



# Civil Resolution Tribunal

Date Issued: February 17, 2023

File: ST-2021-005848

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 313 v. Beretta*, 2023 BCCRT 151

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

The Owners, Strata Plan NW 313

**APPLICANT**

**A N D :**

ANDREA BERETTA and ELIJAH BERETTA

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell, Vice Chair

## **INTRODUCTION**

1. This strata property dispute is about flooring bylaws.
2. The respondents, Andrea Beretta and Elijah Beretta, own strata lot 62 (SL62) in the applicant strata corporation, the Owners, Strata Plan NW 313 (strata).

3. The strata says the Berettas have breached its bylaws by installing hard surface flooring, and have refused to remove it. As remedy, the strata requests orders that the Berettas remove the flooring, and comply with the flooring bylaw.
4. The strata is represented by a strata council member in this dispute. The Berettas are self-represented.
5. The Berettas deny breaching any bylaws. They say they replaced pre-existing laminate flooring, and did not install hard flooring in any area that was previously carpeted. They also say they emailed the strata manager about their flooring replacement plan before the installation occurred, and the strata manager and council raised no objections.
6. For the reasons set out below, I find in favour of the strata in this dispute. I order the Berettas to remove the laminate flooring.

## **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 which 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. CRTA section 61 says the CRT may, on its own initiative, make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. CRT documents incorrectly show the name of the applicant as The Owners, Strata Plan, NWS 313. However, based on section 2 of the *Strata Property Act* (SPA), the strata's correct legal name is The Owners, Strata Plan NW 313. 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 CRTA section 61 to amend the strata's name in the style of cause above.
11. 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.
12. Both parties provided evidence after the CRT's deadline. The CRT gave each party an opportunity to respond to the late evidence. For this reason, I find no party was prejudiced. Bearing in mind the CRT's mandate for flexibility, I considered the late evidence and submissions. In any event, I found they were not relevant to the issues determined in this decision, so placed no weight on them.

## **ISSUES**

13. The issues in this dispute are:
  - a. Did the Berettas breach the strata's flooring bylaw?
  - b. Did the strata treat the Berettas significantly unfairly by not raising its concerns about the flooring until after it was installed?
  - c. What remedies are appropriate, if any?

## REASONS AND ANALYSIS

14. In a civil claim like this one, the strata, as applicant, must prove its claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.
15. The strata was created in 1975, and the Berettas bought SL62 in 2007. The strata plan shows that SL62 is a 2-storey strata lot located in Building K. It located on the second and third floors, above a first floor strata lot.
16. The strata repealed and replaced all of its bylaws by filing new bylaws with the Land Title Office in February 2018. I find these are the bylaws applicable to this dispute. The strata filed an additional bylaw amendment in January 2020, which I find is not relevant to this dispute.
17. Bylaw 8 is the strata’s flooring bylaw. It includes the following relevant provisions:
  - 8.1 “Hard surface flooring” includes hardwood and laminate.
  - 8.2 Except in the kitchen, bathroom, or entrance hall, no resident may install hard surface flooring in a strata lot located above the first floor in a “maisonette unit”, which includes SL62.
  - 8.3 In a maisonette strata lot with 2 or 3 storeys, no resident may install hard surface flooring on the internal staircase from the 1st floor to the 2nd floor.
  - 8.4 For owners of maisonette strata lots which had hard surface flooring installed before December 2, 2008, if a resident makes a “justified complaint” about noise from the strata lot above associated with hard surface floors, the owner must cooperate with the strata council and make every effort to reduce noise be installing carpets on at least 60% of the floor area, and by wearing soft-soled shoes.
18. The parties agree that SL62 is a “maisonette” strata lot, and so is subject to the flooring bylaw. The parties also agree that there was laminate flooring in parts of SL62

when the Berettas purchased it in 2007. This is confirmed by a copy of the real estate listing provided in evidence, which states “laminated on Main”. It is also confirmed by the written statement of former strata council member HQ, who says she visited SL62 on multiple occasions between 2018 and 2020 and saw hard flooring on the main level.

