Civil Resolution Tribunal

Date of Amended Decision: June 30, 2021

File: ST-2020-006246

Type: Strata

Civil Resolution Tribunal

Indexed as: *Cheslock v. The Owners, Strata Plan NW 3158*, 2021 BCCRT 712

B E T W E E N :

ANDREW CHESLOCK and CAROL CHESLOCK

APPLICANTS

A N D :

The Owners, Strata Plan NW 3158 and Shannon Perka

RESPONDENTS

AMENDED REASONS FOR DECISION

Tribunal Member: Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about alleged nuisance due to odours in a strata corporation.

2. The applicants, Andrew Cheslock and Carol Cheslock, own strata lot 8 (unit 201) in the respondent strata corporation, The Owners, Strata Plan NW 3158 (strata). The other respondent, Shannon Perka, is the former owner of strata lot 1 (unit 101) in the strata. The strata plan shows that unit 101 is located directly below unit 201.

3. The Cheslocks say the strata has failed to enforce its no-smoking and nuisance bylaws, despite numerous complaints. They say smoke from cigarettes and marijuana, and odours from plug-in air fresheners or essential oil devices, entered their strata lot from unit 101. They say these odours were a nuisance and impacted their health, and they were not able to eliminate them.

4. The Cheslocks say the strata acted significantly unfairly by eventually refusing to consider their complaints at all, and by "colluding" with Ms. Perka to make sure the bylaws were not enforced against her. The Cheslocks also say the strata failed to accommodate Mrs. Cheslock's disabilities to the point of undue hardship, as required under the *BC Human Rights Code* (Code).

5. The Cheslocks request the following remedies in this dispute:

    - An order that the strata enforce its non-smoking and nuisance bylaws.
    - Reimbursement of $530.39 for an air purifier, $111.95 for air filters, $79.46 for a fan, and $156.59 for hotel accommodation.
    - $5,000 in damages for pain, suffering, anxiety, and loss of dignity.

6. The strata denies the Cheslocks' claims. It says it investigated the Cheslocks' complaints and took steps to enforce the bylaws, and ultimately determined the source of the odours was unidentifiable and that Ms. Perka and her partner, C, had not violated any bylaws.

7. Ms. Perka also denies the Cheslocks' claims. She says she has cooperated with the strata, and that she and C stopped smoking in or near the strata building in September 2018. She says the alleged odours did not come from unit 101. Ms. Perka says the

Cheslocks' ongoing odour complaints were harassment, which caused her to list her strata lot for sale in July 2020 and move out in December 2020.

8. Ms. Perka initially filed a counterclaim in this dispute seeking damages against the Cheslocks for stress and loss of use and enjoyment of her strata lot. That counterclaim is now categorized as a separate dispute under the CRT's small claims jurisdiction, SC-2021-004374. I have issued a separate decision for that dispute.

9. The Cheslocks and Ms. Perka are self-represented in this dispute. The strata is represented by a strata council member.

10. For the reasons set out below, I dismiss the Cheslocks' claims against Ms. Perka, but find the strata discriminated against Mrs. Cheslock contrary to the Code by not sufficiently investigating or addressing the Cheslocks' smoke and odour complaints.

JURISDICTION AND PROCEDURE

11. 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). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.

12. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Both parties in this dispute question the credibility, or truthfulness, of the other. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that

includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. Also, in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is in issue.

13. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

14. Ms. Perka requests anonymity for herself and C in the published version of this decision to prevent injury to their reputations. I agree it is appropriate to anonymize C's name, as he is not a party to this dispute, or the related dispute. However, parties in CRT's proceedings are generally named, consistent with an 'open court' principle that allows for transparency. I find there is nothing in this dispute that would warrant departing from the open court principle, and so I will not anonymize Ms. Perka's name, particularly given her decision to pursue her own claims against the Cheslocks that are the subject of my separate decision.

ISSUES

15. The issues in this dispute are:

    a. Did the strata discriminate against Mrs. Cheslock, contrary to the Code?

    b. Did the strata fail to enforce its non-smoking or nuisance bylaws?

    c. What remedies, if any, are appropriate?

BACKGROUND

16. In a civil claim like this one, the Cheslocks, as applicants, must prove their claims on a balance of probabilities (meaning "more likely than not"). While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.

