



# Civil Resolution Tribunal

Date Issued: October 10, 2024

File: ST-2023-006384

Type: Strata

Civil Resolution Tribunal

Indexed as: *Flaming v. The Owners, Strata Plan BCS 4383*, 2024 BCCRT 1012

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

**MARK FLAMING**

**APPLICANT**

**A N D :**

**The Owners, Strata Plan BCS 4383**

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Deanna Rivers

## **INTRODUCTION**

1. This dispute is about deck repairs. Mark Flaming and CV, who is not a party to this dispute, own strata lot 16 (SL16) in the respondent strata corporation, The Owners, Strata Plan 4383 (strata). Mr. Flaming says the strata's poor maintenance of the deck led to damage to SL16. He asks for an order the strata repair the deck immediately, with a stated cost of \$35,000. The strata sent him a bylaw infraction letter, which is

on SL16's file. He also asks for an order that the strata's bylaw violation letter be rescinded.

2. The strata says it has complied with its obligations under the *Strata Property Act* (SPA) and its bylaws. It says it investigated the leak and unclogged the drain. It says it has paid for some repairs, and Mr. Flaming and CV are responsible for any further deck repairs.
3. Mr. Flaming is self-represented. A council member represents the strata.

## **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 the *Civil Resolution Tribunal Act* (CRTA) section 121. 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.
5. 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. I find that an oral hearing is not necessary in the interests of justice and fairness.
6. 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.
7. 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.

## ***Preliminary Issues***

8. The strata submitted evidence after the CRT's deadline. Mr. Flaming had the opportunity to review the late evidence and provide response submissions. He did not object to the late evidence, and I find that it is relevant to this dispute. Given the CRT's mandate that includes flexibility and given the lack of prejudice to Mr. Flaming, I have considered the late evidence in this decision.
9. Mr. Flaming makes submissions regarding damage to SL16's sliding glass door and front door. As he did not request a remedy for these issues, I have not discussed them in my decision.

## **ISSUES**

10. The issues in this dispute are:
  - a. Is the strata responsible to repair Mr. Flaming's deck?
  - b. Is Mr. Flaming entitled to an order that the strata rescind the bylaw infraction decision and retract the bylaw infraction letter?

## **BACKGROUND**

11. As the applicant in a civil proceeding, Mr. Flaming must prove his claims on the balance of probabilities, meaning more likely than not. While I have considered all the parties' arguments, submissions, and evidence, I only refer to what is necessary to explain my decision.
12. The strata was created in 2012 and is governed by the SPA. It consists of 23 strata lots composed of 21 residential lots and 2 non-residential lots, in three buildings. Mr. Flaming became an owner in 2016. SL16 is in Building 2 and is 3 storeys high. The 3<sup>rd</sup> storey has a limited common property (LCP) deck that is that is the subject of this dispute.

13. Land Title Office documents show the strata filed a complete new set of bylaws on March 12, 2012, which repealed and replaced all its bylaws, including the Standard Bylaws under the SPA. On January 9, 2020, and April 25, 2022, the strata filed bylaw amendments. After reviewing these filings, I find the various amendments are not relevant to this dispute.
14. The relevant bylaws that describe the responsibilities of the strata and strata lot owners are:
  - a. Bylaw 2.2(b) says that an owner who has use of LCP must repair and maintain it, except when the repair and maintenance is the responsibility of the strata under the bylaws.
  - b. Bylaw 2.6(a) says an owner must obtain the written approval of the strata before making an alteration to LCP.
  - c. Bylaw 3.1(c) says that strata must repair and maintain all LCP other than where it is the responsibility of a separate section under bylaw 1.4, but the duty to repair is restricted to events that ordinarily occur less than once each year, and balconies and other things attached to the exterior of a building no matter how often the repair or maintenance ordinarily occurs.
15. I find that the deck in dispute is a balcony under bylaw 3.1(c) and so it is the strata's responsibility to repair and maintain.

## **EVIDENCE AND ANALYSIS**

### ***The leak***

16. Mr. Flaming says that on January 11, 2022, the third-floor deck leaked, causing damage to SL16. He says that he advised the strata manager through the emergency line and contacted his insurance company.

