



# Civil Resolution Tribunal

Date Issued: November 25, 2021

File: ST-2021-002386

Type: Strata

Civil Resolution Tribunal

Indexed as: *Fox v. The Owners, Strata Plan NWS 2301*, 2021 BCCRT 1243

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

ALLAN FOX

**APPLICANT**

**A N D :**

The Owners, Strata Plan NWS 2301

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

David Jiang

## **INTRODUCTION**

1. This dispute is about 2 windows with damaged seals. The applicant, Allan Fox, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NWS 2301 (strata). Mr. Fox says the strata is obligated to replace the exterior-facing windows and seals in his strata lot. He says the damaged seals have resulted in trapped grime

and condensation between the window panes, cold drafts, and heat loss. He also says these issues exacerbate his chronic obstructive pulmonary disease (COPD).

2. The strata says it reasonably deferred repairs. It says it plans to have owners vote on replacing all windows in 2022. It says these repairs would include Mr. Fox's strata lot windows.
3. Mr. Fox represents himself. A strata council member represents the strata.
4. For the reasons that follow, I dismiss Mr. Fox's claims.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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. 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 in the interests of justice and fairness.
7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8. Under CRTA section 123, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
9. CRT documents incorrectly show the name of the respondent as The Owners, Strata Plan NW 2301. Based on section 2 of the *Strata Property Act* (SPA), the correct legal name of the strata is The Owners, Strata Plan NWS 2301. 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.

## **ISSUE**

10. Did the strata breach any obligation to repair and maintain Mr. Fox's 2 windows and window seals and if so, what is the appropriate remedy?

## **BACKGROUND AND EVIDENCE**

11. In a civil proceeding like this one, Mr. Fox as applicant must prove his claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions, including case law, but refer only to the evidence and arguments that I find relevant to provide context for my decision.
12. I begin with the undisputed background. In June 2020, Mr. Fox became one of the registered owner of strata lot 212 in the strata. The strata plan shows Mr. Fox's residential strata lot is located on the 22<sup>nd</sup> floor of a high-rise building.
13. In June 2020, Mr. Fox advised the strata's property manager that a window seal on a south-facing window was "gone". There is no dispute that the seals have failed due to age, trapping visible moisture and grime between the double-paned windows. Mr. Fox commented on the visible dirt at the time. He asked for repairs. The property manager replied in August 2020 with the strata council's decision. It decided that, absent a safety issue, it would not replace the windows or its components. The strata

said many strata lots had window problems and that it was awaiting a full engineering report about the windows. It said if the report supported it, the strata would present a plan to owners to replace all exterior windows.

14. Sense Engineering Ltd. (Sense) completed the report on August 28, 2020. It recommended replacing all windows. I discuss the report in detail below.
15. In October 2020, Mr. Fox emailed the property manager to advise he was also losing heat through the damaged window seal. He said this increased his heating bill. He also expressed scepticism that owners would vote to approve funding for the window replacement project described in Sense's report. Mr. Fox then requested a hearing which the strata council held on March 16, 2021. The property manager reported the council's decision in a March 22, 2021 email to Mr. Fox. The council denied Mr. Fox's window replacement request. It advised that, based on Sense's report, it would be best to replace all windows at once. It said this work and its funding would be a topic at the 2022 annual general meeting (AGM).

***Did the strata breach any obligation to repair and maintain Mr. Fox's 2 windows and window seals?***

16. The strata's bylaws and amendments are registered in the Land Title Office. The strata repealed and replaced its bylaws in February 2019. Bylaw 11(1)(d) says the strata obligated to repair and maintain certain parts of the strata lots, including the windows on the exterior of the building. I find bylaw 11(1)(d) applies to Mr. Fox's windows and window hardware like the seals. In any event, the parties agree that the strata is responsible for the windows and seals at issue.
17. Numerous cases discuss a strata corporation's duty to repair and maintain common property. These cases say that 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 also) should be cautious before inserting themselves into the process. See, for example, *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784 at paragraphs 23 to 32. I find that the same consideration apply in

assessing whether the strata has met its duty to repair and maintain the windows and seals under bylaw 11(1)(d).

18. It is essentially undisputed that Mr. Fox's windows and seals require replacement. The question is whether the strata reasonably deferred that replacement. For the reasons that follow, I find that the strata's decision was reasonable.
19. The strata did not ignore the windows. When Mr. Fox made his complaint, the strata had already retained Sense to assess all the exterior windows. Sense reported the following. The windows were 35 years old. There was no widespread water leakage, but the risk of it would increase over time. The hardware and components, including the seals, were either worn out or failing. Sense's owner survey indicated many owners experienced trapped condensation, much as Mr. Fox reported. Sense recommended replacing all windows and sliding glass doors as "the most prudent investment". This was because the windows and doors had reached the end of their service lives. Sense estimated the work would cost \$10.5 million.
20. I find that by deferring repairs to Mr. Fox's windows, the strata followed Sense's recommendations. Sense wrote that individual window and door components could be replaced on a case-by-case basis. However, it also wrote, "considering the large number of number of windows and doors with problems, this approach will be very labour-intensive and does not guarantee like-new operation". It added, "Installing new windows and doors would be the most effective and reliable approach to restore proper operation." The strata says it intends to have owners vote to approve and fund the replacement work at the next AGM. There is nothing before me to suggest the strata will do otherwise. I find that under *Weir*, which is binding, the strata is entitled to deference in this matter. I find the strata's decision to defer repairs was reasonable given that it was well-supported by Sense's recommendations.
21. Mr. Fox reported cold drafts that increased his heating bill and affected his health. I find it likely that the failed seals did let in some cold air. Sense's report noted that the deteriorating windows and hardware could result in air drafts, heat loss, and noise

transmission. However, Mr. Fox provided no evidence to show the scope of the negative effects of the drafts.

22. For example, Mr. Fox did not show how much his heating bill increased. He said the window work was urgent because it aggravated his COPD. However, he provided no evidence, such as a doctor's diagnosis, to show he had this condition. He never referred to it or other health conditions in his emails with the property manager. He said visible grime and increased heating costs were his concerns. Even if I accept that he had COPD, he provided no evidence that the failed window seals worsened or could potentially worsen his COPD, or his health in general. Further, Sense did not say the current situation presented any health hazards. So, I find it unproven that replacing the windows or window seals in strata lot 212 was an urgent matter that could not be deferred.
23. Finally, Mr. Fox expressed scepticism that the owners would vote in favour of the planned replacement, given its cost. I note that in my decision of *Weiler v. The Owners, Strata Plan VR437*, 2020 BCCRT 1000, I reviewed case law where owners in a strata corporation were unable to agree on funding repairs. The decisions show that the BC Supreme Court and the CRT have the ability to order the strata to raise funds and complete necessary repairs if circumstances warrant it. I find it premature to order repairs given that the owners have not yet voted on the issue.
24. For all those reasons, I find the strata met its duty to repair and maintain the windows and its seals under the bylaws. I dismiss Mr. Fox's claims.

## **CRT FEES AND EXPENSES**

25. 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. The strata paid no CRT fees and claimed no dispute-related expenses, so I order none. I dismiss Mr. Fox's claims for reimbursement.

26. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Fox.

**ORDER**

27. I dismiss Mr. Fox's claims and this dispute.

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David Jiang, Tribunal Member