



Civil Resolution Tribunal

Date Issued: April 7, 2022

File: ST-2021-003951

Type: Strata

Civil Resolution Tribunal

Indexed as: *Greenall v. The Owners, Strata Plan NW 313*, 2022 BCCRT 392

BETWEEN:

CATHERINE GREENALL

APPLICANT

AND:

The Owners, Strata Plan NW 313

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about an owner's proposed repairs to a strata lot, and access to common property to effect those repairs.

2. The applicant, Catherine Greenall, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 313 (strata). Ms. Greenall intended to make some repairs to her strata lot bathroom. She asked the strata for access to the common property crawlspace below her strata lot for her plumber to temporarily shut off the water. The strata determined that the work was an “alteration” within the meaning of its bylaws and required Ms. Greenall to complete an assumption of liability (AOL) agreement as a condition of approval. Ms. Greenall refused, taking the position that the AOL agreement put too much responsibility on her, and the work did not require strata approval in any event.
3. Ms. Greenall now seeks an order that the strata provide her plumber with “access to common areas, including access to the water shut-off for [her] strata lot.” The strata says it is prepared to grant Ms. Greenall’s plumber access upon receipt of Ms. Greenall’s signed AOL agreement.
4. Ms. Greenall represents herself. The strata is represented by a council member.

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.

ISSUES

9. The issues in this dispute are:
 - a. Is Ms. Greenall's proposed work an alteration that requires approval under the strata's bylaws?
 - b. If the work required approval, was the strata's condition of approval that Ms. Greenall sign the AOL agreement significantly unfair?
 - c. What remedy, if any, is appropriate?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Ms. Greenall must prove her claim on a balance of probabilities, meaning more likely than not. While I have read all the evidence and submissions, I only refer to what is necessary to explain my decision.
11. The strata includes 102 strata lots. Ms. Greenall owns strata lot 71 (SL71), which is a ground level unit in a building with 7 other strata lots. It is undisputed that a common property crawlspace exists under at least part of SL71. At all material times, Ms. Greenall rented SL71 to a tenant.
12. On February 26, 2018, the strata repealed and replaced its former bylaws. I consider the bylaws relevant to this dispute below.

13. The background facts are undisputed. In January 2020, Ms. Greenall approached the strata manager seeking approval to replace a bathtub and re-tile the bathtub enclosure. She noted she did not agree with the strata's position that she needed approval to repair her strata lot. The strata manager did not respond to that email, nor to follow-up inquiries in February and April. Finally, in response to a third follow-up in September 2020, the strata manager requested more details and mentioned that Ms. Greenall would need to sign an indemnification form.
14. Ms. Greenall's October 18, 2020 email described the proposed work as follows:
 - a. Removing the existing bathtub and surrounding walls
 - b. Installing a new bathtub. A plumber will be needed to reconnect the drain.
 - c. Installing new bathtub walls and tiles
 - d. Replacing any deteriorated portion of the floor under the bathtub.
15. In this dispute, Ms. Greenall adds that her plumber recommends, given the age of the fixtures, that she replace the tub/shower diverter while replacing the tile and walls to avoid having to reopen the walls in the future.
16. On January 11, 2021, the strata approved the alteration application, subject to Ms. Greenall completing an AOL agreement, which the strata attached.
17. The particular paragraph in the AOL agreement that Ms. Greenall took issue with is paragraph 6. It said that Ms. Greenall agreed:

To indemnify and save harmless forthwith upon demand the Strata Corporation and other Owners of property within the Strata Development from any and all costs, damage, loss or liability which may occur to such parties by reason of the carrying out of work related to "the installation". Without restricting the generality of the foregoing in the case of an installation requiring a shutdown of all or a portion of the water distribution services within the building, it is recognized that damages may occur as a result of the shutdown

and reactivation of such system and that "The Owner(s)" specifically agrees that this agreement shall apply to any such damages.

