



Civil Resolution Tribunal

Date Issued: March 2, 2022

File: ST-2021-003874

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sailor v. The Owners, Strata Plan 1214*, 2022 BCCRT 227

B E T W E E N :

BRIAN E. SAILOR, Litigation Guardian of ERNEST JOSEPH SAILOR

APPLICANT

A N D :

The Owners, Strata Plan 1214

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about 2 strata lot skylights. The applicant is Brain E. Sailor, litigation guardian of Ernest Joseph Sailor. Ernest Sailor is one of 2 registered owners of a strata lot in the respondent strata corporation, The Owners, Strata Plan 1214 (strata).

Brian Sailor corresponded with the strata in this dispute. I will refer to him as Mr. Sailor in my decision.

2. Mr. Sailor says the strata failed to maintain the skylights. He seeks orders for the strata to hire a contractor to inspect and repair the skylights, repair and maintain common property including the skylights, reimburse him \$210 for an inspection report, and reimburse \$2,182.82 in legal fees.
3. The strata agrees with most of the requested remedies. It agrees to remove the 2 skylights and install new ones. It also agrees to reimburse Mr. Sailor \$210 for the inspection report and \$225 in CRT fees. However, it disputes liability for legal fees of \$2,182.82. This is the main point of disagreement in this dispute.
4. A lawyer, Trevor Morley, represents Mr. Sailor in this dispute. A strata council member represents the strata.
5. For the reasons that follow, I have ordered the strata to make repairs and reimburse Mr. Sailor the amounts he requested, excluding legal fees.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that 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.
7. Section 39 of the CRTA 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.

8. Section 42 of the CRTA 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.
9. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUES

10. Mr. Sailor says the “only issue remaining in dispute” is who is responsible for his legal fees. However, the parties did not agree on the precise wording of what orders I should make. So, I find the issues in this dispute are as follows:
 - a. Given the parties’ agreement on the substantive issues, what orders should I make?
 - b. Should the strata reimburse Mr. Sailor \$2,182.82 in legal fees?

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Mr. Sailor 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. The background facts are largely undisputed. Ernest Joseph is 1 of 2 registered owners of strata lot 59 (SL59) in the strata. SL59 has 2 skylights. The strata registered a complete set of bylaws in the Land Title Office in May 2017. Bylaw 12(1)(d)(iv) states that the strata must repair and maintain the skylights of any strata lots located

on the exterior of a building. It is undisputed that the strata is responsible for repairing and maintaining the 2 skylights in SL59.

13. In January 2020 one of the skylights in SL59 began leaking. The strata hired Alpha Roofing & Cladding Inc. (Alpha) to complete temporary repairs. The strata decided to replace the 2 skylights in SL59 and 3 others in separate strata lots. Alpha completed the work in April 2020.
14. That same month, Mr. Sailor sent letters and emails to the strata advising that the skylights were deficient. In particular, he said the skylights were installed poorly and used the wrong materials, creating a safety hazard. The installed skylights were made of 2 sheets of tempered glass. He said they should have been made of tempered glass over laminated glass. For the reasons discussed below, I find Mr. Sailor was correct. He offered to pay for replacing the 2 skylights. He also requested a hearing.
15. In May 2020 the strata council held a hearing. The strata said Mr. Sailor could replace the skylights at his expense but had to sign an indemnity agreement. Mr. Sailor refused. He obtained an email opinion from Van Isle Windows Ltd. (Van Isle) on July 7, 2020. Van Isle's representative inspected the 2 skylights at Mr. Sailor's request. It verified that the skylights were installed deficiently. It said that building codes required the skylights to be tempered glass over laminated glass. Mr. Sailor also obtained an August 7, 2020 opinion from Fairfield Buildings Inspections Ltd. (Fairfield), stating that the installations were of "sub-quality" and "prone to failure".
16. The strata held another hearing with Mr. Sailor on July 14, 2020. It requested Alpha to return and correct deficiencies. Alpha returned in August 2020 and agreed the installation work was deficient. It attempted to fix this, but disagreed that laminated glass was required and did not install it.
17. Mr. Sailor remained dissatisfied with Alpha's work. In February 2021 the strata refused to take further action. Around March 2021, Mr. Sailor hired a lawyer. He then applied for dispute resolution in May 2021.

18. The strata subsequently hired Method Engineering & Building Services Ltd. (Method Engineering) to assess the skylight construction requirements. In its September 10, 2021 report, Method Engineering wrote that the BC Building Code and the best practices of the Glazing Contractors Association of British Columbia essentially required the strata's skylights to be installed as tempered over laminated glass. Alternatively, a contractor could install another form of protection for occupants below in the event of glass breaking, such as a wire screen directly below the skylights. Alpha did not do this.

