



# Civil Resolution Tribunal

Date Issued: November 3, 2022

File: ST-2021-005819

Type: Strata

Civil Resolution Tribunal

Indexed as: *Juhala v. The Owners, Strata Plan NW 2089*, 2022 BCCRT 1208

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

BRADLEY HUGO JUHALA and JASMINA GEORGIEVA IVANOVA-  
VELKOVA

**APPLICANTS**

**A N D :**

The Owners, Strata Plan NW 2089

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## **INTRODUCTION**

1. This strata property dispute is about alleged negligence of a strata corporation to repair its building envelope causing strata lot damage, loss of use and enjoyment of the strata lot, and mental stress and wage loss to strata lot owners.

2. The applicants, Bradley Hugo Juhala and Jasmina Georgieva Ivanova-Velkova, own strata lot 98 (SL98) in the respondent strata corporation, The Owners, Strata Plan NW 2089 (strata).
3. As discussed below, the Dispute Notice for this dispute was amended to add Ms. Ivanova-Velkova as an additional applicant, to revise 3 original claims and to withdraw 8 claims. In the amended Dispute Notice, the applicants say the strata has negligently delayed repairs to the building envelope and specifically a window leak in SL98. They say the strata's negligence caused damage to SL98 and "severe mental stress and wage loss" to and by the applicants, as well as their loss of use and enjoyment of SL98.
4. The applicants seek several remedies which I summarize as follows:
  - a. Repair the building envelope,
  - b. Replace the window system of SL98 that is leaking,
  - c. Replace the engineered hardwood floor system and baseboards in SL98,
  - d. Remove and store the applicants' contents and provide nearby hotel accommodation for the applicants while the flooring is being replaced,
  - e. Repair the interior of SL98 to include replacing baseboards, a baseboard heater, insulation, backing for window coverings, drywall, paint, and windowsills that were removed by the strata's contractors,
  - f. Reimburse Mr. Juhala for "extra" electricity cost to run a dehumidifier and heat SL98 as a result of the walls being opened up,
  - g. Compensate Ms. Ivanova-Velkova for water damage to her laptop computer,
  - h. Compensate the applicants for loss of use and enjoyment of SL98, and
  - i. Compensate Ms. Ivanova-Velkova for "wages lost by the damage to her mental health and contributing to her declared permanent disability".

5. The applicants place a total value of \$588,725 on their claims, generally broken down as follows:
  - a. \$100,000 for building envelope repair
  - b. \$25,725 for damages to SL98 and personal property,
  - c. \$8,000 in compensation for storage of personal belongings, hotel accommodation and electrical consumption,
  - d. \$95,000 for loss of use and enjoyment of SL98, and
  - e. \$360,000 for Ms. Ivanova-Velkova's lost wages.
6. The strata disagrees entirely. In its amended Dispute Response, the strata says its council acted appropriately at all times. The strata expressly says that it was not negligent, and that if the applicants suffered any loss, damage or expense, it was not as a result of any act, omission, negligence, fault, or breach of duty of the strata. Finally, the strata asks for an order that the applicants reimburse it \$7,261.00 for legal fees.
7. The applicants are represented by Mr. Juhala. The strata is represented by a strata council member.
8. For the reasons that follow, I find the strata was not negligent, but I order it to repair the damage it caused to SL98 while investigating the window leak and repairing the window. I dismiss the applicants' remaining claims and the strata's claim for legal fees.

## **JURISDICTION AND PROCEDURE**

9. These are the formal written reasons of the 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.

10. 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.
11. 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.
12. Under section 123 of the CRTA and the CRT rules, 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.

### ***Preliminary Matters***

#### *Amended Dispute Notice and Dispute Response*

13. The original Dispute Notice was issued on July 26, 2021 and contained a total of 11 claims. The strata provided a Dispute Response but the date of the response is unclear. An amended Dispute Notice was issued on April 8, 2022 as described above. The strata submitted its amended Dispute Response on April 21, 2022. The withdrawn claims are not before me so I will not comment further on those details. Given there were no concerns raised by either party about the amendment procedures followed, I find there are no procedural fairness issues surrounding these amended documents.

