Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Casement v. The Owners, Strata Plan 1247*, 2025 BCCRT 194

B E T W E E N :

ABIGAIL CASEMENT

APPLICANT

A N D :

The Owners, Strata Plan 1247

RESPONDENT

AMENDED[1] REASONS FOR DECISION

Tribunal Member: J. Garth Cambrey

INTRODUCTION

1. This strata property dispute is about repair and maintenance of common property, limited common property (LCP), and a strata lot, and a strata corporation's alleged unfair treatment.

2. The applicant, Abigail Casement, is the owner of a strata lot (SL7) in the respondent strata corporation, The Owners, Strata Plan 1247 (strata). Ms. Casement is

represented by a lawyer, Jonathan Walls. The strata is represented by a lawyer, Sadaf Pourmand.

3. Ms. Casement says the strata failed to reasonably repair a concrete patio located at the front of SL7 (front patio). The patio was damaged in August 2022 to allow for repairs to an underground water pipe. After the water pipe was repaired, Ms. Casement says there is evidence of additional water issues that potentially affect the structural integrity of the building comprising SL7. These things include settlement of the front patio, and an LCP patio designated to her exclusive use at the back of SL7 (back patio), water permeating through the SL7 carport floor slab, and the continual saturation of the grass areas around SL7. According to Ms. Casement, the settlement also caused damage to SL7, such as cracked floor tiles and "fogged doors". Ms. Casement argues the strata has failed to investigate these things despite saying that it would do so after a February 2023 council hearing. Alternatively, Ms. Casement says that if the strata has investigated the alleged issues, it has failed to provide her with any objective information about the findings of its investigation. In any event, Ms. Casement says the strata's actions affected her use and enjoyment of SL16 and surrounding property. Finally, Ms. Casement also says the strata has treated her significantly unfairly by delaying its promised investigation and repair and by attending to repairs requested by other owners much faster. She says she suffered significant undue anxiety and stress and incurred additional medical expenses because of the strata's actions.

4. Ms. Casement seeks orders that the strata retain an engineer to investigate the patios, grass areas, and SL7 and, if recommended by the engineer, retain a contractor to complete the engineer's recommended repairs without the need for the strata to pass a ¾ vote. She also asks for orders that the strata restore any damaged property to the state it was in prior to water pipe repair, including her patios and landscaping, pay her $1,500 to relocate her heat pump from the exterior building wall to a concrete pad on the ground, and pay her $500 to repair damage to SL7 caused by the strata's failure to investigate. Ms. Casement also seeks an order the that the strata pay her $5,000 for her anxiety, stress and medical expenses.

5. The strata denies Ms. Casement's claims and says it has met its repair and maintenance obligations. In essence, the strata says it retained an engineer to investigate her claims and followed the engineer's advice by retaining a drainage contractor. The strata acknowledges its responsibility to repair damaged common property and says the strata owners approved a repair expense from the strata's contingency reserve fund of up to $3,000, subject to first determining what drainage work might be required. The strata argues it is not responsible for Ms. Casement's improvements or betterments, such as relocating her heat pump or replacing common property landscaping that she had previously altered. The strata argues Ms. Casement has not proved any damage occurred to SL7. Finally, the strata denies it acted in a significantly unfair manner and denies it caused her psychological harm or increased medical expenses. The strata asks that Ms. Casement's claims be dismissed.

6. As explained below, I order the strata to complete further investigation into water ingress issues and retain a contractor to investigate and repair the perimeter drainage system of the building comprising SL7. I dismiss Ms. Casement's remaining claims.

JURISDICTION AND PROCEDURE

7. 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 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. I find I am properly able to assess and weigh the documentary evidence and submissions before me. I am satisfied an oral hearing is not necessary in the

interests of justice. I therefore decided to hear this dispute through written submissions.

9. 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.

10. Under CRTA section 61, the CRT may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the CRT may make such an order on its own initiative, on request by a party, or on recommendation by a case manager. CRT documents incorrectly show the name of the respondent as The Owners, Strata Plan VIS 1247, whereas, based on section 2 of the *Strata Property Act* (SPA), the correct legal name of the strata is The Owners, Strata Plan 1247. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the style of cause above.

ISSUES

11. The issues in this dispute are:

    a. What are the strata's repair and maintenance obligations and has it met those obligations? If not, what is an appropriate remedy?

    b. Did the strata treat Ms. Casement significantly unfairly? Is so, what is an appropriate remedy?

    c. Did the strata cause Ms. Casement to suffer psychological harm and incur medical expenses? If so, is Ms. Casement entitled to compensation?

