



Civil Resolution Tribunal

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Amendment Date: January 31, 2023¹

File: ST-2021-008598

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan KAS 913 v. Oxley*, 2023 BCCRT 76

B E T W E E N :

The Owners, Strata Plan KAS 913

APPLICANT

A N D :

LORAINÉ OXLEY and KENNETH GORDON OXLEY

RESPONDENTS

A N D :

The Owners, Strata Plan KAS 913

RESPONDENT BY COUNTERCLAIM

AMENDED¹ REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about required repairs to common property, including a limited common property (LCP) deck that was previously altered.
2. The applicant, and respondent by counterclaim, The Owners, Strata Plan KAS 913 (strata) is a strata corporation existing under the *Strata Property Act* (SPA). The strata is comprised of 34 residential strata lots in several low-rise buildings.
3. The respondents, and applicants in the counterclaim, Lorraine Oxley and Kenneth Gordon Oxley (Oxleys), own strata lot 32 (SL32) located in 1 of the buildings.
4. In its claim, the strata says structural repairs are required to a second floor LCP deck designated for the exclusive use of the owners of SL32. It says the owners previously took responsibility for deck repairs as part of completing approved alterations to the deck that involved covering the vinyl deck with tile. The strata seeks an order that the Oxleys pay for the “repair of the structural integrity of the upper patio deck surface and structures”. The Oxleys say the tile installation did not cause or contribute to the deck damage, so the strata is responsible for the deck repairs.
5. In their counterclaim, the Oxleys say the strata is negligent because it has failed to reasonably repair and maintain common property windows, gutters, deck posts and a sprinkler (irrigation) system. They say the negligent actions of the strata have caused leaks and insect ingress into SL32. The Oxleys say the strata hires contractors without proper WorkSafeBC (WCB) and insurance coverage, or reasonable experience and competence. The Oxleys also say when deck posts were previously repaired by the strata, the strata “opened up the stucco, the upper deck, and the underlying structure” was “open to the elements for months”, which they say contributed to further deterioration. They also say the strata’s workers brought material through SL32 and damaged a wooden staircase. The Oxleys seek orders that the strata:
 - a. Replace windows and “window fittings” as required,
 - b. Perform further necessary repairs to the deck posts and supports,

- c. Replace or repair the LCP deck next to SL32,
 - d. Maintain the “[irrigation] system, gutters, drainage etc.” using properly licenced contractors with “necessary designations and coverage”, and
 - e. Pay them \$3,675 for damage to the wooden staircase inside SL32.
6. The strata agrees it is responsible for window repair or replacement and says the Oxleys’ windows will be repaired based on its contractor’s advice. It denies it has been negligent in its common property repair and maintenance obligations and says it hires properly insured and licenced contractors that have WCB coverage. As for the Oxleys’ claim for damage to the interior wooden staircase, the strata says the alleged damaged occurred in 2015 and should have been reported at that time. I infer the strata says the staircase damage is out of time under the *Limitation Act* (LA). I also infer the strata asks that the Oxleys’ counterclaims be dismissed.
7. A strata council member represents the strata. Amber Poburn, a lawyer, represents the Oxleys.
8. As explained below, I find the strata must repair the LCP deck. I dismiss the parties’ remaining claims and counterclaims¹.

JURISDICTION AND PROCEDURE

9. 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.
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. 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 Issues

Evidence

12. In the Oxleys' counterclaim, they included what they say was a neighbour's email embedded in their final reply submission. The strata objected to the embedded email suggesting it was new evidence. In keeping with the CRT's flexible mandate, through staff I asked the parties to provide further submissions on this issue, which they did. As a result of this process, I find no procedural fairness issues arise about the embedded email. In any event, I have not relied on the information because it relates to a neighbour's deck and I do not find it relevant.

Contractor Qualifications

13. The Oxleys also claim the strata hires contractors without WCB coverage, insurance, experience and competence to maintain the value and structural integrity of the complex, but did not provide any evidence to support their allegation. Based on this general unsupported allegation, and that that strata provided a copy of WCB coverage for 1 of its contractors, I dismiss the Oxleys' claim that the strata hires unqualified contractors.

ISSUES

14. The issues in this dispute are:

- a. Who is responsible to repair the LCP deck, and to what extent?

