



# Civil Resolution Tribunal

Date Issued: September 29, 2022

File: ST-2021-006697

Type: Strata

Civil Resolution Tribunal

Indexed as: *Thoreson v. The Owners, Strata Plan BCS 3425*, 2022 BCCRT 1077

**B E T W E E N :**

TIFFANY THORESON and 1096313 B.C. LTD.

**APPLICANTS**

**A N D :**

The Owners, Strata Plan BCS 3425

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about an outdoor deck that is limited common property (LCP). The corporate applicant, 1096313 B.C. Ltd. (109), owns strata lot 23 (SL23) in the respondent strata corporation, The Owners, Strata Plan BCS 3425 (strata). The other applicant, Tiffany Thoreson, is one of 109's directors and lives in SL23.

2. The applicants say that the strata allowed debris and waste to fall onto SL23's deck from the above strata lots in contravention of the bylaws. They seek orders for the strata to 1) approve installation of a deck cover, 2) enforce bylaws about falling debris, and 3) waive fines issued against the applicants for keeping a tent up on the deck. The applicants also say the strata breached its repair and maintenance obligations by failing to deal with a pigeon infestation. They seek orders for the strata to 1) hire a pest control service to remove the existing pigeon roost from the building's exterior within 1 month, 2) approve installing pigeon deterrents like spikes or slides, 3) regularly monitor the effectiveness of the deterrents and take additional steps if they are ineffective, and 4) stop advising occupants to use streamers and plastic owls as pigeon deterrents, as the applicants say they are ineffective and pose a falling hazard.
3. The applicants also allege that the strata has refused to communicate with them and instituted a "communication ban." They seek orders for the strata to stop the communication ban or file a complaint against the strata manager with the *BC Financial Services Authority* for professional misconduct or unbecoming conduct. Finally, the applicants also seek orders for the strata to 1) perform exterior window maintenance of SL23 and 2) exempt the applicants from a bylaw that prohibits them from cleaning their decks with water and cleaning products.
4. The strata agrees with the applicants' requests for the strata to perform window maintenance and to allow the applicants to clean their deck with water and cleaning products. The strata otherwise disagrees with the applicants' requested orders. It says the deck cover is a significant change under section 71 of the *Strata Property Act* (SPA) that requires the approval of the owners by a  $\frac{3}{4}$  vote. It also says it has reasonably enforced bylaws and met its repair and maintenance obligations in connection with the pigeons. It denies refusing to communicate with the applicants. The strata says it will cancel the fines if the applicants propose an acceptable permanent deck cover.
5. Ms. Thoreson represents the applicants. A strata council member represents the strata.

6. For the reasons that follow, I find the applicants have proven some parts of their claims and make the orders set out below.

## **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. 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.
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 questions of the parties and witnesses 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 as follows:

- a. Are the current or proposed deck covers significant changes under SPA section 71, and are any remedies appropriate?
- b. Should the strata cancel fines in connection with the tent on SL23's deck?
- c. Should I order the strata to enforce bylaws about falling debris and smoking?
- d. Has the strata breached its repair and maintenance obligations in connection with the pigeons, and if so, are any remedies appropriate?
- e. Should I order the strata to lift the alleged communication ban or file a complaint about the strata manager?
- f. Are any other orders appropriate?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. This means 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.
13. The strata plan shows the following. The strata was created in May 2009. The strata's property includes a 25-floor tower. SL23 is located on the fifth floor, directly above a common property amenity room. SL23 has an outdoor LCP deck that rests on top of the roof of amenity room. The LCP deck covers only a portion of the roof. The rest of the roof is common property. The plan shows that the strata lots on the floors above SL 23 each have outdoor LCP balconies. They are suspended in the air on top of each other. Several of them are directly above the deck. The deck has a slightly larger floorspace than the balconies. I find this means the deck may "catch" debris falling from the balconies.
14. A title search shows that 109 became the registered owner of SL23 in December 2016. Ms. Thoreson introduced herself to the strata manager in an April 25, 2020 email. I find she moved into SL23 around that time. She wrote that she was a

shareholder in 109. I find this to be the case. Other emails indicate she co-owns 109 with another family member.

