



# Civil Resolution Tribunal

The Date Issued: July 12, 2024

File: ST-2023-002482

Type: Strata

Civil Resolution Tribunal

Indexed as: *Jie v. The Owners, Strata Plan NW86*, 2024 BCCRT 670

BETWEEN:

HUI JIE

**APPLICANT**

AND:

The Owners, Strata Plan NW86

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell, Vice Chair

## INTRODUCTION

1. This strata property dispute is about skylight replacement.
2. Hui Jie (owner) owns strata lot 51 (SL51) in the strata corporation, The Owners, Strata Plan NW86 (strata).

3. The owner is self-represented in this dispute. The strata is represented by a strata council member.
4. The owner says the skylights above her strata lot are leaking. She says they are common property, and the strata's responsibility to repair. The owner requests an order the strata replace the skylights. She also requests an order that future skylight repairs are the strata's responsibility.
5. The strata says the skylights are not original to the building, so they are not the strata's responsibility to repair or maintain. The strata says it acted reasonably by offering that the owner could replace the skylights at her own expense, or alternatively the strata would eliminate them and reinstate the original roof.
6. For the reasons set out below, I find in favour of the owner. The strata must repair or replace the skylights above SL51.

## **JURISDICTION AND PROCEDURE**

7. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction (authority) over strata property claims under *Civil Resolution Tribunal Act* (CRTA) section 121. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
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. I have considered the potential benefits of an oral hearing for this dispute. The parties did not request an oral hearing, and there are no significant credibility issues in this dispute. I find I am properly able to assess and weigh the documentary evidence and submissions before me, and the CRT's mandate to provide proportional and speedy dispute resolution outweighs any potential benefit of an oral hearing. So, I decided to hear this dispute through written submissions.
9. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.

## ***Order About Future Repairs***

10. As noted above, the owner requests an order that future skylight repairs are the strata's responsibility. I do not make this order for two reasons. First, I find it would be inappropriate to make an order about future events that have not yet occurred. Second, the requested order would be a declaratory order. A declaratory order is an order making a statement about the law, or some other topic. The CRT has no authority to make declaratory orders in strata property disputes. So, I make no order about future skylight repairs.

## **ISSUES**

11. The issues in this dispute are:

- a. Is the strata responsible to repair and maintain the skylights above SL51?
- b. If so, would it be significantly unfair for the strata to eliminate the skylights?

## **BACKGROUND**

12. In a civil claim like this one, the owner, as applicant, must prove her claims on a balance of probabilities. This means more likely than not. I have reviewed all the parties' evidence and submissions, but I only refer to what is necessary to explain my decision.

13. In April 2015, the strata filed bylaws at the Land Title Office (LTO) that replaced all previous bylaws, including the Standard Bylaws in the *Strata Property Act* (SPA). The strata later filed 2 other sets of bylaw amendments, but I find these are not relevant to this dispute. I discuss the relevant bylaws in my reasons below.

14. The owner says she bought SL51 in 2006. This is undisputed. SL51 has 3 skylights above it, installed by a previous owner or owners.

15. Around August 2021, the owner informed the strata that 1 skylight was leaking. The strata hired Abney Roofing (Abney) to inspect the skylights and roof.

16. The owner provided a partial copy of an inspection report Abney, which the owner says was created on August 13, 2021. The report says 1 skylight was leaking, and Abney covered it with plastic film. Abney's report also says there were problems with how the roof membrane was installed around the other 2 skylights, which could lead to leaks.
17. Abney did a second inspection on May 20, 2022. At that time, Abney covered the leaking skylight with a tarpaulin, and noted that the tarpaulin would also deteriorate quickly.
18. The parties disagreed about who must pay for the skylight repairs. On March 6, 2023, the strata's lawyer sent the owner a letter, stating that if she wished to keep the skylights, she would be responsible to repair and maintain them, including replacement if necessary. Otherwise, the strata would remove the skylights and reinstate the roof.
19. The owner rejected those options. She requested a hearing with the strata council, and then filed this CRT dispute.

## **REASONS AND ANALYSIS**

### ***Is the strata responsible to repair and maintain the skylights above SL51?***

20. The owner says the skylights are common property, and are the strata's responsibility to repair and maintain. The strata says they are an addition, and so are the owner's responsibility under the strata bylaws, and based on the terms of a January 16, 1990 permission letter.
21. The strata provided a copy of the January 16, 1990 letter. It was addressed to EC, a previous owner of SL51. The letter gave EC written permission to install 1 skylight, if EC followed the "attached specifications." The letter said that as a condition of the approval, "you assume full responsibility for any future maintenance and/or repairs resulting from the skylight installation."

