



Civil Resolution Tribunal

Date Issued: June 18, 2024

File: ST-2023-000975

Type: Strata

Civil Resolution Tribunal

Indexed as: *Martel v. The Owners, Strata Plan VR 264*, 2024 BCCRT 565

B E T W E E N :

CARLEIGH MARTEL

APPLICANT

A N D :

The Owners, Strata Plan VR 264

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about window and related repairs.
2. The applicant, Carleigh Martel, owns strata lot 5 (SL5) in the respondent strata corporation, The Owners, Strata Plan VR 264 (strata). Mrs. Martel represents herself. A strata council member represents the strata.

3. Mrs. Martel says the strata has been negligent in repairing common property window leaks which caused damage in SL5, for which she paid. Mrs. Martel also says she lost rental income as a result of the strata failing to replace the windows in a timely fashion.
4. Her claims involve 2 separate windows. First, in an earlier dispute, ST-2021-001647, Mrs. Martel reached a settlement agreement with the strata in June 2022 about replacement of a kitchen window of SL5. Mrs. Martel alleges the strata has not satisfied its part of the agreement and says she was forced to accept a cash settlement from her insurer at a 17% lesser amount than her actual repair cost because of the strata's delay in replacing the kitchen window.
5. Second, Mrs. Martel says the strata is negligent in its repair of a second leaking window of SL5, which caused further damage to SL5.
6. Mrs. Martel asks the Civil Resolution Tribunal (CRT) to issue an order setting out the terms and conditions contained in the settlement agreement reached for ST-2021-001647 so she can enforce the order through the court.
7. She also seeks an order that the strata pay her a total of \$43,626.43 for lost rental income, additional repair costs, overpayment of her special levy payment, and pain and suffering. She did not provide a breakdown of her claimed amounts for these things.
8. The strata denies all liability. It says it satisfied its obligations under the settlement agreement reached in ST-2021-001647 but says there was a delay in replacing the kitchen window because of supply issues. It also says Mrs. Martel delayed providing proof of her paid expenses. As for the second window replacement, the strata says it took time to arrange for and approve the window replacement, which is part of a window replacement project for the entire building. The strata says the window is scheduled to be replaced and asks that Mrs. Martel's claims be dismissed.
9. The strata also seeks \$1,000 in dispute-related expenses.

10. As explained below, I refuse to resolve Mrs. Martel's claim for an order under ST-2021-001647 and I dismiss her claim for damages. I also dismiss the strata's claim for dispute-related expenses.

JURISDICTION AND PROCEDURE

11. These are the CRT's formal written reasons. 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 10 says the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
13. 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. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the written evidence and submissions provided.
14. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

Request for order under ST-2021-001647

15. I note the parties were aware the previous dispute, ST-2021-001647, was withdrawn and closed by the CRT. The case manager involved in the dispute expressly brought this to the parties' attention in a June 23, 2021, email, including that Mrs. Martel needed to seek permission to re-file the withdrawn claim as set out in CRT rule 6.1(3).

16. Mrs. Martel did not seek permission to re-file the withdrawn claim. However, she did email the CRT to request an order in ST-2021-001647 so she could enforce it with the BC Provincial Court. In response, CRT staff advised Mrs. Martel that she must file another CRT dispute application and request a consent resolution order. This advice was not procedurally accurate, but I find Mrs. Martel relied on it when she applied for this dispute. Therefore, for procedural fairness reasons, I have accepted that Mrs. Martel's first claim for an order relating to the previous CRT dispute is a request to re-file the withdrawn claim under rule 6.1(3), which I discuss below.

New allegations

17. In her further submissions on the settlement agreement, which I discuss below, Mrs. Martel makes new allegations about the strata's harassment, a privacy breach, and a new leak under her patio door. These allegations were not included in the original Dispute Notice for this dispute. The CRT rules permit an applicant to amend a Dispute Notice to add claims and remedies, but Mrs. Martel did not do that.

18. The purpose of a Dispute Notice is to define the issues and provide notice to the respondent of the claims against it. Procedural fairness requires that a party must be notified of the claims against it and have a fair opportunity to respond, which the strata has not. I therefore decline to address Mrs. Martel's new allegations in my decision below.

ISSUES

19. The issues in this dispute are:

- a. Should the CRT issue an order for the settlement agreement reached in ST-2021-001647?
- b. Was the strata negligent in attending to the second leaking window repair?
- c. What is an appropriate remedy, if any?