Issue #1. Given the parties' agreement on the substantive issues, what orders should I make?

19. I will first begin with the areas of agreement. Mr. Sailor requested an order for the strata to retain a qualified third party to investigate and repair deficiencies in the skylights. The strata says it agrees to remove the existing non-compliant skylights in the strata and to install BC Building Code compliant Velux-brand skylights using Van Isle as the contractor. Mr. Sailor says he prefers this brand of skylights and this contractor. So, I order the strata to, within 120 days of the date of this decision, replace the 2 skylights in SL59 with Velux-brand skylights, using Van Isle as the contractor to do this work, or another contractor of its choice if Van Isle is unavailable.

20. I have limited my order to the 2 skylights because Mr. Sailor did not specifically request changes to the other 3 skylights in his application for dispute resolution. Mr. Sailor may also lack standing to request changes in other strata lots. I have also provided ample time for the strata to complete the work because I have no evidence or submissions about Van Isle's availability.

21. Mr. Sailor also requested an order for the strata to repair and maintain common property, including the skylights. I decline to make this order as the strata must already do so under section 72 of the *Strata Property Act* (SPA) and the strata's bylaws.

22. Mr. Sailor requested \$210 as reimbursement for the August 2020 Fairfield report. The strata agrees, so I order the strata to reimburse Mr. Sailor this amount.

Issue #2. Should the strata reimburse Mr. Sailor \$2,182.82 in legal fees?

23. As noted above, Mr. Sailor hired a lawyer in March 2021. He requests reimbursement for work done up to May 7, 2021. The work is documented in lawyer's invoices dated March 11, April 12, and May 17, 2021.

24. I find that the claimed fees predate this dispute. This is because Mr. Sailor applied for dispute resolution on May 13, 2021, after his lawyer completed work on May 7, 2021. So, I find they are not lawyer's fees that are also dispute-related expenses, which under CRT rule 9.5(5) the CRT only awards in extraordinary circumstances.

25. In general, the CRT does not otherwise order reimbursement of legal fees. I find that nothing in the SPA or bylaws requires the strata to pay Mr. Sailor's lawyer fees. Under CRTA section 2, the CRT's mandate includes providing dispute resolutions services in a speedy, economical, informal, and flexible manner. The CRT rules also consider the principle of proportionality. I find these factors weigh against reimbursement of the claimed legal fees.

26. One exception to the above is discussed in *Parfitt et al v. The Owners, Strata Plan VR 416 et al*, 2019 BCCRT 330. In that decision, the CRT Vice Chair awarded legal fees to the strata corporation because the respondent owners had acted reprehensibly. They wrote a threatening email to a potential witness in the dispute. The Vice Chair found this conduct met the threshold of reprehensible conduct deserving of reproof to warrant such an award.

27. I find the strata's conduct did not approach the standard of reprehensibility. It did not ignore its responsibility to repair and maintain the skylights. It decided to replace the skylights and reasonably hired a contractor, Alpha, to do so. I find the strata council members relied on Alpha and believed, erroneously but in good faith, that the skylights were built to a reasonable standard. This is apparent from the written statements of the strata council members GM and DB, provided as evidence. At Mr.

Sailor's request, the strata asked Alpha to return and correct the required deficiencies. The strata subsequently hired Method Engineering and agreed to follow its recommendations, after Mr. Sailor applied for dispute resolution. At worst, I find the strata responded slowly and placed too much reliance on Alpha's advice and workmanship. I find this falls short of reprehensibility.

28. For those reasons, I dismiss this claim.
29. The *Court Order Interest Act* applies to the CRT. Mr. Sailor is entitled to pre-judgment interest on the sum of \$210 from August 7, 2020, the date of Fairfield's invoice, to the date of this decision. This equals \$1.48.
30. 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. The strata agrees it should reimburse Mr. Sailor in full for his CRT fees. So, I find Mr. Sailor is entitled to reimbursement of \$250 in CRT fees. No parties claimed reimbursement for any specific dispute-related expenses.

ORDERS

31. Within 120 days of the date of this order, I order the strata to replace the 2 skylights in strata lot 59 with Velux-brand skylights, using Van Isle as the contractor to do this work, or another contractor if Van Isle is unavailable.
32. Within 14 days of the date of this order, I order the strata to pay Mr. Sailor a total of \$461.48, broken down as follows:
 - a. \$210 as reimbursement for the Fairfield invoice,
 - b. \$1.48 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$250 in CRT fees.
33. Mr. Sailor is entitled to post-judgment interest, as applicable.

34. I dismiss Mr. Sailor's remaining claims.
35. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision.
36. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

David Jiang, Tribunal Member