#### *Late Evidence*

14. In its submissions, the strata provided several arguments that the applicants had failed to provide documentary evidence to support their claims, arguing the claims should fail as a result. The applicants requested an extension to their deadline to provide a final reply and permission to provide additional evidence with their final reply submissions. In an August 2, 2022 email, CRT staff permitted the applicants to upload

additional evidence, but advised them the additional evidence would be marked as “late” and that it would be at the discretion of the tribunal member hearing this dispute whether to accept the late evidence. CRT staff also permitted the strata an opportunity to review the late evidence and provide further submissions, which the strata did.

15. The strata objects to the late evidence being admitted. It suggests the applicants should have provided all of their relevant evidence in their initial submissions to establish their case against the strata. By not doing so, the strata says it could be perceived that the applicants were splitting their case by withholding relevant evidence only to introduce it after they had received the strata’s submissions and evidence. Thus, the strata says the applicants did not establish their case against the strata and should not be permitted to introduce additional evidence in support of their claims after knowing the strata’s defence. In support of its position, the strata says reply evidence is permitted only when it is necessary to “ensure that at the end of the day each party will have had an equal opportunity to hear and respond to the full submissions of the other”, citing *R. v. Krause*, 1986 CanLII 39 (SCC) at paragraph 16 and *Allcock Laight & Westwood Ltd. v. Patten Bernard and Dynamic Displays Ltd.*, 1966 CanLII 282 (ON CA), that addresses “splitting a case” at paragraph 7.
16. By allowing the late evidence, the strata says the applicants will be permitted a “2<sup>nd</sup> kick at the can” and the strata “will have lost its equal opportunity to be heard because the Applicants failed to follow the normal rules of procedure”, thus creating procedural unfairness and prejudice to the strata.
17. The strata also recognizes the flexible mandate of the CRT and that many CRT decisions have permitted late evidence because both parties had an opportunity to consider it, thereby removing any procedural unfairness or prejudice. As an alternative argument, the strata also provided submissions in response to the applicants’ reply submissions in the event I allow the late evidence.
18. I have reviewed the late evidence and the strata’s alternative submissions on it. In the circumstances of this dispute, I allow the late evidence but find it does not assist the applicants and I place no weight on it, as discussed briefly below.

### Legal Counsel as a Helper

19. In submissions, the applicants comment on the strata's alleged use of legal counsel to assist it with submissions. CRT rule 1.16 addresses representatives and helpers. For strata property disputes such as this, a party needs CRT permission to use a representative, but not a helper. To the extent the applicants allege wrongdoing by the strata in using legal counsel to help it with its submissions, I disagree, noting the BC Court of Appeal has found the use of legal counsel as a helper in CRT disputes to be acceptable. See *The Owners, Strata Plan NW 2575 v. Booth*, 2020 BCCA 153 at paragraph 24, as cited by the strata.

### Character Limit for Submissions

20. In submissions, the applicants say the strata has exceeded the character limit for its submissions contrary to CRT rule 7.3(5) that limits arguments (submissions) to 20,000 characters per claim. The strata disagrees and relies on *Jaud v. The Owners, Strata Plan KAS 1436*, 2022 BCCRT 594, where the tribunal member found that a total character count of 56,160 "complied with the character limit for each claim".

21. Here, the strata provided its submissions for all 3 claims as 1 long submission split into 3 sections under each of the 3 claims. The applicants did not suggest how the strata contravened rule 7.3(5), but I calculate the total characters for the respondents entire submissions to be 53,200, split separately for the 3 claims as 17,407, 18,485, and 17,308. Under rule 7.3(5), the total permitted character count for the 3 claims is 60,000, which the strata did not exceed. While not binding on me, I agree with the interpretation of CRT rule 7.3(5) in *Jaud*, and apply it here. Therefore, I find the strata has not contravened the rule.

## **ISSUES**

22. The issues in this dispute are:

- a. Was the strata negligent in attending to the leak in SL98?
- b. If not, did the strata treat the applicants significantly unfairly.

- c. What remedies are appropriate, if any?

