



Civil Resolution Tribunal

Date of Original Decision: July 20, 2022

Date of Amended Decision: July 21, 2022

File: ST-2021-005203

Type: Strata

Civil Resolution Tribunal

Indexed as: *Lysyk v. Caminiti*, 2022 BCCRT 828

B E T W E E N :

GERALD LYSYK and DONNA LYSYK

APPLICANTS

A N D :

PASQUALE CAMINITI, BARBARA CAMINITI, and The Owners, Strata
Plan LMS 4175

RESPONDENTS

AMENDEDⁱ REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about a furnace vent's location

2. The applicants, Gerald and Donna Lysyk, own strata lot 81 (unit 79) in the respondent strata corporation, The Owners, Strata Plan LMS 4175 (strata). The respondent owners, Pasquale and Barbara Caminitis, own strata lot 82 (unit 78). Units 78 and 79 are in a side-by-side duplex.
3. Until August 2020, both units' furnaces vented through the upper roof. In August 2020, the Caminitis replaced their furnace. Their contractor installed a new furnace vent in the lower roof above the Caminitis' garage. The Lysyks and the Caminitis disagree about:
 - a. Whether the strata approved the vent's location,
 - b. Whether the vent is a significant change in the use or appearance of common property under section 71 of the *Strata Property Act* (SPA), and
 - c. Whether the Caminitis contravened the strata's bylaws by installing the vent on the garage roof.
4. The Lysyks seek several orders but primarily they want the Caminitis to relocate the furnace vent to the upper roof. They say the strata has treated them unfairly by allowing the vent to remain where it is. The strata generally takes the same position as the Caminitis and says I should dismiss the Lysyks' claims.
5. A strata council member represents the strata. Mr. Lysyk represents the Lysyks. The Caminitis represent themselves.
6. As I explain below, I find the garage roof vent must be removed because the strata did not approve it and allowing it to remain is significantly unfair to the Lysyks.

JURISDICTION AND PROCEDURE

7. 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.

8. 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. Based on the evidence and submissions provided, I am satisfied that I can fairly decide this dispute without an oral hearing.
9. 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 the parties and witnesses questions of and inform itself in any other way it considers appropriate.
10. 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

11. The issues in this dispute are:
 - a. Did the strata approve the Caminitis' furnace vent location?
 - b. Was the strata's decision to let the Caminitis' furnace vent remain on the garage roof significantly unfair to the Lysyks?
 - c. What remedies, if any, are appropriate?

EVIDENCE AND ANALYSIS

12. As the applicants in this civil proceeding, the Lysyks must prove their claims on a balance of probabilities, meaning more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

13. The strata was created in 2000 and includes 165 strata lots in 80 buildings. The Lysyks' unit 79 is the eastern half of a side-by-side duplex shared with the Caminitis' unit 78. Each strata lot has a main floor and an upper floor. At the front of the main floor of each strata lot is a garage. The garages share a wall. The duplex's upper floor is set back from the main floor, so a lower roof extends over the front of the garages.
14. The disputed vent is on the lower roof above the Caminitis' garage. Above that lower roof are bedroom windows on the upper floor of each strata lot. A downspout marks the mid-line between the windows, and the vent is about halfway between the mid-line and the Caminitis' window. The vent is a small black pipe with a cap jutting up from the garage roof.
15. In April 2020, the strata repealed its bylaws and replaced them with a complete set of bylaws filed at the Land Title Office. Those are undisputedly the bylaws applicable to this dispute.
16. On July 2, 2020, the Caminitis applied for the strata's approval to replace their furnace under bylaw 1.6, which governs alterations to strata lots and common property. On August 11, 2020, the strata approved the Caminitis' application. I return to the specific wording of the application and approval below.
17. On August 26, 2020, the Caminitis' contractor, Fraser Valley Heating Ltd., installed the new furnace and vent. As noted above, the new furnace vent exited the garage roof. Previously, the furnace vent exited the upper roof.
18. The strata received a complaint from another owner, not the Lysyks, about the vent. In response, at an October 8, 2020 council meeting, the council decided to alter its furnace venting "guidelines" so that venting through garage roofs would not be permitted going forward. However, the strata decided that "those units" with furnaces already vented through garage roofs would not be required to relocate their vents.
19. On November 2, 2020, the Lysyks complained to the strata about the Caminitis' furnace vent. They identified 4 concerns:
 - a. The vent may release toxic gases that could blow into their bedroom window.

