



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Hundal v. Deshaw*, 2023 BCCRT 340

BETWEEN:

SARAH HUNDAL and MANDEEP BRAR

APPLICANTS

AND:

MICHELLE S. DESHAW, MARK JOSEPH RAINER, and The Owners,
Strata Plan EPS6218

RESPONDENTS

AND:

SARAH HUNDAL and MANDEEP BRAR

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about alterations and repairs in a duplex strata corporation.
2. Sarah Hundal and Mandeep Brar own strata lot 1 (SL1) in the strata corporation, the Owners, Strata Plan EPS6218 (strata). Michelle Deshaw and another individual, WE, co-own strata lot 2 (SL2). Until June 2022, Mark Joseph Rainier (MJR) and Ms. Deshaw co-owned SL2.
3. Sarah Hundal and Mandeep Brar are the applicants in the primary dispute, and Ms. Deshaw, MJR, and the strata are the respondents. In the counterclaim, Ms. Deshaw is the applicant, and Ms. Hundal and Mr. Brar are the respondents. For convenience, I refer to Ms. Hundal and Mr. Brar as “the SL1 owners”.
4. The parties are each self-represented. The strata did not provide separate submissions, since the strata council is made up of only the owners engaged in this dispute.
5. The SL1 owners say the respondents have refused to permit them to add a fence to the front yard. They also say the respondents refused to approve repairs to SL1’s front stairs and replacement of slippery tiles on SL1’s front porch. The SL1 owners say these refusals are significantly unfair. The SL1 owners request the following orders:
 - The strata approve the SL1 owners’ proposed fence.
 - The strata either replace the SL1 front stairs and porch tiles or permit the SL1 owners to do so at their own expense.
 - The respondents reimburse the SL1 owners for legal fees.
6. Ms. Deshaw says she agrees to the front porch tiles proposed by the SL1 owners. Ms. Deshaw says she is willing to agree to a front yard fence, but does not accept

the specific design proposed by the SL1 owners. As a condition of fence approval, Ms. Deshaw also wants the SL1 owners to agree to her proposed landscaping changes and agree to add a gate to the existing fence. Ms. Deshaw also says she will agree to the SL1 front stair replacement if the SL1 owners also replace SL2's front stairs at their expense, so the building's appearance remains consistent.

7. Ms. Deshaw and MJR say that since MJR is no longer an owner in the strata, he should not be a respondent in this dispute.
8. In her counterclaim, Ms. Deshaw says the SL1 owners, without permission, installed stairs connecting the strata's raised front yard to the streetside boulevard and sidewalk (boulevard stairs). Ms. Deshaw says the boulevard stairs encroached on City of Vancouver (City) property. She says installing these stairs breached strata bylaws and jeopardized the strata's insurance. Ms. Deshaw says she incurred \$2,625.00 on behalf of the strata to relocate the stairs after the City ordered them removed. She claims reimbursement of this amount, plus legal fees.
9. The SL1 owners say Ms. Deshaw and MJR, who was an SL2 owner at the time, agreed to installing the boulevard stairs. They say MJR helped build the stairs, and either MJR or Ms. Deshaw purchased the concrete for their construction. The SL1 owners say Ms. Deshaw and MJR were aware of the encroachment onto the City boulevard, but agreed to proceed anyway. The SL1 owners also say Ms. Deshaw hired a contractor to relocate the boulevard stairs without their approval, and without sufficient notice, so they are not responsible to pay for the work.
10. For the reasons set out below, I allow the SL1 owners' claims in part. I dismiss Ms. Deshaw's counterclaim. I order no reimbursement of legal fees.

JURISDICTION AND PROCEDURE

11. 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.

12. 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.
13. 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.
14. 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.

MJR as a Party

15. As noted above, Ms. Deshaw and MJR say MJR should not be a respondent in this dispute because MJR is no longer an owner of SL2. The SL1 owners disagree.
16. I find nothing turns on this, as I make no orders against MJR, and the proceeding is now done. So, I dismiss the claims against MJR.

