



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Korecki v. The Owners, Strata Plan LMS 4255*, 2021 BCCRT 1233

B E T W E E N :

ALEKSANDAR KORECKI

APPLICANT

A N D :

The Owners, Strata Plan LMS 4255

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, Aleksandar Korecki, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 4255 (strata). He bought it in early 2021 and asked the strata for permission to renovate it. The strata granted that permission and charged Mr. Korecki a \$1,000 “renovation fee” under its bylaws. Mr. Korecki has

not paid the renovation fee because he says it is unenforceable under the *Strata Property Act* (SPA). He asks for an order that the strata reverse the \$1,000 charge on his strata lot account. He also asks for an order that the strata propose amendments to the strata's bylaws to remove the renovation fee and the strata's right to hire an inspector to supervise renovations at an owner's expense.

2. The strata says that these 2 bylaws are enforceable and that the renovation fee is reasonable. It asks that I dismiss Mr. Korecki's claims.
3. Mr. Korecki is self-represented. The strata is represented by a strata council member.

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 tribunal 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.

8. I note that Mr. Korecki's requested remedies changed since he started this dispute. In his initial Dispute Notice, the remedy he requested was vague and unclear. During the CRT's facilitation process, he replaced this vague order with the 2 orders set out in the introduction of this decision. Even though Mr. Korecki did not formally amend the Dispute Notice, I find that the strata had sufficient notice of the changes to his requested remedies and responded to them in its evidence and submissions. So, I find no procedural unfairness in considering the amended remedies.

ISSUES

9. The issues in this dispute are:
 - a. Is the renovation fee a permissible user fee under the SPA?
 - b. If so, is the amount of the renovation fee reasonable?
 - c. What remedy, if any, is appropriate?

BACKGROUND

10. In a civil claim such as this, Mr. Korecki as the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. The strata consists of 362 strata lots and includes 3 towers. Mr. Korecki's strata lot is on the 19th floor of one of the towers.
12. The strata filed a consolidated set of bylaws on November 30, 2018. The only bylaw relevant to this dispute is bylaw 5, which is about strata lot alterations. Bylaw 5(1) says that an owner must get written approval from the strata council before altering their strata lot for a renovation that meets certain listed criteria, such as replacing flooring. Bylaw 5(3) says that to obtain strata approval, an owner must provide the strata with a full set of plans, a construction timeline, and a "renovation fee" of \$1,000. Bylaw 5(3) also gives the strata discretion to hire an inspector to supervise the renovations, at the owner's cost.

13. As mentioned above, Mr. Korecki bought his strata lot on January 21, 2021. Shortly after buying it, Mr. Korecki asked the strata for permission to renovate it. The renovation plans are not in evidence, but the strata says that Mr. Korecki's renovation involved removing several walls, reflooring, and replacing the kitchen cabinets, among other things. It is undisputed that due to renovation's scope, Mr. Korecki required strata approval under bylaw 5(1). The strata granted that approval and charged Mr. Korecki the \$1,000 renovation fee, which Mr. Korecki has refused to pay. Mr. Korecki says that he was aware of the \$1,000 renovation fee in the bylaws, but assumed that it was not being enforced because, in his view, it obviously breached the SPA.
14. Mr. Korecki makes 2 arguments. First, he says that the renovation fee contravenes the SPA because it charges a user fee for what happens in a strata lot, not common property. Mr. Korecki says that the SPA provides no authority for a strata corporation to charge a user fee for the use of a strata lot. Second, he says that the renovation fee is excessive.

ANALYSIS

Is the renovation fee a permissible user fee under the SPA?

15. Section 110 of the SPA says that the strata may not impose user fees for the use of common property or common assets except as set out in the SPR. Mr. Korecki says that this means that the SPA does not permit the strata to charge a user fee for the use of a strata lot. The strata says that under bylaw 5, the renovation fee only applies to renovations that affect common property or other residents.
16. I disagree with Mr. Korecki that the renovation fee charges a user fee for using a strata lot. I find that any renovation will necessarily include the use of common property, even if the renovations themselves do not involve common property. At the very least, the materials will get to the strata lot via common property parkades, elevators, and hallways.

17. In this way, I find that the renovation fee is no different than a move fee, which many strata corporations charge residents when they move in or out of a strata lot. The CRT assessed the reasonableness of a move fee in *Cody Watson v. The Owners, Strata Plan BCS 1721*, 2017 BCCRT 10. There, the CRT found that a \$100 move fee was unreasonable and reduced it to \$25. The court upheld this decision in *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164. This move fee was based entirely on the strata corporation's cost of staff time facilitating the use of a common property elevator. I therefore find that the SPA permits a renovation fee if the renovations involve elevator use, as Mr. Korecki's did.

Is the amount of the renovation fee reasonable?

18. Section 6.9(1) of the *Strata Property Regulation* (SPR) sets out the 2 requirements for a valid user fee: it must be set out in a bylaw or rule and the amount must be reasonable. Section 6.9(2) of the SPR says that a user fee may be for a fixed amount or may vary based on factors like the user's consumption rate, the strata's costs, the number of users, and the duration of the use. The renovation fee is for a fixed amount and is set out in a bylaw. So, the question is whether it is reasonable. Mr. Korecki says that the \$1,000 renovation fee is excessive.

19. In *The Owners, Strata Plan LMS 3883 v. De Vuyst*, 2011 BCSC 1252, the court said that a user fee must be objectively reasonable. The assessment of whether a user fee is reasonable may account for prevailing market conditions and a strata corporation's costs. There is no evidence before me about how common it is for a strata corporation to charge a similar renovation fee.

