



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Jorgensen v. The Owners, Strata Plan NW 2685*, 2023 BCCRT 831

B E T W E E N :

LEONARD JAMES JORGENSEN

APPLICANT

A N D :

The Owners, Strata Plan NW 2685

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute essentially about governance.
2. The applicant, Leonard James Jorgensen, owns and lives in strata lot 10 (SL10) in the respondent strata corporation, The Owners, Strata Plan NW 2685 (strata). Mr. Jorgensen is self-represented. A strata council member represents the strata.

3. Generally speaking, Mr. Jorgensen claims the strata intentionally ignored his concerns about a malfunctioning exterior lamp standard for several months in 2022, as well as other repair and maintenance issues. He also says the strata failed to properly communicate its actions about repairing the lighting, which he alleges was a security and safety issue. Mr. Jorgensen also says a full contingent of strata council members would even out the strata council's workload and make discussions more involved and fairer for all owners. He seeks orders that that the strata:
 - a. Deliver timely responses to owner requests or complaints and not wait until the next strata council meeting to respond,
 - b. Act promptly in response to any safety issues brought to its attention and advise owners of its actions, and
 - c. "Work at near or [a] full" strata council.
4. The strata disagrees with Mr. Jorgensen's claims. It essentially says it took a progressive approach to determine why the lamp standard was malfunctioning, retained an electrician, and presented options for the lamp standard repair to the strata owners for a vote. As for the strata council's operation, the strata says on 1 occasion, only 2 council members were able to attend a council hearing because the 3rd member was ill. It makes no other arguments.
5. As explained below, I dismiss Mr. Jorgensen's claims and this dispute.

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

7. 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 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.

Preliminary Issue – Additional Evidence

9. Mr. Jorgensen submitted additional evidence with his reply submissions to which the strata objected. I find the additional evidence was largely further written submissions from Mr. Jorgensen in reply to the strata's response submissions. However, Mr. Jorgensen also provided correspondence he sent to the strata about other maintenance concerns, such as snow removal, asphalt repairs, curb painting, and lawn maintenance. Given the strata had the opportunity to review the additional evidence and responded to it, I find no procedural fairness issues arise. I therefore allow the additional evidence in keeping with the CRT's flexible mandate set out under CRTA section 2.

ISSUES

10. The issues in this dispute are:
 - a. Has the strata acted reasonably about its repair and maintenance obligations?
 - b. Must the strata elect a full contingent of strata council members?

BACKGROUND, EVIDENCE AND ANALYSIS

11. As applicant in a civil proceeding such as this, Mr. Jorgensen must prove his claims on a balance of probabilities, meaning more likely than not. I have considered all the

parties' submissions and evidence but refer only to information I find relevant to explain my decision.

12. The strata plan shows the strata was created in December 1981 under the *Condominium Act*. It includes 24 townhouse-style strata lots in 4 buildings and continues to exist under the *Strata Property Act* (SPA).
13. The strata filed consolidated bylaws with the Land Title Office (LTO) on August 3, 2022, which I find are the bylaws applicable to this dispute. Based on the strata's bylaw filing history at the LTO, I find it has never repealed the Standard Bylaws. Therefore, the August 3, 2022 bylaws include some Standard Bylaws, some Standard Bylaws that have been partially amended, and some new bylaws. The strata filed further consolidated bylaws with the LTO on November 1, 2022, after this dispute was commenced, so I find those bylaws do not apply. I discuss relevant bylaws below as necessary.
14. I note at the outset that Mr. Jorgensen provided very specific details about his experience with the strata over the operation of a lamp standard located near SL10, which I find below is undisputedly a common asset of the strata corporation. Given Mr. Jorgensen does not seek specific remedies about the lamp standard and that his requested remedies are general in nature, I find Mr. Jorgensen has used his experience about the lampstand to illustrate what he alleges is improper conduct by the strata council. The difficulty for Mr. Jorgensen with this approach is that the only evidence before me is evidence about his communications with the strata over the lamp standard operation. There are no other repair and maintenance examples other than his assertions made in correspondence provided as late evidence noted above. Therefore, I will base my analysis on the lamp standard issue.

Has the strata acted reasonably about its repair and maintenance obligations?

15. SPA section 72 requires the strata to repair and maintain common property and common assets of the strata. Bylaw 8 says the same thing. "Common property" as defined under SPA section 1(1) includes "that part of the land... shown on a strata plan that is not part of a strata lot". A "common asset" is defined as "personal property

held by or on behalf of a strata corporation”. The lamp standard is located in a traffic island in the strata’s driveway that is identified as common property on the strata plan. I find the lamp standard is either common property or a common asset of the strata. In either case, the lamp standard is clearly the strata’s responsibility to repair and maintain.