BACKGROUND, EVIDENCE AND ANALYSIS

20. In a civil proceeding such as this, Mrs. Martel must prove her 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.
21. The strata was created in September 1975 under the *Condominium Act* (CA). It exists under the *Strata Property Act* (SPA) and is comprised of 30 residential strata lots in a single 4-storey building.
22. The strata filed a complete new set of bylaws with the Land Title Office (LTO) on February 1, 2002. The bylaw amendment confirms all previously registered bylaws were repealed except the rental restriction bylaw, which does not apply here. The amendment also confirms the February 2002 bylaws replace the CA Part 5 bylaws and the Standard Bylaws under the SPA. Several other bylaw amendments were filed with the LTO between February 2002 and February 2019, but none apply.
23. The only relevant bylaws are those that address repair and maintenance. Bylaw 2(1) makes an owner responsible for repair and maintenance of their strata lot. Bylaws 9(b) and 9(d) make the strata responsible for repair and maintenance of common property and windows on the exterior of the building or that front on common property.
24. SPA section 72 also makes the strata responsible for repair and maintenance of common property. Based on SPA section 72 and the strata's bylaws, there is no dispute that the strata is responsible for the window repairs which are the subject of this dispute. I note the CRT has consistently found that interior repairs to a strata lot caused during a strata corporation's investigation, such as drywall removal, is a strata corporation's responsibility. See for example *Juhala v. The Owners, Strata Plan NW 2089*, 2022 BCCRT 1208, at paragraph 66.
25. There is no dispute the strata began investigating a window replacement project for the entire building in 2021. At some point, the strata retained an engineer to assist with the project as evidenced by emails provided. The strata says the project was approved in July 2022. There is no supporting evidence before me, such as meeting

minutes, but Mrs. Martel did not say otherwise, so I accept the strata's statement. Additional funds were required for the project, but they were not approved in July 2023, when the owners failed to approve a ¾ vote resolution for the increased cost of the window project. The parties agree the full window replacement project was finally approved in December 2023. According to the strata, the window replacement project started in March 2024.

Should the CRT issue an order for the settlement agreement?

26. In a previous CRT dispute between the same parties, ST-2021-001647, Mrs. Martel alleged the strata failed to complete repairs that I understand related to a kitchen window leaked and caused damage to SL5. As noted, the parties reached a settlement agreement in that dispute and Mrs. Martel withdrew her claims.
27. Under CRT rule 6.1(3), a party who withdraws a claim can only re-file the claim again with the tribunal's permission, subject to the factors in Rule 6.1(5), including whether the limitation period for the claim has expired.
28. I first consider whether the limitation period has expired for Mrs. Martel's kitchen window damages claim.
29. CRTA section 13 confirms the *Limitation Act* applies to CRT claims. The limitation period stops running when a CRT dispute application is made. The basic period to file a claim is 2 years after the claim is "discovered". At the end of the 2-year limitation period, the right to bring a claim disappears. A claim is "discovered" on the first day the person (here Mrs. Martel) knew, or reasonably ought to have known, that the loss or damage occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made (here the strata), and that a court or tribunal proceeding would be an appropriate way to remedy the damage.
30. The Dispute Notice for ST-2021-001647 shows Mrs. Martel first became aware of the kitchen window leak in October 2020. Evidence provided in this dispute confirms this but that does not mean she discovered her claim in October 2020. Mrs. Martel filed her application for ST-2021-001647 on January 5, 2022, so I find Mrs. Martel discovered her claim for the first window leak between October 2020 and January 5,

2022. I cannot determine on the limited evidence before me when Mrs. Martel discovered her claim, so I accept it was January 5, 2022, at the latest. She filed her claim for this dispute on January 28, 2023, which is well within the 2-year limitation period. Therefore, based on the evidence before me, I find Mrs. Martel's claim is not out of time under the *Limitation Act*.

31. In ST-2021-001647, the parties engaged in the CRT's facilitation process and on June 23, 2022, they reached agreement on a full and final settlement of the dispute. The CRT case manager emailed the parties as follows:

I have noted your agreement below, which both parties have confirmed, and which includes a term for withdraw of the dispute. The CRT's dispute file is now closed.

In full and final settlement of this dispute

Parties agree:

1. Within 90 days of the date of this agreement, the applicant provide the respondent proof of payment of the insurance deductible paid in the amount of \$2,000.00 and related to this dispute, and proof of payment of the plumbing bill of \$162.00.
2. Within 30 days of receiving the proof of payment as required in term 1 of this agreement, the respondent pay to the applicant the amount of \$5,162.00. This sum is comprised of \$3,000.00 as damages, \$2,000.00 for the insurance deductible, and \$162.00 for the plumbing bill.
3. Strata will reimburse CRT fees in the amount of \$125 plus any applicable taxes.
4. Within 90 days of the date of this agreement, the respondent strata corporation replace and install at their expense, the applicant's kitchen window.