## BACKGROUND

23. As the applicants in a civil proceeding such as this, Mr. Juhala and Ms. Ivanova-Velkova must prove their claims on a balance of probabilities, meaning “more likely than not”. I have reviewed all the submissions and evidence provided by the parties, but I refer only to information I find relevant to give context for my decision. In particular, the strata has cited several CRT and court decisions, and the applicants have responded to most. I do not see a need to address all of the referenced caselaw because not all is relevant.
24. The strata is a mixed-used strata corporation that includes 130 strata lots in a 19-storey high rise above underground parking. It was created in 1993 under the *Condominium Act* and continues to exist under the *Strata Property Act* (SPA). Land Title Office (LTO) documents show the applicants purchased SL98 in May 2020. SL98 is located on the 17<sup>th</sup> floor of the high rise.
25. The strata filed a complete new set of bylaws with the LTO that replaced the Standard Bylaws under the SPA on December 14, 2001. Several subsequent bylaw amendments were filed but none apply to this dispute. The following summarized bylaws are relevant to this dispute:
- Bylaw 2(1) requires an owner to repair and maintain their strata lot except for repair and maintenance that is the responsibility of the strata under the bylaws.
- Bylaw 8(1)(d) requires the strata to repair and maintain the exterior of the buildings.
- Bylaw 8(2)(b) requires the strata to repair and maintain certain parts of a strata lot, but none apply here.
26. SPA section 72 says the strata must repair and maintain common property and common assets. It is undisputed, and I find, the building exterior next to SL98, including

the living room window of SL98 located in the exterior wall, is common property. Section 72 and bylaw 8(1)(d) require the strata to repair and maintain the building exterior, also known as the building envelope.

27. Based on SPA section 68, the boundary between SL98 and the common property building exterior “is midway between the surface of the structural portion of the wall ... that faces the strata lot and the surface of the structural portion of the wall ... that faces the ... common property”.
28. The parties generally agree on the following background facts. Some detail is required.
29. On September 24, 2020, the applicants reported water leaking from the top of their living room window frame. The strata manager responded on September 29, 2020 that Steelhead Contracting (Steelhead), onsite doing balcony repairs at other building locations, was requested to contact the applicants for access to look at the window leak.
30. On October 10, 2020, the applicants notified the strata manager that they were waiting for Steelhead to attend and the water continued to enter SL98. The applicants stated they believed the SL98 damage was worsening. Steelhead attended SL98 on November 4, 2020 to do work on SL98’s deck. From the evidence and submissions, it appears Steelhead viewed the window leak but did not attempt any repairs.
31. About a month later, on December 8, 2020, the applicants enquired of the strata manager on the status of the window leak repair. The matter was discussed at the December 15, 2020 strata council meeting. The meeting minutes show the strata council requested clarifying details on the leak, which the strata manager requested by email to the applicants on December 23, 2020. The applicants responded December 26, 2020. They provided the requested information and suggested it was already known to the strata manager.
32. The strata council meeting minutes of January 14, 2021 note that at least 6 strata lots were experiencing water ingress, including 1 on the 17<sup>th</sup> floor, However, the minutes are unclear if the reported leaks were window leaks or balcony leaks or both. The



minutes contain a statement that “balcony work is weather permitting and will need to be scheduled for spring/summer 2021”.

33. On February 1, 2021, the applicants emailed the strata manager and their superior expressing concern over the continuing leak noting it was first reported in September 2020, about 4 months earlier. The email detailed the location of the leak and damage that was occurring to the window wall and flooring, suggesting the flooring damage had “gotten noticeably worse”. On February 2, 2021, the strata manager responded stating Steelhead was asked to provide a quotation for the necessary repair. The strata manager also stated that, New City Contracting (New City), a contractor that had done building envelope repairs for the strata in the past had also been asked to look at “the areas of concern, including [the applicants]”. New City attended SL98 on February 16, 2021, and on March 5, 2021 emailed the strata manager. The email suggested further investigation by swing stage to view SL98 and 3 other strata lots to investigate and repair the water leaks on a time and material basis with a budget of \$20,000.
34. On March 26, 2021, the applicants reiterated their concerns and restated the leak details to the strata manager and a council member. They asked for copies of the Steelhead and New City reports, and for a repair timeline. The applicants followed up on March 31, 2021 stating they would begin repairs to SL98 and charge the strata if they had not received a reply by April 9, 2021. The strata manager provided a copy of the March 5, 2021 New City email to the applicants on April 9, 2021 with no other information.
35. The April 20, 2021 strata council meeting minutes confirm New City had investigated water ingress issues “in a couple of units”. The minutes also state the strata council would be reviewing quotations received from Steelhead on the water ingress issues and that it had agreed to retain a building envelope specialist to inspect and provide recommendation on repairs. On May 5, 2021, the strata manager responded to the applicants’ request for repair information and stated “another company” would be assessing water ingress occurring at several strata lots.
36. The May 18, 2021 strata council meeting minutes state the strata manager contacted

