



Civil Resolution Tribunal

Date Issued: July 29, 2022

File: ST-2021-007093

Type: Strata

Civil Resolution Tribunal

Indexed as: *Norry v. The Owners, Strata Plan 953*, 2022 BCCRT 866

B E T W E E N :

DANIEL NORRY and LESA NORRY

APPLICANTS

A N D :

The Owners, Strata Plan 953

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This strata property dispute is about a special levy, and alleged damage to a strata lot and personal property.

2. The applicants, Daniel Norry and Lesa Norry, co-own strata lot 25 (SL25) in the respondent strata corporation, The Owners, Strata Plan 953 (strata).
3. The Norrys say the strata's handyman damaged a murphy wall bed (murphy bed) in SL25. They also say that when they purchased SL25 in September 2019, the strata failed to disclose that the fireplace in SL25 was condemned, and that there was a special levy payment owed. Finally, they say they lost use of living space in SL25 due to unrepaired leaks.
4. As remedies in this dispute, the Norrys request orders that the strata do the following:
 - Pay damages of \$6,000.00 for the murphy bed.
 - Pay damages of \$6,623.00 for the fireplace.
 - Refund the Norrys' \$14,348.46 special levy payment.
 - Refund strata fees of \$1,586.15, due to lost use of living space.
5. The strata says it is not liable for the Norrys' claims, and that the dispute should be dismissed.
6. The Norrys are self-represented in this dispute. The strata is represented by a strata council member.
7. For the reasons set out below, I dismiss the Norrys' claims about the murphy bed, the gas fireplace, and the leaks. I refuse to resolve their claim about the special levy.

JURISDICTION AND PROCEDURE

8. 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.

9. 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 which includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
10. 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.
11. 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.
12. CRT documents incorrectly show the name of the respondent as The Owners, Strata Plan, VIS 953. Based on *Strata Property Act* (SPA) section 2, the correct legal name of the strata is The Owners, Strata Plan 953. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under CRTA section 61 to direct the use of the strata's correct legal name in these proceedings, and have amended the strata's name above.

ISSUES

13. The issues in this dispute are:
 - a. Must the strata pay \$6,000.00 for murphy bed damage?
 - b. Must the strata pay \$6,623.00 in damages for the fireplace?

- c. Must the strata refund the Norrrys' special levy payment?
- d. Must the strata refund any strata fees?

REASONS AND ANALYSIS

14. In a civil claim like this one, the applicants must prove their claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.

Murphy Bed

15. The Norrrys say that when they viewed SL25 on August 20, 2019, before purchasing it, there was a queen-sized murphy bed in one of the rooms. The Norrrys say the seller's realtor, and later their realtor, said the bed would be included with the SL25 sale. The Norrrys say that when they viewed SL25 again on August 29, 2019 during the home inspection they requested, the murphy bed was gone.
16. The Norrrys say BA, who was then the strata council president, told them that K, the strata's maintenance person, broke the bed while repairing a ceiling leak and therefore removed it.
17. The strata agrees to these facts. However, the strata says that the bed was broken and removed before the Norrrys purchased SL25. The strata says SL25's previous owner asked K to do some repairs in SL25 before the sale. The strata says the previous owner was aware of the bed's damage and removal and raised no concerns. The strata argues that the strata is therefore not liable to the Norrrys for the bed.
18. For the following reasons, I agree with the strata and find the Norrrys are not entitled to any compensation from the strata for the murphy bed.

19. First, the Norrlys claim \$6,000.00 for the murphy bed, but have not proven those damages. They provided no receipt or invoice for a replacement bed, and no evidence proving that the bed they viewed in August 2019 was worth \$6,000.00, or any other amount. I therefore find the damages are unproven.
20. Second, the land title search document in evidence shows that the Norrlys purchased SL25 on September 19, 2019. The Norrlys admit the murphy bed was gone when they viewed SL25 on August 25, 2019. The Norrlys could have raised the issue of the missing bed with the seller, since the Norrlys argue that the bed was part of the SL25 sale agreement. I find that any claim about the bed is a contractual claim between the Norrlys and the previous SL25 owner. The strata was not a party to the contract of purchase and sale for SL25, and is therefore not liable for the murphy bed.
21. Third, the Norrlys argue that the strata is responsible for the murphy bed because its employee, K, negligently damaged it. I make no finding about that because even if accurate, only the previous SL25 owner would be entitled to a remedy. Since the Norrlys did not own SL25 at the time the bed was damaged and removed, the strata owed them no duty of care, and therefore is not liable to the Norrlys for negligence.
22. For these reasons, I dismiss the Norrlys' claim for \$6,000.00 in damages for the murphy bed.