15. The strata's bylaws are relevant. The strata registered complete, consolidated bylaws in 2010 and in 2017, 2018, 2019, and 2020 as well. The relevant bylaws filed October 2019 and November 2020 share the same wording, though at times the numbering differs as noted below.
16. Bylaw 2(2) says an owner who has the use of LCP must repair and maintain it, except for repair and maintenance that is the strata's responsibility under the bylaws.
17. Bylaw 8 says the strata must repair and maintain common property and certain forms of LCP. These forms of LCP include the structure and exterior of the building, balconies and other things attached to the exterior of a building, windows and skylights on the building exterior, and railings that enclose patios, balconies and yards. The strata must repair and maintain these forms of LCP no matter how often the repair or maintenance ordinarily occurs under bylaw 8(c)(ii).
18. I find that SL23's LCP deck is either part of the building's exterior or attached to it. So, I find that under bylaw 8's wording, the strata must repair and maintain the deck.
19. As of October 2019, bylaw 35(4)(c) said that a "tenant" must not throw or discard anything from any window, deck, balcony or patio. This bylaw was renumbered as bylaw 36(4)(c) in October 2020.
20. The applicants say that occupants often throw cigarette butts from the overhead balconies. As of October 2019, bylaw 36.1 said that an owner, tenant, occupant, or visitor may not smoke in a strata lot, in interior common property, or on patios and balconies. This bylaw was renumbered as bylaw 37.1 in October 2020.

***Issue #1. Are the current or proposed deck covers significant changes under SPA section 71, and are any remedies appropriate?***

21. I will first outline the chronology about the deck covers. Shortly after Ms. Thoreson moved into SL23 she complained of debris falling into her deck from the above

balconies. She emailed the strata manager on April 25, 2020, for some guidelines for permissible covers. I find from the email that the deck lacked a cover at the time. The strata manager suggested that Ms. Thoreson request permission for a free-standing sun shelter. Ms. Thoreson did so by email.

22. Ms. Thoreson provided numerous photos of the debris that I find has fallen onto her deck since she moved in. I find it likely that the debris fell from the above strata lot balconies. The debris includes used cigarettes, dog toys, gardening materials, and other garbage. Some of the larger objects include a broom handle and a metal bar. Photos also show items that I find are connected to pigeons living at the building. These include a dead pigeon, cracked pigeon eggs, pigeon waste, bread someone presumably fed to the pigeons, bird seeds, and bird deterrents that I find were purchased by other owners and not the strata. These include several fake owls, strips of bird spikes, and a rubber snake.
23. On May 19, 2020, the strata manager emailed Ms. Thoreson to advise that the strata council said the following. SL23's previous owner used a large outdoor tent, but it blew away during a windstorm. The council advised it had no issues with a tent, so long as SL23's owner assumed liability for it blowing away during a storm. The strata manager suggested a large umbrella was the "best solution" and asked Ms. Thoreson to let her know what she intended to do.
24. Ms. Thoreson did not reply and purchased and installed an outdoor canopy tent on the deck. I describe the tent in more detail below. I find Ms. Thoreson did not have the strata's permission to do so as she did not respond to the strata manager or agree to assume liability for the tent blowing away. In a May 27, 2020 email, the strata manager asked Ms. Thoreson to remove the tent. Ms. Thoreson asked for permission to keep it. At the June 11, 2020 strata council meeting, the strata decided that Ms. Thoreson had to remove the tent as soon as possible and install a balcony umbrella instead. The decision is documented in the minutes.
25. Ms. Thoreson requested a hearing which the strata held on August 5, 2020. As noted in the minutes, she asked the strata to approve installation of a permanent structure,

such as a pergola or structure with a polycarbonate roof, to stop objects from falling on the deck. She also asked the strata to consider installing bird spikes and to clean her deck as part of the annual window cleaning work.