- b. Has the strata been negligent in its repair and maintenance of windows and patio doors, gutters, and the irrigation system?
- c. Is the owners' claim for wooden staircase damage out of time under the LA? If not, is the strata responsible to pay the Oxleys for the cost to repair the alleged damage?

BACKGROUND, EVIDENCE AND ANALYSIS

15. As applicant in a civil proceeding such as this, the strata must prove its claims on a balance of probabilities, meaning more likely than not. The owners must also prove their counterclaims on the same basis. I have considered all the submissions and evidence provided by the parties, but refer only to information I find relevant to explain my decision.
16. The strata was created in May 1991 under the *Condominium Act* and continues to exist under the SPA. SL32 is a 2-level strata lot. The strata plan shows there are 2 LCP balconies designated for the exclusive use of the SL32 owners: an upper balcony off the second level of SL32 and a lower balcony off the first level of SL32. I find the upper balcony is identified by the parties as a deck and the lower balcony is the patio referenced by the respondents. I find the strata's claim deals only with the upper LCP balcony only and I will refer to it as an LCP deck for ease of reference.
17. On November 26, 2001, the strata filed a complete new set of bylaws with the Land Title Office (LTO) that repealed and replaced all previously filed bylaws and the Standard Bylaws under the SPA. Further bylaw amendments were filed in May 2003 and November 2019, but I find they are not relevant to this dispute. I discuss the relevant bylaws below as necessary.
18. The following general facts are undisputed.
 - a. The strata issued a completed Form B – Information Certificate under SPA section 59 to the Oxleys dated August 13, 2008 (Form B). The Form B disclosed, among other things, that the owner of SL32 took responsibility for expenses relating to “Glass railings with respective end gate(s) or other

enclosures. This refers to both upper and lower levels” that were allegedly approved by the strata and completed by a prior owner of SL32. The Oxleys do not deny receiving the Form B, so I find that they did.

- b. The Oxleys purchased SL32 in September 2008.
- c. In June 2010, the Oxleys applied for and received approval from the strata to alter the 2 LCP decks (upper and lower) next to SL32 by installing ceramic tiles on the decks’ surfaces. They installed tile on the 2 decks shortly thereafter.
- d. In about September 2015, after the Oxleys installed tile on the deck, the strata retained KnG Builders Inc. (KnG) to replace 6 structural posts associated with the upper LCP deck next to SL32. KnG brought materials necessary for the repair through SL32.

Who is responsible to repair the LCP deck, and to what extent?

- 19. SPA section 72 addresses repair of property and says that a strata corporation must repair and maintain common property and common assets. Among other things that do not apply here, section 72 also says that a strata corporation may, by bylaw, make an owner responsible for the repair and maintenance of LCP the owner has a right to use, such as the upper LCP deck in this dispute.
- 20. Bylaw 3 of the strata says an owner who has use of LCP must repair and maintain it except for repair and maintenance that is the responsibility of the strata under the bylaws. Bylaw 12.1(c) says (my emphasis):

12.1 The strata corporation ***must repair and maintain all of the following:***

(c) ***limited common property***, but the duty to repair and maintain it is restricted to

(i) repair and maintenance that in the ordinary course of events occurs less often than once a year, and

(ii) ***the following, no matter how often the repair or maintenance ordinarily occurs:***

(A) ***the structure of a building;***

(B) the exterior of a building;

(C) chimneys, stairs, ***balconies and other things attached to the exterior of a building;***

(D) doors, windows and skylights on the exterior of a building or that front on the common property;

(E) fences, ***railings and similar structures that enclose patios, balconies and yards;***

21. Further, bylaw 9.1 says an owner must obtain the written approval of the strata before making or authorizing an alteration to LCP and bylaw 9.3 states, in part (my emphasis):

The strata corporation may require, as a condition of its approval, that the owner agree, in writing, to certain terms and conditions, including, not exhaustively, the following:

....

(d)that the owner from time to time of the strata lot receiving the benefit of an alteration to... limited common property... ***must, for as long as he or she remains an owner,*** be responsible for all present and future maintenance, repairs and replacements, increases in insurance, and any damage suffered or cost incurred by the strata corporation as a result, directly or indirectly, of the alterations to... limited common property....