19. On September 16, 2020, Andrea Beretta emailed the strata manager, MB, stating that they planned to renovate SL62. The email discussed potential noise, communications with neighbours, and other issues including the scope of work to be performed. The email said the Berettas would not replace any carpets with laminated flooring. Mrs. Beretta wrote that they would update “all flooring and underlay in home, with same material as already pre-existing in entrance, stairwells, main floor and top floor.” The email asked the strata manager to “please advise as to the bylaws, restrictions and insurance which need to be adhered to and/or purchased prior to the construction beginning”.
20. MB replied on September 17, stating the strata would need a copy of WorkSafe BC documentation and confirmation of liability insurance, as well as any necessary permits. MB did not specifically comment on bylaws, other than to say, “See attached the buildings bylaws for all the rest as you requested” [reproduced as written].
21. Mrs. Beretta responded on October 20, 2020 to confirm that construction would start on November 2 or 3. She wrote, “we are updating all underlay & flooring with the like-for-like/pre-existing materials, which include laminated & carpeting.”
22. On December 1, 2020, council president AA emailed Mrs. Beretta, stating that there was a “rumour circulating” that new laminated floors had been installed in SL62, in areas such as the living room, hallway, and dining room. AA wrote that this would be contrary to strata bylaws, as the only areas where hard flooring was permitted were in the entrance, storeroom, laundry and bathrooms. AA said there were no retroactive exemptions for prior installations. AA asked Mrs. Beretta to confirm compliance with the flooring bylaw.

### ***Did the Berettas breach the strata's flooring bylaw?***

23. The strata says the Berettas have been aware of the flooring bylaw since it came into effect in 2008. The strata says the bylaw means the Berettas were not permitted to install any laminate flooring in areas other than the kitchen, bathroom, or entrance hall, even if there was laminate there previously.
24. Bylaw 8.2 specifically says that no resident may install laminate flooring in a maisonette strata lot, except in the kitchen, bathroom, or entrance hall. "Install" is not defined in the bylaws, or in the *Strata Property Act* (SPA). The Merriam-Webster Dictionary defines install as "to set up or use for service". Based on that definition, I find that replacing old laminate flooring with new is an "installation", since the laminate permanently placed for service as a floor covering.
25. The Berettas admit to replacing the laminate flooring on the main floor of SL62, in areas other than the kitchen, bathroom, and entrance. Based on this admission, I find the Berettas' laminate flooring replacement breaches bylaw 8.2, as it was an "installation" outside the areas permitted for hard surface flooring.
26. The Berettas say they were entitled to install new laminate flooring because the old laminate flooring was worn and damaged, and because SL62's entire main floor had laminate flooring since before they purchased it in 2007. I am not persuaded by this argument, because bylaw 8.2 contains no retroactive exemption for strata lots with pre-existing laminate flooring, and no exemption for flooring replacements. The only exemption is bylaw 8.4, which allows owners to keep hard surface flooring installed before 2008 unless another resident complains about noise. I find there is nothing in the bylaws that permits "like-for-like" replacement of old hard flooring with new hard flooring.
27. For these reasons, I conclude that the Berettas violated bylaw 8.2 by installing new laminate flooring in areas outside the kitchen, bathrooms, and entrance hall.

## ***Significant Unfairness***

28. The Berettas argue that since they informed the strata about their renovation plans in advance, in writing, it was significantly unfair for the strata to later object to their new laminate flooring.
29. The CRT has authority to make orders remedying a significantly unfair act or decision by a strata corporation under section 123(2) of the CRTA. This provision is similar to SPA section 164, which allows the BC Supreme Court to make orders remedying significantly unfair acts or decisions. The court recently confirmed that the legal test for significant unfairness is the same for CRT disputes and court actions: *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113.
30. The most recent BC Court of Appeal case about significant unfairness is *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173. In paragraphs 75 to 97, the court confirmed the following legal test. Significantly unfair actions are those that are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust, or inequitable. In applying this test, the owner or tenant's reasonable expectations are a relevant factor, but are not determinative. The use of the word "significant" means that the impugned conduct must go beyond mere prejudice or trifling unfairness.
31. Having carefully reviewed the email correspondence in evidence, I find the Berettas' expectation that the strata would not later object to their updated laminate flooring was unreasonable. First, as explained above, there is no provision in the bylaws that allows for "like-for-like" replacement of hard surface flooring. Second, I find Mrs. Beretta's emails to the strata do not clearly state that they planned to install laminate in a maisonette strata lot, in areas outside of the kitchen, bathrooms, and entrance hall.
32. In her September 16, 2020 to strata manager MB, Mrs. Beretta said they planned to replace update "all flooring and underlay in home, with same material as already pre-existing in entrance, stairwells, main floor and top floor." The email does not

specifically say that this planned work included installing laminate or hard surface flooring in areas such as the living room or dining room.