BACKGROUND, EVIDENCE AND ANALYSIS

12. As applicant in a civil proceeding such as this, Ms. Casement 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. I note the meeting minutes in evidence confirm Ms. Casement was a strata council member until the annual general meeting (AGM) held on June 5, 2023 when she retired from the strata council.

13. The strata plan shows the strata was created in March 1983 under the *Condominium Act*. It continues to exist under the SPA and consists of 20 residential strata lots located in 4 2-storey buildings. SL7 is located at the end of building 2. According to the strata plan, the SL7 carport is part of the strata lot. Photographs in evidence show the LCP back patio is constructed of concrete and paving stones. Photographs also show the front patio is located on common property. It is also constructed of concrete.

14. On October 21, 2016, in accordance with SPA section 74, the strata filed a resolution passed by a ¾ vote with the Land Title Office (LTO) designating portions of all back yard areas as LCP for the exclusive use of the adjacent strata lot. For SL7, the LCP back yard area extends 3.9 metres perpendicular from the building's east exterior wall and 5.1 metres from the exterior wall on the northwest side of SL7 beside strata lot 8. When comparing the LCP yard area to the original strata plan, I find the LCP yard areas do not extent to the strata property's perimeter boundaries such that there is common property located between the LCP yard areas and the property's perimeter. However, nothing turns on this.

15. I have reviewed the strata's bylaws. In particular, I have reviewed all bylaw amendments the strata filed with the LTO after the SPA and *Strata Property Regulation* (regulation) came into force on July 1, 2000. Under the SPA and regulation, the Schedule of Standard Bylaws was deemed to replace all bylaws registered under the *Condominium Act* except any filed bylaw which conflicted with the Standard Bylaws, as set out in regulation section 17.11. The strata filed bylaw amendments with the LTO on December 14, 2016, where the LTO filing document (Form I) states that "all *previously registered bylaws shall be replaced*" with the new bylaws (my emphasis added). I infer that statement reflects the language of the ¾ vote that approved the amendments. Therefore, I find the strata did not repeal or replace the Standard Bylaws, so I find they continue to apply together with the

December 2016 bylaw amendments, except to the extent that different bylaws are filed with the LTO as stated in SPA section 120(1). The strata also filed bylaw amendments on July 28, 2021, and September 28, 2021, but I find those amendments are not relevant to this dispute. I address below the bylaws relevant to this dispute, as necessary.

16. I summarize the facts in the following chronology.

17. In August 2022, the main water pipe servicing SL7 leaked. The pipe is partially located under SL7's front patio and concrete floor slab. The strata repaired the water pipe the day after it leaked partly by cutting through part of the front patio, partly from inside SL7. The strata made a claim against its insurance but later withdrew it because it determined the repair cost was below the deductible. The strata manager initially informed Ms. Casement that interior repairs to SL7 necessary to gain access to the water pipe were her responsibility but eventually paid Ms. Casement for the cost of those repairs, as I discuss below. At the time of this dispute, the strata had not repaired SL7's front patio.

18. The October 24, 2022, council meeting minutes note the grassed area beside SL7 was wet over the summer months, which the strata council determined indicated a potential secondary leak. The minutes state that the strata would review the matter with Roto Rooter. The strata also agreed to investigate the cost of installing a retaining wall between strata lot 6 and SL7. The minutes also state small hairline cracks were evident in the concrete floor of the SL7 carport but that no further investigation would be completed.

19. On December 11, 2022, the strata's landscape contractor emailed the strata manager about the "extra work" at the strata, which I find means the quotations they provided for repairs to the SL7 front patio and installation of retaining walls throughout the complex. The strata manager responded on December 12, 2022, that the strata had elected for a "low-cost fix" of [SL7's] front patio (basically just fill in the hole)" and that the quote for retaining walls was "fairly substantial" so the strata would need to hold a general meeting to approve the work, if that is what the strata council decided to do. Photographs in evidence show the portion of the front

patio that was removed to allow for the water pipe repair was filled in with pieces of wood and pieces of the concrete patio that were removed. The landscape contractor forwarded the strata manager's email to Ms. Casement on December 14, 2022.

20. On December 24, 2022, the landscape contractor reported in an email, which I infer was sent to the strata council members, that they had viewed the property around SL7 at Ms. Casement's request. The email stated they noticed "the side hill is sloughing even more that it was" when they viewed the property earlier to bid on the retaining wall. The contractor further stated there was "a lot of water pooling in the back yard and also the front as well", suggesting "the side hill and the front and back might have to do with the cracked water lines and not having proper drainage in place".