Reasonableness of Lamp Standard Repair

16. There is evidence the lamp standard had “dim lighting” in early 2021 as reported by Mr. Jorgensen. The July 6, 2021 strata council minutes state an electrician investigated the lamp standard at that time and determined “there was no issue”.
17. Primary to this dispute, Mr. Jorgensen wrote to the strata by regular mail on May 1, 2022 to advise the lamp standard had not been working since April 28, 2022, a period of about 3 days. He asked that it be repaired. Mr. Jorgensen again wrote to the strata by regular mail on May 13, 2022. He referred to his May 1st letter stating the complex was in “complete darkness” and that lack of light was a health, safety, and security concern to all owners. He cited vehicles entering the complex and animals or others hiding in the darkness as reasons why. I note in his submissions, Mr. Jorgensen admits the complex was in partial darkness, which I infer means only the common property surrounding the lamp standard was in darkness. On May 20, 2022, Mr. Jorgensen made a 3rd request for repair that alleged the strata was uninterested in addressing the issue. He also criticized the strata for not communicating any information to the owners. On May 27, 2022, Mr. Jorgensen requested a council hearing to discuss the length of time the lamp standard had been out, and lack of communication from the strata. The council hearing was held on June 15, 2022.
18. The strata says it did not receive Mr. Jorgensen’s May 1, 2022 letter until May 9, 2022 and that it takes time to provide a response. In submissions, the strata also says that in 2022, it received over 30 letters of complaint and 2 council hearing requests from Mr. Jorgensen. Based on legal advice it received, the strata says it was not obligated to respond to every piece of correspondence received from Mr. Jorgensen and that it communicates general information through strata council meeting minutes. I note the

strata did not report its legal advice until its November 29, 2022 strata council meeting minutes.

19. While I accept the length of time it took the strata to first address the light being out may have been frustrating for Mr. Jorgensen, I agree with the strata that it is not required to respond to every letter from Mr. Jorgensen. There is nothing in the SPA or the strata bylaws that requires the strata to respond to all correspondence it receives. In any event, the strata says a burned out light bulb was replaced on May 28, 2022, which resolved the lighting issue. The strata wrote to Mr. Jorgensen on June 2, 2022 to advise him the light had been changed. Mr. Jorgensen agrees the lamp standard was working on May 28, 2022.
20. The courts have found that a strata corporation's obligation to repair and maintain common property (and common assets) is measured by the test of what is reasonable in all circumstances. Repair can also include replacement when necessary. See *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363.
21. What is reasonable in the circumstances also depends on the likelihood of the need to repair, the cost of further investigation, and the gravity of the harm sought to be avoided or mitigated by investigating and remedying any discovered problems. See *Guenther v. Owners, Strata Plan KAS431*, 2011 BCSC 119 at paragraph 40.
22. In *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74, the Court found that slowness in completing repairs by a strata corporation may still be reasonable. *Leclerc* was a case of water ingress from common property into a strata lot over an extended period of time. The Court said that although the strata corporation could perhaps have hastened its investigations of the problem, there was no evidence of deliberate "foot-dragging", and found the strata took reasonable action with fair regard for the interests of all concerned. Here, I find the strata addressed Mr. Jorgensen's concerns about the light not working by replacing the bulb in May 2022. While there may have been some delay for the strata to replace the light bulb, there is no evidence the delay was intentional as suggested by Mr. Jorgensen. I find there was no deliberate delay in the length of time the strata took to replace the light bulb in May 2022 and urgency as suggested by Mr. Jorgensen, which I discuss below.

23. The lamp standard continued to work for about 3 months until September 5, 2022. Mr. Jorgensen wrote to the strata on that date and again on September 7, 2022 to say the light was operating on September 6 but was out again on September 7. On September 12, 2022, Mr. Jorgensen wrote to the strata to advise of intermittent problems with the light and requested the strata retain an electrician and advise the owners “of the problem, repairs, and time involved to have the lights working in a proper manner”. Based on the strata’s submissions, I find it contacted an electrician, E-Tron Electric (E-Tron) on September 7, 2022 after a council member noticed the light was out. The parties exchanged further correspondence and E-Tron investigated the light operation on September 23, 2022. I find there was no delay in the strata retaining an electrician to investigate the lighting issue in September 2022. I accept that the time it took for the electrician to attend the property was based on the electrician’s schedule and outside of the strata’s control.
24. In October and November 2022, the parties exchanged further correspondence about the lamp standard’s operation. The strata issued an undated notice to its owners in that provided some background information about the light’s operation. Mr. Jorgensen provided a copy of the notice into evidence that has a handwritten notation in the top right corner that indicates it was received on October 18, 2022. I infer Mr. Jorgensen received the notice on that date. The notice also states the strata requested an electrician to replace the wiring in the lamp standard as a first step, but that problems with the light’s operation continued. The notice goes on to say the strata was waiting for the electrician to return to continue its inspection of potentially faulty underground wiring that connects the lamp standard to the utility room. E-Tron’s November 23, 2022 invoice confirms an electrician was on site September 23, October 11 and 14, 2022 but does not indicate what work was performed. However, the November 29, 2022 council meeting minutes state the electrician advised the base of the lamp standard would have to be fully removed for further investigation. The minutes also state:

