



# Civil Resolution Tribunal

Date Issued: March 20, 2024

File: ST-2023-001063

Type: Strata

Civil Resolution Tribunal

Indexed as: *Bennett v. The Owners, Strata Plan VIS 5283, 2024 BCCRT 295*

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

ALISON BENNETT

**APPLICANT**

**A N D :**

The Owners, Strata Plan VIS 5283

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr, Vice Chair

## **INTRODUCTION**

1. Alison Bennett owns a strata lot in the strata corporation, The Owners, Strata Plan VIS 5283. She believes that an exterior wall and part of the attic around her strata lot lacked insulation. She says that the strata failed to properly investigate the issue, so she hired her own contractor to inspect the wall. She claims \$100 reimbursement for

that investigation. She also says the strata's failure to meaningfully investigate the issue was significantly unfair.

2. Ms. Bennett also alleges that the strata lied when it sent a letter to the other owners about the insulation issue. She claims a further \$1,000 in compensation for the strata's allegedly significantly unfair actions. She also asks for an order that the strata correct strata council minutes about the investigation. She is self-represented.
3. The strata says that it reasonably investigated the insulation issue and found no issues. The strata denies lying or misleading anyone about the insulation issue. It asks me to dismiss Ms. Bennett's claims.

## **JURISDICTION AND PROCEDURE**

4. 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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I have considered the potential benefits of an oral hearing. Here, I am properly able to assess and weigh the documentary evidence and submissions before me. So, the CRT's mandate to provide proportional and speedy dispute resolution outweighs any potential benefit of an oral hearing. I find that an oral hearing is not necessary in the interests of justice. I therefore decided to hear this dispute through written submissions.
6. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.

## **ISSUES**

7. The issues in this dispute are:
  - a. Must the strata reimburse Ms. Bennett's \$100 in alleged investigation costs?
  - b. Did the strata treat Ms. Bennett significantly unfairly?
  - c. If so, what remedy is appropriate?

## **BACKGROUND AND EVIDENCE**

8. In a civil claim such as this, Ms. Bennett as the applicant must prove her claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. The strata consists of seven strata lots in a single building. Ms. Bennett's strata lot is a three-story townhouse. The strata was created in 2002.
10. In March 2021, a restoration contractor was working in Ms. Bennett's strata lot after a leak. According to Ms. Bennett, the contractor told her that there was no insulation in an exterior wall. On March 19, Ms. Bennett emailed the strata about the issue, noting that her walk-in closet and primary bedroom were "always freezing". The strata said it would get a report. The strata never did.
11. On July 15, 2021, Ms. Bennett emailed the strata about the insulation issue. The strata responded on August 31 that the restoration contractor had not provided the strata with any photos or measurements about the insulation. Still, the strata suggested it was open to having an insulation contractor attend.
12. On October 21, 2021, the strata wrote to Ms. Bennett that it had reviewed the municipality's 2003 building inspection records, which showed that each strata lot's insulation complied with the BC Building Code. The records include a specific note that Ms. Bennett's strata lot had Code-compliant insulation. The strata suggested that

the insulation may have settled over time, which the strata considered normal. The strata said it considered the matter resolved.

13. Nothing happened for a year after this. On October 12, 2022, Ms. Bennett's lawyer wrote the strata about several matters, including the insulation. The letter included two photos that show the attic space above Ms. Bennett's strata lot. In a response the next day, the strata committed to having the insulation repaired. Later that month, the strata hired a contractor to address the issue. According to an October 31, 2022 email from the strata, the contractor ensured that the attic insulation was thick enough to meet BC Building Code standards, and blew insulation into the end wall.
14. Ms. Bennett does not suggest that there was anything wrong with the repair itself.

## **ANALYSIS**

### ***Must the strata reimburse Ms. Bennett for the \$100 she says she paid to investigate the insulation issue?***

15. Ms. Bennett claims \$100 for her investigation into the insulation issue. There is nothing in evidence about this. There is no correspondence with the person who did the investigation. There is also no invoice, receipt, or other evidence to show Ms. Bennett paid \$100 to anyone for an investigation. Ms. Bennett acknowledges this lack of evidence in her submissions, explaining that she paid a friend cash and no longer speaks to them. I dismiss this claim for lack of evidence.

### ***Did the strata treat Ms. Bennett significantly unfairly?***

16. The CRT has authority to make orders remedying a strata corporation's significantly unfair actions or decisions. Significantly unfair actions are those that are burdensome, harsh, wrongful, lacking in probity and fair dealing, done in bad faith, unjust, or inequitable. In applying the test, the owner's objectively reasonable expectations are a relevant factor, but are not determinative.<sup>1</sup>

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<sup>1</sup> See *Dollan v. The Owners, Strata Plan 1589*, 2012 BCCA 44, *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.

17. There are two aspects to Ms. Bennett's significant unfairness claim. The first relates to the strata's investigation into the insulation issue. The second relates to how the strata communicated to the other owners about the insulation issue. I will address them in turn.