Front Porch Tiles

17. In her Dispute Response Form, Ms. Deshaw says she agrees to the front porch tiles proposed by the SL1 owners. Based on that agreement, I find this issue is no longer in dispute, and I have not addressed it in this decision.

Late Evidence

18. The SL1 owners provided evidence after the CRT's deadline. The respondents had an opportunity to comment on the late evidence, so I find there is no procedural unfairness in accepting it. I have considered it where relevant.

ISSUES

19. The remaining issues in this dispute are:

- a. Must the SL1 owners reimburse Ms. Deshaw \$2,625.00 for relocating the boulevard stairs?
- b. Must the strata approve the SL1 owners' proposed fence?
- c. Must the strata replace the SL1 front stairs, or permit the SL1 owners to do so?
- d. Is any party entitled to reimbursement of legal fees?

REASONS AND ANALYSIS

20. In a civil claim like this one, the SL1 owners, as applicants, must prove their claims on a balance of probabilities (meaning "more likely than not"). Ms. Deshaw must prove her counterclaim to the same standard. I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.

21. The strata was created in January 2020. It consists of 2 strata lots in a 3-storey building, plus a detached garage.

22. The strata's bylaws are the Standard Bylaws set out in the *Strata Property Act* (SPA).

Must the SL1 owners reimburse Ms. Deshaw \$2,625.00 for relocating the boulevard stairs?

23. The evidence shows that in June 2021, the SL1 owners hired Luna Construction Ltd. (Luna) to modify the stairs leading from the strata's front yard to the City boulevard and sidewalk. Photos show that before June 2021, the stairs were located within and

behind the wooden retaining wall running between the strata's property and the City boulevard. Subsequent photos show that Luna removed the old stairs, and built new stairs further toward the street. These new stairs were located entirely on the boulevard.

24. The SL1 owners do not deny hiring Luna to build the boulevard stairs. However, they say that MJR, who was an SL2 owner at that time, was aware of and helped with the construction. Based on my reasons below, I find nothing turns on this fact.
25. The correspondence shows that after the boulevard stairs were built, both the City and the strata's insurer required them to be removed. On July 29, 2021, the City issued a notice stating that the stairs encroached on the City's boulevard, and should not extend past the retaining wall. The notice asked that the stairs be removed, although it did not frame it as an order, and did not set a specific deadline.
26. Text messages show that on July 29, 2021, Ms. Hundal told Ms. Deshaw that mutual approval was required to modify the stairs. Ms. Deshaw replied that it would be more productive and effective to hold a "proper strata meeting" to discuss the issue. She suggested using email to set up the meeting. However, the evidence indicates that no strata meeting occurred. The SL1 owners and Ms. Deshaw each say the other failed to set up or attend the meeting, but I find nothing turns on this. The key point is that the strata council did not make a decision about what to do about the boulevard stairs.
27. On August 30, 2021, Ms. Deshaw emailed Ms. Hundal, informing her that the next day, a contractor would move the stairs back to their original position, to comply with the City's instructions. Ms. Hundal's lawyer emailed Ms. Deshaw asking her to delay the work. The lawyer said that hiring a contractor without notice was contrary to the SPA. The lawyer also suggested it might be possible to get variance permission from the City to allow the stairs.
28. The evidence, including an invoice and a police report, show that Luna removed the stairs and relocated them behind the property line on August 31, 2021.