...if the cost of the lighting repair is reasonable, and... the local wiring is repairable, the light will be put back. If the cost of repairs is excessive, the

light will be removed until such time as the owners can vote to approve the expenditure.

25. In *Oldaker v. The Owners, Strata Plan VR1008*, 2007 BCSC 669 the Court restated its well-established findings that a strata corporation is not an insurer obligated to fulfill an owner's demand for maintenance and is generally entitled to rely on repair and maintenance advice received from its professionals. Here, I find the strata relied on its electrician's advice to approach the repair on a step-by-step basis to eliminate potential sources of an electrical problem associated with the lamp standard's wiring.
26. Contrary to Mr. Anderson's arguments, I find there was no proven urgency to get the lamp standard operating. In particular, I do not find that Mr. Jorgensen has established any safety or health issues existed when the light was malfunctioning. The strata is located in Abbotsford, BC. I find it unlikely that black ice was a safety hazard in May or September 2022 as alleged. Even if black ice was present in October or November 2022, better lighting would not have resolved the ice issue. Further, the strata says every strata lot has an entrance light, which if turned on, provides sufficient light in the driveway near the lamp standard. Mr. Jorgensen did not address the strata's submission, so I infer he does not object to it.
27. Finally, I note the strata called a special general meeting for May 30, 2023 to consider a special levy to address the lamp standard issue. It is unclear if the electrician completed any further investigation after November 2022, but I find it clear that the strata believed the owners should be consulted on the next step for the lamp standard repair. I find the actions of the strata were in line with *Weir v. Strata Plan NW 17*, 2010 BCSC 784.
28. In *Weir*, the Court confirmed that, when assessing what is "reasonable", a strata corporation must act in the best interests of all the owners and endeavour to achieve the greatest good for the greatest number. That involves implementing necessary repairs within a budget that the strata owners can afford and balancing competing needs and priorities.

29. I find there is nothing unreasonable about the strata's approach to address the lamp standard lighting issue raised by Mr. Jorgensen.
30. As earlier mentioned, Mr. Jorgensen did not provide evidence of other repair and maintenance issues except for his assertions that things such as snow removal, asphalt repairs, curb painting, and lawn maintenance were not completed properly. As a result, I dismiss Mr. Jorgensen's claim that the strata did not act reasonably in addressing its repair and maintenance obligations.

Communications

31. As for communicating its actions about the lamp standard repair, I find the strata did so reasonably. It advised Mr. Jorgensen of the light bulb replacement and the further action it took to retain an electrician, as Mr. Jorgensen had requested. The strata also advised the owners of the difficulties encountered to repair the lamp standard and ultimately put the issue to the owners to decide.
32. Finally, I note bylaw 18(1) requires strata council decisions to be made by a majority of council members present in person at a council meeting. Based on the following case law, I find this restricts the strata council from making decisions between meetings as suggested by Mr. Jorgensen.
33. In *Kayne v. The Owners, Strata Plan LMS2374*, 2007 BCSC 1610, the court considered the practice of "informal meetings" of a strata council to discuss issues facing the strata. The court endorsed the practice but said that no decision made at an informal meeting "has any validity unless and until" it is ratified at a formal council meeting.
34. In *Azura Management (Kelowna) Corp. v. Owners of the Strata Plan KAS2428*, 2009 BCSC 506, and *Yang v. Re/Max Commercial Realty Associates (482258 BC Ltd.)*, 2016 BCSC 2147, the court found that the SPA did not prohibit meetings by email. In other words, if a strata council held a formal meeting via email, and properly minuted that meeting, decisions made at that email meeting would be valid based on the reasoning in *Kayne*.

35. It is unclear from these cases how an “email meeting” would operate, but I find the strata’s bylaws do not permit email meetings. Therefore, unless the strata’s bylaws are amended to permit email meetings, I find it is not possible for the strata to make decisions between meetings, except in emergencies as noted in *Cassey v. The Owners, Strata Plan VR326*, 2023 BCCRT 645. So, I find it reasonable for the strata to generally communicate its decisions through council meeting minutes.