21. On December 31, 2022, Ms. Casement wrote to the strata to request a council hearing. She stated the purpose was "to have repairs to her front patio, front lawn, back patio, back lawn and carport completed expeditiously". In her letter she also advised she believed the interior repairs caused to SL7 during the water pipe repair were the strata's responsibility, so I find the interior SL7 repairs were not yet completed.

22. In January 2023, Ms. Casement retained a plumbing contractor to inspect the perimeter drain lines of SL7. The plumber was unable to use a camera to inspect the drain lines but charged her $219.45 for the attempted work. Ms. Casement also obtained an assessment and quotations from Cowichan Valley Excavating, which she says is a drainage contractor, about the area outside SL7. In a letter assessment dated January 31, 2023, the Cowichan said that due to a water leak, the perimeter drain was not directing water away from the foundation slab so ground saturation was permeating through the carport floor slab and causing the patios, planters, ground to settle around SL7 and strata lot 6. Cowichan also said the water leak was potentially causing the ground under the SL7 ground floor slab to settle.

23. According to Cowichan, the perimeter drains required replacement, and the building

structure required inspection by an engineer once the perimeter drains were exposed. The contractor provided a detailed cost estimate for the recommended work of $13,607.92, excluding any engineering fees. It also provided a separate quote of $4,649.51 for work to connect strata lot 6's perimeter drain to the storm drain.

24. On January 31, 2023, Ms. Casement wrote to the strata. She included her December 2022 hearing request, the Cowichan assessment and quotations, and the plumbing contractor's $219.45 invoice. She also included an invoice dated December 29, 2022, from an unspecified contractor for $1,516.45 for repairs to SL7 resulting from the main water line break. Ms. Casement asked the strata to pay her for the SL7 repairs and to retain an engineer to assess potential structural issues for SL7 and strata lot 6. She also included copies of emails from the strata's landscaper mentioned above, information from the Vancouver Island Strata Owners Association supporting her belief the interior SL7 repairs are the strata's responsibility and recommending the strata retain an engineer, photographs of the areas outside SL7, and an email from her realtor stating they would be unable to sell SL7 without knowing when the strata would address Ms. Casement's issues.

25. The strata council held her requested hearing on February 6, 2023. The minutes accurately reflect Ms. Casements' requests. The minutes also confirm that the strata would request a legal opinion about paying the SL7 interior repairs. The strata also approved completing further investigation into repair options for the reported drainage issues and retaining an engineer to complete a structural review of SL7 and the building containing SL7. The strata manager wrote to Ms. Casement on February 13, 2023 confirming the strata's decisions.

26. In an April 2023 email exchange between Ms. Casement and the strata manager, the manager said Roto Rooter attended SL7 in March 2023 and provided a quotation to the strata, which the strata was reviewing. When Ms. Casement requested a copy of the quotation, the strata manager refused to provide it stating quotations are not records the strata is required to provide under SPA sections 35 and 36. However, the quotation was provided in evidence for this dispute. It includes excavating the base of 4 downspouts, installing pipe fittings, flushing the

perimeter drainage system around the entire building comprising SL7 and inspecting it with a camera. The quotation also included locating the perimeter drain "exit line" and confirming the exit line was clear. Roto Rooter estimated the work would cost $3,638.25 including taxes.

27. The May 8, 2023, council meeting minutes confirm the strata agreed to pay for interior repairs to SL7, but that the expenses would be offset against other expenses Ms. Casement owed the strata for window replacement. The net result was that Ms. Casement owed the strata $59.61, which the minutes report was paid. Given Ms. Casement does not request an order for payment of SL7 expenses relating to the water leak, I find she accepted the strata's decision and payment amount. At the same meeting, the strata council agreed to recommend at the upcoming AGM that the strata owners approve expenses of $3,000 to repair SL7's front patio and $15,000 for "potential drainage repairs" at SL7.

28. The AGM was held on June 5, 2023. The owners approved a $3,000 expense from the contingency reserve fund to replace the front patio of SL7 on the condition the repairs would not be completed until after the engineer's review. I find an engineering review had not yet been started because the minutes report that the strata council was "working to engage" an engineer. The proposed $15,000 resolution to repair potential drainage issues near SL7 was defeated. A resolution to approve funding for retaining walls, including next to SL7 was also defeated.

29. The July 24, 2023, council meeting minutes state the council reviewed the events that occurred at SL7 and the repair process but made no decisions.