26. As stated in the minutes, the strata decided to temporarily permit the tent to stay. It declined permission for a more permanent structure because it felt this would require approval by a  $\frac{3}{4}$  vote of owners at an annual general meeting (AGM) or special general meeting (SGM). While not explicitly stated, I find it relatively clear from the minutes that the strata allowed the tent to stay with the expectation that Ms. Thoreson would submit a proposal the owners could vote on. The strata also agreed to include cleaning the deck as part of the window washing work. The strata also decided to further discuss the topic of installing bird spikes in the future. I note it never decided to install them.
27. Ms. Thoreson did not immediately submit a deck cover proposal. On April 1, 2021, the strata sent Ms. Thoreson a letter alleging that the tent was flapping in the wind, causing unreasonable noise in breach of bylaw 3.1. The bylaw says that an owner, tenant, occupant, or visitor must not use a strata lot, the common property, or common assets in a way that causes a nuisance or unreasonable noise. Ms. Thoreson replaced the tent cover with a stiffer material, semi-transparent carbonate sheeting, as shown in the photos. There is no indication that the strata imposed a fine for the noise.
28. Ms. Thoreson eventually obtained a quote for an aluminum patio cover with a white roof in November 2021 for \$7,400 plus GST. She emailed the quote to the strata on November 14, 2021 for approval. On December 16, 2021, the strata emailed its decision to Ms. Thoreson. The strata decided to refuse permission for the aluminum patio cover. It said that it would not fit the building's aesthetics. The strata also decided that Ms. Thoreson should dismantle the current tent within 120 days, otherwise it might begin imposing fines.
29. The applicants requested a hearing which the strata held on January 27, 2022. The strata council meeting minutes indicate that the applicants asked for guidance on

what would be an acceptable deck cover. The strata suggested that they hire a licensed engineer and architect to prepare a proposal. Once prepared, the strata said it would circulate the plans to owners and hold a vote at the next AGM for approval.

30. I now turn to the parties' positions and the law. Ms. Thoreson says the strata should approve the installation of the patio cover quoted in the November 2021 email. The strata says it cannot do so because it is a significant change in the use or appearance of common property. As noted above, it also has an unfavourable view of the cover's appearance.
31. Section 71 of the SPA says that a strata corporation must not make a significant change in the use or appearance of common property or land that is a common asset unless the change is approved by a resolution passed by a 3/4 vote at an AGM or SGM, or there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage. See *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333. As noted in *Foley*, the same test applies to owner changes.
32. As the applicants have already installed a tent, I find that there is no immediate danger to the applicants. I will first consider whether the current tent is a significant change under the test from *Foley*. In *Foley*, the court summarized the criteria for a significant change at paragraph 19 as follows:
  - a. A change would be more significant based on its visibility to residents and towards the general public.
  - b. Whether the change to common property affects the use or enjoyment of a unit or a number of units or an existing benefit of a unit or units.
  - c. Is there a direct interference or disruption as a result of the changed use?
  - d. Does the change impact on the marketability or value of the unit?
  - e. The number of units in the building may be significant along with the general use, such as whether it is commercial, residential, or mixed.



- f. Consideration should be given as to how the strata corporation has governed itself in the past and what it has allowed. For example, has it permitted similar changes in the past? Has it operated on a consensus basis or has it followed the rules regarding meetings, minutes and notices as provided in the SPA?
33. Court decisions suggest that the more permanent the change, the more significant it is. See for example, *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126 and *Sidhu v. The Owners, Strata Plan VR1886*, 2008 BCSC 92. The CRT has previously found that gazebos, sunshades, and pergolas may be significant changes to either common property or LCP. See, for example, my non-binding decision of *Braun v. The Owners, Strata Plan 1295*, 2021 BCCRT 1221 and *Parsons v. The Owners, Strata Plan KAS1436*, 2022 BCCRT 721.
34. The most recent photos of the tent show a structure that occupies the majority of the deck. It has four posts and a semi-transparent carbonate sheet for a roof. As noted earlier, the tent initially used a tarp cover, but its roof is now solid. While the parties refer to it as a tent, it resembles a pergola with wooden posts.
35. Overall, I find the *Foley* factors and the structure's degree of permanence support the conclusion that the tent is a significant change. The tent is outside. Photos show it is readily visible to pedestrians and to occupants in the strata lots above it. I also find the tent positively affects the applicants' enjoyment of SL23. It provides shelter from falling debris. I also find the structure is unique as no other strata lot has anything equivalent. It is much larger than, for example, other patio umbrellas seen in the photos. I find the structure has a moderate degree of permanence, given its size and purpose. Ms. Thoreson's submissions indicate she uses it to stop falling debris, rather than seasonally.
36. There is no indication that the tent affects SL23's value or that the number of strata lots is a significant factor in this dispute.
37. I acknowledge that the tent has stayed in place for some time. However, the parties agree that the tent was meant to be temporary. Consistent with this, Ms. Thoreson is seeking approval to install a different structure.