(e)that the ***owner and any subsequent owner*** on title who receives the benefit of such alteration, must, ***with respect only to claims or demands arising during the time that they shall have been owner,*** indemnify and hold harmless the strata corporation... from any and all claims and demands whatsoever arising out of or in any manner ***attributable to the alteration.***

22. On their own, the bylaws require the strata to repair and maintain all common property, including the LCP deck. However, the strata has allowed alterations to the deck as permitted under SPA section 72 and bylaw 9.3. The strata alleges the Oxleys are responsible to pay for the water damage repair that has occurred to the LCP deck based on its bylaws and the written agreement it has with Oxleys for the tile installation. For the reasons that follow, I find the Oxleys are not responsible for the LCP deck repairs.
23. As mentioned, the strata issued a Form B to the Oxleys that stated they were responsible for the “Glass railings with respective end gate(s) or other enclosures” on the LCP deck. However, other than that statement attached to the Form B, there is no evidence before me that confirms the prior owner of SL32 took written responsibility for these things. The strata says it has used a standard form of agreement for several years but it did not provide a copy of any agreement it made with the previous owner of SL32 that involved any alterations to the LCP deck. Without a written agreement, I find the Oxleys have not contravened bylaw 9.3 and are not responsible for the glass railing installation on the LCP deck. More on this below.
24. The strata also says the written agreement signed by the Oxleys in 2010 makes them responsible to pay the water damage expenses to the LCP deck because the approved tile installation on the LCP deck was improper and caused the water damage and rot. However, as explained below, I find the strata has not proved the tile installation caused the water damage to the deck.
25. I first consider the language contained in the “Application & Agreement” signed by the strata and Loraine Oxley on behalf of the SL32 owners on June 1, 2010. The relevant parts of the agreement say the Oxleys (emphasis in original)

“... have elected to **resurface the upper and lower decks with tile**... as per written notification of May 30, 2010. **All work will be done by a licenced tradesman. Any damage/changes around [this installation] will be repaired and the look and color will stay in integrity with the existing outside wall and decking edges.** The owners hereby agree to all terms as set out in the Bylaws of KAS 913, Section 9.

The owners understand that by making these changes, they and future owners assume full responsibility for the maintenance and repair of same or for any adverse conditions that may develop due to the installation. They are also aware of the need to notify their own Insurance Company of the renovations to ensure they have proper and up to date insurance coverage.

26. While I agree with the strata that the agreement makes the Oxleys responsible for the tile installation and damage that may be caused by the tile installation, I do not find it proven the tiles caused the damage. There are no details of tile installation other than those contained in the agreement, which I find are vague and unspecific.
27. The strata retained an engineering firm, Inspect IT, to inspect the LCP deck and provide direction on required repairs. Inspect IT provided 2 letter reports dated May 3, 2021 and September 22, 2022. The September 22, 2022 report was provided in response to a field review report completed by KO Structural Engineering (KO) dated January 11, 2022, obtained by the Oxleys. All 3 reports are written by professional engineers so I accept them as expert evidence, which is not disputed.
28. The May 2021 Inspect IT report describes the deck construction as “ceramic over vinyl deck covering on plywood on wood sleepers nailed through a pebbled acrylic like product on original plywood on wood joists with a stucco soffit.” KO does not directly address this but also does not dispute the description. Rather, KO relies on a statement made by Mr. Oxley that the tiles were installed over an existing vinyl membrane, which aligns with the Inspect IT description of the deck construction. The strata relies on Inspect IT’s September 2022 report that states the “newer decking” was improperly installed and maintained, and states that water penetrated through the nail holes of the wood sleepers causing the water damage to the deck.
29. In submissions, the strata argues the vinyl membrane was not original implying that the Oxleys installed it when the tiles were installed. The Oxleys say the vinyl membrane was original. However, in an October 2022 written statement from the Oxleys tile installer, the installer described how the installation was completed, which did not include an additional layer of plywood. The installer also expressly stated they did not use “any screws or nails to affix the waterproofing membrane or the tile to the

deck surfaces”. I find this supports a conclusion that the vinyl membrane and wood sleepers observed by Inspect IT to be nailed to the original deck existed at the time the tile was installed. Based on this, and the strata’s own expert evidence that the water leaked through the nail holes, I cannot find the Oxleys are responsible for leaking that occurred from things they did not install.