17. Mr. Flaming says his insurance company arranged for remediation of SL16, and tarped the deck. He says that it was 24 hours before the deck boards were lifted, and the drain was unclogged.
18. On February 9, 2022, the strata hired Centurion Contracting Construction Services to investigate the leak. A Centurion Daily Update dated February 9, 2022, says that the drain was most likely plugged, causing the water to overflow the flashing under the sliding door. It says that at the time of the investigation, the drain was working normally, and the leak was likely caused when the drain was plugged with leaves. The photos show a deck slat removed, with the deck drain located under the removed slat and below the level of the wooden deck.
19. The strata says that the only repair that needed to happen to the deck was for the drains to be unclogged. It says Mr. Flaming insisted that the deck needed to be fixed, and says the strata decided to have it fixed so it would not leak again. Mr. Flaming says that Centurion found the issue was a clogged drain that could not be accessed because the deck boards were screwed down.
20. Mr. Flaming's insurance company retained InspectRight Property Inspection Services to inspect the damage. Mr. Flaming says that InspectRight told him there were voids under the sliding door that should have been sealed. This is confirmed by InspectRight's March 4, 2022, letter that says the wood decking is at the height of the patio door sill, which allowed snow to accumulate and snowmelt waters to enter the unit through the unsealed door threshold. The letter says the drainage system was functioning as intended at the time of the site review, but does not say when the review was done. It says there were voids around the sliding door which would permit rainwater into the strata lot, and the voids needed to be sealed. The pictures with the report also show the deck slats removed, with the drain below the slats.
21. The strata says that the strata manager retained Centurion to go to the strata lot and assess the damage. The strata says that Centurion recommended replacing the wooden deck with vinyl and an exposed drain so it could be unclogged regularly. Mr.

Flaming says that Centurion told him the overflow drain was not connected, and the membrane was not properly installed. It told him that the deck had to be rebuilt.

22. Centurion's March 21, 2022, estimate included removing the decking as required, supplying and installing a scupper (with a note a new scupper and overflow drain may be required at additional cost), a subfloor, and a roofing membrane.
23. On April 4, Mr. Flaming emailed the strata requesting it repair the deck. The strata replied that it had approved the waterproofing repairs around the balcony doors and replacement of broken boards if required. On April 8, 2022, Centurion provided a second estimate to remove, install, and paint deck boards as required. It does not include vinyl membrane, and specifically excludes vinyl decking.
24. The May 10, 2022, strata meeting minutes indicate that a clogged drain and overflow caused water to ingress into the strata lot, that other rooftop decks had boards cut to allow access to clean the drains, referred to the March 4, 2022 InspectRight report, and requested Centurion to quote on the work requested.
25. An email chain from June 29 to July 14, 2022, indicates that Centurion had phoned Mr. Flaming for confirmation to proceed, and Mr. Flaming had passed that information to the strata. Specifically, Centurion was asking to have the vinyl material decking signed off from both the homeowner and the strata. Centurion also noted that the replacement of the scupper and the overflow drain and connection to the downspout would be quoted separately. Centurion's email said it had spoken to a council member and would attend the strata off on the quote for the vinyl material on July 4, 2022.
26. Centurion also provided a quote for the scupper and overflow. The strata manager approved Centurion's quote on July 14, 2022.
27. There is no evidence which quote the strata council approved in July 2022, other than the email asking to have vinyl material decking signed off. The strata says it did not approve the vinyl deck.

28. The strata says contrary to the quote, the wooden deck was removed and replaced with vinyl decking, and not similar materials. It says it did not approve the vinyl decking. Mr. Flaming says that the vinyl installed is roofing membrane put down over the new plywood, and did not replace the wooden deck. A close inspection of the photographs of the deck material confirms that the deck is a single piece of material, and not individual or interlocked slats.
29. Centurion's emails indicated that it would not return to the site until it had both strata and owner approval. The emails also say that it was coming to the strata to meet the council member to approve the estimate. I find it is more likely than not that the strata signed the work order from Centurion including the vinyl membrane as Centurion returned and completed the deck repairs by the end of July 2022.
30. The strata says that no council members or strata managers ever went to the strata lot because of COVID-19 restrictions. It says it relied on Mr. Flaming to supervise the repairs.
31. Mr. Flaming says that the contractors did the work, and he was not involved in the deck repair, except to allow Centurion access to the strata lot. He says the strata lot was empty from July "for the rest of the summer" as interior repairs were also happening, so a council member could have safely entered if they had asked.