38. Given the above, I conclude that the tent currently on SL23's deck is a significant change in the use and appearance of common property under SPA section 71. As the owners have not voted to approve the tent, I find it is in breach of the SPA.
39. For similar reasons, I find that Ms. Thoreson's proposed aluminum patio cover, referred to in her November 2021 email, would also be a significant change. Pictures show it is approximately the same size as the tent, but it is made of metal throughout and is bolted to the ground. So, I find the same considerations about the tent apply, with the added fact that the aluminum cover is fully attached to the deck.
40. As noted above, the applicants seek approval of the proposed deck cover. Given my conclusions, I find I am unable to order the strata to approve it. The strata says it is open to having the owners vote on approving a cover, though the strata disapproves of the appearance of the aluminum patio cover. So, I order the strata to, within 120 days of the date of this decision, hold an SGM or AGM to vote on a resolution under SPA section 71 to approve the aluminum patio cover referred to in the November 2021 email for installation on SL23's deck, or another design of the applicants' choice.

***Issue #2. Should the strata cancel fines in connection with the tent on SL23's deck?***

41. Ms. Thoreson says the strata should cancel fines levied in connection with the tent, up to an amount of \$2,000. She says the strata levied the fines because she applied for dispute resolution with the CRT on August 27, 2021.
42. The strata says it will cancel the fines if Ms. Thoreson makes a proposal for a permanent deck cover that the strata accepts. While I find this statement suggests it levied fines, it did not provide any details or evidence about them.
43. On the evidence before me, I find it unproven the strata actually levied any fines for the tent. There is no evidence, such as a decision letter or statement of account for SL23, that shows the fine. Ms. Thoreson did not say when the strata imposed the fines or how much they were. She requests that the strata cancel up to \$2,000 in fines but says this is because she spent \$700 initially on the tent and \$1,300 to replace its roof. So, I find the requested amount is unrelated to any fines actually levied.

44. This leaves the strata's submission that it will cancel the fines under certain conditions. On balance, I find this likely refers to future fines it is considering levying. The evidence, including the strata's December 16, 2021 email about removing the tent, shows it "may" levy fines but hasn't done so.

45. As I find it unproven that the strata levied fines for the tent, I dismiss this claim.

***Issue #3. Should I order the strata to enforce bylaws about falling debris and smoking?***

46. The applicants say the strata has failed to enforce bylaws prohibiting smoking and throwing items from the above balconies. These bylaws are currently numbered 37.1 36(4)(c), respectively. The applicants say this has resulted in the debris described earlier landing in their deck, including cigarette butts. There is no suggestion that smoke from the above strata lots is entering the deck area or SL23. The applicants request as a remedy that I order the strata to enforce the bylaws by fully investigating the breaches, and recording actions taken in the minutes.

47. The strata denies failing to enforce the bylaws and says it reasonably investigated complaints.

48. The strata is already obligated to enforce its bylaws and investigate bylaw contravention complaints under SPA section 26. See *The Owners, Strata Plan LMS 3259 v. Sze Hang Holdings Inc.*, 2016 BCSC 32. Further, the strata must also record the decisions taken by council. See *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610 at paragraph 8. I find that recording such decisions is essentially the same as recording "actions taken" as submitted by the applicants.

49. I find the applicants seek orders for the strata comply with its legal obligations, which it is already obligated to do. I find that the orders sought would serve no further purpose. Given this, I must dismiss this claim.

50. I note that my decision does not affect the applicants' ability to seek other remedies about any potential, future breaches of the strata to enforce its bylaws.

