



# Civil Resolution Tribunal

Date Issued: December 17, 2021

File: ST-2021-001997

Type: Strata

Civil Resolution Tribunal

Indexed as: *Fenske v. The Owners, Strata Plan BCS 2726*, 2021 BCCRT 1319

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

DWAYNE FENSKE

**APPLICANT**

**A N D :**

The Owners, Strata Plan BCS 2726

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about an exterior-facing door. The applicant, Dwayne Fenske, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS 2726 (strata). Mr. Fenske says the strata unfairly chose an inferior replacement door. He seeks reimbursement of \$1,632.75 that he paid to replace the door and door jamb on his own.

2. The strata disagrees. It says it purchased a reasonable replacement and Mr. Fenske's family member stopped the strata's contractors from completing their work.
3. Mr. Fenske represents himself. A strata council member represents the strata.
4. For the reasons that follow, I dismiss most of Mr. Fenske'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  
14or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

### ***Mr. Fenske's Late Evidence***

9. Mr. Fenske provided a combination of 18 emails and photos as late evidence. The strata did not object. I find the strata is not prejudiced by the late evidence as it had the opportunity to review it and provide submissions in response. I also find the evidence relevant to the issues in this dispute. It included discussions leading up to the parties' disagreement and photos of the door and door jamb at issue. For those reasons, and bearing in mind the CRT's flexible mandate, I admit the late evidence.

### ***Mr. Fenske's Claims Raised in Submissions***

10. Mr. Fenske raised new claims and sought additional remedies in submissions. First, he asked for "financial compensation" for "multiple instances of significantly unfair treatment". I do not find this claim to be properly before me. It was not in the Dispute Notice and Mr. Fenske did not say how much compensation he was seeking. I find it would be procedurally unfair to decide this claim given that it was raised late, and the amount sought is unspecified.
11. Second, Mr. Fenske also asked for an order that the strata permit him to keep a second dog in his strata lot and cancel all dog-related fines. I find that this claim was also raised late as it was not in the Dispute Notice. The strata also submitted it was not related to the replacement door at issue. I agree, and so I find this claim is also not properly before me.
12. Third, Mr. Fenske says the strata impermissibly used his strata fees to partially pay for legal advice about this dispute. He seeks reimbursement of 10% of the money paid by the strata. He provided a copy of the strata's legal invoice for \$297.50. I find this claim for \$29.75 may be characterized as reimbursement for a dispute-related expense. So, I will consider this claim below.

### **ISSUE**

13. The issue in this dispute is whether the strata must reimburse Mr. Fenske \$1,632.75 for replacing the patio door and door jamb.

## EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, the applicant Mr. Fenske must prove his claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions, including cited case law, but refer only to the evidence and arguments that I find relevant to provide context for my decision.
15. The background facts are shown in documents and correspondence. Mr. Fenske is 1 of 2 registered owners of strata lot 3 in the strata. The other owner, MC, is a family member. MC exchanged correspondence with the strata as discussed below. The strata plan shows that strata lot 3 is attached to a porch on the ground floor designated as limited common property (LCP). Based on the strata plan and photos in evidence, I find the door at issue exits from strata lot 3 onto the exterior LCP porch.
16. At the July 16, 2019 strata council meeting, the council decided to replace the porch doors of strata lots 2 and 3. The council tasked a council member, LV, with purchasing replacement doors and trim and hiring a contractor. LV purchased the 2 doors and 2 door jambs. I will refer to these as the strata's doors and door jambs. Like the pre-existing doors, they were white and had a window panel and mini blinds.
17. In early August 2019, the strata's contractor began installing the strata's door in strata lot 3. Mr. Fenske says LV acted as an independent contractor to oversee this work but there is no evidence to support this. Starting on August 9, 2019, MC and LV exchanged several emails. MC said to LV that the partially installed door and blinds were of lesser quality than the original door. MC asked for an in-kind replacement. LV said that he could not return the strata's door. MC emailed back, "Ok we'll get a new door and replace in kind". LV did not object to this. MC also said they refused to pay for the partially installed door and that the door appeared to be too small. LV replied that the workers were coming to complete the work on the trim but would cancel based on MC's email. MC did not dispute this, so I find she agreed to cancel the work. LV also wrote that there was nothing wrong with the door and that the strata should not have to pay for a specific door MC wanted. I find from the emails that the strata did not agree to pay for MC's choice of door or its installation.

18. Mr. Fenske replaced the strata's door and door jamb on December 17, 2020. He paid for the components and installation himself as shown in an invoice from Doors Galore for \$1,632.72. The strata's door was put in storage. Mr. Fenske requested a hearing about the new door and invoice on March 10, 2021. The strata said it could not grant a hearing until some time in May 2021, because LV was out of the country. I find the strata breached section 34.1 of the *Strata Property Act* (SPA) because that section requires the council to hold a meeting within 4 weeks after the request. I find however, that little turns on this in this dispute. Mr. Fenske then filed a CRT application for dispute resolution on June 22, 2021.

***Must the strata reimburse Mr. Fenske \$1,632.75 for replacing the patio door and door jamb?***

19. A Land Title Office search shows the strata only registered bylaw amendments restricting who may occupy the strata lots. So, I find the SPA's Schedule of Standard Bylaws applies. Standard Bylaw 8 says the strata must maintain and repair the exterior doors of a building. So, I find that the strata has an ongoing duty to repair and maintain the door at issue.

20. Mr. Fenske says the strata acted in a significantly unfair manner. SPA section 164 sets out the BC Supreme Court's authority to remedy significantly unfair actions. The CRT has jurisdiction over significantly unfair actions under CRTA section 123(2), which has the same legal test as cases under SPA section 164. See *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164. Significantly unfair conduct means conduct that is 1) oppressive in that it is burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in bad faith, or 2) conduct that is unfairly prejudicial in that it is unjust or inequitable. See *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173 at paragraph 88.