30. The strata received a report from RDH Building Science Inc. dated August 11, 2023. It was written by a Professional Engineer licenced in British Columbia following a site visit on July 10, 2023. Although the author's information was not included, I accept the report qualifies as an expert report under the CRT rules. Ms. Casement does not dispute this and relies on the report in her own submissions. The report details a visual investigation of SL7 following discussion with the strata manager and Ms. Casement. The report stated that no settlement issues were found. It addressed Ms. Casement's concerns and reported issues about settlement and

water saturation but made no conclusive findings stating that interior finishes in SL7 would need to be removed and sections of the patios and soil would need to be excavated to identify if water issues were causing the reported issues. The RDH report concluded by making 4 staged recommendations, which I summarize as follows:

a. Ensure the perimeter drain system is functioning properly and confirm it directs collected water to the municipal storm system and does not over saturate the soil.

b. Separate the gutter and downspout collection system from the below-grade perforated perimeter drain system, if not already done.

c. Correct the sloped concrete patios and pavers at the building perimeter to slope away from the building.

d. Concurrent with or separate from the preceding recommended repairs, investigate and repair the water source for wetting of the concrete slab-on-grade in the carport and potentially below the ground level interior floor finishes.

31. The October 23, 2023, council meeting minutes state the council was reviewing the engineer's report and was "expected to finalize the report" within about 1 week. It also approved Roto Rooter to conduct a permitter drain inspection and repair work to "address" the downspouts at SL7. It is unclear what the strata council meant by finalizing the report, since RDH authored the report in August 2023, however I infer the strata decided to retain Roto Rooter based on the RDH recommendations.

32. Roto Rooter worked on the SL7 building drains on December 1, 2023. The strata manager confirmed this date in an advance email to Ms. Casement. Another owner also witnessed Roto Rooter on site that day and asked for a copy of the report. The strata manager did not provide a copy of a Roto Rooter report or invoice but provided a description of the alleged work completed in a January 25, 2024 email to the neighbour. The manager's description matched exactly the description in the March 2023 Roto Rooter quotation noted above. The manager stated the perimeter drains were flushed and inspected by camera, with "no blockages inside". The manager also stated the exit line was located but that the camera cable length did

not allow the camera to reach the “city” connection.

33. On January 5, 2024, Ms. Casement notified the strata manager that her carport floor was wet and that the cracks were getting wider and longer. She requested a copy of the RDH report, apparently for the 5th time. The email seemingly led to a strata council member taking photographs around SL7 that afternoon, but the strata did not provide them. The evidence suggests Ms. Casement’s lawyer requested copies of the RDH and Roto Rooter reports from the strata. Ms. Casement clearly requested copies of the reports in an email to the strata manager on January 30, 2024. The reports were not provided.

34. The May 6, 2024 council meeting minutes state that Roto Rooter had confirmed the perimeter drains of the SL7 building were in good condition with no blockages. Based on this, the strata determined that no further drainage work was required and that replacement of SL7’s front patio should proceed. The minutes state the strata council had receive a quotation to complete patio replacement but wanted to check the contractor’s references before proceeding. No work was authorized.

35. The May 6, 2024 minutes also state that the strata investigated and repaired a separate water ingress issue at SL7 at a cost of $478.80, but I find those repairs were not related to the issues in this dispute. The strata also voted to propose funding for retaining wall repairs and installations, including at SL7, for the next AGM.

What are the strata’s repair and maintenance obligations and has it met those obligations?

36. The strata accepts it has a duty to repair and maintain common property. That duty is clearly set out in SPA section 72 and the strata’s bylaws. As noted, common property includes the front patio as well as the front yard and side yard areas. I also find the perimeter drains around the building comprising SL7 are common property as defined under SPA section 1(1) because they service more than 1 strata lot. But what about the LCP back patio and yard areas, potential water ingress through the parts of the floor slab of SL7, such as the carport floor and interior ground floor areas, and structural repairs to the SL7 building?

37. I will first review the strata's bylaws.

38. As noted earlier, I find the Standard Bylaws have not been explicitly replaced or repealed. I also find the relevant bylaws filed in December 2016 conflict with Standard Bylaws 2 and 8. Standard Bylaw 2 says an owner must repair and maintain their strata lot and LCP designated to them except for the repair and maintenance for which the strata is responsible under its bylaws. Standard Bylaw 8(c)(i) says the strata must also repair and maintain any LCP if the repair and maintenance usually occurs less often that once per year. Further, Standard Bylaw 8(d) requires the strata to repair and maintain certain parts of a strata lot which include the structure of a building, the exterior of a building, and doors and windows on the exterior of the building or that front on the common property.

39. The December 2016 bylaws say something different. The bylaws are not numbered, but on page 7 of 20 of the LTO bylaw document (Form I), the bylaw titled "Repair and maintenance of property by owner", subsections 3 and 4, make an owner responsible for repair and maintenance of their strata lot and LCP without exception. On page 10 of 20 under the bylaw titled "Repair and maintenance of property by strata corporation", the strata is responsible for repair and maintenance of common property that has not been designated as LCP. The filed bylaws do not state the strata is responsible for any parts of a strata lot or LCP.

