courts (and by extension, the CRT) should be cautious before inserting themselves into the process. That is, the strata is entitled to some deference in choosing how to carry out its repair and maintenance obligations: see, for example, *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784 at paragraphs 23 to 32. The strata’s duty to repair CP includes a duty to investigate the need for repair: *Guenther v. KAS431*, 2011 BCSC 119. What is reasonable depends on many factors including the likelihood of the need to repair, the cost of further investigation and the gravity of harm sought to be avoided or mitigated by investigating and remedying any discovered problems: *Guenther* at paragraph 40.
92. I find that these considerations apply in assessing whether the strata met its repair and maintenance obligations for the building envelope and exterior.
93. The As submit that the recurrence of water ingress in 2020 proves that the strata’s repair and maintenance choices in 2018 were inadequate. I disagree. The strata’s 2018 repairs were responsive to the concerns identified by Belfor. The strata elected to make smaller repairs and rather than addressing the entire building envelope. Those repairs held for more than a year without further problems.
94. In a persuasive though non-binding decision in *Berke v. NW 962*, 2018 BCCRT 539 at paragraph 57 the CRT held that even if repairs will only defer the need for eventual replacement, it may be reasonable for the strata to choose the repair option. Because the strata is entitled to choose among reasonable repair options, I find the strata met its duty to repair and maintain the building exterior and envelope in 2018.
95. However, upon receiving the January 2020 report of water in SL112 and LDR’s March 2020 recommendations, the strata chose to take no further significant repair action.

The strata relies on the Hammerhead depreciation report for its position that the building envelope remains in “serviceable condition until 2024.”

96. As I noted above, the depreciation report is a budgeting tool. It is not a thorough assessment of the building envelope’s condition following a report of water leaking into a strata lot. The timelines in a depreciation report are only estimates. By contrast, the actual service life of a building envelope is affected by many factors including weather and the degradation of building materials.
97. I find that the strata’s repair and maintenance obligation includes reasonably following LDR’s recommendations. Having agreed to have LDR assess the building envelope, I find the strata failed to meet its repair and maintenance obligations by ignoring LDR’s recommendations.
98. For these reasons, I find that the strata must apply wood preservative at the areas of water staining on the plywood sheathing and must repair the identified areas where damaged building paper was noted.
99. The more significant issue is whether and when the strata must obtain a Building Envelope Condition Assessment (BECA). Contrary to the strata’s submission that obtaining a BECA was a “suggestion”, I find it was a recommendation. Based on the LDR Report, I find that a BECA is needed to assess the building envelope’s current performance. I also find the strata must perform routine monitoring of the building envelope guided by the BECA recommendations.
100. Above, I explained that the LDR Report recommended that the strata monitor the performance of the wall assembly through a routine moisture content survey. Although the strata submits that it has been “aggressively monitoring and maintaining siding to date”, it did not provide proof of routine moisture content surveys aside from occasional readings taken by ML in response to the As’ concerns. I find that the strata has not been routinely monitoring the performance of the wall assembly as recommended by LDR.

101. On this point I accept LDR's opinion that, considering the age of the complex, "the type of cladding, the generally poor performance of face sealed wall assemblies, moisture readings, and damaged building paper at localized areas" to explain that "incidental rainwater could be entering ..." and it would be "prudent" to monitor the wall assembly by conducting routine moisture content surveys.
102. Although the LDR report does not mandate a specific timeline for a BECA, I find that the strata must take this step within a reasonable time given the age of the building, the repeated water ingress concerns, and the earlier information from several contractors identifying specific defects in the exterior and envelope, particularly around the windows. I find that the strata must obtain a BECA within 120 days of this decision and share a copy of that report with the As.
103. I turn to the question of replacing the building envelope assembly. I agree with the strata that LDR does not mandate replacing the existing face seal wall assembly with a rainscreen wall assembly on a specific timeline. Rather, LDR writes that the urgency depends on the building envelope assembly's overall condition. I find that assessing a reasonable timeline for the eventual building envelope assembly replacement in this circumstance requires the information that will be contained in the BECA.
104. While I decline to order the strata to replace the building envelope assembly now, I find that the strata is obliged to review the BECA and promptly implement a reasonable repair or replacement plan based on it.

Did the strata cause a nuisance to the As?

105. A nuisance is an unreasonable continuing or repeated interference with a person's use and enjoyment of their strata lot: *LMS 3539 v Ng*, 2016 BCSC 2462.
106. To establish a claim in nuisance, the As must prove a "substantial, non-trivial interference" with their use and enjoyment of SL112 and that the interference is unreasonable: see *The Owners, Strata Plan LMS 1162 v Triple P Enterprises Ltd.*, 2018 BCSC 1502 (*Triple P*) at paragraph 33.

