



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Spiteri v. The Owners, Strata Plan K664*, 2022 BCCRT 1228

B E T W E E N :

RICHARD JOSPEH SPITERI

APPLICANT

A N D :

The Owners, Strata Plan K664

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about window repairs in a strata corporation.
2. The applicant, Richard Joseph Spiteri, co-owns a strata lot (SL10) in the respondent strata corporation, The Owners, Strata Plan K664 (strata).

3. Mr. Spiteri says SL10's windows are common property, and need to be replaced. Mr. Spiteri says the strata has passed the responsibility for window repair costs on to the owners contrary to the *Strata Property Act* (SPA). Mr. Spiteri asks for an order that the strata "accept the responsibility" to pay for the expense of replacing SL10's "problem" windows.
4. The strata does not dispute that SL10's windows are common property, but says Mr. Spiteri did not explain the problem with SL10's windows. The strata says Mr. Spiteri's claims should be dismissed.
5. Mr. Spiteri is self-represented. The strata is represented by a strata council member.

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, KAS664. Based on SPA section 2, the correct legal name of the strata is The Owners, Strata Plan K664. 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 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the strata's name above.

Admissible evidence

11. The strata provided communications exchanged between the parties during the CRT's facilitation stage in evidence. CRTA rule 1.11 says that communications made attempting to settle claims by agreement in the tribunal process are confidential and must not be disclosed during the tribunal decision process. CRTA rule 1.11 exists to encourage settlement by allowing parties to make admissions without fear that those admissions will end up as evidence in a later hearing. The communications in evidence do not contain any admissions or other information that could prejudice Mr. Spiteri. So, while the strata should not have included the communications as evidence, doing so did not prejudice Mr. Spiteri. In any event, given CRTA rule 1.11, I have not considered any of the above communications in reaching my decision.

Finance irregularities

12. In his application for dispute resolution, Mr. Spiteri alleged that there were "unanswered irregularities" in the strata's finances. However, Mr. Spiteri did not request any remedy related to this allegation. So, I have not addressed this allegation in this dispute.

ISSUES

13. The issues in this dispute are:
 - a. Is the strata responsible to repair and maintain SL10's windows?
 - b. Did the strata breach its duty to repair and maintain SL10's windows?
 - c. If yes, what remedies are appropriate?

EVIDENCE AND ANALYSIS

14. In a civil proceeding such as this one, Mr. Spiteri, as the applicant, must prove his claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence, but I only refer to what I find relevant to provide context for my decision.
15. The strata is a residential strata corporation consisting of 10 strata lots in 2 buildings. It was created in September 1987 under the *Condominium Act* and continues to exist under the SPA.
16. The strata filed bylaws in 1993 under the *Condominium Act* in the Land Title Office (LTO). The *Strata Property Regulation* (SPR) includes transitional provisions for bylaws filed under *Condominium Act* when the SPA came into force on July 1, 2000. SPR section 17.11 says the SPA's standard bylaws were deemed to be the bylaws for all strata corporations on January 1, 2002, except to the extent that conflicting bylaws were filed with the LTO, unless those filed bylaws also conflicted with the SPA. The strata also filed bylaw amendments in 2009 and 2011 after the SPA came into force, but neither are relevant in this dispute.
17. The strata did not repeal and replace all of its filed bylaws after the SPA came into force. Therefore, I find the 1993 bylaw amendments made under the *Condominium Act* remain in effect after January 1, 2002, except to the extent that the 1993 bylaws conflict with the SPA. I also find the SPA's standard bylaws are applicable to this

dispute, except to the extent they conflict with the 1993, 2009 and 2011 bylaws. I will address the relevant bylaws below.

Is the strata responsible to repair and maintain Mr. Spiteri's window?