17. The strata was created in 1990, and consists of 21 residential strata lots in a 3-storey building with basement parking. As noted, Ms. Perka's unit 101 is directly below the Cheslocks' unit 201.

18. The strata repealed and replaced its bylaws by filing new bylaws with the Land Title Office in December 2018. This included a non-smoking bylaw, which was a new addition at that time. This non-smoking bylaw was approved by the strata ownership in November 2018, and came into effect when it was filed at the LTO in December 2018.

19. The strata filed subsequent bylaw amendments in 2020, which I find are not relevant to this dispute.

20. Bylaw 3(5)(a), the non-smoking bylaw, says an owner, tenant, occupant, or visitor must not smoke tobacco, marijuana, or any similar organic substance, or use an e-cigarette or vaporizer, on any interior common property, or on exterior common property within 7.5 meters of a door, window, or intake vent. The bylaw also says no one may allow smoke odours or vapours to escape their strata lot such that it can be smelled by another resident.

21. Bylaw 3(5)(b) is part of the strata's nuisance bylaw. It says an owner, tenant, occupant, or visitor may not make undue noise, smell, vibration, or glare in or about any strata lot or common property, or do anything which will interfere unreasonably with any other owner, tenant, or occupant.

22. The evidence shows that the Cheslocks complained in writing to the strata about smoke smells from unit 101 starting in August 2018, before the non-smoking bylaw was created. The complaint emails mentioned various health problems that the Cheslocks said were affected by the smoke. The Cheslocks said the odours entered unit 201 through their fireplace, windows, electric heaters, and from under the kitchen sink.

23. In 2020, the Cheslocks also complained to the strata about “sweet” or “toxic” odours entering their strata lot, which they now say came from air fresheners or essential oil diffusers in unit 101.

24. The documents in evidence establish the following timeline of events, which I discuss more detail later in this decision:

- August 2018 – Cheslocks sent the strata their first written complaint about smoke smells from unit 101.

- August 24, 2018 – strata sent letter to Ms. Perka setting out complaints about second hand smoke. The letter cited bylaws 3(5)(a) and (b), and asked Ms. Perka to take steps to stop the transference of smoke, or potentially face fines.

- July 3, 2020 – strata sent letter to Ms. Perka stating there had been 2 written complaints about nuisance due to cigarette smoke, marijuana smoke, and another unidentified odour. As in the previous letter, the strata cited bylaws 3(5)(a) and (b), and asked Ms. Perka to take steps to stop the transference of smoke, or potentially face fines.

- July 29, 2020 – council hearing to discuss Cheslocks’ and another owner’s (GW’s) odour complaints.

- August 4, 2020 – strata sent letter to Ms. Perka setting out complaints from Cheslocks and unit 102 owners about odours of vaping, marijuana, and a “strong scent”. The strata imposed a $50 fine against Ms. Perka for breaching bylaws 3(5)(a) and (b).

- September 18, 2020 – strata sent letter to Ms. Perka stating that upon further review, the $50 fine was reversed because there was no conclusive evidence of a bylaw breach.

25. The documents in evidence also show that the strata emailed Ms. Perka on a few other occasions, noting recent odour complaints, asking her to ensure no odours were

transmitted, and warning her of potential bylaw fines. The strata also posted notices throughout the strata building directing owners to comply with the no-smoking bylaw.

REASONS AND ANALYSIS

26. The Cheslocks say Ms. Perka violated bylaws 3(5)(a) and (b) by permitting cigarette and marijuana smoke to enter unit 201, and by permitting odours from essential oil air fresheners to enter unit 201 from early 2020 until Ms. Perka moved out around December 2020.

27. The Cheslocks say the strata failed to investigate their complaints about odours from unit 101, and failed to enforce the bylaws. They say that in failing to address the odour issues, the strata discriminated against Mrs. Cheslock on the basis of disability, contrary to the Code.

28. As explained below, I find that Mrs. Cheslock does have a physical disability, as contemplated in the Code. The correspondence in evidence shows that the Cheslocks brought this disability to the strata's attention, and provided medical notes stating that the smoke and odours were aggravating Mrs. Cheslock's health conditions. This means that under the Code, the strata had a duty to accommodate Mrs. Cheslock to the point of undue hardship. As discussed below, following case law from the BC Human Rights Tribunal (HRT), because the duty to accommodate was triggered, the strata had a higher duty to investigate the Cheslocks' smoke and odour complaints in these circumstances than it would have had if there were no issue of disability under the Code.