several companies that do water ingress repairs. One of the contacted companies suggested there is no simple solution and the strata should retain a consulting or engineering firm to implement a “comprehensive envelope rehabilitation plan”. The minutes also state the strata received quotations from Busque Engineering to complete a 1-day inspection and report on the building envelope (\$1,250), or complete a full building envelope inspection (\$7,000). However, the strata council did not accept any quotations and agreed to “gather further information”.

37. By July 2021, the strata had retained WSP Global Inc. (WSP), an engineering firm. On July 20, 2021 the strata manager advised the applicants that WSP would attend SL98 on July 29, 2021 to investigate the window leak. On August 8, 2021, WSP provided an email report that comments on leaks at 4 strata lots, including SL98. For SL98, WSP suggested further visual review and water tests on the SL98 window, windows in strata lots above it and the roof parapet. In order to complete the further investigation and tests, WSP stated they require a contractor who can provide exterior access such as by way of a bosun chair. WSP also provided comments on potential water ingress source locations. After considering some photographs and explanations provided by the applicants, WSP recommended replacing the SL98 window and frame along with further investigation that included removal of interior finishes in SL98. On August 19, 2021 the strata manager advised the applicants that strata council had approved the work recommended by WSP.

38. A1 Windows (A1) provided a quotation dated September 2, 2021 to replace the window in SL98 at a price of \$11,250 plus taxes, which the strata approved. Arrangements were made for A1 to replace the living room window on November 1, 2021, but the installation was postponed due to concern raised over the condition of rotted wood framing exposed in the window wall on October 27, 2021. A1 replaced the window on November 16, 2021, but on November 25, 2021, the applicant confirmed water was again entering SL98. A1 responded that the exterior flashing and caulking of window was not complete. I infer from the submissions and evidence the window flashing and caulking was complete on November 27, 2021. The applicants reported no water entering SL98 on November 30, 2021, but the next day reported the water

leak continued.

39. Part of the wall below the living room window in SL98 was opened up on December 9, 2021. The drywall, vapour barrier and insulation were removed but it is unclear who did the work. On December 17, 2021, the strata retained Phoenix Restorations (Phoenix) to open the entire wall areas below and beside the living room window. In a January 31, 2021 report (WSP Report), WSP states it conducted 3 inspections for water ingress on July 29, September 8, and December 23, 2021. SL98 was visually inspected on July 29, 2021, but the report notes the applicants did not permit any exploratory openings. A scheduled water test of SL98 was not conducted on September 8, 2021 because the contractor retained by the strata “was unable to provide a bosun chair technician for the site visit”. As for the December 23, 2021 inspection, the report notes the scope was limited as the contractor did not remove the rigid insulation from inside the wall of SL98. The report further notes a series of planned water tests were cancelled because owners of the 2 strata lots above SL98, which were also being investigated, “did not anticipate having to wait for another contractor to open up the exterior wall”. One of the “key findings” of the report stated that despite water tests not being conducted, the living room window of SL98 likely experiences water ingress from several sources, including from windows of the 2 strata lots above SL98 and possibly cracks and deficient sealant.
40. The evidence shows the strata began communication with Absolute Building Science Strata Engineering Inc. (SE) on December 13, 2021. This was a time when WSP was already retained. It is unclear why the strata chose to involve SE, but on January 19, 2022, the strata agreed to retain SE to investigate SL98 and the 2 strata lots above it. Following a series of emails about collecting past leak information and organizing access to the 3 affected strata lots, SE confirmed a water test had been arranged for March 9, 2021. The water test was conducted and SE issued a report dated March 25, 2022 (SE Report).
41. The SE Report describes its objective as observing water ingress into SL98 and “providing recommendations on repair strategies to eliminate it”. In summary, the report concluded that water was entering as a result of failed exterior sealants around