18. Ms. Greenall was concerned that paragraph 6 appeared to make her responsible for repairing damage to common property pipes and to other strata lots if common property pipes burst. The parties' emails show a mutual concern that aging common property pipes were at risk of bursting if the water was turned off and back on.
19. As documented in February 1, 2021 email, the strata council met and voted unanimously to uphold the requirement to sign the AOL agreement as written.
20. Ms. Greenall replied the same day, stating that she would not require permission for an alteration as she had decided to only repair her strata lot. She again requested access to the crawlspace. A further exchange of emails did not result in either party changing their position.
21. On March 15, 2021, the strata proposed that if Ms. Greenall was unwilling to sign the AOL agreement, the strata's plumber could attend to turn the water off and on, and the strata would charge the expense to Ms. Greenall. Ms. Greenall did not directly respond to that proposal but reiterated her position that she was repairing and not altering her strata lot. She requested and was granted a hearing, but the hearing did not resolve the issue.

Is the proposed work an alteration that requires strata approval?

22. Ms. Greenall's position is that she needs to access the common property crawlspace to disconnect and reconnect the drain to her bathtub and to access the water shut-off for her strata lot to make necessary repairs. She says as an owner, she has a duty to repair her strata lot and a right to access common property.
23. The strata's position is that Ms. Greenall's proposed work is an alteration of plumbing, piping and original fixtures the strata is required to insure, which requires strata approval under the bylaws. The strata says the bylaws empower it to require owners complete the AOL agreement.

24. Bylaw 3.1 says an owner must repair and maintain their strata lot, except for repair and maintenance that is the strata's responsibility under the bylaws. The strata's responsibility to repair a strata lot is found in bylaw 10.1(d) and there is no suggestion that bylaw 10.1(d) is relevant to this dispute.
25. Bylaw 7 addresses alterations to a strata lot or common property. Although Ms. Greenall's plumber requires access to common property, there is no indication that changes to common property are anticipated, so I have focused on the portions of bylaw 7 that address strata lot alterations.
26. Bylaw 7.1(a) says an owner must obtain the strata's written approval before making or authorizing an alteration to a strata lot that involves, among other things:
- The structure of a building,
 - Parts of the strata lot that the strata must insure under section 149 of the *Strata Property Act* (SPA), and
 - Wiring, plumbing, piping, heating, air conditioning, furnace upgrades and other similar services.
27. SPA section 149(1)(d) says the strata must maintain property insurance on fixtures built or installed on a strata lot as part of the original construction. Section 9.1(1) of the *Strata Property Regulation* says fixtures includes floor and wall coverings and plumbing fixtures.
28. Bylaw 7.3 allows the strata to require, as a condition of its approval, that the owner agree to certain terms and conditions including (e) that the owner must indemnify and hold harmless the strata from all claims and demands whatsoever arising from or attributable to the alteration.
29. It is clear from the bylaws that Ms. Greenall must repair and maintain her strata lot. It is also clear that many alterations to the strata lot require the strata's written approval. Although the strata's bylaws are customized, the SPA's standard bylaws contain

nearly identical provisions, so there are applicable decisions from BC courts and the CRT about the terms “repair and maintain” and “alteration”.

30. In *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363, the court considered whether replacing 4 common property windows and a patio door was an alteration to common property within the meaning of the SPA’s standard bylaw 6(1). The court relied on an Ontario case, *Wentworth Condominium Corp. No. 198 v. McMahon*, 2009 ONCA 870, and found that an “alteration” involves a change to the structure of the common property or a strata lot. There was no structural change in replacing windows and a door, so there was no alteration.
31. In *Allwest International Equipment Sales Co. Ltd. v. The Owners, Strata Plan LMS4591*, 2018 BCCA 187, the BC Court of Appeal was critical of *Wentworth* and suggested that structural change cannot be the test for an alteration given that the terms “structure” and “structural change” do not appear in standard bylaw 6(1). The court said that immaterial changes to common property will not be alterations. In *Allwest*, the owner’s heat pump and permanent pipes through the building’s exterior wall were material changes and were an alteration under standard bylaw 6(1).
32. In *D.E. Pezzot Inc., Inc. No. 296176 v. Turko*, 2021 BCCRT 179, the CRT considered an owner’s proposed work that involved removing an existing deck surface, railing and stairs and installing a new deck surface, railing and stairs. The CRT said even if there was a change to the materials, such as the railing, and even if some modifications were required to bring the deck up to current municipal requirements, the deck would still be a rooftop deck of the same dimensions and fit for the same purpose. The CRT found that the proposed work to the deck was within the scope of repair and maintenance, and was not an alteration. Although CRT decisions are not binding on me like court decisions, I agree with the reasoning in *Turko*. I find that a change in material is not necessarily a material change.
33. The strata referred me to *Ho v. The Owners, Strata Plan LMS 1178*, 2019 BCCRT 777, where an owner failed to obtain strata approval before making alterations that involved original fixtures. The CRT held that the owner breached standard bylaw