29. For that reason, I begin my analysis in this decision by considering how the Code applies to this dispute.

Human Rights Code

30. Section 8 of the Code says, in part, that unless there is a *bona fide* and reasonable justification, a person must not, because of a physical or mental disability,

discriminate against another person about any accommodation, service, or facility customarily available to the public.

31. Numerous prior decisions of the CRT and the HRT have confirmed that section 8 of the Code applies to strata corporations: see *The Owners, Strata Plan LMS 2900 v. Mathew Hardy*, 2016 BCCRT 1; *Konieczna v. Strata Plan NW 2489*, 2003 BCHRT 38; *Williams v. Strata Plan LMS 768*, 2003 BCHRT 165.

Physical Disability

32. The first question in assessing whether the strata discriminated against Mrs. Cheslock is determining if she has a disability. The Code does not define "disability".

33. In the case before me, Mrs. Cheslock provided medical evidence from 2 optometrists, and a letter from her family doctor. The family doctor wrote that Mrs. Cheslock has allergies and asthma impacted by second-hand smoke in her home. The doctor said cigarette smoke, vaping fumes, and air fresheners had a negative effect on Mrs. Cheslock's recovery from eye surgery and her general respiratory health.

34. Based on the doctor's letter, and Mrs. Cheslock's own statements about her symptoms when exposed to smoke or fumes, I accept that Mrs. Cheslock has a disability as contemplated in the Code.

Discrimination under the Code

35. In their submissions, the Cheslocks rely on an HRT decision, *Leary v. Strata Plan VR1001*, 2016 BCHRT 139. *Leary* states in paragraph 65 that strata corporations have a duty to accommodate owners who have a disability that is adversely affected by second-hand smoke. Prior tribunal decisions, including *Leary,* are not binding on me. However, I find the reasoning in *Leary* persuasive and rely on it here, particularly since I find the facts in *Leary* are substantially similar to those before me in this dispute. I accept that *Leary* accurately sets out the applicable law, and the burden on the strata to accommodate a disability in these circumstances.

36. In *Leary,* the applicant strata lot owner had complained to the strata for an extended period about second-hand smoke entering her strata lot. Her medical evidence confirmed she was diagnosed with allergic and asthmatic bronchitis, which was negatively impacted by the smoke.

37. The HRT accepted that Ms. Leary's condition was a disability, that she experienced adverse impacts due to the smoke, and that her disability was a factor in the adverse impact. This triggered the strata's duty to accommodate the disability, which duty the HRT found the strata had not fulfilled to the required point of undue hardship. In particular, the HRT member found the strata had made minimal attempts to address Ms. Leary's concerns and obtain relevant information. In particular, while the strata said it did not know the source of the smoke, or how it was getting into Ms. Leary's strata lot, the HRT member found the strata was required to do more to investigate and search for solutions (paragraph 59). Paragraph 62 of *Leary* states as follows:

38. I find that once the "witness" confirmed that there was the smell of smoke in Ms. Leary's apartment, there was no further investigation to determine the extent of the problem and thereafter determine if the Strata could solve any problem by accommodating Ms. Leary's disability up to the point of undue hardship. The Strata claims that Ms. Leary's conclusions are not credible about the source of the smoke, yet it undertook no investigation as to its source. Without this information, there was no attempt by the Strata to accommodate Ms. Leary's disability.

39. The HRT member ordered several remedies, including $7,500 in damages for injury to dignity, feelings, and self-respect, and an order that the strata engage an air quality specialist to determine the source of the smoke.

40. Paragraph 66 of *Leary* says that although strata council members are volunteers, as service providers, strata corporations must take a "serious and rigorous approach" to smoking-related complaints when accommodation is requested by an owner with a disability. In paragraphs 68 and 69*,* the HRT member set out guidelines for how a strata corporation should address a request for accommodation related to second-hand smoke. While these HRT guidelines are not binding, I find they are useful, and

relevant to this dispute. I will not reproduce all of the guidelines here, but note that the strata and the owner claiming accommodation must cooperate. Other guidelines include that the strata must:

- Gather enough information to understand the nature and extent of the need for accommodation.
- Obtain expert opinions or advice where needed.
- Take the lead role in investigating possible solutions.
- Rigorously assess whether the strata can implement an appropriate accommodation solution.
- Ensure that the strata representatives working on the accommodation are able to approach the issue with an attitude of respect. Members of a strata council whose behaviour risks undermining genuine efforts at co-operation and conciliation may need to be removed from the process.