- b. Because the vent was below the upper roof soffit, moisture could enter the duplex's attic, leading to possible mould issues.
 - c. The vent was an unsightly protrusion through the lower roof and released visible vapour clouds when the furnace operated.
 - d. The vent was inconsistent with other furnace installations in the strata complex that vented through the upper roofs.
20. The strata council considered the Lysyks' complaint and, at the November 12, 2020 council meeting, passed a motion that the Caminitis "will need to have this vent rerouted."
21. On November 27, 2020, the strata wrote to the Caminitis, saying they were required to reroute the vent so that it exited their strata lot through the upper roof. The strata said it was prepared to consider contributing to the cost of the work because specific venting information was not provided in the strata's furnace installation guidelines.
22. The Caminitis refused to relocate the vent, stating in a November 30 letter that the installation met all applicable standards and was approved by Technical Safety BC. They also said rerouting would involve opening drywall. It seems the strata council found the Caminitis' arguments persuasive, as the December 10, 2020 council meeting minutes said there were no grounds for council to ask the Caminitis to reroute the vent. The minutes said there was no reason to believe the furnace and vent did not meet the BC Building Code and "no specifics were included in the approval letter with respect to the location of the vent."
23. On April 15, 2021, the Lysyks had a hearing before the strata council, but their issue was not resolved.
24. The strata council held a separate hearing with the Caminitis. The Caminitis provided a report from John Sadler Plumbing confirming that the furnace installation met the "BC 149 gas code" and BC Building Code and passed an emissions test. The strata confirmed it saw no reason to ask the Caminitis to reroute the vent. The May 13, 2021

strata council meeting minutes also noted council's opinion was that the installation did not contravene any bylaws.

25. On July 2, 2021, the Lsysyks filed their application for dispute resolution with the CRT.

Did the strata approve the Caminitis' furnace vent location?

26. Bylaw 1.6.1 says owners must obtain the strata's written approval before making any alteration, change or improvement to common property or a strata lot that involves, among other things, the structure or exterior of a building. It is undisputed that the Caminitis' furnace vent required approval under bylaw 1.6.1.

27. The Caminitis' July 2, 2020 alteration application is titled "Assumption of Liability Agreement" (AOL). The AOL described the work as replacing the existing furnace with a new furnace and adding an air conditioner. The AOL attached a letter from Dominic Bifulchi of Fraser Valley Heating Ltd. that described 2 venting options. The first was to install a "vent termination horizontally through the front wall of the garage, above the main garage door." The second was to install the vent "vertically through the roof." Mr. Bifulchi wrote, "I personally prefer this [second] method as it blends in with the home better."

28. The first question is precisely what the strata approved. The Lsysyks say the Caminitis had approval to vent through the upper roof and then changed the location to the garage roof. The Caminitis say the strata never specified whether the "roof" meant the garage roof or the upper roof. Similarly, the strata says it told the Caminitis that the vent had to go through the roof. It says the Caminitis did this, but not in the location the strata anticipated.

29. A July 30, 2020 email from the strata manager to the Caminitis said the paperwork was forthcoming but "council approved the roof venting that your contractor brought forward." The strata's August 11, 2020 approval letter said that council approved the Caminitis' request to install a new furnace and air conditioning unit and said, "see attached AOL." The letter did not explicitly refer to the 2 options or say how the furnace must be vented. However, because Mr. Bifulchi's letter used "vertically

through the roof,” I find the roof venting approval meant using the existing furnace vent channel to vent vertically to the upper roof. Drawings of the duplex show that the furnace is behind the garage, central in the home. Mr. Bifolchi’s use of “vertical” cannot have meant travelling horizontally 12 feet through the garage before venting through the garage roof.

30. For clarity, I find that venting through the garage roof was not the other option Mr. Bifolchi identified, which was to vent horizontally through the front wall of the garage, above the garage door. The vent installed is not a horizontal vent and is not on a wall. In other words, the Caminitis did not follow either of the options identified in Mr. Bifolchi’s letter.
31. In an April 28, 2021 letter to the Lsyks, the strata said that because its written approval did not specify the location of the Caminitis’ new vent, the strata considered the vent’s location to be approved. I find the strata holds itself to an impossible standard. The strata was not required to identify all the places the Caminitis could not vent their furnace. The strata approved the work as set out in the AOL. The AOL said either above the garage wall or vertically through the roof, which could only mean the upper roof.
32. I find that the strata did not approve the Caminitis’ vent installation through the garage roof. I therefore find that the Caminitis contravened bylaw 1.6.1 by failing to obtain approval for their garage roof vent.

