



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Aminolashrafi v. The Owners, Strata Plan BCS152*, 2022 BCCRT 695

B E T W E E N :

NAHID AMINOLASHRAFI

APPLICANT

A N D :

The Owners, Strata Plan BCS152

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about exterior door frame repairs in a strata corporation. The applicant, Nahid Aminolashrafi, owns strata lot 1 (SL1) in the respondent strata corporation, The Owners, Strata Plan BCS152 (strata). The strata repaired an exterior door frame outside SL1 and charged \$472.50 to Nahid Aminolashrafi's strata lot account for a portion of the repair expense. Nahid Aminolashrafi says that the strata is responsible

for the repair expense under strata bylaw 10. They claim the removal of the \$472.50 expense from their strata lot account.

2. The strata denies the claim. The strata says that Nahid Aminolashrafi is responsible for the repair expenses under bylaw 4.2 because Nahid Aminolashrafi's short-term tenants allegedly damaged the door frame.
3. The strata is represented by a strata council member. Nahid Aminolashrafi is represented by a non-lawyer family 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). 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.
5. 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.
6. 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.

7. 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.

ISSUE

8. The issue in this dispute is whether the strata must remove a \$472.50 charge to repair SL1's exterior door frame from Nahid Aminolashrafi's strata lot account.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Nahid Aminolashrafi, as the applicant, must prove their claim on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. The strata was created in 2002 and includes 183 residential strata lots in townhouses and a tower. SL1 is a townhouse.
11. The strata repealed its bylaws and filed a complete set of bylaws with the Land Title Office (LTO) on July 19, 2016. Further, relevant bylaw 44.1 was amended by a bylaw amendment filed at the LTO on July 9, 2018. As discussed below, the strata charged back a portion of an October 9, 2020 repair invoice to Nahid Aminolashrafi's strata lot account. However, neither party provided any evidence or submissions about whether the strata charged back these expenses before it filed new complete sets of bylaw amendments at the LTO on November 2, 2020 and December 9, 2020. In the absence of evidence about the charge back date, I will apply the bylaws in existence on the repair date in my decision. However, I find that nothing turns on this date because the relevant bylaws in this dispute were not significantly changed in the November 2, 2020 and December 9, 2020 bylaw amendments, other than bylaw 44.1 was renumbered as bylaw 44.3.
12. Nahid Aminolashrafi says that SL1's exterior entry door frame had rot damage in 2017. The strata acknowledges that the door frame was damaged. However, it

alleges that Nahid Aminolashrafi's short-term tenants caused the damage. It is undisputed that the strata hired Nikls "One Call" Property Services (Nikls) to repair the door frame in 2020. Nikls issued an October 9, 2020 invoice charging the strata \$945 for the door frame repairs. Both parties agree that the strata charged \$472.50 back to Nahid Aminolashrafi's strata lot account for these repairs. However, as discussed above, neither party stated when this chargeback was applied to Nahid Aminolashrafi's strata lot account.

13. The strata says that the \$472.50 chargeback represents one-half of the repair expenses, which is consistent with Nikls's invoice. The strata says that it only charged back a portion of the expense because it was being sympathetic and understanding. I find that nothing turns on the strata's decision to only charge back a portion of the repair expenses rather than the entire invoice amount.
14. Nahid Aminolashrafi claims that the strata is responsible for the maintenance and repair of the exterior door frame because it is common property (CP). *Strata Property Act* (SPA) section 72 and bylaw 10.1(b) say the strata is responsible for maintaining CP. Further bylaw 10(d) says the strata is responsible for maintaining strata lots relating to the building's exterior and exterior doors that front on the CP.
15. Based on the photographs provided and the parties' submissions, I find that the door frame repairs were located outside, next to SL1. Section 68(1) of the SPA identifies the boundaries of a strata lot where the strata lot is separated from CP by a wall. SPA section 68(1) says the strata lot boundary is midway between the surface of the structural portion of the wall that separates the strata lot from the CP, unless the strata plan identifies different boundaries, which the strata plan does not do so here. Based on Nahid Aminolashrafi's photograph of the damaged area, I find that the door frame damage was located on the exterior side of the midpoint of the exterior wall. So, I find that the damaged door frame area is CP, which the strata was responsible for maintaining and repairing under SPA section 72 and bylaw 10.1(b).

Bylaw 44.1

16. Though the strata was responsible for repairing the door frame, Nahid Aminolashrafi may still be obligated to reimburse the strata for these repair expenses under bylaw 44.1. This bylaw says in part that an owner must indemnify and save harmless the strata for the expense of any maintenance, repair, or replacement rendered necessary to the CP by the strata lot's owner, tenant, occupant or visitor. Though the strata does not specifically refer to bylaw 44.1 in its submissions or Dispute Response, I find that the strata raised this issue by alleging that Nahid Aminolashrafi's short-term tenants caused the door frame damage.
17. The strata says the door frame damage was caused by a high number of short-term tenants staying in SL1 in 2017. The strata provided a portion of Nahid Aminolashrafi's strata lot account from September 2016 to May 2017. The strata lot account shows that the strata assessed \$7,200 in bylaw fines for short-term rentals against Nahid Aminolashrafi's strata lot account on February 20, 2017. The strata says that these bylaw fines represent 39 separate short-term rental incidents. The strata argues that this excessive occupancy caused the door frame damage.
18. Nahid Aminolashrafi does not dispute the strata's allegation that short-term tenants stayed in SL1 during 2017. However, Nahid Aminolashrafi says that these tenants did not damage the door frame. First, Nahid Aminolashrafi argues that the strata's allegation is speculative and that the strata has not provided any witnesses who saw the short-term tenants damage the door frame. Further, Nahid Aminolashrafi argues that the door frame damage was located at the base of the door frame, on the opposite side of the door from the door handle. So, Nahid Aminolashrafi argues that tenants, entering and exiting the door, would not likely damage the door frame in a location so far from the door handle.
19. In contrast, Nahid Aminolashrafi claims that the door frame damage was caused by rot from water exposure, rather than her occupants' conduct. Nahid Aminolashrafi provided a photograph which appears to show wood rot on the door frame. I find that this is consistent with Nikls' October 9, 2020 invoice which describes the damaged site as a "rotten frame." I find that Nikls' invoice does not meet the requirements under