windows and “now obsolete waterproofing detailing in the windows’ original design and installation”. SE recommended replacing the backer-rod and sealant joints around the windows as a temporary measure and replacing the living room windows of the 2 strata lots immediately above SL98 as a more permanent repair, as the windows were past their expected service life. On April 20, 2022, the strata manager emailed SE approving the window replacement as well as other things, including a full building envelope assessment. This is confirmed in the April 19, 2022 strata council meeting minutes. An email exchange between SE and the strata manager dated May 5, 2022 confirms SE was in the process of developing specifications and drawings for the SL98 repair.

42. By June 29, 2022 the specifications and instructions were complete and SE advised it was obtaining quotations on the work. According to email exchanged in June and July 2022, SE and the strata manager were having difficulty obtaining quotations for the window work. However, on July 26, 2022 SE provided 2 quotations for the repair work to the strata manager.
43. The parties’ exchange of submissions and evidence for this CRT dispute was complete by August 9, 2022, before the repairs recommended by SE were complete.

## **REASONS AND ANALYSIS**

### ***Was the strata negligent in attending to the leak in SL98?***

44. The majority of the applicants’ requested remedies flow from their allegation that the strata is negligent.
45. To be successful in an action for negligence, the applicants must demonstrate that the strata owed them a duty of care, that the strata breached the standard of care, that the applicants sustained damage, and that the damage was caused by the strata’s breach: see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.

### **Strata’s Duty of Care**

46. Under SPA section 72 and bylaw 8 discussed above, the strata clearly has a duty of

care to properly repair and maintain the building exterior and living room window of SL98.

*Did the Strata Breach the Standard of Care*

47. The standard of care established by the courts is reasonableness: see *Weir v. Strata Plan NW 17*, 2010 BCSC 784 and *John Campbell Law Corp. v. Strata Plan 1350*, 2001 BCSC 1342.
48. Based on the above caselaw, the applicants must show the strata's actions to repair the SL98 leak were unreasonable. One of the applicants' main arguments is that the strata did not address its duty to repair and maintain the common property building exterior in a timely manner. In *Slosar v The Owners, Strata Plan KAS 2846*, 2021 BCSC 1174, a judicial review of a CRT decision, addressed this very point. I find the court's comments at paragraphs 66 and 67 provide helpful guidance here.

[66] The standard against which the Strata's actions are to be measured in assessing its duty under s. 72 of the SPA is objective reasonableness, which requires, among other things, balancing interests to achieve the greatest good for the greatest number given budget constraints. Contrary to the petitioner's arguments, there is no requirement that repairs be performed immediately or perfectly: *Hirji v. Strata Plan VR 44*, 2015 BCSC 2043 at para. 146. Steps required to be taken are dictated by the circumstances at the time. The standard is not perfection nor is it to be judged with the benefit of hindsight.

[67] It must be remembered that Strata councils are made up of lay volunteers and that mistakes and missteps will doubtlessly occur from time-to-time. Council members are not to be expected to have expertise in the subject matter of their decisions. Accordingly, latitude is justified when a strata council's conduct is being scrutinized: *Mitchell v. The Owners, Strata Plan KAS 1202*, 2015 BCSC 2153 at para. 50; *Hill v. The Owners Strata Plan KAS 510*, 2016 BCSC 1753.

49. I find the applicants have not established the strata acted unreasonably with respect to the window leak. First, I appreciate the applicants were concerned about water

ingress and that they wanted the repairs completed as quickly as possible. However, the evidence shows the strata was faced with other leak repairs, including balcony membrane repairs at SL98 and other strata lots. It was reasonable for the strata to ask a contractor already on site working on balcony leaks to view their window leak.

