



# Civil Resolution Tribunal

Date Issued: August 31, 2023

File: ST-2022-007588

Type: Strata

Civil Resolution Tribunal

Indexed as: *Carr v. The Owners, Strata Plan PGS206*, 2023 BCCRT 749

**BETWEEN:**

KARLA GENE CARR

**APPLICANT**

**AND:**

The Owners, Strata Plan PGS206

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about repair and maintenance in connection with exterior drainage. The applicant, Karla Gene Carr, owns strata lot 37 (SL37) in the respondent strata corporation, The Owners, Strata Plan PGS206 (strata).

2. Ms. Carr says that the strata failed to maintain 4 window wells on the exterior of SL37. She also says that water unacceptably pools in a yard near the exterior of SL37. She seeks an order for the strata to 1) maintain the windows wells, and 2) install a drainage system, such as French drains, to handle the pooling. I note that a French drain consists of an underground trench that redirects surface water or groundwater from an area. Ms. Carr also says both the wells and drainage system must meet the requirement of the BC Building Code (Code).
3. The strata disagrees. It says the wells are currently functioning as required, and it paid to repair 1 of them in August 2022. As to the yard, it says that melting snow caused water to temporarily pool above the frozen ground. It says no new drainage is necessary as the pooling causes no damage and the ground slopes away from SL37, carrying away water. It also says that the strata's building meets the applicable Code requirements of 1992, and there is no obligation for the strata to update any of the construction.
4. Ms. Carr represents herself. A strata council member represents the strata.
5. For the reasons that follow, I dismiss Ms. Carr's claims.

## **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.
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.

## **ISSUES**

10. The issues in this dispute are as follows:
  - a. Did the strata fail to repair and maintain the 4 window wells?
  - b. Did the strata fail to repair and maintain the yard near SL37?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, Ms. Carr must prove her claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision. Ms. Carr did not provide reply submissions though she had the opportunity to do so.
12. A title search shows that Ms. Carr became the registered owner of SL37 in July 2019. The strata plan shows the following. SL37 is part of a townhouse-style building and is the last strata lot at its northeast end. SL37 has a ground floor, upper floor, and a basement that is below grade. The exterior areas around SL37 are labelled as common property (CP). It is undisputed that the yard drainage at issue affects CP.
13. Pictures and video footage show that the SL37's basement has 4 windows below grade that are each surrounded by a window well. The wells appear to be made of

corrugated metal panels bent in a wide U-shape around each window. At the base of each well is a gravel bed.

***Issue #1. Did the strata fail to repair and maintain the 4 window wells?***

14. I will briefly summarize the undisputed background of the window wells. In late June 2022, Ms. Carr emailed the strata manager about water entering SL37's basement. Photos showed water damage in the basement interior, and that the metal edge of a nearby water well had pulled away from the foundation. This left a visible gap.
15. In July 2022, the strata hired Emma Construction to adjust the window well, reattach it to the foundation, and re-slope the ground away from the window well. In early August 2022, Emma construction dug below the gravel bed of the window well, either to lower the ground level below the window or to unearth 2 drains. The parties dispute the reason for this work, but I find nothing turns on this. It is undisputed that 1 of the 2 unearthed drains currently works, and that Emma Construction tried to unplug the other drain but was unable to do so.
16. It rained during the work on August 13, 2022. At the time, Emma Construction had removed the window well. This allowed rainwater to flood around the window and enter Ms. Carr's basement. The strata hired PG Restoration to repair the water damage. The parties disagreed at the time on whether the removed window well could be reused. Ms. Carr decided to purchase a new window well on her own and Emma Construction installed it. This completed the planned work. In this dispute, Ms. Carr makes no specific claims about the interior water damage or the new window well she paid for.
17. Ms. Carr requested a hearing about the window wells, which the strata held on September 27, 2022. There have been no reports of leaks about any water wells in the strata since then.
18. I turn to the applicable law. The *Strata Property Act* (SPA) and the strata's bylaws set out the repair and maintenance obligations of the strata and its owners. SPA sections 3 and 72 require the strata to repair and maintain CP and common assets. The

strata's bylaws are filed in the Land Title Office. The strata repealed and replaced most of its bylaws in March 2014, save for certain rental bylaws that are irrelevant to this dispute. Bylaw 8(1) says that the strata must maintain CP and common assets, and certain forms of limited common property (LCP), including the building's structure, exterior, and windows on the building exterior. It is undisputed that the strata must repair and maintain the window wells. I find the strata must do so because they are CP or common assets. Nothing turns on the exact reason.

