



Civil Resolution Tribunal

Date Issued: August 11, 2022

File: ST-2022-000136

Type: Strata

Civil Resolution Tribunal

Indexed as: *Nietzle v. The Owners, Strata Plan LMS 384*, 2022 BCCRT 905

BETWEEN:

OLIVER NIETZLE

APPLICANT

AND:

The Owners, Strata Plan LMS 384

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about who is responsible for a pest control treatment in a strata corporation.
2. The applicant, Oliver Nietzle, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 384 (strata). Mr. Nietzle says there was a pill bug

infestation on the common property outside his strata lot, and the bugs were coming into his home. He says the strata approved a pest control treatment to address the problem, but the single treatment did not completely eliminate the bugs. Mr. Nietzle says the strata refused to approve a second treatment, so he arranged it himself. Mr. Nietzle seeks reimbursement of the \$201.60 he paid for the second pill bug treatment.

3. The strata says it inspected the common property outside Mr. Nietzle's strata lot and did not see any pill bugs, so it decided the second treatment was unnecessary. The strata says it is not responsible to pay for the treatment, which it did not authorize.
4. Mr. Neitzle is self-represented. The strata is represented by a strata 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.

ISSUE

9. The issue in this dispute is whether the strata must reimburse Mr. Nietzle \$201.60 for the second pill bug treatment.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Nietzle must prove his claims on a balance of probabilities (meaning “more likely than not”). I have read all of the parties’ evidence and submissions, but I refer only to what I find is necessary to explain my decision.
11. The strata was built in phases in the 1990s. It consists of 55 townhouse-style strata lots in 15 3-level buildings.
12. Mr. Nietzle owns strata lot 36 (SL36), which is an end unit in building 9. The strata plan shows there is an attached garage on the first floor that is designated as limited common property for the exclusive use of SL36.
13. The strata repealed and replaced the majority of its bylaws in the Land Title Office on September 21, 2012, except for existing pet and rental bylaws that are not relevant to this dispute. The strata also filed further bylaw amendments in 2016 and 2018 that are not relevant. I discuss the relevant bylaws below as necessary.
14. The following background facts and chronology of events are not disputed.
15. In about July 2020, Mr. Nietzle emailed the strata’s management company, QPPM, about an ongoing issue with pill bugs (also called sow bugs in the evidence) entering the garage attached to his strata lot, and that the problem had worsened over the years. Mr. Nietzle stated there was rotten wood on the stairs and landscaping around

his strata lot, which he believed was the source of the bugs. In further emails, Mr. Nietzle advised that bugs had also started coming inside his strata lot.

16. The strata says it considered treating the entire complex but decided it would likely be ineffective due to the prevalence of the bugs. Nevertheless, the strata hired a pest control company, TC, to treat both the exterior and interior of SL36 on September 15, 2020. It is undisputed that this treatment immediately reduced the number of bugs Mr. Nietzle noticed around and inside his strata lot. While Mr. Nietzle says he still observed some bugs after the treatment, the parties' email evidence shows they agreed to reassess the issue in the spring, as the bugs eventually went away in the colder weather.
17. On April 24, 2021, Mr. Nietzle emailed QPPM that the bugs had returned over the previous couple of weeks and were coming inside his strata lot again. He requested that the strata arrange for TC to re-treat the area surrounding his strata lot. QPPM advised Mr. Nietzle in a July 9, 2020 email that the strata approved another treatment, conditional on it occurring at the time of year TC recommended, and that Mr. Nietzle understood further treatments would be at his own cost, to which Mr. Nietzle agreed.
18. On August 9, 2021, QPPM advised Mr. Nietzle that TC suggested the best time for treatment was whenever there was an abundance of bugs. Mr. Nietzle responded that the treatment could likely wait until September. Mr. Nietzle then made several requests in early September 2021 for QPPM to schedule the treatment. On September 21, 2021, QPPM emailed Mr. Nietzle that the strata council had inspected SL36's exterior and found no bugs, so the council decided not to approve the treatment after all.
19. Mr. Nietzle then contacted TC himself and paid for a second treatment to the exterior of SL36, which occurred on October 15, 2021. Mr. Nietzle requested that the strata reimburse the \$201.60 cost, but the strata refused. The strata later confirmed its decision not to pay for the treatment following a December 13, 2021 hearing.

Is the strata responsible for reimbursing Mr. Nietzle for the bug treatment?