33. Mrs. Beretta asked MB to “advise...as to the bylaws...which need to be adhered to”. The correspondence indicates that MB promptly provided a copy of the bylaws. Since Mrs. Beretta’s September 16 email did not mention laminate or hard surface flooring, or specifically say where it would be installed, I find it was unreasonable to expect that the strata would provide guidance on the application of bylaw 8.2.
34. In a further email on October 20, 2020, Mrs. Beretta confirmed that the Berettas were “updating all underlay & flooring with the like-for-like/pre-existing materials, which include laminate & carpeting.” While this email did mention laminate, it again did not say specifically where it would be installed. By this time, the Berettas had a copy of the bylaws. Giving the wording of those bylaws, I find it would have been reasonable to inquire about whether bylaw 8.2 permitted “like-for-like” replacement of the laminate in areas outside of the kitchen, bathrooms, and entrance.
35. So, to the extent that the Berettas relied on their correspondence with MB as permission to install laminate flooring in SL62, I find that expectation was unreasonable. I find this because Mrs. Beretta’s emails to MB were not sufficiently specific about where laminate would be installed.
36. The Berettas argue that some strata council members knew there was pre-existing laminate flooring throughout SL62’s main floor, and since MB sent their emails to the council, they assumed there would be no problem. Again, I find this expectation was unreasonable. This was not a renovation that required explicit strata permission under the bylaws. Bylaw 7 requires written strata permission for strata lot alterations that involve the structure or exterior of a building, patios, doors, windows, fences, garages, wiring, and other things. The scope of work is set out in Mrs. Beretta’s September 16 email, and does not include any of the alterations that require permission under bylaw 7. I find there is no indication in the correspondence before me that the Berettas specifically asked for permission to install laminate flooring, and no permission was given.

37. If the Berettas had specifically informed the strata that they planned to replace the laminate flooring in their living room and other areas outside those permitted in bylaw 8.2, they would likely have had a reasonable expectation that the strata would not later object. However, since the Berettas' correspondence with the strata did not explicitly say where they planned to install laminate flooring, I find their expectation was unreasonable. Again, I note that the strata's bylaws do not permit "like-for-like" replacement of otherwise prohibited hard surface flooring.

38. For these reasons, I conclude that the strata did not treat the Berettas significantly unfairly by objecting to the new laminate flooring.

### ***Remedy***

39. The strata requests orders that the Berettas remove the laminate flooring and comply with the flooring bylaw.

40. I do not order the Berettas to comply with the flooring bylaw, as they are already required to do so. However, I find it is appropriate in the circumstances to order them to remove the laminate floors. Within 120 days of this decision, the Berettas must replace the laminate flooring in all areas of SL62 that are not the kitchen, a bathroom, or an entrance hall with flooring that does not meet the definition of "hard surface flooring" in bylaw 8.1.

### **CRT FEES AND EXPENSES**

41. As the strata was successful in this dispute, under the CRTA and the CRT's rules I find it is entitled to reimbursement of \$225.00 in CRT fees. Neither party claimed dispute-related expenses, so I order none.

## ORDERS

42. I order that:

- a. Within 30 days of this decision, the Berettas must reimburse the strata \$225.00 for CRT fees.
- b. Within 120 days of this decision, the Berettas must replace the laminate flooring in all areas of SL62 that are not the kitchen, a bathroom, or an entrance hall with flooring that does not meet the definition of “hard surface flooring” in bylaw 8.1.

43. The strata is entitled to postjudgment interest under the *Court Order Interest Act*, as applicable.

44. Under CRTA section 57, a validated copy of the CRT’s order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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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Kate Campbell, Vice Chair