5. In the event that the strata corporation window project (general maintenance project for the common property windows) does not proceed in any capacity (all or partial), strata will be water testing all of the applicant's windows including the one that is being replaced. If the window project does proceed, the strata will not be doing any further water testing of the windows on the exterior of the unit. If only part of the window project proceeds, strata will water test all of the applicant's windows including the one that is being replaced. If the strata has not come to a conclusion about any part of the window project within the following 90 days, the strata will proceed with the window testing as previously described.
6. This dispute is withdrawn in accordance with the CRT Rule 6.1 which indicates it cannot be brought back again in the CRT by the applicant without the CRT's permission.
32. I was unclear about the nature of Mrs. Martel's claim about the settlement agreement and its status. So, through CRT staff, I asked the parties for further submissions, including whether the CRT has jurisdiction to enforce the settlement agreement.
33. While both parties suggested the CRT has jurisdiction to order the settlement terms agreed to, I find it does not. This is because breach of a settlement agreement is not a matter "in respect of" the SPA as I discussed in *Alameer v. Zhang*, 2021 BCCRT 435. See also *Burton v. The Owners, Strata Plan NW 2166 et al*, 2018 BCCRT 588.
34. A breach of contract claim could be made under the CRT's small claims jurisdiction, subject to the \$5,000 monetary limit, or under the jurisdiction of either the BC Provincial Court or BC Supreme Court. Given Mrs. Martel's claim is outside the CRT's strata property jurisdiction, I must refuse to resolve it under CRTA section 10(1).
35. Even if the CRT had jurisdiction to decide Mrs. Martel's dispute under its strata property jurisdiction, I would dismiss it. I say this because the parties agree the settlement terms were eventually met. The parties confirmed the kitchen window was replaced in November 2022 and that the strata paid Mrs. Martel \$5,162.00 by June

2023. I find the strata also paid Mrs. Martel \$125.00 for her CRT fees as she acknowledges the strata paid her “the agreed upon compensation” in June 2023.

36. The strata says its payment to Mrs. Martel was delayed because she did not submit proof that she had paid her insurance deductible. The evidence shows that Mrs. Martel first emailed the strata on March 14, 2023, with what she believed was proof of payment for her expenses. This was well past the 90-day deadline established in the settlement agreement. The email included an email exchange between Mrs. Martel and her insurance broker about a cash settlement she accepted for the insurance claim, which was reduced by the \$2,000.00 deductible. Mrs. Martel emailed the strata a proof of loss on March 15, 2023, that also showed the \$2,000.00 deductible was deducted. While the strata initially requested a copy of a paid invoice for the insurance deductible, it eventually accepted that Mrs. Martel’s paid her insurance deductible, so it paid Mrs. Martel the agreed amount in June 2023. There is no evidence the strata acted unjustly or intentionally delayed paying Mrs. Martel. Also, given Mrs. Martel’s requested resolution is that the CRT order the settlement terms, I find the 2-month delay beyond what the parties agreed is now irrelevant given the strata has made the payment.
37. I also find the settlement agreement contemplated a delay in the kitchen window replacement that might go past the agreed 90 days. The evidence is that the delay was not caused by the strata. Rather, the strata says the window replacement was delayed because of supply issues, which Mrs. Martel does not dispute. From the emails in evidence, it also appears there was miscommunication between the strata’s contractors involved in the window replacement. However, this delay was also outside the strata’s control.
38. Finally, other than payment for Mrs. Martel’s insurance deductible, there is nothing in the agreement about her insurance. For this reason, I find Mrs. Martel’s assertion that she was “forced to accept” 17% less for her insurance claim because of the delay has no relevance.
39. I find this ends the issues surrounding replacement of the kitchen window.

Was the strata negligent in attending to a second leaking window repair?

40. I turn now to the strata's actions concerning replacement of the second window, which Mrs. Martel says were negligent.
41. To be successful in an action for negligence, Mrs. Martel must demonstrate that the strata owed her a duty of care, that the strata breached the standard of care, that she sustained damage, and that the damage was caused by the strata's breach: see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3. For the following reasons, I find the strata was not negligent in its repair of the second leaking window.