41. Applying the analysis in *Leary* to the facts before me in this dispute, I find that the strata discriminated against Mrs. Cheslock, contrary to section 8 of the Code. Specifically, I find the strata had a duty to accommodate Mrs. Cheslock to the point of undue hardship, and did not do so. My reasons follow.

42. A 2-step analysis applies to cases of alleged discrimination contrary to the Code. First, the applicant must establish a *prima facie* case of discrimination. If that is proven, the onus then shifts to the respondent to justify its actions, including by showing that it has accommodated the applicant up to the point of undue hardship: see *Moore v. British Columbia (Education)*, 2012 SCC 61 at paragraph 49.

Adverse Impact

43. As explained in *Leary,* to establish a *prima facie* case of discrimination, Mrs. Cheslock must prove that she has suffered an adverse impact in relation to provision of services by the strata, and that her disability was a factor in the adverse impact.

44. The Cheslocks say there was smoke in their strata lot from at least October 2018 to December 2020, and odours from air fresheners or essential oils throughout most of 2020.

45. I note the strata's position that there is no evidence of smoke or odour ingress into unit 201. However, as explained in *Leary,* if a strata lot owner asks the strata to take steps to address second-hand smoke due to a disability, the strata cannot simply say there is no evidence of smoke. Rather, once adverse impact is established, the strata then has a duty to investigate, and take steps to cooperate with the owner to address the problem. Thus, there is a higher burden on the strata to investigate an alleged bylaw violation where the duty to accommodate under the Code is triggered, as compared to a bylaw complaint where the Code is not engaged.

46. Paragraph 69 of *Leary* states that where the strata has a duty to accommodate a physical disability:

> For second-hand smoke, a "sniff test" undertaken by another strata member will rarely be sufficient to evaluate the extent of a problem with smoke in a suite. The strata may have to retain air quality experts. The strata should pay for any tests or expert reports.

47. Returning to the question of adverse impact, I find the evidence before me establishes that there likely were odours of smoke and air fresheners in unit 201 during the periods claimed by the Cheslocks. The Cheslocks documented the presence of smoke and odours in their repeated correspondence with the strata. While that may not be objective, I find it is supported by the written statements of GW, the owner of unit 102, which is located next door to Ms. Perka's unit 101. I place significant weight on GW's statements, as some of them were provided to the strata at the time of the events in question, and since GW is not a party to this dispute, I find she is a neutral witness. Also, since GW lived immediately next to unit 101, I find she was well-positioned to observe the nature and source of the alleged odours.

48. In a July 1, 2020 email, GW described odours of cigarette and cannabis, and another "sickly sweet smell", coming from next door. She said the odour was unacceptable, and that she used a fan and water with cinnamon to try and abate the smell. GW said she had burning, streaming eyes, a sore throat, and a burning feeling in her nose. She said she opened her windows and door every morning to air out the smells.

49. GW made similar comments in emails dated July 8, July 20, July 21, and August 10, 2020, and in a written statement dated February 10, 2021. In her statement, GW said that at times, the smells made her vomit. The evidence shows that GW complained to the strata in writing about the odours.

50. While the strata says that council members visited on a few occasions and did not detect significant odours in unit 201, there are no statements or records from these council members in evidence documenting the times or dates of these visits, or their specific observations.

51. I also place significant weight on evidence from Lewis MacLean Plumbing Heating Air Conditioning (Lewis). Invoices from Lewis show that its technician visited unit 201 in September 2020 and January 2021 to service the gas fireplace. The September 18, 2020 invoice says that when accessing the fireplace valve assembly, the technician "noticed an extreme perfume odor" in the mechanical chase adjacent to the fireplace. A January 20, 2021 invoice says the technician discovered a "void" at the back left corner of the fireplace, which opened to the ceiling and chimney of the unit below. The technician recommended repairs for fire safety reasons, as there was "direct contact between the units on different floors". Finally, in a January 23, 2021 handwritten invoice, the technician wrote that they found a large hole underneath the fireplace, which should be closed to prevent flames from going floor to floor. The technician also wrote that they noticed a "sweet perfumey smell present on the mesh screen from odors below".