40. SPA section 120(1) states "the bylaws of the [strata] are the Standard Bylaws except to the extent that different bylaws are filed in the Land Title Office". Given the December 2016 repair and maintenance bylaws are clearly different than the Standard Bylaws, I find the filed December 2016 repair and maintenance bylaws apply to the strata and that Standard Bylaws 2 and 8 do not apply. Therefore, based on the strata's bylaws, Ms. Casement is responsible to repair and maintain the LCP back patio and LCP yard area.

41. I will now address the structural components of the building and strata lot.

42. SPA section 68 confirms the boundary of a strata lot as the midpoint of the structural portion of the wall, floor, or ceiling that divides a strata lot from another strata lot or common property, unless a different boundary is established on the

strata plan. Here, the strata plan does not establish a different boundary, so the boundary is as set out in section 68. That means for the carport and ground floor slabs of SL7, the strata lot boundary is the midpoint of the slab. Therefore, the part of the slab that is below the midpoint and the ground below the slab is common property.

43. For the exterior walls of SL7, the strata lot boundary is the midpoint of the wall. See also the comments of the court in *Allwest International Equipment Sales Co. Ltd. v. Strata Plan LMS4591*, 2018 BCCA 187 at paragraph 11.

44. In *Tang v. The Owners, Strata Plan VR656*, 2023 BCCRT 699, a CRT vice chair found that the SPA does not address building components that staddle the boundary between common property and a strata lot. He found that a building component that straddles a boundary, such as insulation, must be common property because that interpretation protects the strata corporation's overall duty to repair and maintain common property. Although not binding on me, I agree with the vice chair's reasoning and apply it to the structural wall components here, such as the wooden studs. If the strata is not responsible for the structural parts of the strata lots, such as the walls and floors, confusion over repairs necessary to maintain the structure of a building would likely ensue. So, I find that the exterior wall studs are common property.

45. From the foregoing, it follows that any repair and maintenance to the common property ground below the SL7 floor slab or the exterior building wall that creates a settlement issue for SL7, is the strata's responsibility. I find the same analysis applies to the ground below the LCP back patio and yard areas. My conclusion is supported by the comments of the court in *Stratton v. Richter*, 2022 BCCA 337 at paragraph 60. In *Stratton*, the court commented that surface rights designated as LCP do not determine the status of areas above or below that land. I interpret the court to say that LCP is limited to the "practically usable" areas above or below the surface.

46. The strata also accepts that its duty to repair includes a duty to investigate, citing *Guenther v. Owners, Strata Plan KAS431*, 2011 BCSC 119. I agree with the strata

noting that several CRT decisions, including mine, have reached the same conclusion. See for example, *Gerlich v. The Owners, Strata Plan EPS7457,* 2025 BCCRT 3 and *Eng v. The Owners, Strata Plan LMS 3841*, 2024 BCCRT 1203.

47. When fulfilling its repair and maintenance obligations, the courts have clearly established that a strata corporation's standard of care is reasonableness. See for example, *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113, at paragraph 69. What is reasonable depends on the circumstances and includes 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* at paragraph 40.

48. 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, there was no evidence of deliberate "foot-dragging", and found the strata took reasonable action with fair regard for the interests of all concerned.

49. I find the main issue here is whether the strata acted reasonably when it investigated Ms. Casement's concerns about SL7. Overall, I find it has not.

50. Although Ms. Casement mentioned concerns about settlement and water saturation in late 2022, it was not until her council hearing in February 2023 that she provided supporting evidence from a drainage contractor and the strata's landscaper that her concerns may be valid. As a result of the council hearing, the strata wrote to Ms. Casement on February 13, 2023, and confirmed its agreement to retain an engineer and other contractors for advice. I find this was a reasonable approach. However, I find the strata's following action was not.

51. In particular, I note although Roto Rooter apparently attended SL7 in March 2023, and provided a quotation to the strata for drain cleaning, I find the strata did not authorize the drain cleaning at that time. I say this because the quotation in evidence is not signed so I find it likely[1] the work was not authorized. Nor did the

strata provide a copy of an invoice or report for any work completed to the drains near SL7 in March 2023 by Roto Rooter or any other contractor.