30. The May 2021 Inspect IT report also suggests that the weight of the tile may also have contributed to the deck damage, but did not elaborate on this statement. The language used in the Inspect IT report that the tile weight *may* have been a factor is inconclusive. Conversely, the KO report states the additional tile weight was assessed and found not to be a factor. Based on this evidence, I find the weight of the tile did not contribute to the cause of the water damage.
31. Based on the overall evidence and submissions, I find the strata has not proved that the Oxleys’ tile installation on the LCP deck contributed to its water damage. I dismiss the strata’s claim.
32. I will now consider the Oxleys’ counterclaim about the deck posts in which they ask for an order that the strata complete necessary repairs to the deck posts and supports. I find the requested order is essentially that the strata complete structural repairs to the deck.
33. Both Inspect IT and KO agree that structural repairs are required to the LCP Deck. I have dismissed the strata’s claim that the Oxleys are responsible for the repairs under the alteration agreements. So, based on SPA section 72 and bylaw 12.1(c), I find the strata is responsible for the structural repairs to the LCP deck, including the deck posts and support beams. Given my conclusion above that the strata has not proved the tile installation caused the water damage, I find the strata is also responsible to replace any rotted decking, such as the plywood.
34. The parties did not directly address what should happen to the existing deck tiles installed by the Oxleys, which I find is clearly an approved alteration for which the Oxleys are responsible. The courts have found that a strata corporation may require an owner to remove an alteration to LCP in order to effect repairs to the common

property. However, the strata corporation, in imposing such a requirement, must consider whether there is a reasonable alternative to the removal: see *Baker v. Strata Plan NW 3304*, 2002 BCSC 1559 and *Strata Plan VR 663 v. Murphy*, 2012 BCSC 1294.

35. Further, the British Columbia Strata Property Practice Manual, online current to February 1, 2022, (Continuing Legal Education Society of British Columbia, 2022) at §4.32 states:

... when engaging in repair and maintenance that require the removal of a pre-approved alteration, the strata corporation's duty under [SPA] s. 164 (preventing or remedying unfair acts) requires it to reasonably consider options that do not require that removal if the cost of removing the alteration is particularly burdensome (see *Strata Plan VR 663 v. Murphy*, 2012 BCSC 1294). In *Murphy*, the strata corporation sought the removal of a balcony enclosure to complete building envelope repairs. The owner proposed alternative strategies that would not require the removal of the balcony enclosure. The court found (at paras. 17 to 21) no evidence to conclude that the strata corporation had reasonably considered the owner's proposals or that the removal of the enclosure was absolutely necessary to effect the building envelope repairs.

In *Baker*, a balcony enclosure built on LCP with permission of the strata corporation was removed by the strata corporation during building envelope remediation. The strata council refused permission to reinstall it due to concern over fire safety, damage to the building envelope, and aesthetics. Although not required under the [SPA] or the bylaws, the strata corporation in *Baker* offered to compensate owners whose balcony enclosures were removed as a result of the building envelope remediation. The court commented in obiter that the strata corporation should compensate the owner in the amount of \$6,500 for the loss of the enclosure.

36. In the circumstances of this dispute, I find it reasonable for the strata to require the Oxleys to remove the tile from the LCP deck in order to replace the plywood decking

below, if it chooses to do so. I do not see how the deck repairs can be completed without removing the tiles, but that decision is at the discretion of the strata. If the strata determines the Oxleys should pay for the tile removal, the strata must give the Oxleys 90 days to complete the work. Alternatively, the parties may agree the strata complete the work and that the Oxleys pay for the tile removal cost. In that case, if the parties are unable to determine a reasonable cost for tile removal within 90 days of the date of this decision, the strata may proceed with the tile removal and address the issue of cost with the Oxleys at a later date. Nothing in this decision restricts the parties from commencing a fresh dispute about the tile removal costs if they are unable to mutually resolve the cost issue.

37. In their submissions, the Oxleys ask that the deck railings be replaced with ones that are side-mounted rather than surface mounted. However, that was not part of the Oxleys' Dispute Notice, so I will not address it for procedural fairness reasons.
38. Based on my reasons above, I order the strata to repair the LCP deck, including posts, structural beams, and plywood decking, at its cost. Given the deck is common property, the Oxleys are not exempted from paying their proportionate share of the deck repair expense. The strata must determine if the Oxleys are to pay for the cost of removing the deck tiles and advise the Oxleys of their decision within 30 days of the date of this decision.
39. Given my conclusion, I need not address whether the strata was negligent in its repair of the LCP deck in 2015 as the Oxleys submit.