29. Luna's invoice shows a charge of \$2,625.00, including GST. Ms. Deshaw claims reimbursement of this amount. For the following reasons, I find she is not entitled to reimbursement.
30. Based on the strata plan, it appears that the stairs built in August 2021 are located partly on common property, and partly on limited common property (LCP).
31. Under SPA section 72, the strata corporation is responsible to repair and maintain common property. Under Standard Bylaw 8(c)(i), the strata is also responsible for LCP repairs and maintenance that occur less often than once a year. I find the August 2021 stair relocation is a repair that occurs less often than once a year, so the strata is responsible.
32. Under SPA section 133, a strata corporation may require an owner who breaches a bylaw to pay to remedy the contravention. Standard Bylaw 6(1) requires an owner to obtain the strata's written approval before altering common property, including LCP. However, even if the SL1 owners unilaterally altered common property without written permission, SPA section 135 sets out strict conditions that must be met before requiring a person to pay the costs of remedying a bylaw contravention. The strata must give written particulars of the alleged contravention, and a reasonable opportunity to respond. The particulars must explain what bylaw was allegedly breached. The strata must also give written notice of its decision requiring the person to pay.
33. There is no evidence that any of these steps were taken in this case. So, I find the SL1 owners were not obligated to pay for the stair work under SPA section 133.
34. There is no authority in the SPA for one owner to simply incur an expense on behalf of the strata and then require payment from another owner. Also, SPA sections 97 and 98 say expenditures over \$2,000 that are not included in the strata's annual budget must be approved by a $\frac{3}{4}$ vote at general meeting. I note that in a duplex strata corporation, a $\frac{3}{4}$ vote is effectively a unanimous vote.

35. SPA section 98 allows for unapproved expenditures where necessary to ensure safety or prevent significant loss or damage. However, SPA section 26 says the powers and duties of the strata corporation must be exercised by the strata council. This means Ms. Deshaw did not have authority to act unilaterally by hiring and paying the contractor without attempting to get the SL1 owners' agreement.
36. Ms. Deshaw says there were urgent deadlines from the City and the strata's insurer. While I agree the matter required speedy attention, the evidence before me did not set out any specific deadline for the change, or a specific order from the City. The July 29, 2021 City notice set a deadline of August 29, 2021 to prune some unrelated branches, but did not set a deadline for moving the stairs. Even if moving the stairs was necessary to ensure safety or prevent loss or damage, I find there was sufficient time between the July 29, 2021 City notice and the August 31, 2021 work to hold a meeting and vote on how to proceed.
37. In *Peters et al. v. Whiting et al*, 2019 BCCRT 1282, an owner in a duplex strata corporation requested reimbursement for common property maintenance. The tribunal member found that an owner cannot be reimbursed for incurring repair expenses where they knew they did not have strata approval (paragraph 56). Although prior CRT decisions are not binding on me, I find the reasoning in *Peters* persuasive, and I rely on it.
38. For all of these reasons, I find Ms. Deshaw is not entitled to reimbursement for Luna's \$2,625.00 invoice for moving the stairs. I dismiss her counterclaim.
39. The SL1 owners submit that the current stairs do not meet Building Code standards, and are a tripping hazard. They submit the strata should rebuild them. However, this is not a claim set out in the Dispute Notice, so I make no findings about it.

Must the strata approve the SL1 owners' proposed fence?

40. Minutes show that at the January 10, 2022 annual general meeting (AGM), the owners voted on a $\frac{3}{4}$ vote resolution from the SL1 owners to install a fence around

the LCP yard in front of SL1. The proposed fence parameters were set out in a January 10, 2022 email from the SL1 owners' lawyer to Ms. Deshaw's lawyer.

41. In her submissions in this dispute, and in a "summary of events" provided in evidence, Ms. Deshaw said she and MJR had previously agreed to the fence, but voted against it at the AGM because the SL1 owners had refused to reimburse them for relocating the boulevard stairs.
42. Ms. Deshaw effectively controls half the votes on the strata, so I find her refusal to permit the fence is effectively a refusal by the strata. 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.
43. In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, at paragraphs 75 to 97, the BC Court of Appeal 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'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.
44. Under Standard Bylaw 6, strata lot owners are entitled to request strata permission to alter common property. I find the SL1 owners had a reasonable expectation that their fence proposal would be assessed on its merits, rather than used as a negotiation tactic. I have found that Ms. Deshaw is not entitled to reimbursement for moving the boulevard stairs. So, I find her refusal to agree to the fence on that basis is unreasonable, and was done in bad faith in an attempt to extract a payment she was not owed. Because of this, I find the refusal to permit the fence was significantly unfair.