5(1)(g), which prohibited alterations involving original fixtures. However, the CRT noted that the owner did not deny that her renovations altered the fixtures. In other words, the CRT did not need to consider whether the owner's work was an alteration, so the case is of limited precedential value about the meaning of "alteration".

34. I take the above decisions to mean that while a structural change will likely always be an alteration for the purposes of similarly-worded bylaws, non-structural changes may still be alterations if they involve a material change, in the sense of appreciable or non-trivial. Adding something that did not exist before is more likely to be a material change than repairing or replacing something.
35. Ms. Greenall proposes to replace the existing bathtub, surrounding tile and walls, and any damaged portion of the floor. She is not adding anything new, and there is no structural change. She is replacing like with like.
36. The plumbing work involves reconnecting the new tub drain and possibly replacing the shower diverter. I find this does not engage bylaw 7.1(a). The question is not whether an owner is doing work that involves plumbing or other fixtures the strata is required to insure. The question is whether the work amounts to an alteration of the plumbing or other fixtures. The plumbing and fixtures at issue will still exist, substantially as they were before. So, I find Ms. Greenall is not proposing an "alteration" to the plumbing or fixtures as the courts have interpreted the word.
37. I do not accept the strata's argument that shutting off and turning back on the water supply is an "alteration" to plumbing or piping. It is undisputed that the water only needs to be shut off for about an hour, so the disruption will be temporary.
38. In *Hall*, the court endorsed the trial judge's consideration of the definition of "maintain", which includes to preserve, continue, keep in proper condition, keep from change, rebuild, repair, and replace. It is well-established that a strata corporation's duty to repair and maintain common property can involve a duty to replace (see *Fudge v. Owners, Strata Plan NW 2636*, 2012 BCPC 409). I see no reason this does not apply similarly to an owner's duty to repair and maintain their strata lot.

39. The strata does not dispute that Ms. Greenall's bathtub, tiles and shower diverter need to be replaced. The work involves replacing old or damaged parts of the strata lot and already in existence. I find Ms. Greenall's proposed work falls under strata lot repair and maintenance.
40. Ms. Greenall says unlike the tiles, the bathtub is original, and if it were to make a difference, she would agree not to replace the bathtub. I find that replacing a bathtub with another bathtub is not a material change and therefore not an alteration. I find Ms. Greenall does not need the strata's approval to replace the bathtub.
41. In all, I find Ms. Greenall's proposed work is not an alteration within the meaning of bylaw 7.1. As a result, the strata has no authority to insist that Ms. Greenall complete the AOL agreement under bylaw 7.3.
42. As the strata does not dispute that Ms. Greenall's plumber will require access to the common property crawlspace to complete the proposed work, I order the strata to grant that access under the terms set out in the order below. I note that Ms. Greenall asked that her plumber have access to "common areas" but did not explain why such a broad order is warranted. The evidence is that the plumber only needs access to the crawlspace below SL71.
43. Given my findings above, it is not necessary to consider whether the particular wording of the AOL agreement meant the strata's refusal to provide Ms. Greenall's plumber access to the crawlspace was significantly unfair to Ms. Greenall.

CRT FEES AND EXPENSES

44. 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. I therefore order the strata to reimburse Ms. Greenall for \$225 in CRT fees. Neither party claimed dispute-related expenses.

45. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Greenall.

ORDERS

46. I order the strata to provide Ms. Greenall's plumber, at no charge and at a time convenient to the plumber, access to the common property crawlspace below SL71 as necessary to effect repairs to SL71's bathroom.

47. I order the strata, within 14 days of the date of this order, to pay Ms. Greenall \$225 for CRT fees.

48. Ms. Greenall is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

49. 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.

Micah Carmody, Tribunal Member