52. Further, I find the strata did not immediately authorize RDH to complete its inspection given the June 5, 2023 AGM minutes reported that the strata was "working to engage an engineer". RDH attended the site on July 10, 2023, about 6 months after the strata advised Ms. Casement it would retain an engineer. As earlier noted, it is unclear why the council meeting minutes of October 2023 reported that the strata council was reviewing the engineer's report and was "expected to finalize the report " within about 1 week. The RDH report is dated August 11, 2023, and the strata did not explain why that report was not final or how the strata was involved in finalizing it. I find it was unreasonable for the strata to take 6 months to retain an engineer and then not report the engineer's recommendations.

53. After the strata received the RDH report in August 2023, it took another 4 months to engage Roto Rooter to investigate SL7 in December 2023, if that is indeed what occurred. I say this because although it is clear Roto Rooter attended SL7 on December 1, 2023, as witnessed by Ms. Casement's neighbour, it is not clear that Roto Rooter did any work on that date. The only evidence provided by the strata was a January 25, 2024 email from the strata manager to another owner that purportedly reproduced the work completed by Roto Rooter in the body of the email. As noted by Ms. Casement, the strata did not provide into evidence a copy of the paid Roto Rooter invoice, or any other direct evidence of what work was done. Even if the work was completed, it was identical to the work described on the March 2023 Roto Rooter quotation, which only satisfied RDH's 1st recommendation. The strata says it intends on completing repairs to report Ms. Casements front patio, but there is no mention of completing RDH's other recommendations such as confirming that the gutter and downspout collection systems of the below-grade perforated perimeter drain system are separate, re-sloping the front or back patios away from the building, or investigating potential below slab issues.

54. The strata did not dispute the RDH report and did not provide any submissions on it. In other words, the strata did not give any reason not to follow RDH's clear

recommendations. So, I find it appropriate to order the strata to complete the RDH recommendations by:

a. Ensuring the perimeter drain system around the SL7 building is functioning properly and confirm it directs collected water to the municipal storm system and does not over saturate the soil. The strata must do this within 60 days of the date of this decision and must provide proof the recommended work is done by giving Ms. Casement a copy of the paid invoice or contractor's report. This includes if the work was done in December 2023 by Roto Rooter.

b. Ensuring the gutter and downspout collection systems around the SL7 building are separate systems from the below-grade perforated perimeter drain system. The strata must provide proof the systems are separate within 60 days of the date of this decision by giving Ms. Casement a copy of the paid invoice or contractor's report.

c. Retaining an engineer to investigate the potential water source for wetting of the concrete slab-on-grade in the carport and below the ground level interior floor finishes. The strata must retain an engineer and begin this work within 60 days of the date of this decision and work with her to complete this work within 120 days of the date of this decision. The strata must keep Ms. Casement fully informed of the investigation and provide her with a copy of a written report from the engineer within 14 days of receiving it. The strata must also act on the engineer's recommendations, if any.

d. Correcting the sloped concrete patios and pavers at the building perimeter next to SL7 to slope away from the building. This must be completed within 180 days of the date of this decision.

55. Given the current condition of the front patio, I agree with Ms. Casement that a potential tripping hazard exists. Therefore, I also order the strata to immediately temporarily repair the damage caused when the water pipe was repaired in August 2023 so as to eliminate any tripping hazard.

56. I make no order for the strata to reimburse Ms. Casement for relocating her heat pump or interior repairs to SL7 allegedly caused by settlement. I say this because

there is no evidence Ms. Casement was forced to install her heat pump on the exterior wall of SL7 and RDH has confirmed there are no settlement issues. I dismiss this aspect of her claims.

Did the strata treat Ms. Casement significantly unfairly?

57. Ms. Casement argues the strata treated her significantly unfairly when it delayed investigating potential structural and water issues, refused to provide her with copies of the RDH and any Roto Rooter reports, and refused to keep her informed her informed on its investigation.

58. As for communicating its actions and RDH's recommendations, I find the strata could have done significantly better. I also acknowledge that it was frustrating to Ms. Casement to continually have to follow up with the strata manager to get any information about the investigation and repair, especially when the strata manager did not respond to her requests or those of her lawyer. I also note that neither the SPA or bylaws address how often a strata must communicate with an owner or if they have to answer every enquiry or email.

59. However, for the following reasons, I find some of the strata's actions were significantly unfair.

60. The CRT has authority to make orders remedying a significantly unfair act or decision by a strata corporation under CRTA section 123(2). The legal test for significant unfairness is the same for CRT disputes and court actions. See *Dolnik*.

61. As discussed in *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, in order for the court (or CRT) to intervene, a strata corporation must act in a significantly unfair manner, resulting in something more than mere prejudice or trifling unfairness.

62. The basis of a significant unfairness claim is that a strata corporation must have acted in a way that was "burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable." See *Reid*, *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.