### ***Pooling water after repairs***

32. Mr. Flaming says after the repairs were complete, rainwater pooled outside the sliding glass door. He says that the new deck slopes toward the building, and the drain is at a higher level than the door. He says that about 22L of water pools after a rain, which is 4 to 6 loads of his shop vacuum.
33. Mr. Flaming says that he notified the strata about the problem. He says Centurion advised him to squeegee the water to the drain.
34. The strata says that after Mr. Flaming told it about the pooling on the deck, it contacted Centurion and was told that the only thing "missing" was the actual deck

wood covering. The strata says as it is LCP it is not the council's responsibility to replace the boards. As noted above, I disagree.

35. On July 3, 2022, Mr. Flaming emailed the strata council members requesting that they meet with Centurion.
36. On August 12, 2022, Centurion emailed Mr. Flaming, the strata manager, and strata council members that it was not contracted to re-slope the deck, and the slope was a pre-existing issue. It says it offered to put deck boards back on and offered to approach the strata about correcting the slope issue which was a deficiency from the original development. CV responded that they would like all issues addressed and fixed correctly. Centurion replied that the cost of framing the deck to correct the slope would be charged to the strata, but Centurion would not charge to replace the membrane.
37. In December 2022, a strata council member, Mr. Flaming, and Centurion met to discuss the installation of the vinyl decking.
38. On December 18, 2022, the strata told Mr. Flaming it would pay Centurion's invoice. It asked Mr. Flaming if paying the invoice was sufficient. Mr. Flaming replied that it was if the only alternative was no further action, but the deck was not level, and he wondered why he had to settle with that.
39. On January 3, 2023, Mr. Flaming sent an email to the strata manager. He attached a video showing the drain three-fourths of the way across the deck from the patio door, with the rain pooling at the door and little or no water near the drain. The video shows a person using a shop vacuum to remove the water, using a squeegee to direct it. The water is deeper than the top of the person's hand when placed palm down on the deck.
40. On January 31, 2023, the strata council worked with the strata manager to set up a meeting to speak with Centurion regarding the repair work at SL16. Centurion's response was that the original deck boards over the membrane had concealed the



standing water on the deck. As the deck boards were not replaced, the standing water was now visible after rain. It said the contract did not include re-sloping the deck.

41. A strata council member responded that the overflow drain did not work, and they wanted it repaired. Centurion threatened legal action to collect the invoice owing, and the strata paid the invoice.
42. The minutes for the March 8, 2023, annual general meeting say that SL16's deck issue should be remediated with a qualified trade. On March 9, 2023, the strata manager requested OceanWest Construction to provide a quote to address the standing water on the deck. OceanWest attended on March 15, 2023. OceanWest emailed the strata manager, a council member, CV, and Mr. Flaming on March 16, 2023, that the drain was not on the low spot of the deck, and in order to install a new sloped sheathing, all of the material needs to be removed, and estimated \$9,000 to \$14,000 plus tax for the remediation.
43. The April 4, 2023, council meeting minutes note that council had limited information of the previous deck work and the cause of the sloping issue, and would not act without more details. It asked the strata manager to arrange further investigation and another estimate.
44. On May 9, 2023, the strata council met to discuss SL16's ongoing issue. The strata provided a summary of that discussion, which includes that the initial issue was a clogged drain, that Mr. Flaming arranged the deck repairs which resulted in material and design change of the deck, and that none of the material or design change was approved by the strata in violation of the strata bylaw. The summary advises that SL16 will be required to demolish the deck, and bring the drain to the initial level. It also says it will research contractors and get quotes to re-deck SL16. It says the strata will determine a final plan and communicate it to the strata manager, who will in turn communicate with SL16.
45. In submissions, the strata says that they would require the applicant to return the balcony to a comparable state with the original construction, but summary did not

indicate Mr. Flaming would be involved in any way with the actions to be taken, other than the strata manager to communicate with Mr. Flaming.