50. Second, it appears there may have been some confusion with the strata manager tracking the window leak separate from other leaks, possibly believing it was a balcony leak, and asking for clarification on the leak details in December 2020. However, I do not agree with the applicants that this was intentional. In *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74, the BC Supreme Court found that short of deliberate delay, slowness in repairs by a strata is reasonable. *Leclerc* was a case of water ingress from common property into a strata lot over a long period of time, not unlike the facts in this case. The court said that although the strata corporation could perhaps have hastened its investigations of the problem, there was no evidence of deliberate “foot-dragging”. In this dispute, the gaps in communication between October and December can be attributable to both parties not identifying any real sense of urgency for the repair. It is certainly plausible that the strata had difficulty in locating appropriate trades and professionals, and arranging investigations and water tests due to COVID-19 as it claims. Weather in early January and February 2021 could also be a contributing factor that caused delay, as suggested by the strata. These things were not in the strata’s control. Based on the background information provided above, I also cannot agree with the applicants’ submission that the strata chose to “ignore the leak”. Clearly, the strata took action to investigate the window leak and replaced the window at significant expense to the strata.

51. Third, I agree with the strata that it has relied on professionals to assist it in determining the cause of the window leak. I do not agree the strata ignored professional advice it received as suggested by the applicants. While the applicants assert every professional consulted by the strata advised it to conduct a building envelope assessment, I find that assertion is not supported by the evidence. The evidence shows strata called for investigations and quotations and received recommendations from qualified sources and acted on those recommendations. At times, the strata

council undertook its own sourcing of qualified consultants and building science engineering firms, which I find was also reasonable, given the professionals they had retained had not determined the source of the window leak.

52. Fourth, there is no evidence the strata's delay affected the damage to SL98 or "increased the costs of repair exponentially". There are no photographs of the flooring prior to the September 2020 leak that show the floor's condition. Further, given the windows of SL98 and other strata lots were found to be past their serviceable life, the strata would have incurred the window replacement cost in any event. Further, I find the applicants' arguments about the strata's delay in repairs to unit 608 and an alleged delay in updating its depreciation report have no bearing on this claim or dispute.
53. Finally, I find it was not initially evident that the building envelope itself was the cause of the leak despite the applicants' emails and claims. Indeed, WSP recommended the applicants' living room window be replaced without any detailed investigation of the building envelope, which the strata finally arranged through SE. SE was able to pinpoint the source of the water leak to failed sealants and windows above SL98 only after completing water tests.
54. For these reasons, I find the applicants have failed to demonstrate that the strata acted unreasonably in the circumstances. Therefore, I find their claim that the strata was negligent in repairing their living room window leak must fail.

*Did the strata treat the applicants significantly unfairly?*

55. Although the applicants did not use these words, their submissions could be interpreted to imply the strata treated them significantly unfairly. I agree with the strata that it did not.
56. The CRT has jurisdiction to determine claims of significant unfairness under section 123(2) of the CRTA (formerly section 48.1(2)). See *The Owners, Strata Plan LMS 1721 v. Watson*, 2018 BCSC 164.
57. The courts and the CRT have considered the meaning of "significantly unfair" and have largely followed the interpretation adopted by the BC Court of Appeal (BCCA) in *Reid*

*v. Strata Plan LMS 2503*, 2003 BCCA 126. In *Reid*, the court said that actions are “significantly unfair” when they are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable.

58. I particularly note that the court in *Reid* agreed with the BC Supreme Court’s finding in *Gentis v. The Owners, Strata Plan VR 368*, 2003 BCSC 120, that a court (or tribunal) should not interfere with the actions of a strata council unless the actions result in something more than mere prejudice or trifling unfairness. Given my finding that the strata was not negligent, I accept that the strata’s actions about the repair of the SL98 window leak may have been unfair to the applicants, but I do not find they rise to the level of significant unfairness.

59. Therefore, I do not find the strata treated the applicants significantly unfairly.

*What remedies are appropriate?*

60. From the evidence before me, I find the strata knows its responsibilities. While it is unclear if the sealant and window work above SL98 has been completed as recommended by SE, I find the strata is aware it must repair and maintain the building envelope. Therefore, I make no order about repairs to the building envelope.

61. As earlier mentioned, the majority of the applicants’ requested remedies flow from a finding that the strata was negligent. Given my finding the strata was not negligent, I find the applicants’ claims for compensation are not appropriate.