63. In *Dollan*, the BC Court of Appeal established the following reasonable expectations test:

    a. Examined objectively, does the evidence support the asserted reasonable expectations of the owner?

    b. Does the evidence establish that the reasonable expectation of the owner was violated by the action that was significantly unfair?

64. In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the Court of Appeal determined the reasonable expectations test set out in Dollan is not determinative. Rather, the Court found the test is a factor in deciding whether significant fairness has occurred, together with other relevant factors, including the nature of the decision in question and the effect of overturning or limiting it.

65. Ms. Casement argues she had a reasonable expectation the strata would provide copies of the RDH reports (and any Roto Rooter reports) she requested. I agree as I find such reports must be disclosed under SPA section 35(2)(k) as correspondence received by the strata. The evidence is clear that Ms. Casement and her lawyer requested copies of the RDH report on several occasions. Her lawyer requested copies of all the reports, including the RDH report, in their September 19, 2023, letter to the strata. Ms. Casement stated she had requested the RDH report 5 times in her January 5, 2024 email to the strata manager. The evidence is that the RDH report was not provided to Ms. Casement or her lawyer until it was uploaded as evidence for this dispute. The strata does not say otherwise, so I accept Ms. Casement's submissions. I find it was significantly unfair for the strata not to provide Ms. Casement with the RDH report given the mandatory requirement of SPA section 35(2)(k).

66. While the strata allegedly retained Roto Rooter to ensure the perimeter drains of the building comprising SL7 were clear, it did not provide proof this work was done. It also did not take any steps to complete the remaining recommendations of RDH, the expert it retained, and gave no reason for not doing so. I find the strata's decision to effectively ignore RDH's remaining recommendations was significantly unfair to Ms. Casement.

67. Ms. Casement makes a number of other arguments in support of the strata's significantly unfair treatment. These include that she was unable to sell SL7 without knowing how or when the strata would address any repairs. Even though Ms. Casement provided email from her realtor confirming this, there is no evidence Ms. Casement was trying to sell SL7 or wanted to do so. I would have expected Ms. Casement to provide a copy of her listing agreement or emails from potential buyers or their realtors, but there is nothing. Without more, I do not accept Ms. Casement had difficulty selling SL7 because of the strata's actions.

68. I also do not accept that the strata's delayed action or lack of action to retain RDH or act on its recommendations lead to her inability to fully use the areas next to SL7, with the possible exception of her front patio area due to the poor temporary repair after the water leak. I accept Ms. Casement suffered a fall and sustained a foot injury, but she did not say the fall occurred on common property or LCP or anywhere within the strata complex. From the photographs provided in evidence, the slope of the patios and pavers towards the building does not appear to be significant enough to cause someone to fall. Other than a few photographs showing water or water damage at the grassed areas around SL7, there is no evidence the water caused any significant damage. In particular, RDH reported the building had not settled and did not confirm the damage would get worse. It only recommended further investigation because of potential future damage.

69. I also do not accept that bylaw infraction letters given to Ms. Casement were meritless and intended to discredit or harm her. Strata corporations are required to notify owners of potential bylaw infractions under SPA 135 by giving them details of the infraction before taking further action. This is often done without significant investigation to give the alleged offending owner an opportunity to respond. Without more information, I find Ms. Casement has not proved the strata acted significantly unfairly when it issued bylaw infraction letters.

70. I reach the same conclusion about the proposed resolution to spend contingency reserve funds to further investigate Ms. Casement's concerns at the June 5, 2023 AGM. The fact that strata council members who proposed the resolution voted against it does not mean the strata acted unfairly. It is the democratic right of each

owner, including strata council members, to vote as they see fit on any resolution before them. I note the strata had not yet retained RDH at the time of the meeting, so the RDH recommendations were unknown at that time.

71. I have found it was significantly unfair for the strata not to provide Ms. Casement with the RDH report given the mandatory requirement of SPA section 35(2)(k). I have also found it was significantly unfair for the strata to effectively ignore RDH's recommendations to complete final stages of its investigation.

72. Ms. Casement did not seek compensation for the strata's actions about investigating her concerns and I have already ordered the strata complete further investigations as RDH recommended. I find my earlier orders are sufficient to meet Ms. Casement's requested resolutions, so I decline to make any further orders for her significant unfair treatment.

Did the strata cause Ms. Casement to suffer psychological harm and incur medical expenses?

73. Finally, I consider whether Ms. Casement suffered psychological harm caused by the strata, for which she seeks compensation of $5,000. I find Ms. Casement's claim to be about stress or mental distress. I have no doubt the strata's actions were stressful to Ms. Casement. However, I agree with the reasoning in the non-binding but persuasive CRT decision *Eggberry v. Horn et al*, 2018 BCCRT 224, which says for a claim about stress or mental distress to be successful there must be medical evidence supporting the stress or mental distress.