***Issue #4. Has the strata failed its repair and maintenance obligations in connection with the pigeons, and if so, are any remedies appropriate?***

51. The SPA and the strata's bylaws set out the repair and maintenance obligations of the strata and its owners. SPA sections 3 and 72 require the strata to repair and maintain common property and common assets. As noted above, bylaw 8 also requires the strata to repair and maintain such property. I have found that this includes SL23's LCP deck, no matter how often the repair or maintenance ordinarily occurs.
52. In discharging its repair and maintenance obligation, the strata must act reasonably. The starting point for the analysis should be deference to the decisions made by the strata council as approved by the owners: *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784 at paragraphs 23 to 32. Similarly, an owner cannot direct the strata how to conduct its repairs: *Swan v. The Owners, Strata Plan LMS 410*, 2018 BCCRT 241 at paragraph 51.
53. The applicants say that the pigeons infest common property, and the strata is obligated to hire a pest control company to deal with them. The strata denies that it must take further steps. It says birds roosting in tall buildings is a natural phenomenon in cities and is minimized if occupants keep exterior areas clean from debris and food.
54. I turn to the evidence, which I find shows the pigeons are a persistent problem at the strata. Ms. Thoreson obtained a March 16, 2022 quote from West Side Pest Control Ltd. (West Side). West Side wrote that pigeons were "targeting" the northwest corner of the tower building. The strata plan shows SL23's deck is in the southwest corner, but I find it is affected by the same pigeons given the amount of waste shown on the deck in the photos. West Side observed pigeon waste on window ledges and balconies. It also saw pigeons sitting on window ledges and seemingly entering strata lots on floors 11 and 12. It attached photos showing numerous pigeons sitting on ledges on the north and west sides of the building, near the northwest corner. Given this information, I find the pigeons regularly nest or rest on areas the strata must repair and maintain, including common property and the building exterior.

55. In the quote, West Side recommended installing spikes for approximately \$11,000 to \$13,000. It said this would stop birds from landing and nesting on the building. In a separate May 3, 2022 email, West Side advised Ms. Thoreson that the pigeons were a health hazard and that the bird spikes were “really the only option for a situation like this”. West Side did not comment on the feasibility of removing existing roots, which is something Ms. Thoreson claims for.
56. The strata says that it received 7 complaints about the birds from 2016 to 2022. As noted earlier, I have also found that pigeon-related debris falls into SL23’s deck. I find several of these objects, such as bird spikes and plastic owls, were used by owners in an unsuccessful attempt to control the pigeons. I find this, coupled with the complaints, indicate that other owners are finding the pigeons to be a problem. As for the applicants, photos of SL23’s deck show that it becomes largely covered in bird waste over time. I find it likely that a person using SL23’s deck faces a non-trivial risk of being hit by pigeon waste.
57. I turn to the strata’s response to the pigeons. I find its response was largely limited to notices or statements in the minutes. For example, in the August 26, 2021 strata council meeting minutes, the strata encouraged occupants to keep balconies clear and to use fake owls. The strata noted the latter measure was only temporary in nature.
58. There is no indication that the strata installed any bird deterrents or obtained quotes for such work. In the August 19, 2019 strata council meeting minutes, the strata noted that pigeons were nesting on a balcony, and that it would consider installing bird spikes. There is no indication it took further action, such as obtaining quotes.

59. Overall, I find that the strata has acted unreasonably in connection with its repair and maintenance obligations and the pigeons. I find it unproven that the strata attempted any solutions or seriously investigated the cost to do so. I find it was obligated to do so, given the complaints of the applicants and other owners over the years, and the situation described in the West Side quote. As stated in *Weir* at paragraph 28, the strata is entitled to choose from good, better or best solutions to resolve its repair and maintenance problems. I find the strata has largely avoided considering any solution at all.
60. As noted earlier, the applicants seek orders for the strata to hire a pest control service, install bird deterrents, and monitor the effectiveness of the deterrents. Given the expense and effect that installing bird spikes will have on the strata, I find this is an issue that should be decided with the participation of the owners. I order the strata to, within 60 days of the date of this decision, request 2 proposals from pest control companies to address the pigeons nesting and resting on the tower building's exterior.
61. I order the strata to, within 120 days of the date of this decision, hold an SGM or AGM to consider and vote on 1 or more resolutions for addressing the pigeons nesting and resting on the tower building's exterior.
62. The applicants also requested that I order the strata to stop advising occupants to use streamers and plastic birds as deterrents. I decline to do so as I find the evidence unclear on whether such deterrents work in the areas they are placed on. The photos show that the pigeons are clustered in unreachable areas of the building without such deterrents.
63. The applicants also requested that I order the strata to regularly monitor the effectiveness of any installed deterrents and take additional steps, as necessary. I find it both premature and unnecessary to make such an order. The strata and its owners will have the opportunity to assess any measures taken in the future.