46. On May 18, 2023, the strata wrote to Mr. Flaming that the council had not approved the materials and the alteration of the deck in violation of bylaw 2.6(a). It requested Mr. Flaming demolish the construction and restore the draining to its original state as required by bylaw 2.6(b)(iii). The letter said after the balcony was restored to the original condition, it would decide about payment for the wooden deck.
47. Bylaw 2.6(b)(iii) says the strata may require conditions of its approval, including that the owner agree to remove the alteration and restore the common property, if required by the strata, at the time of sale of the strata lot. As Mr. Flaming is not selling his strata lot, I find Bylaw 2.6(b)(iii) does not apply.
48. I also considered bylaw 6.5 which says that where expenses attributable to LCP would not have been expended if the area had not been designated as LCP, the owners of the strata lots entitled to use the LCP will pay the expenses equally.
49. The BC Supreme Court considered the wording of bylaw 6.5 in *Lim v. The Owners, Strata Plan CR2654*, 2001 BCSC 1386, a case also relating to the repair of a balcony. The court found that effect of the section was to make all owners responsible for expenses incurred in respect of LCP, and not just those owners entitled to use the LCP. It was only where the expenses arise because of the LCP designation that the individual strata owner would have to pay. The court gave an example of a barbecue on the LCP damaging the balcony, which would be the owner's responsibility.
50. I am bound by that decision. The repair of the deck was necessary, and would have arisen whether or not the deck was designated as LCP. The strata is primarily responsible for maintaining LCP. Bylaw 6.5 only applies if the owner's use of the LCP creates additional expenses. I also note that while most of the repair relates to the LCP deck, some relates to the void under or around SL16's sliding door which ties into the deck, which is not LCP.

51. As noted above, I have found above that the repair and maintenance of the deck is the strata's responsibility. Based on my reasons above, I order the strata within 4 months of this decision to repair the SL16 deck at its cost, to prevent further damage to the strata lot, and prevent water pooling and entering the strata lot.
52. I do not make an order as to the specifics of the repair. Under the SPA and case law, the strata must act reasonably in carrying out its repair and maintenance duties. See *Weir v. Strata Plan NW 17*, 2010 BCSC 784. It is up to the strata to decide how to undertake the work, and who should perform it. For example, it will be up to the strata to decide whether, or how, to remove the existing decking, or replace the membrane or the wooden deck. If the strata acts reasonably, it will have met its duties. The strata council must make the repair decisions, not Mr. Flaming.

### ***Removal of bylaw violation letter***

53. Mr. Flaming asks for an order that the strata rescind the May 18, 2023, bylaw violation letter. The strata did not fine Mr. Flaming. As I have found that Mr. Flaming was not responsible for the deck repairs, it follows that he did not violate the bylaw. This decision rescinds the decision of the strata with respect to the LCP deck.
54. The SPA prevents the destruction of documentation for the time set out in the *Strata Property Regulation*. SPA section 35 governs the records that must be prepared and maintained by the strata. Section 35(2)(k) requires the strata to retain copies of all correspondence sent or received by the strata.
55. So, I dismiss this claim.

### **CRT FEES AND EXPENSES**

56. 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 order the strata to reimburse Mr. Flaming \$225 for CRT fees.
57. The strata did not pay CRT fees and neither party claims dispute-related expenses.

58. The strata may not charge any dispute-related expenses against Mr. Flaming under SPA section 189.4.

## **ORDERS**

59. I order the strata to:

- a. Complete the SL16 LCP deck repairs within 4 months at its cost, and
- b. Within 30 days, to pay Mr. Flaming \$225 for CRT fees.

60. Mr. Flaming's remaining claims are dismissed.

61. Mr. Flaming is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

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

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Deanna Rivers, Tribunal Member