Gas Fireplace

23. The Norrlys say the strata negligently failed to inform them that the gas fireplace in SL25 had been condemned. The Norrlys say they only learned this information on December 7, 2019. They say BA told their sons, who were occupying SL25, that they should not use the fireplace anymore because it had been condemned.
24. As remedy, the Norrlys claim \$6,323.00 for the cost of a replacement fireplace.
25. The strata admits it did not disclose information about the fireplace before December 2019. However, the strata says it is not responsible for fireplace repairs, and was not required to disclose information about its condition to the Norrlys. The strata says this is because the fireplace is part of the strata lot, and was not original to the building

but installed later by an owner. The strata says it was the Norrlys' home inspector's responsibility to advise them of the fireplace's condition.

26. The strata says that in September 2018, it hired Heatpro to clean and inspect all owner fireplaces. BA wrote that the strata schedules annual or bi-annual inspections for all fireplaces "in bulk" so owners get a break on the cost of individual inspections. BA wrote that while the strata coordinates the inspections, individual fireplace repairs are the responsibility of each strata lot owner.
27. The strata says that during the September 2018 inspection, Heatpro's tradesperson identified safety issues with 2 gas fireplaces, including the SL25 fireplace. In a December 8, 2019 email to the Norrlys, BA says that the other unsafe fireplace was removed. BA says he did not recall that the strata or K were ever directed to cap off the gas connection to the SL25 fireplace.
28. For the following reasons, I dismiss the Norrlys' claim for fireplace replacement costs.
29. First, the Norrlys provided an invoice for \$6,751.14 for an installed new fireplace, including pipes and other equipment. However, while the parties agree there was a problem with the SL25 fireplace, there is no evidence before me about the nature of that problem, and no evidence proving that the entire fireplace required replacement. So, I find that the Norrlys have not proven they are entitled to the cost of an entirely new fireplace.
30. Second, I find the strata is not responsible for the cost of the SL25 fireplace repairs or replacement, and was not responsible to disclose the condition of the SL25 fireplace to the Norrlys before the SL25 purchase.
31. In making these findings, I place significant weight on my finding that the gas fireplace is part of SL25, and is not common property. The strata says the fireplace was added to SL25 by a previous owner, and the Norrlys do not specifically dispute this. The fireplace is not shown on the strata plan. SPA section 68 says that unless otherwise shown on the strata plan, the boundaries of a strata lot are midway between the surface of the structural portion of the wall, floor or ceiling that faces the strata lot and

the surface of the structural portion of the wall, floor or ceiling that faces the other strata lot, the common property or the other parcel of land. The specific location of the SL25 fireplace is not set out in the evidence, but based on SPA section 68, I conclude, on a balance of probabilities, that it is part of the strata lot.

32. In general, under the SPA the strata is responsible for repairing and maintaining common property. Strata lot owners are responsible for repairing their strata lots, unless the bylaws say otherwise. In February 2014, the strata filed consolidated bylaws with the Land Title Office. I find that these are bylaws applicable to this dispute.
33. Bylaw 2(1) confirms that owners are responsible to repair and maintain their strata lots, except where the bylaws say otherwise. Bylaw 11 sets out a list of what the strata must repair and maintain, but that list includes no parts of a strata lot. It only includes common property, common assets, and limited common property. So, I find the strata had no responsibility for the repair or maintenance of the SL25 gas fireplace, and no responsibility to the Norrlys to disclose problems with the fireplace that arose before the Norrlys bought SL25.
34. Under common law, a seller of real estate has a duty to disclose latent defects, meaning defects that cannot be easily discovered through normal observation. The parties agree that the previous SL25 died, and the executor listed SL25 for sale. In a December 10, 2021 email, the executor says he never lived in SL25, so he did not fill out a Property Disclosure Statement. He said there was a condition in the sale contract for a property inspection.
35. Any failure by the executor to disclose gas fireplace problems is matter between the Norrlys and the estate, and the strata is not liable for it. There is no evidence before me about what the strata, or Heatpro, told the previous SL25 owner about the gas fireplace problems Heatpro identified in September 2018. Since the Norrlys bear the burden of proof in this dispute, I find they have not proven that the strata failed to properly inform the previous SL25 owner about gas fireplace problems.