***Issue #5. Should I order the strata to lift the alleged communication ban or file a complaint about the strata manager?***

64. The applicants say that the strata was slow to respond to some messages and ignored others. In particular, the applicants say the strata manager “banned” them from speaking to the strata. They says this happened in part because Ms. Thoreson left a negative review of the strata manager’s firm on Google Maps on November 24, 2021. A copy of the review is in evidence. The strata denies any such ban exists.
65. I find it unproven that the strata manager or the strata instituted the alleged communication ban. The emails shows that the strata manager and strata responded to the applicants at some times and not others. However, the SPA does not oblige a strata corporation to answer every question or respond to every message from an owner. See, for example, the non-binding but persuasive reasoning in *Harvey v. The Owners, Strata Plan VR 390*, 2019 BCCRT 944 at paragraph 112. I am not satisfied that the strata breached any obligation to respond to correspondence.
66. In discussing the ban, the applicants say that there were irregularities in the minutes. I have not considered this because the applicants did not seek any specific orders about them.
67. Given the above, I dismiss the applicants’ claim to order the strata to lift the alleged communication ban or file a complaint about the strata manager.

***Issue #6. Are any other orders appropriate?***

68. As noted above, the applicants seek an order for the strata to perform “window maintenance” and to clean up any debris entering SL23’s deck from such maintenance. From the applicants’ submission I find the maintenance refers to annual window washing rather than repairing or replacing any windows. The strata agrees with the applicants’ request and says it deferred the annual window washing because of the pandemic.

69. Given the above, I order the strata to, within 120 days and if it has not done so already, wash the exterior windows of the tower building and clean any debris entering SL23's deck from the washing.
70. The applicants also seek an order for the strata to allow them to clean SL23's deck with water and cleaning products. The strata agrees with this as well. So, I order the strata to immediately refrain from enforcing any bylaws or rules that prohibit the applicants from cleaning SL23's deck with water and cleaning products.

## **CRT FEES AND EXPENSES**

71. 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 that the applicants have been partially successful. I therefore order the strata to reimburse the applicants for CRT fees of \$122.50.
72. The applicants also claim reimbursement for legal fees totaling \$2,030.09. Rule 9.5(3) says that the CRT will not order one party to pay another party's legal fees in a strata property dispute unless there are extraordinary circumstances which make it appropriate. Rule 9.5(4) goes on to say that in determining whether a party must pay the fees that a lawyer charged to another party, the CRT may consider:
- a. the complexity of the dispute,
  - b. the degree of involvement by the representative,
  - c. whether a party or representative's conduct has caused unnecessary delay or expense, and
  - d. any other factors the CRT considers appropriate.
73. The applicants did not fully succeed so I would not order full reimbursement of legal fees in any event. However, I also decline to order partial reimbursement of legal fees for the following reasons. I find this dispute was of slightly greater complexity than



normal because of the volume of evidence and number of issues raised by the applicants. I find this dispute was otherwise unremarkable. Given this, I find extraordinary circumstances are absent. So, I decline to order reimbursement of legal fees.

74. The applicants are entitled to post-judgment interest as applicable.

75. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

## **ORDERS**

76. Within 120 days of the date of this order, I order the strata to hold an SGM or AGM to vote on a resolution under SPA section 71 to approve the aluminum patio cover referred to in the November 2021 email for installation on SL23's deck, or another design of the applicants' choice.

77. Within 60 days of the date of this order, I order the strata to request 2 proposals from pest control companies to address the pigeons nesting and resting on the tower building's exterior

78. Within 120 days of the date of this order, I order the strata to hold an SGM or AGM to consider and vote on 1 or more resolutions for addressing the pigeons nesting and resting on the tower building's exterior.

79. Within 120 days of the date of this order, and if it has not done so already, I order the strata to wash the exterior windows of the tower building and clean any debris entering SL23's deck from the washing.

80. I order the strata to immediately refrain from enforcing any bylaws or rules that prohibit the applicants from cleaning SL23's deck with water and cleaning products.

81. Within 30 days of the date of this order, I order the strata to pay the applicants \$122.50 as partial reimbursement of CRT fees.

82. The applicants are entitled to post-judgment interest, as applicable.

83. I dismiss the applicants' remaining claims.

84. 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.

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David Jiang, Tribunal Member