19. The strata's obligation to repair and maintain such property is measured by the test of what is reasonable in all circumstances and can include replacement when necessary. The standard is not one of perfection. The strata has discretion to approve "good, better or best" solutions. The CRT will not interfere with a strata's decision to choose a "good", less expensive, and less permanent solution although "better" and "best" solutions may have been available. See *Ricci v. The Owners, Strata Plan LMS 3940*, 2021 BCCRT 755 at paragraph 40, citing *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363 and *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784.
20. An owner is not entitled to direct the strata on how to conduct its repairs or maintenance. See *Garry v. The Owners, Strata Plan EPS2501*, 2021 BCCRT 409, citing *Swan v. The Owners, Strata Plan LMS 410*, 2018 BCCRT 241.
21. Ms. Carr says that the window wells are badly warped and filled with debris. She also says that each well requires at least 1 drain under the Code.
22. The strata says the wells work as intended. It says the photos show the wells have only minor cosmetic imperfections, such as dents, and that the depicted debris does not affect the wells' capabilities. It also says that there is no evidence that the Code has any requirements about the construction of window wells.
23. Overall, I find it unproven that the strata has acted unreasonably or otherwise breached its obligation to repair and maintain the window wells. The photos show the metal sheets of the wells have some dents. However, I do not find it obvious or likely that this affects their function, nor do I find their appearance so objectionable that they should reasonably be repaired or replaced.

24. As to the debris, it appears to be mostly a thin layer of dried leaves that does not completely cover the gravel bed. I find it unproven that this debris would affect the wells' function.
25. The strata also provided photos of some of the wells from October 2022, January, and May 2023. The photos do not show any obvious signs of deterioration over time.
26. I acknowledge that 1 of the 2 drains for the window well discussed above is plugged. However, I find the strata acted reasonably by having Emma Construction attempt to unplug it, even though these efforts proved unsuccessful. There is no indication that the strata ignored any of Emma Construction's recommendations, that any further work is required or outstanding, or that the functioning drain has insufficient capacity. I note that Ms. Carr provided a slide from an unnamed source that says the Code requires each well should have "at least one drain". As the window well in question has 1 working drain, I find the slide does not support Ms. Carr's claim.
27. I also find it unproven that the window wells breach any provisions of the Code. This is because Ms. Carr did not cite the Code or quote any passage from it.
28. Consistent with my conclusion, the strata says that it has received no other recent complaints from other owners about their window wells. As there is no evidence or submissions to dispute this, I find this is likely the case. I find this supports my conclusion that the window wells are being suitably repaired and maintained.
29. In these circumstances, I find that proving a deficiency in the window wells requires expert evidence. This is because I find this is a technical matter, and it is not obvious that the window wells are deficient or substandard. See *Absolute Industries and Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196. That evidence is not before me. For all these reasons, I dismiss this claim.

***Issue #2. Did the strata fail to repair and maintain the yard near SL37?***

30. Ms. Carr says that SL37 is located at the lowest point of the strata's property. She provided an April 28, 2023 photo that shows water pooling on a grassy area near a

gutter downspout. As noted above, she says installing a French drain or other drainage would address the pooling.

31. The strata says the ground near SL37 slopes away and directs water towards the street. It also says it monitored the ground in the fall, winter, and spring and found nothing to suggest that a French drain or other drainage was required. It also says that a council member checked the ground on May 9, 2023, and the area was “completely dry”. As noted above, it also says that that water can occasionally linger when snow melts while the ground is still frozen.
32. Ms. Carr’s evidence about the yard drainage was essentially the 1 photo discussed above. I find this insufficient to prove that the strata has failed to repair or maintain the yard or other CP, or otherwise suitably address yard drainage. While the photos shows some pooling, it does not appear severe. It covers a limited area of the CP yard and is shallow enough to show the grass underneath it. The photos in evidence also show the area with the pooling slopes downward towards a nearby street, as claimed by the strata. Further, Ms. Carr did not dispute the strata’s submission that by early May 2023, the ground was dry. This supports my conclusion that the slope sufficiently addresses pooling and drainage.
33. Ms. Carr’s video also shows a considerable amount of snow on the ground. I find this supports the strata’s submission that melting snow over frozen ground may have been a contributing cause to the pooling.
34. Finally, there is no evidence that the pooling caused or will cause any water damage to the building, SL37, or any CP. The pooling does not appear to be in an area that occupants might normally walk in, so its overall impact appears minimal and temporary. For all these reasons, I dismiss this claim as well.

## **CRT FEES AND EXPENSES**

35. Under section 49 of the CRTA, 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 in this case not to follow that general rule.

I dismiss Ms. Carr's claims for reimbursement of CRT fees. The parties did not claim any dispute-related expenses.

36. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Carr.

## **ORDER**

37. I dismiss Ms. Carr's claims and this dispute.

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David Jiang, Tribunal Member