107. In *Triple P*, the court wrote that although the focus in nuisance claims is primarily on the plaintiff, “the conflicting interests have to be weighed and all relevant circumstances considered in assessing whether the interference, even if non-trivial, is unreasonable.”
108. I turn to the As’ claim. They submit that the leaks from CP are a nuisance because the strata refused to properly repair the building envelope from 2018 to present. The As say they lost the use of their primary bedroom due to water ingress and mould from 2018 to present.
109. However, I have found that the strata conducted reasonable repairs in 2018. I acknowledge that the As had several days of inconvenience while the mould inside SL112 was remediated, for which the As were financially responsible under the bylaws. I also find that this disruption as non-trivial. However, there can be interference with strata living, particularly in older buildings, when the strata carries out its SPA repair and maintenance obligations. Such interference may be reasonable in the circumstances. I find that it was reasonable for the strata to conduct investigations and repairs, even with the attendant disruptions, as it did in 2018.
110. As well, I find that the As have not proven that the primary bedroom was unsafe to use from the 2018 mould remediation up until the LDR Report was issued. They provided a mould spore report but without expert explanation of what it means. They also elected not to replace the drywall inside SL112 but could have chosen to do so.
111. For these reasons, I find that the As have not proven that the strata caused a compensable nuisance to them for the events in dispute from 2018.
112. Turning to 2020, I find that the As suffered a non-trivial interference with their use and enjoyment of SL112 after they reported the further leak. I find that the strata refused to take definitive steps to assess the building envelope and the disruptions went beyond what reasonable to address the further leak. I find that this was unreasonable in all of the circumstances because the strata failed to move forward with the LDR recommendations. This extended the time of disruption and uncertainty for the As. I find that, following the 2020 leak and LDR Report, the As made a

reasonable decision not to use the primary bedroom until the leak's cause was remediated. They reasonably would have understood that moisture from the exterior would likely make using the room both uncomfortable and potentially damage their belongings. Put differently, once the parties knew of the problems with the building envelope as outlined in the LDR report and the new moisture in the wall of SL112, I find it was reasonable for the As to leave the primary bedroom vacant awaiting definitive action by the strata.

113. I make this finding in part because MA has advanced lung cancer. A letter from her family physician confirms that she has a weak immune system meaning that exposure to indoor dampness puts her at increased risk of a lung infection. Given this evidence, I have assessed the nuisance from the perspective of a reasonable person with a significant life-threatening illness. I find that being unable to use the strata lot's primary bedroom caused disruption to MA's quiet enjoyment of her home.

114. The As also submit that the need to use air purifiers and empty dehumidifiers means the strata should have to pay them nuisance damages. I do not agree. The As used dehumidifiers to maintain interior humidity at levels provided in the bylaws. At the time of the second leak, the interior humidity was recorded by LDR as being at acceptable levels. I find that the strata did not wrongfully cause the need for dehumidifiers or air purifiers.

115. Given my findings that there has been an unreasonable delay by the strata in responding to the LDR Report, causing the As a nuisance, I turn to the question of damages.

116. The LDR Report was issued in March 2020. The strata then refused to act on those recommendations. I find that the additional delay caused by the strata's refusal caused about 12 months in excess of the time the As could reasonably expect for building envelope investigation and issues. Although the As claimed \$35,000, their submissions did not support this figure. I find that \$5,000 in damages is appropriate compensation for the disruption caused by the strata's inaction, which prevents the As from using their primary bedroom for a period of time.

Counterclaim

117. The strata counterclaims for \$4,482.94 for “invoices for 3rd party opinions” which it says were incurred due to the As’ insistence that problems with the building envelope caused the interior mould in SL112.
118. The As disagree, saying the amount claimed is for reports to assist the strata in complying with its SPA obligations to repair and maintain CP.
119. In its counterclaim Dispute Notice, the strata did not explain what invoices it included in its counterclaim total. However, based on the strata’s submissions, I find that the \$4,482.94 is broken down as:
- a. \$3,083.81 for the LDR Report,
 - b. \$509.25 for ML’s re-installation of new wood siding and repairs after LDR’s investigation in July 2020,
 - c. \$280.88 for ML’s meeting with LDR and steps to facilitate inspection, and
 - d. \$609.00 for ML’s investigative and repair work in August 2018.
120. I have found that the LDR Report identified signs of water ingress, elevated moisture on the plywood sheathing and damaged building paper at some points in the building envelope. Based on that determination, I find that the investigation by LDR and the associated costs for ML to facilitate the inspection and conduct repairs after it were reasonable components of the strata’s repair and maintenance responsibility. I make the same finding regarding ML’s August 2018 investigative and repair work. The strata directed ML to complete that work, not the As, and it formed part of a reasonable investigation of whether water was entering the building envelope.
121. Although the strata submits that, in part, its counterclaim is based on the As having their “interior wall open for two years ...”, I find the strata has not proven that the As caused any of the exterior problems identified by LDR. Since they did not create the need for the claimed investigations and repairs, and the strata is responsible for the

building envelope and exterior under the SPA, I dismiss the strata's counterclaim for these expenses.

CRT FEES, EXPENSES AND INTEREST

122. 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 As for CRT fees of \$225. Although the As referred to legal fees in their submissions, they did not claim legal fees in their Dispute Notice nor prove their legal fee expenditures such as through receipts. I find that a claim for legal fees is not before me. I make no order for dispute-related expenses. I dismiss the strata's claims for legal fees and dispute-related expenses because it was the unsuccessful party.

123. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against MA and JA.

ORDERS

124. I order that that strata, within 60 days of this decision:

- a. Apply wood preservative at the areas of water staining on the plywood sheathing identified by LDR,
- b. Repair the identified areas where damaged building paper was noted by LDR, and
- c. Pay the As \$5,000 in nuisance damages and \$225 for CRT fees.

125. I further order that the strata, within 120 days of this decision:

- a. Obtain a building envelope condition assessment (BECA) report, including assessment of the areas around the windows, and share a copy with the As, and

b. Implement a repair or replacement plan guided by the BECA recommendations,

126. The As are also entitled to post-judgement interest under the *Court Order Interest Act*.

127. 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.

Julie K. Gibson, Tribunal Member

ⁱ Amendment Notes: Amended under CRTA section 64, to correct an inadvertent error in naming an individual.