Must the strata elect a full contingent of strata council members?

36. Mr. Jorgensen says the strata council would be more productive if it operated with the maximum number of members. He asks for an order that the strata elect the maximum number of strata council members. I decline to make that order for the following reasons.

37. SPA section 25 governs council elections. It says that at each annual general meeting (AGM), the eligible voters who are present in person or by proxy at the meeting must elect a council. SPA section 51(1) says at annual and special general meetings, matters are decided by majority vote unless a different voting threshold is required or permitted by the SPA or the *Strata Property Regulation*. This means council elections must be approved by majority vote.

38. “Majority vote” is defined in SPA section 1(1) as “a vote in favour of a resolution by more than ½ of the votes cast by eligible voters who are present in person or by proxy at the time the vote is taken and who have not abstained from voting”.

39. SPA section 29(1) says the number of persons on council is determined by the bylaws. There are no other SPA provisions setting out how elections must occur. However, a strata corporation may have bylaws that address how elections will be conducted.

40. The strata has the following relevant bylaws about council elections, which I have summarized:

Bylaw 9(1) – the council must have at least 3 and not more than 5 members.

Bylaw 10(1) – a council member’s term of office ends at the end of the AGM at which the new council elected.

Bylaw 12(1) – if a council member resigns or is unwilling to or unable to act for a period of 2 or more months, the remaining members of the council may appoint a replacement council member for the remainder of the term.

Bylaw 27(7) – a council election must be held by secret ballot if a secret ballot is requested by an eligible owner.

41. At the July 26, 2021 AGM, 5 owners were nominated for council, including Mr. Jorgensen. The minutes show the election was conducted by secret ballot and only 3 of the 5 owners nominated received a majority vote, so 2 owners, including Mr. Jorgensen, were not elected to the council. The August 24, 2022 AGM minutes show 6 owners were nominated and 5 were elected to the council by majority vote. Mr. Jorgensen was not nominated.
42. Several Court decisions state that a court should not interfere with the democratic governance of a strata unless absolutely necessary. See for example, *Lum v. Strata Plan VR519 (Owners of)*, 2001 BCSC 493, *Oldaker v. The Owners, Strata Plan VR 1008*, 2010 BCSC 776, and *Norenger Development (Canada) Inc. v. Strata Plan NW 3271*, 2016 BCCA 118.
43. Further, many CRT decisions have found this reasoning applies to the CRT, with which I agree. See for example, *Nadjafov v. The Owners, Strata Plan BCS 1362*, 2021 BCCRT 814, *Butler v. The Owners, Strata Plan NWS 3403*, 2023 BCCRT 460, and *Zoetica Wildlife Research Services Inc. v. The Owners, Strata Plan LMS2749*, 2023 BCCRT 486.
44. The 2021 and 2022 AGM minutes indicate the strata council members were elected through a democratic process as required by the bylaws. While the bylaws permit a maximum of 5 council members, in 2021 at least, only 3 members had sufficient votes to be elected by the majority. Further, as noted in bylaw 12(1) above, the only way a

person can be appointed to the strata council is if an elected member resigns or is unwilling or unable to act for a period of 2 months. In other words, the strata's bylaws

45. do not permit a person to be appointed to the strata council in order for the strata council to have the maximum number of 5 members. I find to order the strata to elect the maximum number of 5 members, or appoint additional members, would be interfering with the strata's democratic governance, which I decline to do.
46. Therefore, I dismiss Mr. Jorgensen's claim that the strata should operate with the maximum number of strata council members.
47. Nothing in this decision restricts Mr. Jorgensen from proposing bylaw amendments to address his concerns, such as increasing the maximum number of strata council members or demanding a bylaw amendment by obtaining at least 20% of the strata's votes under SPA section 43.
48. Based on my conclusions above, I dismiss Mr. Jorgensen's claims and this dispute.

CRT FEES AND EXPENSES

49. 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. Here, the strata was the successful party, but it did not pay CRT fees, so I make no order for CRT fees.
50. Mr. Jorgensen claims dispute-related fees of \$501.98 and submitted receipts for things like registered mail, photocopying and administrative services such as typing and emailing. However, given Mr. Jorgensen was not successful, I make no order for dispute-related expenses.
51. Under section 189.4 of the SPA, the strata may not charge any dispute-related expenses against Mr. Jorgensen.

DECISION AND ORDER

52. I dismiss Mr. Jorgensen's claims and this dispute.

J. Garth Cambrey, Vice Chair