74. Here, Ms. Casement provided letters from her family doctor and physiotherapist dated September 20, 2023, and August 21, 2024, respectively. I find neither letter supports her claim for mental stress as they both refer to her recovery from a broken foot and the need for her to have even ground to walk on safely. She also did not provide any documentary evidence about additional medical expenses, so I find her claim is unproven and I dismiss it.

75. As for Ms. Casement's argument that she lost the use and enjoyment of LCP areas, I find this is also unproven. I have found that any settlement of the back patio is not

significant, so I find it unlikely that Ms. Casement could not use the area. As for the LCP back yard, although there are photographs that show the area is saturated with water, it is unclear if this was a regular occurrence or just a temporary issue in 2023. Therefore, I also find her claim for loss of use and enjoyment of her LCP areas is unproven and I dismiss it.

CRT FEES, EXPENSES AND INTEREST

76. 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, Ms. Casement was partially successful and paid $225.00 in CRT fees. I find it reasonable to order the strata to pay Ms. Casement ½ of her CRT fees, or $112.50.

77. Ms. Casement claims $5,000.00 in legal fees, which I find are dispute-related fees. She provided a copy of an August 22, 2024 invoice from her lawyer specifying legal fees of $5,574.81 including taxes. The invoice does not provide any detail of the services nor the dates they were provided. Ms. Casement argues retention of her lawyer was necessary because of factual and legal complexity of the dispute and the tense history between the parties. She argues that the strata's decision to withhold the RDH report contrary to the SPA created complexity along with "retaliatory" bylaw warnings, the dispute process, and strata's actions that caused her undue anxiety and stress. The strata disagrees with Ms. Casement's arguments and says retaining a lawyer is reserved for extraordinary circumstances which have not been established.

78. CRT rule 9.5(3) says for a strata property dispute, the CRT will not order one party to pay another party's legal fees unless there are extraordinary circumstances. Rule 9.5(4) sets out factors the CRT may consider when determining if extraordinary circumstances exist. They include the complexity of the dispute, the degree of involvement by the lawyer, whether a party or their representative has caused undue delay or expense, and any other factors the CRT considers appropriate.

79. I do not agree with Ms. Casement that the issues here are legally or factually complex. However, I find the strata's refusal to provide Ms. Casement with a copy of the RDH report contrary to SPA section 36, caused unnecessary delay and legal expense for Ms. Casement. Since some of these requests occurred while the CRT process was ongoing, I find they are dispute-related expenses, at least in part. The amount of legal expense charged to Ms. Casement is unclear, but I find it reasonable and appropriate to order the strata to reimburse Ms. Casement $1,000.00 in these circumstances. I dismiss Ms. Casement's claim for legal fees in excess of that amount.

80. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Casement.

DECISION AND ORDER

81. I order the strata:

    a. Within 30 days of the date of this decision, to pay Ms. Casement a total of $1,112.50, broken down as follows:

        i $112.50 for CRT fees, and

        ii $1,000 for legal fees, and

    b. To immediately make temporary repairs to damage caused to the front patio of SL7 when the water pipe was repaired in August 2023 by eliminating any tripping hazard.

    c. Within 60 days of the date of this decision, to:

        i Ensure the perimeter drain system around the SL7 building is functioning properly and confirm it directs collected water to the municipal storm system and does not over saturate the soil. The strata must provide proof the work was completed by giving Ms. Casement a copy of the contractor's paid invoice or report.

ii Ensure the gutter and downspout collection systems around the SL7 building are separate systems from the below-grade perforated perimeter drain system. The strata must provide proof the work was completed by giving Ms. Casement a copy of the contractor's paid invoice or report.

iii Retain an engineer to investigate the potential water source for wetting of the concrete slab-on-grade in the carport and below the ground level interior floor finishes. The strata must work with the engineer and Ms. Casement to ensure the investigations is complete within 120 days of the date of this decision. The strata must keep Ms. Casement fully informed of the investigation and provide her with a copy of a written report from the engineer within 14 days of receiving it. The strata must also act on the engineer's recommendations, if any.

d. Within 180 days of the date of this decision, to correct the sloped concrete patios and pavers at the building perimeter next to SL7 to slope away from the building.

82. Ms. Casement is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.

83. This is a validated decision and order. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, 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.

J. Garth Cambrey, Tribunal Member

[1] Amendment Note: Paragraph 51 was amended to correct an inadvertent error under the authority of *Civil Resolution Tribunal Act* section 64.