45. As remedy, I order that the SL1 owners may install the fence. They may choose to use one of the proposed designs attached to the January 2022 AGM minutes, or the alternative designs set out in the June 22, 2022 letter from Ms. Deshaw's lawyer.
46. Standard Bylaw 6(1) says a strata corporation may require an owner altering common property to take responsibility in writing for any expenses relating to the alteration. Based on that provision, I order that the SL1 owners are responsible for the cost of building the fence, and any expenses of repairing or maintaining it in the future.
47. I note that in the June 22, 2022 letter, Ms. Deshaw's lawyer asked the SL1 owners to approve certain landscaping changes and installation of a gate in the existing fence as a condition of Ms. Deshaw agreeing to the new fence. Although the parties could have agreed to those terms, they did not, and there is nothing in the SPA that requires such terms. So, I make no order about these conditions.

Must the strata replace the SL1 front stairs, or permit the SL1 owners to do so?

48. The SL1 owners request permission to replace the stairs leading to SL1's front porch. The strata plan shows that both the porch and the stairs are LCP for the use of SL1.
49. Minutes show that the owners voted on a resolution to replace the stairs at the January 2022 AGM, but it did not pass. The resolution was to remove the existing metal stairs, and replace them with black-painted wooden stairs, at the SL1 owners' expense.
50. The existing stairs were installed by the owner developer. The SL1 owners say they are damaged, slippery, unsafe, and unsightly. They say the stairs are not sound, require repairs, and should be replaced.
51. In support of their position, the SL1 owners provided a November 30, 2022 email from SS of ADR Contracting. SS said they inspected the stairs, which were made of very light gauge metal. SS said:

- The prefabricated stairs were not suited for residential exterior use as they are flimsy and slippery.
- The bottom step had begun to sag because there is no support stringer.
- The stairs were poorly installed, as the screws holding the stairs and railing to the pavement below had loosened and fallen out, and the pavement had cracked.
- The bolts at the top of the stairs were installed unevenly.
- The concrete at the front of the landing is unfinished, exposed, and uneven.
- The area is in poor condition, and is “unfinished from both a safety standpoint and in appearance.

52. SS recommended removing the existing stairs and rebuilding them in wood, which would cover the unsightly exposed concrete. SS said that having a custom metal stringer made would be costly, and the stairs would remain slippery and hard to keep clean. SS said the cost of new wooden stairs would likely be less than the cost of a new stringer and the concrete repair work.

53. Based on the CRT’s rules, I do not accept SS’s email as expert evidence, because SS’s qualifications were not provided. However, I accept SS’s email as a description of what SS observed when inspecting the stairs. I find SS’s statement about the likely expense of repairing the existing stairs is speculative, since there is no information about what a new stringer would actually cost. However, I find nothing turns on that, since the SL1 owners have not asked the respondents to pay anything for the stairs.

54. Ms. Deshaw does not dispute that the stairs need repairs. However, she says they do not need to be replaced. She relies on a December 16, 2022 email from the owner developer, which says the SL1 stairs were correctly installed, and if they were damaged, it was because a heavy object was dropped on them. The email says the stairs could be repaired by the same shop that installed them, or easily replaced with the same product.