36. The strata was not a party to the contract of purchase and sale, so it had no disclosure requirement other than what is set out in the Form B Information Certificate (Form B). The Form B requirements are set out in SPA section 59 and the *Strata Property Regulation* (Regulation). There is no requirement in the SPA or Regulation to disclose problems with a strata lot such as the gas fireplace. Rather, that is a matter between the strata lot's buyer and seller, and does not involve the strata.
37. Also, as I discuss further below, the CRT does not have jurisdiction to order a remedy for an incorrect Form B in any event.
38. Third, I find that the Norrlys' home inspector's report establishes that the Norrlys should have done further investigation into the fireplace's condition before completing their purchase of SL25. Page 13 of the report says the inspector lit the pilot light. It also says the following (my emphasis added):

Regular maintenance and check up required of gas fireplace. Request copies of service history for your information and records.

...

The gas fireplace unit is aging, but at the time of this review appeared to be functional. It will eventually require replacement. Older units are significantly less efficient.

39. I find that these statements from the home inspector, including the specific direction to request copies of the fireplace service history, mean that the strata is not liable for having failed to disclose any known problem with the fireplace. The inspection report is dated August 29, 2019. This means that the Norrlys were instructed to find out more about the fireplace before they purchased SL25 in September 2019. Had they requested this information from the SL25 seller, they likely would have learned about the fireplace problem for which they now seek compensation. Again, I find this supports the conclusion that the strata is not liable for the Norrlys' fireplace replacement.

40. Fourth, the Norrlys say there should have been a red tag displayed on the fireplace to show it was condemned. For the reasons set out above, I find that any obligation to do this lies with the SL25 seller, and not with the strata. Because the gas fireplace is part of SL25, the strata is not responsible for its condition, or for disclosing that condition to buyers like the Norrlys.

41. For these reasons, I dismiss the Norrlys' claim for gas fireplace replacement.

Special Levy

42. The Norrlys say they received a Form B that was completed on May 29, 2019. They say the Form B did not indicate that SL25 would owe a special levy. The Norrlys say the strata should reimburse their \$14,348.46 special levy payment, as the strata did not include it on the Form B.

43. There is no May 29, 2019 Form B in evidence. However, I find the Norrlys are likely referring to the Form B they uploaded as evidence which is dated May 21, 2019. The Form B document is set out in the Regulation. Item (d) on the Form B asks the strata to disclose "any amount that the owner of the strata lot...is obligated to pay in the future for a special levy that has already been approved", and the date the payment is due. I agree that the May 21, 2019 Form B in evidence does not show any special levy owed.

44. The strata admits this, and says that the special levy at issue was approved at a special general meeting (SGM) in August 2019. Therefore, the strata says the special levy was not known or required to be disclosed when it issued the May 2019 Form B. The strata also says it issued a new Form B in September 2019 that did disclose the special levy, but the Norrlys say they did not receive it.

45. I find it is not necessary to make any findings about these contested facts, because for the following reasons I conclude that the CRT does not have jurisdiction to decide this claim.

46. The Norrlys' claim is for a remedy (special levy refund) based on an allegedly incorrect Form B. SPA section 59(6) says the BC Supreme Court may make any order it considers just in the circumstances to give effect to or relieve the strata corporation from some or all of the consequences of an inaccurate certificate. In previous CRT disputes, tribunal members have considered whether the CRT has jurisdiction to make orders to remedy incorrect Form B certificates. They have consistently found that the CRT does not, based on the fact that jurisdiction is specifically given the BC Supreme Court in SPA section 59(6): see *Warren v. The Owners, Strata Plan VIS 6261*, 2020 BCCRT 765, *Fung et al v. The Owners, Strata Plan NW 1294*, 2019 BCCRT 443, *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379, *Proulx et al v. The Owners, Strata Plan VR 841*, 2019 BCCRT 297; *Pilehchianlangroodi v. The Owners, Strata Plan LMS 1816*, 2019 BCCRT 367. While prior CRT decisions are not binding on me, I agree with their reasoning and find them persuasive.
47. So, I find the CRT does not have jurisdiction to decide the Norrlys' claim about the special levy. CRTA section 10(1) says the CRT must refuse to resolve a claim over which it has no jurisdiction. I therefore refuse to resolve the special levy claim.