Has the strata been negligent in its repair and maintenance of windows and patio doors, gutters, and an irrigation system?

40. As earlier noted, the Oxleys say the strata is negligent because it has failed to reasonably repair and maintain common property windows, gutters, and a sprinkler (irrigation) system.
41. To be successful in an action for negligence, the Oxleys must demonstrate that the strata owed them a duty of care, that the strata breached the standard of care, that

the Oxleys sustained damage, and that the damage was caused by the strata's breach: see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3.

42. There is no argument that the windows, gutters and irrigation system are common property. Therefore, I find the strata has a duty to repair and maintain it under SPA section 72 and bylaw 12.1(b), which restates the section 72 requirement.
43. The BC Supreme Court has found that a strata corporation's obligation to repair and maintain common property is measured against a test of what is reasonable in all of the circumstances: see *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363.
44. That means, the Oxleys must prove the strata breached its standard of care by acting unreasonably. I find they have not done so for the following reasons.

Windows and Patio Doors

45. The Oxleys say the strata either refused or failed to replace windows, doors and "fittings" of SL32 that resulted in leaks and insect ingress inside the strata lot. In submissions, the Oxleys accept the strata now agrees that the living room picture window and 3 of 4 patio sliding doors need to be replaced. The Oxleys want the 4th sliding door replaced at the strata's expense as well as all custom interior wood trim around the windows and doors, which is what I understand the Oxleys mean by "fittings". I do not agree with the Oxleys that the strata has an obligation to ensure all the doors and window are the same make and design. Again the strata's obligation is to act reasonably. Therefore, if there are supply chain issues and the strata determines it is appropriate to replace a failed sealed unit rather than an entire window or door, that is reasonable.
46. There is no allegation that the windows and patio doors do not operate properly. It is clear the strata has agreed to take steps to address the window and patio door issues, which appear to be mostly condensation issues. The strata says it has a program in place to replace failed sealed units of windows and doors over a number of years, which the Oxleys do not dispute. According to the Oxleys, a former strata council member promised them "10 years ago" the windows and doors would be addressed. The

Oxleys did not provide any supporting evidence to confirm the alleged statement and I find this assertion is insufficient to support a negligence finding.

47. The strata says it has acted reasonably because historically, it is common that a failed glass seal of common property window or patio door can be replaced without replacing the entire window or door. The strata also says with recent increases in the cost of replacing failed sealed glass units, it has considered replacement of windows and doors over simply the sealed glass units.
48. It is not clear whether the strata intends on repairing or replacing the windows and doors but I find I do not need to determine what repair is required. That is because the courts have found a strata corporation may have several reasonable options available to undertake necessary repairs. When deciding whether to fix or replace common property, the strata has discretion to approve “good, better or best” solutions to any given problem. The fact that one of the options may be a more cautious approach or even turn out in hindsight to be the less wise or preferable course of action will not be a basis for overturning a strata council’s decision regarding the repair option selected, if the option selected is a reasonable one: see *Weir v. Strata Plan NW 17*, 2010 BCSC 784. In other words, the strata is not required to replace the Oxleys’ window or patio door if there are other reasonable repair options available to it.
49. *Weir* also confirmed that in assessing what is reasonable a strata corporation may consider the available financial resources of the owners to undertake the necessary work.
50. There is no evidence to suggest that repair or replacement of windows and doors with failed seals is urgent. As for the insect ingress, there is no evidence the access point around the patio door frame cannot be repaired.
51. Finally, given the strata has agreed to take steps to address the window and patio door issues, I find it has acted reasonably in its repair of the windows and patio doors.

Gutter Cleaning

52. The Oxleys state the gutters on both the upper deck and lower deck are difficult to access. They say the strata has expressed dissatisfaction with the contractors it has retained for gutter cleaning in the past and has had to make arrangements for contractors to re-attend to properly complete gutter cleaning. The Oxleys say the gutter maintenance does not appear to ongoing because the gutters are consistently overflowing and leak. Although the Oxleys say they have photograph of a leaking gutter, that photograph is not before me. In any event, I find Oxleys have not proved the gutters are not cleaned, nor have they proved the strata's actions are unreasonable.
53. I also do not accept the Oxleys' suggestion that gutter cleaning should be done more often to avoid further or increased water damage to the decks as their assertion is entirely unsupported by any evidence.