52. The qualifications of Lewis' technician were not provided, so I find the Lewis invoices do not meet the requirements for expert evidence under CRT Rule 8.3. However, I find that observing domestic odours and large holes between floors does not require

knowledge or experience beyond that of an ordinary person, so I accept the evidence regardless of expertise. Also, I find the strata has not provided evidence contradicting the information in the invoices.

53. In addition, the Lewis evidence is consistent with the real estate listing photos showing plug-in air fresheners in unit 101. Ms. Perka admits to having one or more air fresheners in unit 101, although she says they were turned to a low setting.

54. I find the evidence documenting odours and a hole between units 101 and 201 support the Cheslocks' statements about the nature and source of odours in their strata lot. I note that this evidence was not available to the strata at the time the Cheslocks filed this CRT dispute in August 2020. However, I find the Lewis evidence supports the complaints the Cheslocks had been making since 2018. Combined with the evidence of GW, I find it is more likely than not there were odours entering unit 201, which the strata should have investigated by some means other than a few council member visits.

55. I also find the combined evidence of the Cheslocks, GW, Lewis, and Mrs. Cheslock's family doctor support the conclusion that Mrs. Cheslock's health condition was negatively affected by smoke and odours entering her strata lot. I therefore accept that Mrs. Cheslock suffered an adverse impact, and that her disability was a factor in the adverse impact. Thus, she has established a *prima facie* case of discrimination.

Duty to Accommodate

56. As noted above, once an applicant has proven a *prima facie* case of discrimination, the onus is on the respondent to justify its actions, including by showing that it has accommodated the applicant up to the point of undue hardship.

57. I find that the strata has not proven that it made reasonable attempts to accommodate Mrs. Cheslock. I find the strata was aware of her disability, as the Cheslocks described their health conditions and symptoms in their various emails to the strata. As noted in *Leary,* It was open to the strata to request more medical information if necessary, but it did not do so.

58. The strata relies on the fact that it enacted a no-smoking bylaw, posted notices about it, and wrote to Ms. Perka to warn her about alleged bylaw breaches. I find that passing a no-smoking bylaw did not meet the duty to accommodate, since the strata did not take steps other than council member "sniff tests" to investigate alleged breaches of that bylaw.

59. The strata did not inspect unit 201 to consider whether alleged odour infiltration could be blocked. I find the subsequent evidence of a hole in the fireplace leading directly to unit 101 shows that this was insufficient in the circumstances, as steps could have been taken to block it. I also find the strata did not take the other steps suggested in *Leary,* such as addressing Mrs. Cheslock's accommodation requests promptly and seriously, obtaining an expert opinion on air quality, or investigating possible solutions.

60. I also find the correspondence in evidence from strata council members did not approach Mrs. Cheslock's complaints and accommodation requests with a respectful attitude, as described in *Leary.* Rather, in a July 16, 2020 email to Ms. Perka, council member LS described the Cheslocks as "trouble makers", and said they might "snoop or plant something" in Ms. Perka's strata lot while it was listed for sale. LS suggested that Mrs. Cheslock might have "mental problems". She ended her email by offering to help Ms. Perka pack or "snoop", and then wrote, "lol". In an August 16, 2020 email to Ms. Perka, council member LS said Ms. Perka could give the Cheslocks "the finger" as she left the strata for the final time.

61. I accept that LS had a friendly relationship with Ms. Perka, and was sympathetic to her. However, as discussed in *Leary*, council members dealing with accommodation requests should have a respectful attitude, or be removed from the process. I find the tone of LS's emails, and her participation in the Cheslocks' complaints and accommodation request, supports the conclusion that the strata did not meet its duty under the Code to accommodate Mrs. Cheslock to the point of undue hardship.

62. For all these reasons, I conclude that the strata discriminated against Mrs. Cheslock, contrary to section 8 of the Code.

Did the strata fail to enforce its non-smoking and nuisance bylaws?

63. Since I have found the strata failed to meet its duty to accommodate Mrs. Cheslock's disability, I find it unnecessary to determine whether the strata failed to take steps to enforce bylaws 3(5)(a) and (b).