Was the strata’s decision to let the furnace vent remain on the garage roof significantly unfair to the Lsyks?

33. The Lsyks say the strata has treated them unfairly. The CRT can make orders to remedy a strata’s significantly unfair actions or decisions under CRTA section 123(2). In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the BC Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable. In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the BC Court of Appeal

confirmed that the reasonable expectations of an owner may also be relevant to determining whether the strata's actions were significantly unfair.

34. I find that the Lysyks' reasonable expectations are relevant in this dispute because the strata made a discretionary decision to approve the AOL and subsequent discretionary decisions about enforcement of its bylaws. The test for assessing an owner's reasonable expectations is from *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44:

- a. What was the owners' expectation?
- b. Was that expectation objectively reasonable?
- c. Did the strata violate that expectation with a significantly unfair action or decision?

35. I find the Lysyks' expectation was that the strata would require an unapproved alteration like the garage roof furnace vent to be removed unless there were compelling reasons not to. I find this expectation was objectively reasonable given the strata's bylaws and the SPA. Under SPA sections 4 and 26, the strata must, through its council, enforce its bylaws. Bylaw enforcement options available to the strata are set out in SPA section 129, and include imposing fines under section 130, or doing work on a strata lot or common property under section 133. In addition, bylaw 1.6.7 says the strata may order an owner to repair or remove any portion of an alteration (approved or not) that may not meet the requirements of the bylaws, may create a health and safety concern, or which is not in keeping with the design and appearance of the property generally. In addition to not being approved, the Caminitis' garage vent was not in keeping with the design and appearance of the strata complex, in which nearly all furnaces vented from the upper roof. The strata made no submissions about bylaw 1.6.7 despite the Lysyks raising it at several points in their submissions.

36. For the reasons that follow, I find strata's failure to remedy to the unapproved garage roof vent was significantly unfair to the Lysyks. First, it is undisputed that all the

furnaces originally installed in the strata complex were vented through the upper roof. I accept the Lysyks' unchallenged evidence that 42 furnaces were replaced between 2018 and 2021, and 40 of those were vented through existing channels to the upper roof. Aside from unit 78, only 1 other strata lot vented through its garage roof. From photos and the Lysyks' submissions I find that that unit's garage is located at the side of the building, difficult to see from the street, and away from any neighbours who may have windows near the vent.

37. While I accept the Caminitis' photo evidence that there is some inconsistency in vent colour and shape across the strata complex, there is remarkable consistency in venting through the top roofs and not lower roofs.
38. As noted above, the strata has, since at least 2010, had guidelines for the replacement of furnaces, fireplaces and hot water tanks. I accept the guidelines as evidence of what the strata community considers acceptable. The guidelines in place at the time did not specify that the vents must run through the upper roof but did say that both the strata council and the altering owner must ensure that the alteration has "no negative impact on another strata lot". There is no evidence the Caminitis or the strata checked with the Lysyks about the vent placement. The guidelines also said the strata must be reasonable in its duty to maintain the aesthetics of the architectural design of the buildings.
39. New guidelines developed in 2021 as a result of this issue said venting should go through the upper roof using existing channels, although venting through the back or side will be considered. This suggests lower-roof vents visible from the front are not acceptable to the strata community, as does the evidence of at least 1 other complaint.
40. The strata initially decided, correctly, that the Caminitis had to reroute the vent. When the Caminitis did not agree, the strata said there was nothing it could do and that it could not compel the unwilling Caminitis to reroute the vent. In submissions, the strata says its initial decision was merely to ask the Caminitis to voluntarily relocate the vent. I find the wording of the council motion that the Caminitis "will need" to have the vent

rerouted, together with the strata's initial letter to the Caminitis that they were "required" to reroute the vent indicate that the strata understood the vent to be in contravention of bylaw 1.6.1.