20. The strata says that it incurred roughly \$4,500 in costs facilitating Mr. Korecki's renovations. The strata identified 5 different costs: the property manager's time (\$600), the building manager's time (\$200), the concierge's time (\$320), the cleaners' time (\$130), and elevator use (\$3,250). The strata says that these costs are not "speculative" but are based on "many years of experience". I take this to mean that the costs the strata says it incurred on Mr. Korecki's renovations are not unusual for renovations that attract the renovation fee. However, the strata provided no objective

evidence to support its assertions, such as time sheets, invoices, statements, or correspondence.

21. Given that a strata corporation can only charge a user fee for the use of common property or common assets, I find that the only costs that can be included in an assessment of the reasonableness of a user fee are those related to that use. With that in mind, I will address each alleged cost in turn.
22. First, the strata says that its property manager spent 4 hours at \$150 per hour dealing with the renovation. The strata says that their tasks included reviewing Mr. Korecki's approval request, corresponding with Mr. Korecki and strata council, dealing with notices, coordinating with tradespeople, helping with permits, and dealing with complaints. I find that very little of this described work related to Mr. Korecki's use of common property.
23. Second, the strata says that the building manager inspected the strata lot before, during and after the renovations and dealt with other "various issues", at a cost of around \$200 for 5 to 6 hours of work. As the strata describes it, I find that none of the building manager's time related to the use of common property.
24. Third, the strata says that its concierges spent a total of around 9 hours on renovation issues at \$35 per hour, most of which (7 hours and 40 minutes) was dealing with elevator use. The strata says that Mr. Korecki booked the elevator 23 separate times for an average of 3 to 4 hours each time. Mr. Korecki does not deny this, so I find that it is accurate. The strata says that the concierge also organized guest fobs for tradespeople, investigated noise complaints, and posted noise notices. Despite the absence of objective evidence to support the exact figure, I find that the concierge likely spent at least 7 hours dealing with elevators and providing access to tradespeople, which are both related to the use of common property.
25. Fourth, the strata says that on the days that Mr. Korecki was either removing renovation debris or bringing in new drywall, its cleaning staff spent 30 to 45 minutes cleaning the hallways and elevators of gypsum dust and other construction debris. Mr. Korecki does not deny that his contractors occasionally left construction debris in

common property areas, so I accept the strata's evidence on this point even though it is hearsay. The strata says that this happened 8 times, for a total of around 5 hours of cleaning time at \$26 an hour, for a total of about \$130. I find that the strata likely incurred some additional cleaning cost for Mr. Korecki's renovation, although I make no specific finding of how much given the lack of objective evidence, which the strata easily could have provided.

26. Finally, the strata attributes a "cost" of \$50 per hour for the use of the elevator itself, apart from the concierge's time. The strata does not say how it arrived at this hourly rate. However, I accept that the roughly 70 to 90 hours that Mr. Korecki had exclusive use of the elevator caused additional wear and tear. I also note that it deprived the other residents of the use of one of the tower's 3 elevators, which I find likely cost those residents time and inconvenience. While these costs are difficult to quantify, I find that they are appropriate considerations when determining the overall reasonableness of the renovation fee.
27. Mr. Korecki argues that it is irrelevant how much time the strata's staff spent dealing with the renovations because staff are paid through the strata's operating budget. He says that it is inevitable that staff will sometimes perform work that relates to an individual owner or strata lot as part of their duties. However, following the court's decision in *Watson*, I find that the cost of staff time is an appropriate consideration in assessing the reasonableness of a user fee.
28. With that, I find that the strata did not provide detailed enough evidence to support its precise cost calculation. However, I find that Mr. Korecki's renovations likely cost the strata several hundred dollars, plus wear and tear on the elevators and the inconvenience of other residents.
29. With that, I find that the strata has not proven that Mr. Korecki's renovations cost \$1,000 or more. However, I find that it is not necessary for the strata to prove that its costs were \$1,000 or more to establish that the renovation fee is reasonable. The purpose of the renovation fee is not to recover the exact actual cost of each renovation. It is a fixed user fee to provide reasonable compensation to the strata for

the use of common property. A fixed user fee, which again the SPR specifically permits, necessarily involves some rough justice. Some owners may pay too much while others may pay too little.

30. I note that according to its bylaws, the strata also charges a \$200 move fee, which Mr. Korecki did not challenge in this dispute. No CRT dispute or court case has considered the reasonableness of a move fee where the resident required exclusive use of a common property elevator. The vice chair in the CRT's *Watson* decision found that move fees between \$50 and \$200 are typical for strata corporations that charge move fees. I find that an individual move would generally involve a resident having exclusive use of an elevator for a single block of several hours. With that context in mind, given the repeated exclusive elevator use required for major renovations like Mr. Korecki's, I find that the \$1,000 renovation fee is reasonable. I dismiss Mr. Korecki's claim that the strata remove the renovation fee from his strata lot account. I also dismiss his claim that the strata propose a bylaw amendment removing the renovation fee.
31. This leaves the requested remedy that the strata propose a bylaw amendment to remove the strata's right to hire an inspector to supervise renovations at the owner's expense. Mr. Korecki made no submissions about this part of bylaw 5(3). He has therefore provided no basis for me to order the strata to propose an amendment. I dismiss this claim.
32. Nothing in this dispute prevents Mr. Korecki from forcing the strata to hold a vote on any bylaw amendments by following the procedure set out in section 46 of the SPA.

TRIBUNAL FEES AND EXPENSES

33. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mr. Korecki was unsuccessful, so I dismiss his claim for CRT fees and dispute-related expenses. The strata did not claim any dispute-related expenses or pay any CRT fees.

34. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Korecki.

DECISION AND ORDERS

35. I dismiss Mr. Korecki's claims, and this dispute.

Eric Regehr, Tribunal Member