The strata's duty to repair

42. In *Slosar v. Strata Plan KAS 2846*, 2021 BCSC 1174, the BC Supreme Court summarized a strata corporation's duty to repair at paragraph 66. It said a strata corporation's duty to repair requires, among other things, balancing interests to achieve the greatest good for the greatest number given budget constraints. There is no requirement that repairs be performed immediately or perfectly, citing *Hirji v. Strata Plan VR 44*, 2015 BCSC 2043 at paragraph 146.
43. There is no question SPA section 72 and bylaw 9 require the strata to repair and maintain the windows at issue here. So, the strata clearly owed Mrs. Martel a duty of care.

The strata's standard of care

44. The court in *Slosar* also found a strata corporation's standard of care is objective reasonableness. It is not perfection nor is it to be judged with the benefit of hindsight.
45. Therefore, the next question is whether the strata acted reasonably when conducting its repair and maintenance obligations. I find that it did.
46. I find strata first became aware of the second window leak into SL5 in September 2022, when Mrs. Martel emailed it about moisture in SL5 wall below the window. There is no evidence the strata was aware of the window leak at an earlier date. The strata immediately responded to Mrs. Martel and requested she provide further

details. By November 3, 2022, the strata's contractor had removed the drywall on the interior of SL5 below and near the window to try to determine the source of the leak. The contractor also sealed the window frame and sealed poly (plastic) over the outside of the window to stop any further leaks from around the window.

47. In January 2023, the strata discussed with its contractor ways to identify the source of the leak, such as water testing the window from the outside. It is unclear what testing, if any, was completed. However, there is no evidence the leak continued into SL5. Also in January 2023, the strata agreed to include replacement of the window in the building-wide window replacement project.
48. Following *Slosar*, I find the strata's decision to include the second SL5 window in the building project was reasonable. As mentioned, the strata was still determining the cost of the window replacement project in January 2023 and did not ultimately approve the project until December 2023. There is no evidence the leak into SL5 continued, but even if it did, I find any delay in replacing the window was also reasonable based on *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74.
49. In *Leclerc*, the Court found that slowness by a strata corporation in completing repairs 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.
50. In this dispute, I find the strata took a reasonable approach to investigate water ingress concerns from the second window and followed the direction of its professionals. There is no evidence the strata intentionally delayed the process. It was reasonable for the strata to cover the window in plastic for several months and include the window in the building project. This is particularly true given the window did not continue to leak after the plastic was installed. It was also reasonable for the strata to ensure it had approved sufficient funds to complete the window project before proceeding. Specifically, I find the strata took reasonable action with fair regard

for the interests of all owners. On this basis, I find the strata was not negligent in its repair obligations.

51. Mrs. Martel complains that the strata removed drywall from the interior of SL5 and did not replace it for several months. It is unclear whether Mrs. Martel refers to the strata removing drywall for the first window or the second window. If the first window, I find the matter was resolved under the terms of the settlement agreement as noted above. If the second window, I note the strata offered to address the removed drywall in a December 2022 email, but there is no evidence before me of a response by Mrs. Martel. Therefore, I cannot find the strata can be found negligent for any delay in repairing the drywall.
52. For these reasons, I find the strata acted reasonably when it addressed its repair and maintenance obligations for the second window. Since the strata did not breach the standard of care, I dismiss Mrs. Martel's claim that the strata was negligent.

What is an appropriate remedy?

53. I decline to order Mrs. Martel's requested remedies as she did not prove the strata was negligent.
54. As earlier noted, Mrs. Martel claims \$43,626.43 in damages that include lost rental income, additional repair costs, overpayment of her special levy payment, and pain and suffering. However, she provided no supporting evidence. She also did not provide details on how the amounts were calculated, despite my request that she do so. Therefore, I would not have awarded her damages in any event.

CRT FEES AND EXPENSES

55. 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. Mrs. Martel was unsuccessful, but the strata did not pay CRT fees, so I do not order reimbursement of fees.

56. The strata claims \$1,000.00 in dispute-related expenses for “reimbursement of evidence collection and documentation”. I find this to be a claim for compensation for time spent dealing with the CRT proceeding. CRT rule 5 says the CRT will not order one party to pay another party for such compensation, except in extraordinary circumstances, which I do not find exist here. I also note the strata did not provide any evidence to support its claim or how it arrived at the claimed amount. For these reasons, I dismiss the strata’s claim for dispute-related expenses.

57. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mrs. Martel.

DECISION

58. I refuse to resolve Mrs. Martel’s claim for an order under dispute ST-2021-001647 and I dismiss her remaining claims.

J. Garth Cambrey, Vice Chair