41. What also makes the strata's subsequent inaction unfair is the absence of information from the Caminitis that the furnace vent had to be located where it was. They do not say the furnace could not be vented through the upper roof. Venting through the upper roof is what virtually all other owners have done, including the Lsyks. It was also the option Mr. Bifulchi preferred. Mr. Bifulchi provided an email in support of the Caminitis saying the vent met all required standards, but he did not say that venting through the upper roof was not feasible or prohibitively expensive. He did not explain the decision to vent through the garage roof. I note the Lsyks offered to show the Caminitis how their furnace is vented, including the 10-by-10-inch access hole, covered by a panel in the bedroom closet, but the Caminitis declined that invitation.
42. Both the Lsyks and the Caminitis provided evidence, including expert evidence, about carbon monoxide and other contaminants in furnace vent gas and the possible health effects. Considering all the evidence, I find that the Lsyks have not established a serious risk of health impacts from the furnace vent exhaust given its 8-foot distance from their bedroom window. That said, the evidence establishes that the furnace vent exhaust can enter the Lsyks' bedroom depending on the wind direction, and that the exhaust does contain trace amounts of carbon monoxide and fine particulate matter that can negatively affect air quality. I accept that the Lsyks feel uncomfortable opening the window when the Caminitis' furnace is operating, and they would not experience the same discomfort if the vent was on the upper roof.
43. Given that the Caminitis' unapproved vent location contravened bylaw 1.6.1, the strata had enforcement options available. It could have ordered the vent rerouted under bylaw 1.6.7. While the strata has discretion under bylaw 1.6.7, I find it was unreasonable for the strata not to order the Caminitis to reroute to vent given the Lsyks' concerns and the availability of other venting options. The strata's inaction had a heightened impact on the Lsyks as the Caminitis' direct neighbours in a duplex

building. I find the strata's decision to let the unapproved furnace vent remain was harsh, wrongful, and significantly unfair.

44. So, what remedy is appropriate? The Lysyks ask for orders that the Caminitis relocate the vent, that the strata enforce its November 12, 2020 decision to order the Caminitis to relocate the vent, and that the strata enforce its bylaws related to the vent. I find these are different ways of asking for the same remedy. While it was the Caminitis who contravened bylaw 1.6.1, my decision is based on the strata's significant unfairness and so I find the strata must reroute unit 78's furnace vent to the upper roof and restore the garage roof to its previous condition. I allow 90 days to complete this work. To facilitate this order, I also order the Caminitis to allow the strata's contractor reasonable access to unit 78 on 48 hours' written notice. Nothing in this decision prevents the strata from, under bylaw 1.6.7, requiring the Caminitis to do the work or pay for the expenses.
45. Given my findings above, it is unnecessary to determine whether the garage roof vent was a significant change to common property within the meaning of SPA section 71.

Document request

46. The Lysyks ask the strata to provide all internal strata correspondence and documents relating to the unit 78 furnace vent from July 2, 2020, to May 19, 2021, not including those already provided or those between the Lysyks and Strata. In particular there is an email that refers to other discussions two council members had by email about the vent. The strata correctly notes that the SPA does not require strata corporations to provide owners with internal emails exchanged between strata council members, relying on *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610.
47. A strata corporation may still be required to produce such emails under CRT Rule 8.1, which says parties must provide all evidence in their possession that may prove or disprove an issue in the dispute, even if the evidence does not support their position. I find that I was able to decide this dispute without the emails in question.

Given that I have made the Lisyks' requested order about the furnace vent, I find it unnecessary to order the strata to provide any other documents.

CRT FEES AND EXPENSES

48. 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 find the Lisyks are entitled to reimbursement of \$225 in CRT fees.
49. The Lisyks claim \$37.30 that the strata manager charged for copies of documents on August 24, 2021. The respondents did not suggest that those documents were not necessary documents related to this dispute, so I allow that claim, which was supported by a receipt.
50. The Lisyks claim \$420 for an ABM Environmental report. I find the Lisyks reasonably incurred this report in an attempt to establish the health risk arising from the furnace vent's location near their window. I find the charge was reasonable for this type of expert evidence and I allow this claim.
51. I do not allow the Lisyks' claim for \$20 for a summons fee and \$15.58 for related postage. They did not provide a copy of the summons or explain why it was necessary.
52. In total, I find the Lisyks are entitled to \$225 for CRT fees and \$457.50 for dispute-related expenses.
53. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the Lisyks.

ORDERS

54. I order the strata to, within 90 days of the date of this order, reroute unit 78's furnace vent to the upper roof and restore unit 78's garage roof to its previous condition.

55. If the strata engages a contractor, I order the Caminitis to allow the strata's contractor reasonable access to unit 78 on 48 hours' written notice to complete the work.
56. I order the respondents, within 30 days of the date of this order, to pay the Lsyks \$682.50, broken down as \$225 in CRT fees and \$457.50 in dispute-related expenses.
57. The Lsyks are entitled to postjudgment interest, as applicable.
58. 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

ⁱ Paragraph 4 amended under section 64 of the CRTA to correct a party's name and another typographical error. The changes are underlined.