CRT rule 8.3 for expert evidence because it does not disclose the author's identity, qualifications, or experience. However, I have considered Nikls' technician's opinion that the door frame was rotted in my decision anyway. I do so because I find that the condition of rotted wood is not a technical matter requiring expertise to identify (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112).

20. Nahid Aminolashrafi says the rot was caused by water exposure. They say that SL1 is located on the corner unit, above the parkade entry. Further, they say that this area has sunk, resulting in water pooling around the door frame. The strata says that it is unlikely that the door frame damage was related to rot because the other 6 townhouse strata lots in the strata did not develop similar water exposure damage. The strata says that the townhouses are virtually identical and that 5 other townhouses recently experienced the same shifting of concrete paving blocks in front of their entrances as SL1, without developing rot. However, I do not find this argument persuasive since the strata lots are in different locations and the strata has not provided sufficient evidence to show that the other town house strata lots have the same water and weather exposure as SL1. Without showing that SL1's water exposure is similar to the other townhouse strata lots, I do not find the absence of rot at the other townhouses helpful in determining the cause of SL1's door frame damage.
21. On balance, based on Nahid Aminolashrafi's submission, the photograph of the damage and Nikls' invoice, I find that the door frame was likely rotted from water exposure. So, I find that this rot damage was not likely caused by Nahid Aminolashrafi's occupants' conduct. So, I find that the strata was not entitled to charge the repair expenses to Nahid Aminolashrafi's strata lot account under bylaw 44.1.

Bylaw 4.2 and SPA Section 133

22. The strata also says that its chargeback was permissible because Nahid Aminolashrafi breached bylaw 4.2. This bylaw says a resident or visitor must not cause damage, other than reasonable wear and tear, to the CP. As discussed above,

the strata argues that Nahid Aminolashrafi's short-term tenants damaged the door frame in 2017.

23. SPA section 133 says the strata may do what is reasonably necessary to remedy a bylaw contravention by doing work on a strata lot or CP, and may require the person who may be fined for the bylaw contravention to pay for that work.
24. For the reasons discussed above, I find that Nahid Aminolashrafi's short-term tenants did not damage the door frame. So, I find that Nahid Aminolashrafi did not breach bylaw 4.2. Further, even if Nahid Aminolashrafi had breached this bylaw, I find that the strata would not be entitled to charge back any of these repair costs to Nahid Aminolashrafi's strata lot account under SPA section 133 because it did provide the written notice required under SPA section 135.
25. SPA section 135(1) says a strata corporation may not require a person to pay the costs of remedying a contravention unless, among other things, the strata corporation has given the owner the particulars of the complaint in writing and a reasonable opportunity to answer the complaint. Further, SPA section 135(2) says that a strata corporation must, as soon as feasible, give notice in writing of a decision charging an owner for these expenses.
26. In *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, the BC Court of Appeal said that SPA section 135 must be strictly followed. While *Terry* dealt with bylaw fines, rather than imposed costs for remedying a contravention, the section 135 requirements are the same for both types of charges. Therefore, I find the analysis applies equally to both repair costs and bylaw fines.
27. Here there is no evidence or submissions showing that the strata gave Nahid Aminolashrafi written notice of any particulars of the complaint against them or provided a reasonable opportunity to answer the complaint. Further, there is no evidence or submissions showing that the strata notified Nahid Aminolashrafi within a reasonable time of its decision to charge back one-half of the repair expenses.

28. *Terry* is a binding precedent, and I must follow it. I also agree with that reasoning. Without knowing what bylaw has allegedly been breached, an owner cannot have a reasonable opportunity to respond. I find that the strata failed to give Nahid Aminolashrafi the written notice and an opportunity to respond required under SPA section 135 and *Terry* before charging the repairs to their strata lot. So, I find that the strata was not entitled to charge back the repair expenses based on SPA section 133.
29. For the above reasons, I find that the strata must remove charges of \$472.50, relating to SL1's exterior door frame repairs, from SL1's strata lot account.

CRT FEES AND EXPENSES

30. 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 Nahid Aminolashrafi for CRT fees of \$225. Neither party claimed reimbursement of dispute-related expenses.
31. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Nahid Aminolashrafi.

ORDERS

32. Within 30 days of the date of this order, I order that:
- a. The strata remove charges of \$472.50, relating to SL1's exterior door frame repairs, from SL1's strata lot account.
 - b. The strata pay Nahid Aminolashrafi \$225 in CRT fees.
33. Nahid Aminolashrafi is also entitled to post-judgment interest under the *Court Order Interest Act*.
34. 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.

Richard McAndrew, Tribunal Member