20. Mr. Nietzle says the strata is responsible for the cost of the second pill bug treatment outside SL36 because the bugs originated in common property, and the strata is responsible for the repair and maintenance of common property under the *Strata Property Act* (SPA).
21. Section 72 of the SPA says the strata has a duty to repair and maintain common property and common assets. Bylaw 8(1) also says the strata must repair and maintain common property that has not been designated as limited common property.
22. Neither party provided any documentary evidence to establish exactly where the pill bugs were coming from. The strata submits that the bugs are “a fact of life” given much of the strata’s landscaping is constructed with wooden ties that are now aging. The strata provided 2 photos of SL36’s exterior, which show the front entrance stairs are accented with wood ties and a wood railing, and there is a large wooden planter box along the front of SL36. Based on the strata plan, all land around the buildings is common property. So, I find the stairs and wood landscaping features in the photos are on common property.
23. Further, there is no evidence that the bug infestation was located within the building itself. Rather, the undisputed evidence is that the pill bugs were entering Mr. Nietzle’s strata lot from the limited common property garage after crawling under the garage door from the common property.
24. Additionally, TC’s October 15, 2021 invoice for the second pill bug treatment shows the treatment consisted of spraying the front steps, wood fence, and wood pilings outside Mr. Nietzle’s strata lot, all of which I find are common property.
25. The question is whether the strata breached its duty under SPA section 72 or the bylaws to repair and maintain common property by declining to arrange the second pill bug treatment.

26. A strata corporation is required to act reasonably in fulfilling its repair and maintenance obligations. The standard is not one of perfection, and deference should be granted to a strata council's decisions as approved by the owners: see *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784.
27. The strata argues that its decision not to proceed with a further pill bug treatment was reasonable, based on its September 19, 2021 inspection of SL36's exterior. The strata says it examined all outside areas where Mr. Nietzle had previously observed the bugs, including the wood landscaping, the garage door frame, and the driveway leading to the garage. The strata says it did not see a single bug.
28. Mr. Nietzle argues the strata's inspection was done at the wrong time of day, in the afternoon when the bugs were the least active. He says the bugs were most active in the mornings. He says the strata council's decision was unreasonable because it was not based on a professional or experienced inspection.
29. The problem for Mr. Nietzle is that he provided no expert evidence about the activity of pill bugs, the necessity for treatment, or whether the treatment would be effective. While Mr. Nietzle says the first treatment in 2020 reduced the number of bugs around his strata lot by about 75%, I find that does not necessarily mean a second treatment would further improve the situation. Given the abundance of aging wood in the strata complex, and the evidence from both parties that pill bugs were prevalent throughout, I find Mr. Nietzle has not proven the strata's decision to deny his request for a second treatment around SL36 was unreasonable.
30. Further, owners are generally not permitted to unilaterally spend money to repair or maintain common property and then expect the strata to reimburse them. This is because a strata council must act in the best interests of all owners, which requires balancing competing interests and working within a budget that the owners can afford. Unilateral action by owners undermines the strata's ability to do so.
31. There are some exceptions to this general rule, such as when the repairs or maintenance are an emergency. For instance, in *The Owners, Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363, the court ordered a strata corporation to reimburse an

owner for the cost of replacing common property windows. The owner had replaced the windows because it was necessary to prevent further mould and water damage to their strata lot, and the strata corporation had refused to do so. The court found that the owner was justified in doing the work themselves when the strata corporation had refused.

32. Similarly, *Gelderman v. The Owners, Strata Plan NWS1208*, 2021 BCCRT 170, dealt with a common property pipe blockage that the strata corporation failed to address when an owner reported it. The tribunal member found the owner was justified in paying to unclog the pipe and seek reimbursement after the fact due to a reasonable possibility of imminent damage to the owner's strata lot.
33. However, I find there is no such evidence of an emergency here. Mr. Nietzle says after the initial treatment, he started noticing some pill bugs enter his strata lot by about April 2021, but he believed a second treatment was unnecessary before September 2021. Mr. Nietzle also does not dispute that the pill bugs were seasonal, and their numbers drastically reduced over the winter months. Again, there is no expert evidence suggesting that a second treatment in the fall of 2021 would permanently eliminate the pill bug problem around SL36 or that delaying a second treatment would make the problem significantly worse.
34. I accept that Mr. Nietzle continued to find the occasional pill bug in his strata lot as of September 2021, which he found upsetting because he had young children. However, I find the evidence falls short of establishing that there was any emergency associated with arranging a second treatment.
35. Overall, I find the strata did not breach its repair and maintenance obligations under the SPA or the bylaws. Under the circumstances, I find the strata's decision not to proceed with a second pill bug treatment in the fall of 2021 was reasonable. So, I find Mr. Nietzle has not proven the strata is required to reimburse the cost of the second pill bug treatment. I dismiss Mr. Nietzle's claims.

CRT FEES AND EXPENSES

36. 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. As Mr. Nietzsche was not successful, I dismiss his claim for reimbursement of CRT fees and dispute-related expenses. The strata paid no fees and claimed no expenses, so I make no order.
37. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Nietzsche.

ORDER

38. I dismiss Mr. Nietzsche's claims and this dispute.

Kristin Gardner, Tribunal Member