Leaks

48. The Norrlys request reimbursement of \$1,586.15 in strata fees, because they say the strata failed to repair leaks in SL25 in a timely way. They say the claimed \$1,586.15 represents a 10 percent reduction in strata fees, as they lost access to 10 percent of SL25 due to drainage holes and buckets.
49. The strata admits there were leaks, but says it was not negligent in addressing them.
50. I dismiss this claim for the following reasons.
51. First, in *Stewart v. The Owners, Strata Plan KAS 2601*, 2020 BCSC 809, at paragraph 106, the BC Supreme Court confirmed that payment of strata fees is mandatory for all strata owners under the SPA and cannot be waived or withheld in protest of strata actions. So, the Norrlys' are not entitled to their claimed strata fee refund, regardless of whether the strata was negligent in fixing the leaks.

52. Second, the Norrlys' submissions suggest they were not living in SL25 for at least part of the period for which they claim a strata fee refund. Their submissions indicate their sons were living in SL25 after the Norrlys purchased it in September 2019. The Norrlys say SL25 was dry when they purchased it, and the water started coming into SL25 "in an alarming fashion" on January 2, 2020. The Norrlys say they planned to move in to SL25 in June 2020. The Norrlys do not have standing (legal entitlement) to claim damages for loss of use for periods when they did not live in or plan to live in SL25.
53. Third, the Norrlys assert the strata was negligent in repairing the leaks, but I find they have not proven this assertion. Where subject matter is technical, or beyond common understanding, it is often necessary to produce expert evidence to determine whether work was performed properly: see *Bergen v. Guliker*, 2015 BCCA 283. I find expert evidence is required to prove the strata's leak repairs fell below the required standard of care. The BC Supreme Court has said that a strata corporation's standard of care in performing its repair and maintenance obligations is reasonableness, and not perfection: see *Weir v. The Owners, Strata Plan NW 17*, 2010 BCSC 784.
54. I find there is no expert evidence before me establishing that the strata acted unreasonably in addressing the leaks. The Norrlys rely on reports from Method Engineering & Building Services Ltd. (Method), which the strata obtained in October 2020 and April 2022. The Norrlys say the Method reports show that the strata's approach to the repairs was unreasonable because it did not entirely fix the leaks. However, I find that is not what the Method reports say. Rather, the reports identify leaks, and recommend next steps. The Method reports do not suggest the strata had taken no action, or that the strata's actions in addressing the leaks were unreasonable.
55. The Norrlys submit that the strata should have hired Method before 2022, at the time of the 2020 report, instead of hiring different contractors. However, I find that the fact that the leaks were not fully fixed does not establish that the strata's actions and decisions to hire different contractors was negligent.

56. The strata's obligation to repair and maintain is measured by the test of what is reasonable in all circumstances: see *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363. As noted above, the standard is not perfection. When deciding whether to fix or replace common property, the strata has discretion to approved "good, better or best" solutions to any given problem. The court 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 *Weir*. Further, no one owner can direct the strata how to conduct its repairs: see the non-binding but persuasive decision of *Swan v. The Owners, Strata Plan LMS 410*, 2018 BCCRT 241.
57. So, while the strata must maintain and repair common property such as the building exterior and roof, it is not required to do so in the best, fastest, or least expensive way. I find the strata has discretion to decide how to satisfy its maintenance and repair obligations, so long as it acts reasonably in the circumstances.
58. The limited evidence before me, and the Norrlys' submissions, confirm that the strata took some action to attempt to fix the leaks after January 2020. The fact that the May 2010 building envelope condition report identified a need for future repairs is not determinative, particularly since the home inspection report the Norrlys commissioned in August 2019 did not indicate any leakage problems. I conclude that the Norrlys have not met the burden of proving that the strata acted unreasonably. I therefore find the strata was not negligent , For all these reasons, I dismiss the claim for strata fee reimbursement or damages for loss of use of SL25.

CRT FEES AND EXPENSES

59. Under CRTA section 49 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. The strata is the successful party. It paid no CRT fees and claims no dispute-related expenses, so I award no reimbursement.
60. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the Norrlys.

ORDERS

61. I dismiss the Norrys' claims about the murphy bed, the gas fireplace, and the leaks. I refuse to resolve their claim about the special levy.

Kate Campbell, Vice Chair