62. Even if I had found the strata was negligent, I would not have ordered the strata to compensate the applicants for damage to or storage of personal belongings, hotel accommodation and electrical consumption, loss of use and enjoyment of SL98, and lost wages. I say this because the applicants did not provide any supporting evidence that they suffered any loss as a direct result of the water ingress. For example, the applicants did not prove they needed to move out of SL98 for flooring work to be completed or provide any invoices supporting an increased use in electrical consumption. Neither did they provide any evidence the water ingress had a direct effect on their mental health or lost wages. The applicants did not submit any medical



records or professional opinions to establish the state of their mental health. Nor did they establish any pre-existing physical or mental conditions of Ms. Ivanova-Velkova were unrelated to their claims in this dispute.

63. The remedies I am left to consider are for physical damages to SL98.
64. The applicants agree the strata has already replaced the living room window, so I make no order about that.
65. I find some of the damage was caused by water leaking from the window, and some was caused by the strata's contractors investigating leak.
66. I find damage caused to SL98 as a direct result of the strata investigating the window leak, such as removal of baseboard, drywall, vapour barrier, insulation and the windowsill along the window wall, is the strata's responsibility. I say this for 2 reasons. First, the strata arranged for these wall components to be removed. Second, the strata would likely not have been able to fully investigate the window leak without removing these components to see the interior of the wall cavity. Therefore, I find the strata must repair the exposed wall, including painting the wall and baseboard, when the exterior repairs are complete. This is consistent with other CRT decisions that have found a strata corporation is responsible for repairing common property it intentionally damages. See for example, *Campbell v. The Owners, Strata Plan 1086*, 2018 BCCRT 795, *Manak v. The Owners, Strata Plan KAS 2116*, 2020 BCCRT 567, and *Ferreira v. The Owners, Strata Plan NW1769*, 2021 BCCRT 305.
67. I find the applicants are otherwise responsible for repairs to SL98 under bylaw 2. So I find they are responsible to repair the water damaged engineered hardwood flooring. Based on the photographs in evidence, the only section of flooring that was lifted was a short section near the window about 12 inches in length. Even if this small section of flooring was lifted by the strata's contractor, which is not proven, I find it is insignificant to the overall flooring replacement.
68. For these reasons, I order the strata to replace the baseboard, drywall, vapour barrier, insulation and the windowsill along the living room window wall of SL98 and paint the

baseboard, windowsill and wall, when the leak repairs are complete.

## **CRT FEES AND EXPENSES**

69. 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 not to follow this general rule in this dispute. I find the strata was the most successful party, but it did not pay CRT fees, so I make no order for reimbursement of fees.
70. The strata claims \$7,261.00 in legal fees. It says it should be entitled to its costs if it is the most successful party. However, CRT rule 9.5(3) that says the CRT will not order reimbursement of lawyer's fees in a strata dispute unless there are extraordinary circumstances. CRT rule 9.5(4) says the CRT may consider the complexity of the dispute, the degree of the lawyer's involvement, whether the conduct of a party or their representative has caused unnecessary delay or expense, and any other factors the CRT finds appropriate.
71. Neither party was represented by legal counsel but as I have noted, the strata had legal assistance. I find the issues in this dispute were not overly complex as the fundamental issue is the investigation and repair of common property. I find the applicants did not cause unnecessary delay or expense during the proceedings and there is no indication their conduct during the course of this dispute was reprehensible. Overall, I find the rule 9.5(4) factors, and the lack of extraordinary circumstances, weigh against ordering reimbursement of the strata's legal fees as a dispute-related expense. Further, the strata did not provide any documentary evidence, such as copies of its legal invoices, so I decline to order the applicants to pay the strata's lawyer's fees. The strata did not claim any other dispute-related fees so I order none.
72. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

## **ORDERS**

73. I order the strata to replace the baseboard, drywall, vapour barrier, insulation and the windowsill along the living room window wall of SL98 and paint the baseboard, windowsill and wall, within the latter of 60 days of when the leak repairs to SL98 are complete or the date of this decision.
74. I dismiss the applicants' remaining claims.
75. I dismiss the strata's claim for legal fees.
76. 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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J. Garth Cambrey, Vice Chair