Irrigation System

54. I reach the same conclusion about the Oxleys claim that the strata has acted unreasonably about its repair and maintenance of the irrigation system. From their submissions, I understand an irrigation pipe became disconnected, but that it was subsequently repaired by the strata in a reasonable amount of time.
55. The Oxleys also claim that the irrigation system was constantly spraying water on the glass railing of their lower deck caused "staining and etching" of the glass. First this allegation is not supported by any evidence. The photographs in evidence show the glass is discoloured but whether any attempt has been made by the Oxleys to clean the glass is unclear. I find bylaw 12.1(c) makes the Oxleys responsible for cleaning balcony glass on an LCP deck because cleaning of the glass is likely required more than once a year. Therefore without further evidence of any damage, or that the strata was aware of damage and did nothing about it, I find the strata acted reasonably in its obligation to repair the irrigation system.
56. I have found the strata acted reasonably in attending to the repair and maintenance of the common property and LCP deck and did not breach its standard of care.

Therefore, I do not find the strata was negligent. For the reasons noted above, I dismiss the Oxleys' counterclaims for repair and maintenance of common property.

Is the owners' claim for wooden staircase damage out of time?

57. Section 13 of the CRTA confirms that the LA applies to CRT claims. Section 6 of the LA says that the basic limitation period to file a claim is 2 years after the claim is "discovered". At the end of the 2-year limitation period, the right to bring a claim disappears.
58. Section 8 of the LA says a claim is "discovered" on the first day the person knew, or reasonably ought to have known, that the loss or damage occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate way to remedy the damage.
59. The Oxleys filed a CRT dispute application about the damaged wooden stairs on February 3, 2022. In order for their claim to have been filed in time, the stair damage must have been discovered, or discoverable, after February 3, 2020.
60. The Oxleys say their wooden stairs were damaged when the strata first repaired the LCP deck structure, but did not give a specific date. The strata says it required materials to be transferred through SL32 to complete LCP deck repairs in 2015. This was not disputed by the Oxleys and is supported by an undated invoice from KnG Builders showing the address of SL32 and a handwritten note that says the work was about replacement of 6 deck posts. Another handwritten note on the invoice states "Pd Apr 16/15 #1734", which I infer means the invoice was paid by cheque # 1734 on April 16, 2015.
61. Based on the overall submissions and evidence, I find the strata completed repairs to the LCP deck by April 2015 which required material to be transferred through SL32. From that, I find the alleged damage to the interior wooden stairs of SL32 must have occurred around that time, which is over 5 years before the Oxleys filed their CRT application and well after the 2-year limitation period. There is no evidence of any correspondence between the parties that may have extended the discovery date, so

I find the Oxleys' claim for damage to their wooden stairs is out of time under the LA and I dismiss it.

CRT FEES AND EXPENSES

62. 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. I see no reason not to follow that general rule here. The strata was not successful in its claim and the Oxleys were partially successful in their counterclaim. I find the strata should pay the Oxleys ½ of the \$225.00 they paid in CRT fees, or \$112.50, and I so order. I make no order for reimbursement of dispute-related fees as none were claimed.
63. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the Oxleys.

ORDERS

64. Within 6 months of the date of this decision, I order the strata to repair the LCP deck, including, structural posts and beams, and plywood decking at its cost. The Oxleys are not exempted from paying their proportionate share of the deck repair expense.
65. Within 30 days of the date of this decision, the strata must determine if the Oxleys are to pay for the cost of removing the deck tiles and advise the Oxleys of its decision within 30 days of date of this decision. If the strata determines the Oxleys should pay for the tile removal, the strata must give the Oxleys 90 days to complete the work. Alternatively, the parties may agree the strata complete the work and that the Oxleys pay for the tile removal cost. In that case, if the parties are unable to determine a reasonable cost for tile removal within 90 days of the date of this decision, the strata may proceed with the tile removal and address the issue of cost with the Oxleys at a later date.
66. Also within 30 days of this dispute, I order the strata to pay the Oxleys \$112.50 for CRT fees.

67. The Oxleys are entitled to post judgment interest under the *Court Order Interest Act*, as applicable.
68. I dismiss the remaining claims of the strata and the remaining counterclaims of the Oxleys.
69. 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.

J. Garth Cambrey, Vice Chair