



Civil Resolution Tribunal

Date Issued: April 11, 2023

File: ST-2022-005206

Type: Strata

Civil Resolution Tribunal

Indexed as: *Forest-Allard v. The Owners, Strata Plan NW 655*, 2023 BCCRT 295

B E T W E E N :

ÉLOÏSE FOREST-ALLARD

APPLICANT

A N D :

The Owners, Strata Plan NW 655

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about skylight repairs in a strata corporation.
2. The applicant, Éloïse Forest-Allard, co-owns strata lot 76 (SL76) in the respondent strata corporation, the Owners, Strata Plan NW 655 (strata).

3. Ms. Forest-Allard is self-represented in this dispute. The strata is represented by a strata council member.
4. Ms. Forest-Allard says the 3 skylights above SL76 have lost their integrity, and are the strata's responsibility to replace. She seeks an order that the strata replace the skylights within 1 year, and an order that the strata is responsible for future skylight maintenance and any damage resulting from the skylights.
5. The strata does not take any position in this dispute, other than to say that the strata wants to find a resolution for the issues.
6. There is a related dispute involving skylights in the same strata corporation, filed by a different owner (dispute ST-2022-003800). As the parties are different, I have written 2 separate decisions.

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. 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.

Preliminary Issues

11. In her dispute application, Ms. Forest-Allard requests a “formal legal opinion” about responsibility for skylight repairs. The CRT’s mandate is to provide dispute resolution, and it does not provide legal advice or legal opinions. I have therefore not done so in this decision.
12. Ms. Forest-Allard also requests a CRT order that the strata provide a “signed agreement” about its skylight responsibilities. Under CRTA section 123, the CRT can order a strata to do things, such as pay money or perform repairs. However, the CRT cannot order a party to agree. So, I have framed Ms. Forest-Allard’s requested remedies as orders, rather than as agreements.
13. Finally, Ms. Forest-Allard seeks remedies about future skylight repairs. The CRT does not generally make prospective orders about things that have not yet happened. I find I cannot make an order about who may be responsible for skylight or other repairs in the future, as future facts may be different. For this reason, I make no orders about future repairs in this decision.

ISSUES

14. The issues in this dispute are:
 - a. Is the strata responsible to repair the skylights above SL76?
 - b. If so, must the strata replace the skylights?

REASONS AND ANALYSIS

15. In a civil claim like this one, Ms. Forest-Allard, as applicant, must prove her 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.
16. The strata was created in 1976. The strata plan shows that SL76 is a corner unit located in building “K”. SL76 is a two-storey strata lot, and is located above another strata lot. There is a roof directly above SL76's second floor with 3 skylights.
17. In July 2008, the strata repealed and replaced all previous bylaws by filing new bylaws at the Land Title Office. I note that because the filed document says “the attached Bylaws replace all existing Bylaws”, the Standard Bylaws in the *Strata Property Act* (SPA) no longer apply to the strata.
18. The strata filed various bylaw amendments after 2008. I refer to specific bylaws where relevant in my reasons below.

Is the strata responsible to repair and maintain the skylights above SL76?

19. For the following reasons, I find the strata is responsible to repair and maintain the skylights above SL76.
20. Based on boundaries shown on the strata plan and SPA section 68, I find the roof above SL76 is common property.
21. Based on SPA section 68, I also find the skylights above SL76 are common property. Specifically, SPA section 68(2) says that unless otherwise shown on the strata plan, if a strata lot is separated from the common property by a ceiling, the boundary of the strata lot is midway between the surface of the structural portion of the ceiling and the surface of the structural portion of the ceiling that faces the common property. This means that all the area outside of the midpoint of the ceiling assembly above SL76 is common property. Based on the photos in evidence that show that the skylights are integrated into the roof, I find they are primarily located in this area

outside the midpoint of the ceiling assembly. In particular, their glass surface is level with or above the common property roof.