### The Insulation Investigation

18. Ms. Bennett says that the delay between her initial report of insulation issues in March 2021 and the strata completing the insulation work in October 2022 was significantly unfair. While Ms. Bennett frames this as a significant unfairness issue, I find it is really about whether the strata fulfilled its repair and maintenance obligations. The parties have always agreed that the strata must repair and maintain the insulation. Section 72 of the *Strata Property Act* (SPA) sets the limit of what a strata corporation is legally required to do to fulfill its repair and maintenance obligations.

19. It is well established that the standard a strata corporation must meet when fulfilling its repair and maintenance obligations is reasonableness. I find that if the strata acted reasonably, it cannot have acted significantly unfairly because this would impose a higher standard than contained in SPA section 72, which is something that no owner could reasonably expect.<sup>2</sup>

20. The strata's obligation to repair and maintain common property includes an obligation to investigate potential issues. What the strata must do to meet this obligation depends on factors like the likelihood for the need for repair, the cost of the investigation, and the gravity of harm to be avoided.<sup>3</sup>

21. Here, it is not accurate to say the strata did nothing to investigate the possibility of an insulation issue. It pulled building inspection records, which confirmed that Ms. Bennett's strata lot passed the inspection's insulation requirements. I find this was a reasonable first step. The strata told Ms. Bennett its conclusion in October 2021.

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<sup>2</sup> See *Dolnik v. The Owners, Strata Plan LMS 1350*, 2024 BCCRT 88.

<sup>3</sup> See *Guenther v. Owners, Strata Plan KAS431*, 2011 BCSC 119, and *Dugaro v. The Owners, Strata Plan LMS 233*, 2023 BCCRT 961.

Then, the strata heard nothing over the winter when a lack of insulation would have had the most impact.

22. I find that it was reasonable for it to do nothing in the absence of a further complaint from Ms. Bennett about cold conditions within her strata lot. This is because the lack of communication from Ms. Bennett suggested a serious issue with the insulation was unlikely. So, there was no indication of an urgent issue or emergency. Then, when Ms. Bennett reengaged the strata on the issue a year later, the strata promptly arranged for an inspection and repair. I recognize that a physical inspection would have been a simple and cheap thing for the strata to arrange sooner. Still, on balance, I find that the strata's approach was reasonable.

### The Letter

23. Ms. Bennett takes issue with the strata's November 19, 2022 letter, which the strata sent to Ms. Bennett's lawyer in response to a demand letter. She says the letter included false or inaccurate statements. The strata distributed the letter to all the owners in November 2022 strata council minutes. Ms. Bennett says this was significantly unfair because it left the other strata owners with the wrong impression of what had happened with the insulation. She points to two aspects of the letter.
24. First, Ms. Bennett argues the letter falsely said that the strata had attempted to communicate with her in October 2021, but she did not reply. She says this is misleading because the strata's October 21, 2021 letter told her that the strata considered the insulation matter resolved. I see nothing wrong with the strata's description of what happened. The strata did not say or imply that it had been waiting for a response from Ms. Bennett. All the strata said was that the last communication between the parties was its October 21, 2021 letter, and that the strata did not hear from Ms. Bennett again until October 12, 2022. This is entirely accurate.
25. Second, Ms. Bennett argues the letter incorrectly said that an area of the attic was not adjacent to a heated living space and therefore did not need insulation. Ms. Bennett says the area in question is above a bedroom. The submissions in this dispute suggest the parties may be talking about slightly different areas of the attic.

In any event, I cannot tell with certainty who is right, but nothing turns on it. The strata's letter says it based its opinion on a review of the building plans. So, it did not present a conclusive statement.

26. Ms. Bennett believes that the strata's letter left the impression that she had unreasonably demanded insulation where none was needed. It is certainly plausible that another owner may have interpreted it that way. Still, I do not agree that the strata's letter was significantly unfair even if it was incorrect on this point. First, the strata's letter is a response to Ms. Bennett's lawyer's demand letter, and in that context, it is to be expected that the strata will defend its position. More importantly, the overall cost of the insulation inspection and installation was under \$300. The owners would know that the "unnecessary" insulation was a small portion of this already small cost. Even if it was unfair for the strata to assert that some of the insulation was unnecessary, it was certainly not significantly unfair. A slightly inaccurate statement in a letter about such a minor repair is a trivial matter that does not justify a remedy, let alone monetary compensation. I also dismiss Ms. Bennett's claim that the strata correct the letter or minutes.

27. In short, I dismiss Ms. Bennett's significant unfairness claim.

## **TRIBUNAL FEES AND EXPENSES**

28. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. Bennett was unsuccessful, so I dismiss her claim for CRT fees and dispute-related expenses. The strata did not claim any dispute-related expenses or pay any CRT fees.

29. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Bennett.

## **DECISION AND ORDER**

30. I dismiss Ms. Bennett's claims, and this dispute.

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Eric Regehr, Vice Chair