18. SPA section 72 says a strata is responsible to repair and maintain common property. It also allows a strata to make an owner responsible for common property maintenance and repairs through its bylaws, but only if it is limited common property or if it is identified in the *Strata Property Regulations*. There are no such regulations and I find SL10's windows have not been designated as limited common property. So, I find these exceptions do not apply here.
19. I find the strata's bylaw 2(a), filed in 1993, is still applicable. Bylaw 2(a) makes owners responsible for the repair and maintenance of their strata lots. So, if SL10's windows are part of Mr. Spiteri's strata lot, he is responsible to repair and maintain them. If SL10's windows are common property, the strata is responsible to repair and maintain them.
20. Mr. Spiteri says SL10's windows are located on the building's exterior and are common property. The strata did not dispute this. For the following reasons, I find the windows are common property.
21. SPA section 1(1) defines common property, in part, as that part of the land and buildings shown on the strata plan that is not part of a strata lot. I find the strata plan identifies a bay window interior space as being part of SL10, and the bay window's exterior as common property. Apart from bay windows, no other windows are identified on the strata plan. The area surrounding the 2 strata buildings is marked as common property.
22. SPA section 68(1) says that the boundary of a strata lot is the midway point in the walls between the strata lot and the common property, or another strata lot. Mr. Spiteri submitted photographs of windows in evidence. I find the windows in the photographs are located on exterior walls, facing common property. I also find the windows are located outside the midway point in the walls. However, even if the windows exist on

both sides of the midpoint boundary, I find it would be unreasonable and illogical to find the windows are part of both the common property and the strata lot. I find SL10's windows are common property. Therefore, I find the strata is responsible to repair and maintain SL10's windows under SPA section 72.

Did the strata breach its duty to repair and maintain Mr. Spiteri's windows?

23. There are numerous cases from the BC Supreme Court which discuss the scope and limits of a strata corporation's duty to repair and maintain under SPA section 72. In such cases, the Court has said that a strata corporation's obligation to repair and maintain is measured against a test of what is reasonable in all of the circumstances: *Taychuk v. Owners, Strata Plan LMS 744*, 2002 BCSC 1638, at para. 30.

24. Mr. Spiteri says the strata did not respond to his April 20, 2022 hearing request to address SL10's "problematic" windows. The strata disputes this. However, I find I do not need to address this issue, because I find Mr. Spiteri has not proved that the windows need to be replaced in any event.

25. Mr. Spiteri says SL10's windows must be replaced because they are in poor condition and leaking. He says SL10's windows' life has finally expired. He says he tried to extend the life of the windows by applying silicone to the outside frame where it meets the glass. Mr. Spiteri says despite these efforts, he has dealt with condensation, a cold draft, water pooling on the windowsills, increased heating and cooling costs, and traces of mold in 2 bedroom windows. Mr. Spiteri says he also applied shrink wrap plastic film to the interior of each window to minimize discomfort and the risk of mold and mildew. Mr. Spiteri provided some photographs that I find show portions of some exterior windows. However, I cannot determine the condition of the windows from the photographs. I find it is not obvious from the photographs that the windows require replacement. The photographs do not show any condensation, mold, water pooling, or water damage. Mr. Spiteri did not provide other evidence to support these submissions.

26. Mr. Spiteri did submit a "footnote" from what he says is the strata's March 2022 depreciation report. The footnote indicates that the strata's windows have a "useful

life” of 50 years, and a “remaining life” of 16 years. The strata did not dispute this evidence. However, I find this evidence does not show that Mr. Spiteri’s windows require immediate replacement.

27. I acknowledge Mr. Spiteri’s submissions about window condensation, drafts, and other issues detailed above. However, Mr. Spiteri did not say that he has any window expertise, so I place no weight on his own opinion about the condition of the windows. Mr. Spiteri did not provide expert evidence or other evidence to show that the windows require replacement. So, I find there is no objective evidence to show that SL10’s windows require replacement.

28. Overall, I find the strata is required to repair and maintain common property, including SL10’s windows. However, as noted, Mr. Spiteri must prove his claims. Based on the evidence before me, I find Mr. Spiteri has failed to prove that SL10’s windows require replacement or repair. Therefore, based on the evidence, I find the strata has not breached its duty to repair and maintain SL10’s windows under SPA section 72, and I dismiss Mr. Spiteri’s claims.

CRT FEES AND EXPENSES

29. Under CRTA section 49, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Mr. Spiteri was unsuccessful, I dismiss his fee claim. The strata did not pay any CRT fees, and neither party claimed any dispute related expenses, so I award none.

30. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mr. Spiteri.

ORDER

31. I dismiss Mr. Spiteri's claims and this dispute.

Leah Volkers, Tribunal Member