55. I place little weight on the owner developer's email, because the owner developer did not inspect the stairs, or view photos or videos, to see their condition. I find the owner developer's statement about damage due to a dropped item is speculative. Also, the owner developer did not comment on, or appear to be aware of, the problems set out in SS's email, such as loose and missing screws and uneven concrete.
56. In her submissions, Ms. Deshaw does not dispute that the SL1 stairs need repairs. She says she objects to the proposed wooden stairs because they are different in material and appearance from the existing stairs. This would change the property's "look" and "not be consistent" between strata lots. She says strata duplexes should "maintain the same look and appearance".
57. Photos in evidence show that the front stairs of both SL1 and SL2 face the street. Currently, both strata lots have the same type of stairs. Maintaining a consistent appearance in the building's exterior may, in general, be a relevant consideration in deciding whether to approve alterations. However, other photos and an email in evidence indicate that Ms. Deshaw changed one of the 2 side-by-side garage doors facing the back lane to a non-matching door style. Previously, the doors matched. Given this, I find it is unreasonable for Ms. Deshaw to now insist on consistency. The back side of the garage might be viewed less than the front of the house, but Ms. Deshaw has not explained the distinction, even though the SL1 owners raised this argument.
58. Also, there is nothing to prevent Ms. Deshaw from requesting permission to change her own front stairs to match the new ones proposed by the SL1 owners.
59. For these reasons, I find Ms. Deshaw's objection to the SL1 stairs is unreasonable. Again, since Ms. Deshaw controls half the votes on the strata council, her refusal to permit the new stairs is effectively a refusal by the strata. Using the test for significant unfairness set out above, I find it was significantly unfair to refuse to allow the SL1 owners to change their stairs due to concerns about consistent appearance when Ms. Deshaw already installed a non-matched garage door. As remedy, I order that the SL1 owners may install the front porch stairs set out in the April 5, 2022 "front porch

proposal". Since the SL1 owners are altering common property, based on Standard Bylaw 6(1), I order that they are responsible for the cost of building the stairs, and any expenses of repairing or maintaining them in the future.

Legal Fees

60. Both the SL1 owners and Ms. Deshaw request reimbursement of legal fees in this dispute.
61. CRT rule 9.5(3) says the CRT will not order a party to pay another party's legal fees in a strata property dispute unless there are extraordinary circumstances that make it appropriate to do so. Rule 9.5(4) says that in determining whether there are extraordinary circumstances, the CRT may consider the complexity of the dispute, the degree of involvement by the representative, whether a party or representative's conduct caused unnecessary delay or expense, and other factors. I find this dispute is not particularly complex, but rather is a routine strata dispute about repairs and alterations. I have no information about the involvement of either lawyer. I find there are no other circumstances that justify reimbursement of legal fees in this dispute. So, I dismiss all parties' claims for reimbursement of legal fees.

CRT FEES AND EXPENSES

62. CRT rule 9.5(1) says the CRT will usually order an unsuccessful party to reimburse a successful party for tribunal fees and dispute-related expenses. I find the SL1 owners were the successful parties in this dispute, so I find they are entitled to reimbursement of the \$225 they paid in CRT fees. As Ms. Deshaw's counterclaim was not successful, I order no reimbursement of Ms. Deshaw's CRT fees.
63. The SL1 owners also claimed \$12.27 for registered mail, and \$177.45, as costs incurred to serve the Dispute Notice on the respondents. They say the process server was required because Ms. Deshaw did not pick up the registered mail package. Ms. Deshaw did not provide contrary evidence, and the SL1 owners provided invoices to confirm these expenses. So, I order Ms. Deshaw to reimburse the SL1 owners \$189.72 for dispute-related expenses.

64. The strata must comply with section 189.4 of the SPA, which in this case means that each owner must bear their own costs related to this dispute.

ORDERS

65. I order that:

- a. The SL1 owners may install the fence, using one of the proposed designs attached to the January 2022 AGM minutes, or the alternative designs set out in the June 22, 2022 letter from Ms. Deshaw's lawyer.
- b. The SL1 owners are responsible for the cost of building the fence, and any expenses of repairing or maintaining it in the future.
- c. The SL1 owners may install the front porch stairs set out in the April 5, 2022 "front porch proposal".
- d. The SL1 owners are responsible for the cost of building the stairs, and any expenses of repairing or maintaining them in the future.
- e. Within 30 days of this decision, Ms. Deshaw must reimburse the SL1 owners \$414.72 for CRT fees and dispute-related expenses.

66. I dismiss the SL1 owners' remaining claims. I dismiss Ms. Deshaw's counterclaims.

67. The SL1 owners are entitled to postjudgment interest under the *Court Order Interest Act*, as applicable.

68. 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