22. So, I conclude that the skylights above SL76 are common property.
23. Under SPA section 72, a strata corporation is responsible to repair and maintain common property, except limited common property, which strata bylaws may make an owner responsible to repair and maintain.
24. The parties agree that the skylights are not original, and were installed by an unknown owner sometime before Ms. Forest-Allard bought SL76 in 2018.
25. A Form B information certificate the strata issued in May 2018, before Ms. Forest-Allard purchased SL76, says there are no agreements under which the owner of SL76 takes responsibility for alterations to the strata lot or common property. The strata does not dispute the accuracy of this certificate. Rather, the strata admits in its submissions that many owners installed skylights in the 1980s and 1990s, with strata permission, and that no liability agreements were signed for these skylights.
26. Since no written agreement exists, I find Ms. Forest-Allard is not responsible for skylight repairs or replacement based on an alteration agreement.
27. For the following reasons, I also find the strata's bylaws about skylight repairs are unenforceable.
28. Strata bylaw A1 says, among other things, that the roofs above each strata lot are limited common property (LCP). Bylaw C16(a) says strata residents are responsible to repair and maintain doors, windows, and skylights.
29. SPA section 121 says a bylaw is not enforceable to the extent that it contravenes the SPA. I find these bylaws contravene the SPA, and are therefore unenforceable.
30. Most importantly, I find a strata corporation cannot designate LCP by enacting a bylaw. The strata's roofs are not shown as LCP on the strata plan, and the skylights are not shown on the strata plan at all. If an area is not designated as LCP on the original strata plan, a strata corporation can amend the strata plan, which requires a

unanimous vote. This undisputedly did not occur in this case. Alternatively, under SPA section 74, a strata corporation may designate LCP by passing a $\frac{3}{4}$ vote at a general meeting, and then filing that resolution with the Land Title Office along with a sketch plan that:

- a) satisfies the registrar of Land Titles,
- b) defines the areas of LCP, and
- c) specifies each strata lot whose owners are entitled to the exclusive use of the limited common property.

31. The evidence before me suggests that bylaw A1 existed before the SPA came into effect in 2002. However, section 53 of the previous *Condominium Act* had essentially the same requirements. There is no suggestion before me that the strata ever filed a copy of its resolution and a sketch plan with the Land Title Office, or that the registrar approved them. So, I find the roofs are common property, but not LCP.
32. SPA section 72 says a strata corporation may make a strata lot owner responsible for repairs to common property that is not LCP “only if identified in the regulations”. There is no such regulation, and there never has been. So, I find the strata’s bylaw C16(a) is unenforceable under SPA section 121. Because they are common property, I conclude that the strata is responsible to repair and maintain the skylights above SL76.

Must the strata replace the skylights above SL76?

33. Ms. Forest-Allard says the skylights began to fail in 2020, and she asked the strata to replace them.
34. In support of her claim for skylight replacement, Ms. Forest-Allard relies on a December 3, 2020 roof system condition report the strata obtained from Design Roofing (DR). DR’s report identifies a number of problems with roofs, vents, and skylights in the strata. It is detailed, and includes photos and descriptions of various problem areas.

35. DR's report states on page 5 that unit 4199 has 2 damaged skylights, which should be removed and replaced. In a November 21, 2022 email to Ms. Forest-Allard, the strata council vice-president confirmed that "unit 4199" meant SL76, even though the numbering was actually incorrect.
36. The strata did not dispute this evidence that 2 of the skylights above SL76 need replacement, or provide contrary evidence. In its submissions, the strata admits there are skylights in the strata that need repair or replacement, including those above SL76. So, I order the strata to replace the 2 damaged skylights identified in DR's report, within 4 months of this decision.
37. As for the third skylight, there is little evidence before me about its condition. I therefore do not order the strata to replace it, but note that the strata is responsible for its repair and maintenance.

CRT FEES AND EXPENSES

38. As Ms. Forest-Allard was successful in this dispute, under the CRTA and the CRT's rules I find she is entitled to reimbursement of \$250 in CRT fees. Neither party claimed dispute-related expenses, so I order none.
39. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to SL76.

ORDERS

40. I order that:
- a. Within 4 months of this decision, the strata must replace the 2 damaged skylights above SL76 identified in DR's report.
 - b. The strata must immediately reimburse Ms. Forest-Allard \$250 for CRT fees.
41. I dismiss Ms. Forest-Allard's remaining claims.

42. Ms. Forest-Allard is entitled to postjudgment interest under the *Court Order Interest Act*, as applicable.
43. 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.

Kate Campbell, Vice Chair