21. In *Kunzler*, the Court of Appeal confirmed that an owner's expectations could be considered a relevant factor in assessing significant unfairness. In considering an owner's reasonable expectations, the following test from *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164 applies:

- a. What was affected owner's expectation?
  - b. Was that expectation objectively reasonable?
  - c. Did the strata violate the expectation with a significantly unfair action or decision?
22. I find this dispute involves an exercise of discretion because the central issue is whether the replacement door was a reasonable choice. So, I find Mr. Fenske's expectations are relevant.
23. Mr. Fenske says he expected the strata to replace the porch door and door jamb at its expense with a door and jamb of equivalent quality and size. I find this expectation unreasonable to the extent that it prevented the strata from exercising any discretion, for the following reasons.
24. As noted above, it is the strata's duty to repair and maintain the doors under the bylaws. The strata's obligation to repair and maintain such property is measured by the test of what is reasonable in all circumstances and can include replacement when necessary. The standard is not one of perfection. The strata has discretion to approved "good, better or best" solutions. The CRT will not interfere with a strata's decision to choose a "good", less expensive, and less permanent solution although "better" and "best" solutions may have been available. See *Ricci v. The Owners, Strata Plan LMS 3940*, 2021 BCCRT 755 at paragraph 40, citing *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363 and *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784.
25. An owner is not entitled to direct the strata how to conduct its repairs or maintenance. In general, an owner cannot unilaterally spend money to repair or maintain common property and then expect the strata to reimburse them. See *Garry v. The Owners, Strata Plan EPS2501*, 2021 BCCRT 409, citing *Swan v. The Owners, Strata Plan LMS 410*, 2018 BCCRT 241. I note that CRT decision are not binding but I agree with the reasoning in these decisions.

26. I find from the above that the strata is not necessarily obligated to provide an in-kind replacement. I will instead consider whether the strata reasonably chose a replacement door and door jamb. For the reasons that follow, I find it acted reasonably.
27. First, I find it unproven that the strata's door was of lesser quality. LV purchased a steel door and door jamb that cost \$687.50. Mr. Fenske purchased a fiberglass door and door jamb from Doors Galore for \$950. Mr. Fenske made detailed submissions on why fiberglass doors were superior, but I find them unproven by evidence. He provided a brochure that commented on the benefits of fiberglass doors generally, but it did not say steel doors were necessarily an inferior choice. Mr. Fenske also provided a video showing the miniblinds on LV's door sometimes did not stay drawn up. However, I place little weight on this because the door installation had not yet completed, and I do not find it proven that this problem was unfixable.
28. MC alleged the door was too small, but I find there is no evidence to support this. I find, however, that LV ordered door jambs of the wrong size. The invoice shows LV ordered a 4 9/16" door jamb. Photos show that when it was installed, it left gaps around the door that exposed the wood frame and insulation. In contrast, Mr. Fenske ordered a 6.5" door jamb, as shown in the invoice. Photos shows that after it was installed, it did not leave the same gaps. In emails LV said the contractor could fix the gap. MC rejected the door and door jamb before repairs were attempted, so I do not find it proven that it was unreasonable to use the 4 9/16" door jamb.
29. Mr. Fenske points out that the strata paid Doors Galore \$1,956.50 to install a replacement fiberglass porch door and 6.5" door jamb in strata lot 5. The July 19, 2017 invoice shows that of this amount, the strata paid \$950 for the door and door jamb. Mr. Fenske paid the same amount to the same contractor. The strata did not explain why it chose to use different, cheaper doors and door jambs for strata lots 2 and 3.
30. I find that differing treatment by the strata among owners may indicate significant unfairness. However, I have already found it unproven that the strata's doors were of

lesser quality or that the door jamb was wholly unsuitable. Given this, I am not satisfied that the strata treated Mr. Fenske in a significantly unfair manner. For those reasons, I dismiss this claim.

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

31. 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 find the strata has been largely successful, so I dismiss Mr. Fenske's claims for reimbursement of CRT fees. The strata did not claim for any specific dispute-related expenses, so I order none.
32. Under SPA sections 167(2) and 189.4, an owner suing the strata corporation is not required to contribute to the cost of defending the suit. As noted above, an April 14, 2021 lawyer's invoice shows the strata paid a lawyer \$297.50 for legal advice about this dispute. The strata does not deny it used a portion of Mr. Fenske's collected strata fees to pay it. So, I find the strata breached the SPA.
33. In general, strata lot owners pay for common expenses by contributing to the operating fund in proportion to their unit entitlement. See, for example, *Owners, Strata Plan LMS 1537 v. Alvarez*, 2003 BCSC 1085 at paragraph 35 to 40. Mr. Fenske's share based on unit entitlement is \$30.09, but as he only claimed \$29.75, I order the strata to reimburse this lesser amount. I find it appropriate to make this order even though the strata was largely successfully in this dispute because the strata breached the SPA.
34. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Fenske is entitled to prejudgment interest on reimbursed strata fees of \$29.75 from the date of the April 14, 2021 lawyer's invoice to the date of this decision. This equals \$0.09.
35. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Fenske.



## ORDERS

36. I order that within 30 days of the date of this decision, the strata must pay Mr. Fenske a total of \$29.84, broken down as follows:
- a. \$29.75 in reimbursed strata fees, and
  - b. \$2.83 in prejudgment interest under the *Court Order Interest Act*.
37. Mr. Fenske is entitled to post-judgment interest under the *Court Order Interest Act*.
38. I dismiss Mr. Fenske's remaining claims.
39. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

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David Jiang, Tribunal Member