22. In *Nguyen v. The Owners, Strata Plan Vr 97*, 2022 BCCRT 260, a vice chair found that an assumption of responsibility agreement signed by an owner for expenses the strata incurred in relation to strata lot alterations did not bind the subsequent owner, because they were not a party to the agreement. Similarly, in *The Owners, Strata Plan VR 42 v. Learmonth*, 2023 BCCRT 400, the same vice chair found that generally, a strata corporation will not be able to hold a subsequent owner responsible for a prior owner's alteration without an indemnity agreement that says otherwise.
23. Prior CRT decisions are not binding on me, but I am persuaded by the reasoning in the cases cited above, and rely on it here. In this case, the owner says she was unaware any agreement about skylight maintenance when she bought SL51. There is no evidence that the strata communicated this agreement to the owner at the time of the purchase or in the years after.
24. Also, the January 1990 permission letter specifically said that EC assumed full responsibility for future skylight maintenance and repairs. The letter did not say or suggest that future owners would be responsible, or that EC had an obligation to inform future owners about skylight responsibility.
25. Also, it is significant that the January 1990 letter only mentions 1 skylight. Because of this, the letter could not make the owner responsible for the other 2 skylights. There is no evidence before me about when the other 2 skylights were installed, or if there was any agreement about their maintenance.
26. In *The Owners, Strata Plan NW 2476 v. Jensen*, 2023 BCCRT 623, a tribunal member noted that under SPA section 59(3)(c), a strata corporation must disclose to a prospective buyer, through a Form B Information Certificate, any agreements under which the owner takes responsibility for expenses relating to the common property, among other things. In that case, the strata also had a bylaw stating that as a condition of approval for common property alterations, an owner must sign an indemnity agreement taking responsibility for future repair and maintenance costs related to the alteration. The tribunal member concluded that the combined effect of SPA section 59(3)(c) and the bylaw was that a strata lot purchaser may become a

party to an indemnity agreement about common property as long as the indemnity agreement is properly disclosed on a Form B Information Certificate and includes language about binding future owners.

27. In this case, the strata did not provide a copy of the Form B. So, I make an adverse inference and assume the assignment of responsibility for skylights was not identified on the Form B. Given this, I accept that the owner was unaware of skylight responsibilities before 2021, and did not agree to take responsibility for skylight repairs.
28. For these reasons, I find the January 1990 permission letter does not make the owner responsible for repairing or maintaining any of the 3 skylights above SL51.

### ***Strata Bylaws***

29. The strata also says the owner is responsible for skylight repair and maintenance based on the following bylaws:
- 2(3) – An owner shall repair and maintain...windows and/or skylights in their strata lot which have been upgraded from the original window type.
  - 2(4) – Where the common or limited common property has been altered by an owner with the approval of the council and it was a term or condition of that approval that the owner and subsequent owners be responsible for the costs of the repair and maintenance of that alteration, then an owner who has the use and enjoyment of the altered common or limited common property or benefits from the alteration shall be responsible for the costs of the repair and maintenance of the alteration which would otherwise not have been incurred by the Strata Corporation.
30. For the following reasons, I find these bylaws do not make the owner liable for skylight repairs.
31. The parties agree that the skylights are common property. I also agree, based on SPA section 68(1), which explains common property boundaries:

Unless otherwise shown on the strata plan, if a strata lot is separated from another strata lot, the common property or another parcel of land by a wall, floor or ceiling, the boundary of the strata lot is midway between the surface of the structural portion of the wall, floor or ceiling that faces the strata lot and the surface of the structural portion of the wall, floor or ceiling that faces the other strata lot, the common property or the other parcel of land.

32. The skylights are not shown on the strata plan. The owner's strata lot is directly under the common property roof. The photos in Abney's report show that the skylights' frames sit on top of the roof and extend above it by several inches. The skylights' glass or plexiglass is several inches above the roofline. These photos show that the skylights are installed on the roof side of the common property boundary between SL51 and the roof. For this reason, and based on SPA section 68(1), I agree that the skylights are common property, and not part of SL51.
33. Under SPA section 72, the strata is responsible to repair and maintain common property, unless it is limited common property (LCP). The skylights themselves are not LCP, as they are not marked as LCP on the strata plan, and there is no evidence that the strata ownership approved a general meeting resolution designating the skylights as LCP, as required in SPA sections 73 and 74.
34. SPA section 72(2)(b) says a strata corporation can make an owner responsible for repair and maintenance of non-LCP common property "only if identified in the regulations". There is currently no such regulation, and there have been none in the past. So, I find bylaw 2(3) cannot make the owner responsible for repairing and maintaining non-LCP common property. To the extent that it purports to do so, bylaw 2(3) is unenforceable.
35. Regarding bylaw 2(4), I acknowledge that in some prior CRT decisions, such as *Ram v. The Owners, Strata Plan NW406*, 2024 BCCRT 113, tribunal members have distinguished between bylaws making owners responsible for common property repairs, and bylaws making owners responsible for the costs of common property repairs.

