



Civil Resolution Tribunal

Date Issued: August 26, 2022

File: ST-2021-008906

Type: Strata

Civil Resolution Tribunal

Indexed as: *Veverytsa v. The Owners, Strata Plan NW 2545*, 2022 BCCRT 955

B E T W E E N :

IRYNA VEVERYTSA and LYUDMYLA VEVERYTSA

APPLICANTS

A N D :

The Owners, Strata Plan NW 2545

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about window repair and replacement in a strata corporation.
2. The applicants, Iryna and Lyudmyla Veverytsa, co-own a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 2545 (strata). The applicants say their window has a broken lock that cannot be repaired, but that the strata refuses to

replace it as required. The applicants ask the CRT to order the strata to replace the window.

3. The strata acknowledges that the window's lock does not work but says it is not obliged to replace the entire window. It says it has provided the applicants with an external lock for the window, which it says is an adequate solution.
4. Iryna Veverytza represents the applicants. A strata council member represents the strata.
5. As explained below, I dismiss the applicants' claims.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.

9. 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.
10. CRT documents incorrectly show the name of the respondent as The Owners, Strata Plan, NWS 2545. Based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan NW 2545. 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 section 61 of the CRTA to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the strata's name above.

ISSUE

11. The issue in this dispute is whether the strata must replace the applicants' window with a broken lock.

EVIDENCE AND ANALYSIS

12. In a civil dispute like this one the applicants must prove their claims on a balance of probabilities (meaning "more likely than not"). I have reviewed the parties' submissions and weighed the evidence submitted but only refer to that necessary to explain and give context to my decision.
13. The strata was created in 1988 and consists of 78 residential strata lots in a 3-storey building.
14. The strata filed an amended set of bylaws in the Land Title Office on November 5, 2001, which I find apply here. Although the strata filed further amendments and new bylaws from time to time, I find none of those later amendments are relevant to this dispute.
15. The applicants own strata lot 72, which is on the third floor. Based on the applicants' submitted photos, I find the window at issue opens onto an external hallway near the

applicants' front door. So, I find it reasonable that the applicants want to be able to lock the window, for security purposes.

16. It is undisputed that the applicants' front window locking mechanism does not work. Based on the applicants' photos I find the window is an old, aluminum frame, sliding window. The photos show that the window lock engages in a hole in the window frame's lower ledge only when the window is open approximately 1 to 2 inches. The parties agree that the lock does not engage when the window is fully closed.
17. Section 72 of the *Strata Property Act* (SPA) requires the strata to maintain and repair all common property. Section 68 of the SPA says the boundary of a strata lot is the midway point in the walls between the strata lot and the common property. I find the applicants' window faces the common property exterior of the building. I find it would be unreasonable and illogical to find the window is part of both the common property and the strata lot, despite that they exist on both sides of the midpoint boundary. On balance, I find the window is common property.
18. This conclusion is consistent with bylaw 12.1(2)(d), which requires the strata to repair and maintain all exterior windows, including the casings, frames, and sills. So, under sections 72 and 68 of the SPA, and bylaw 12.1(2)(d), I find the strata is responsible to repair and maintain the applicants' window.
19. The applicants submitted copies of their correspondence with the strata council, and strata council meeting minutes. Those documents show the applicants asked the strata to repair the broken lock on the window in August 2020. Around that time, the property manager and a strata council member visually inspected the window. The strata agreed to send a contractor to inspect and, if needed, repair the window lock. However, the strata was unable to get a contractor to attend in person, which it says was due to COVID-19 guidelines in place at the time. In a September 28, 2020 letter to the applicants, the strata explained that many strata windows had the same defective locking handle and that those owners had the same locking device the applicants had, which the strata believed to be an adequate solution.