Remedies

64. Since I have found the strata discriminated against Mrs. Cheslock, I turn to the question of remedy.

65. First, the Cheslocks request an order that the strata enforce bylaws 3(5)(a) and (b). I do not grant that order because the strata is already required under *Strata Property Act* (SPA) section 26 to enforce its bylaws. Ordering it to do so would have no practical effect and is likely unenforceable. Also, Ms. Perka has now sold her strata lot and moved out.

66. Second, the Cheslocks request reimbursement for expenses and damages for pain, suffering, anxiety, and loss of dignity. I find Ms. Perka is not liable to pay any damages, since she is not responsible for any duties arising from the SPA or the Code. I dismiss the Cheslocks' claims against Ms. Perka. I note that the Cheslocks did not frame their claim against Ms. Perka as a claim based on the common law tort of nuisance, and if they had, I would not have jurisdiction to address that claim in this strata property decision: see *Alameer v. Zhang*, 2021 BCCRT 435.

67. The Cheslocks request $642.34 for an air purifier and air filters, and $79.59 for a fan. I do not order reimbursement for the air purifier or filters, since there is no evidence before me establishing that these items would reasonably reduce odours or smoke, and since the air purifier was purchased in September 2018, only a month after the Cheslock's first documented smoke complaint. However, a receipt shows the Cheslocks paid $79.46 for the fan on August 1, 2020. I find that purchasing a fan at that time was reasonable in the circumstances. so I order the strata to reimburse them for it.

68. The Cheslocks also request reimbursement of $156.59 for hotel accommodation on August 2, 2020. An email in evidence shows that the Cheslocks emailed the strata at 7:08 pm on August 2, 2020 to state that it was necessary to stay in a hotel due to Mrs. Cheslock's "eye health", and a high level of odours the previous 3 nights which caused them to sleep on the couch. Given that the evidence shows that the Cheslocks had been raising these issues for some time before August 2, 2020 and the strata had taken no steps to address the problem, I find this expense is reasonable in the circumstances. The medical evidence from Mrs. Cheslock's optometrist confirms a link between the smoke in unit 201 and Mrs. Cheslock's eye condition. I therefore order the strata to reimburse the Cheslocks $156.59 for hotel expenses.

69. The Cheslocks claim $5,000 in damages for pain, suffering, and loss of dignity. In *Leary,* the HRT awarded $7,500 in damages for injury to dignity, feelings, and self-respect. In that case, the parties agreed that Ms. Leary complained about second-hand smoke from 1997 onwards, and provided medical evidence showing adverse health effects in 2011 and 2014. The *Leary* decision was issued in 2016.

70. Given that the time period at issue in this case is significantly shorter than in *Leary*, I find that $4,000 in damages is an appropriate amount, and I order the strata to pay it.

71. Finally, I find the Cheslocks are entitled to prejudgement interest on the ordered damages under the *Court Order Interest Act,* from August 2, 2020. This equals $17.29.

CRT FEES AND EXPENSES

72. As the Cheslocks were largely successful in this dispute, in accordance with the CRTA and the CRT's rules I find they are entitled to reimbursement of $225.00 in CRT fees.

73. The Cheslocks claim reimbursement of $2,543.77 in legal fees. CRT rule 9.5(3) says the CRT will not order reimbursement of legal fees in a strata property dispute, except in extraordinary circumstances. I find the circumstances of this dispute are not

extraordinary. In making this finding, I have considered the factors set out in the CRT rule 9.5(4), which include the complexity of the dispute. I find this dispute was not unusually complex compared to typical CRT disputes, did not involve novel or complicated legal issues, and did not include an usually large amount of evidence or submissions. So, I dismiss the Cheslocks' claim for reimbursement of legal fees.

74. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the Cheslocks.

ORDERS

75. I order that within 30 days of this decision, the strata must pay the Cheslocks a total of $4,478.34.16, broken down as:

    a. $79.46 for a fan,

    b. $156.59 for hotel accommodations,

    c. $4,000 in damages for injury to dignity contrary to the Code,

    d. $17.29 in prejudgment interest under the COIA, and

    e. $225 in CRT fees.

76. I dismiss the Cheslocks' claims against Ms. Perka, and their remaining claims against the strata.

77. The Cheslocks are entitled to postjudgment interest under the COIA.

78. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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.

AMENDMENT NOTES

79. This decision has been amended under the authority of CRTA section 64, in order to correct typographical errors in paragraphs 26 and 58 of the original decision.

Kate Campbell, Vice Chair