36. Even accepting this distinction, I find the wording of bylaw 2(4) does not make the owner responsible for the skylights. Bylaw 2(4) says an owner is responsible for the costs of repairing and maintaining approved common property alterations where “it was a term or condition of that approval that the owner and subsequent owners be responsible for the costs of the repair and maintenance of that alteration”.
37. As explained above, there is no evidence before me at all about the approval of 2 of the skylights. And the January 1990 letter approving 1 skylight did not say that subsequent owners were responsible. So, I find bylaw 2(4) does not apply to the current owner of SL51.
38. For these reasons, I find the owner is not responsible to repair and maintain the skylights above SL51.

***Would it be significantly unfair for the strata to eliminate the skylights?***

39. The strata says that if it is responsible to repair and maintain the skylights, it will eliminate them and reinstate the roof. The owner says this is unfair, because it will negatively affect her use and enjoyment of SL51, and reduce its market value.
40. The CRT has authority to make orders preventing or remedying a strata corporation’s significantly unfair actions or decisions. Significantly unfair actions or decisions 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 (or tenant’s) objectively reasonable expectations are a relevant factor, but are not determinative. See *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.
41. For the following reasons, I find it would be significantly unfair for the strata to eliminate the skylights.
42. The strata says that based on the case law, it has discretion about how to carry out common property repairs. The strata cites several cases as authority, including *Weir v. Owners*, Strata Plan NW17 2010 BCSC 784.



43. I agree that the case law gives the strata discretion in how it carries out its repair and maintenance obligations. However, the case law also says that in doing so, the strata must act reasonably. For example, in *Hill v. The Owners, Strata Plan KAS 510*, 2016 BCSC 1753, the court found the strata acted significantly unfairly in carrying out its repair and maintenance duties because it did not meet the “standard of reasonableness” (see paragraph 75). The standard of reasonableness for strata repair and maintenance decisions is also set out in *Weir*, as well as in *John Campbell Law Corp. v. Strata Plan 1350*, 2001 BCSC 1342, and *Wright v. Strata Plan #205 (Owners)*, 1998 CanLII 5823 (BC CA).
44. The strata has not explained or provided evidence about why it decided to eliminate the skylights, rather than repair or replace them. There is no evidence before me setting out the relative cost of both options, or other factors such as safety or building integrity. So, I find the strata has not shown that its decision to eliminate the skylights is a reasonable building maintenance decision, rather than a tactic to get the owner to agree to pay for the repairs.
45. As noted above, the owner says removing the skylights will reduce her enjoyment of SL51 and reduce its market value. I find the owner’s assertion about market value is speculative, and she provided no evidence to support it, so I am not persuaded by it. However, the photos show the skylights are relatively large, so I accept they let in substantial light and improve the owner’s enjoyment of SL51.
46. The strata permitted previous owners to install at least 1 skylight. I reject the strata’s assertion that it was unaware of the skylights, since the photos show they are clearly visible on the roof, and the strata would have had to do some roof maintenance since 1990, when at least 1 skylight was installed. So, the strata permitted skylights to be installed, and to remain for a long time, and never informed the owner that they were not original to the building. Therefore, I find the owner had a reasonable expectation that SL51 would have 3 skylights. As noted above, the strata has not proved that its decision to remove the skylights is reasonable.

47. For these reasons, I find the strata's decision to remove the skylights is significantly unfair. I order the strata to repair the skylights. As noted in *Weir*, reasonable repair may include replacement.

## **CRT FEES AND EXPENSES**

48. As she was successful in this dispute, under the CRTA and the CRT's rules I find she is entitled to reimbursement of \$225 in CRT fees. Neither party claimed dispute-related expenses, so I order none.

49. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses to the owner.

## **ORDERS**

50. I order that:

- a. Within 60 days of this decision, the strata must repair the skylights, and
- b. within 30 days of this decision, the strata must reimburse the owner \$225 for CRT fees.

51. The owner is entitled to postjudgment interest under the *Court Order Interest Act*.

52. This is a validated decision and order. The CRT's order can be enforced through the British Columbia Supreme Court (CRTA section 57). 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 (CRTA section 58). Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

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Kate Campbell, Vice Chair