20. The applicants followed up with the strata again in 2021. In June 2021, the strata again told the applicants that the window could be manually locked and so the strata did not feel any further repairs were needed. However, in August 2021, the strata agreed to obtain a quote to fix the applicants' window. M, from Titan Security inspected the window on August 27, 2021.
21. In a September 27, 2021 letter to the applicants the strata reiterated its decision that it was not necessary to replace the applicants' window or window handle and that it would not be taking any further steps. Following the applicants' strata council hearing in December 2021, the strata again wrote that it had already provided an acceptable solution to lock the applicants' window, that the same device was used by other strata lot owners and that it could provide another external locking device if the applicants desired.
22. The applicant's photos also show a wooden flat stick and a metal rod, both of which are the same size as the bottom window frame ledge. I find either could be inserted into the ledge when the window is fully closed, to stop anyone sliding the window open. The photos also show a metal clamp attached to the bottom ledge, with a screw. The applicants explain that tightening the screw engages the clamp and prevents the window from being slid open, although they say the screw clamp is difficult to apply and turn. In any event, I find these 3 devices are intended to "lock" the front window.
23. Based on the parties' submissions and correspondence in evidence, I find the strata provided at least the metal clamp to the applicants to lock the window. The strata says that the external mechanisms are sufficient to lock the windows. The applicants disagree and say the strata is obliged to replace the broken window.
24. The strata's obligation to repair and maintain is measured by the test of what is reasonable in all circumstances and can include replacement when necessary (see *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363). The standard is not one of perfection. When deciding whether to fix or replace common property or parts of a strata lot the strata must repair, the strata has discretion to approve "good, better

or best” solutions to any given problem. The court, and by extension the CRT, 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 v. Owners, Strata Plan NW 17*, 2010 BCSC 784). In other words, the strata is not required to replace the applicants’ window if there are other reasonable repair options open to it.

25. The applicants say M, from Titan Security, told the applicants the window could not be fixed and needed to be replaced. Based on emails between the applicants and the strata manager, I find M did not provide any written report. Further, M told the applicants to speak to the strata manager and not him about any opinion, so I accept that the applicants could not provide a copy of M’s opinion as evidence in this dispute.
26. However, I cannot give the applicants’ recitation of what M said any weight, as it is second-hand information. Further, there is no indication how M is qualified to provide such an opinion. Finally, it is unclear whether M considered the external locking mechanisms provided by the strata.
27. The applicants have provided no other expert opinion that the entire window must be replaced to lock the window.
28. Based on the applicants’ photos, I find it obvious that the external clamp, metal rod, and wooden stick all operate to stop the window from being slid open from the outside, and so effectively lock the window. Further, I find the window’s locking mechanism can be engaged with the window partly open, or the metal clamp could be applied at any spot along the lower window frame to lock the window while it is open. So, I find that these various mechanisms “lock” the window in both open and closed positions.
29. The strata says, and the applicants do not dispute, that approximately half of the strata lots have windows that do not fully lock for the same reasons. I find that replacing all those windows would be a significant financial undertaking for the strata, based on the applicants’ submitted quotes of \$996 to \$1,400 to replace their 1 window. I find the replacement costs is one of the circumstances to be considered when determining whether replacement is reasonable, in all the circumstances.

30. Overall, I find the external locking mechanisms provided by the strata are reasonable options to lock the applicants' window. Even if the applicants had shown that replacing the window is the best option, I find the strata has the discretion not to choose that option, so long as the strata acts reasonably in the circumstances. Again, the standard is not one of perfection.
31. In their submissions, the applicants also say the window should be replaced because it is old, the frame is starting to crack, and the rubber seal is coming loose. This is confirmed by the applicants' photos. However, the applicants provided no expert opinion that these issues require repair or replacement. So, I find they have not proven the window must be repaired or replaced because of the cracking, rubber seal, or age.
32. Contrary to the applicants' arguments, I find the strata did not fail to adequately investigate the window lock's condition and whether it required repair or not. The applicants' evidence shows the strata sent its property manager and a strata council member to inspect the window shortly after the locking issue was reported.
33. I acknowledge that the strata could have been more proactive about having an external contractor inspect the window, but also accept that needs to be balanced with the strata council and its contractor's comfort levels during the COVID-19 pandemic. I find the strata did not act unreasonably in delaying the in person inspection, given that it had provided the applicants with external locking mechanisms to ensure their safety.
34. I also find the applicants have not shown that they raised their concerns about the window's rubber seal or frame with the strata. So, I find the strata cannot be expected to have investigated that issue to determine if the window required repairs or replacement for that reason.
35. For all the above reasons, I find the strata acted reasonably in the circumstances. I dismiss the applicants' claims.

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 the applicants were unsuccessful in this dispute, I find they are not entitled to reimbursement of any CRT fees or expenses. As the successful party, the strata did not pay any CRT fees or request reimbursement of any expenses.
37. The strata must comply with section 189.4 of the SPA, which includes not charging any of its dispute costs against the applicants.

ORDERS

38. I dismiss the applicants' claims and this dispute.

Sherelle Goodwin, Tribunal Member