



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Wugalter v. The Owners, Strata Plan LMS 223*, 2025 BCCRT 1017

B E T W E E N :

ALLISON NICHOLE WUGALTER and RYAN HEATH WUGALTER

APPLICANTS

A N D :

The Owners, Strata Plan LMS 223

RESPONDENT

AMENDED¹ REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey

INTRODUCTION

1. This strata property dispute is about the installation of an air conditioner (AC).
2. The applicants, Allison Wugalter and Ryan Wugalter, co-own a strata lot (SL45) in the respondent strata corporation, The Owners, Strata Plan LMS 223 (strata). Allison Wugalter represents the applicants. A strata member represents the strata.

3. The applicants say the strata approved the installation of their AC on common property in February 2022. They say it now asks them to relocate the AC to a limited common property (LCP) patio designated to their exclusive use, at their cost. They seek orders that the strata pay the cost to relocate their AC and repair the building's exterior siding, which they value at \$2,650.
4. The strata says the applicants are responsible to relocate their AC at their cost largely because they did not properly obtain the strata's approval to alter common property before installing the AC. The strata asks that the applicants' claim be dismissed.
5. As explained below, I order the strata to hold a general meeting to consider approving the applicants' current AC installation or the installation of the AC on their LCP patio as they requested. I also find the strata is responsible for all costs associated with any approved changes.

JURISDICTION AND PROCEDURE

6. 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.
7. 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, so I decided to hear this dispute through written submissions.
8. 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.

ISSUES

9. The issues in this dispute are:
 - a. Did the applicants receive the strata's written approval for the AC installation?
 - b. Is the AC installation contrary to *Strata Property Act* (SPA) section 71?
 - c. Did the strata treat the applicants' significantly unfairly?
 - d. What is an appropriate remedy?

BACKGROUND, EVIDENCE AND ANALYSIS

10. As applicants in a civil proceeding such as this, Ms. Wugalter and Mr. Wugalter must prove their 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.
11. The strata was created in December 1991 under the *Condominium Act* and continues to exist under the SPA. It consists of 62 residential townhouse-style strata lots located in several buildings. SL45 is an end unit in one of the buildings, so it has three walls next to common property and shares one wall with the adjacent strata lot. There is LCP designated to SL45 that includes a patio at the rear of SL45 and a landing and stairs at the front. The other property surrounding SL45 is shown as common property on the strata plan.
12. Land Title Office documents show the strata filed a consolidated set of bylaws on March 14, 2017, plus subsequent bylaw amendments in January 2019 and January 2020. I find these are the bylaws that apply to this dispute. I discuss relevant bylaws below as necessary.

Did the applicants receive the strata's written approval for the AC installation?

13. The strata's bylaws 5 and 6 require an owner to receive the prior written permission of the strata before making an alteration to a strata lot that involves the exterior of a building or to common property. These bylaws permit the strata to require the owner

to take responsibility for any related expenses. Bylaw 36.1 addresses AC installations and simply says central air conditioners are permitted with council's written permission, provided they are installed by a professional company, and are a small unit of "low noise".

14. On February 7, 2022, the applicants emailed the council president requesting permission to install a new furnace and AC. They asked to install an AC on the common property next to SL45 and confirmed the installation would "need to access the wall", which I take to mean go through the wall to connect to their furnace. They provided a photograph of the intended location of the AC unit.
15. There is no argument, and I find, that the exterior wall of the building comprising SL45 is common property. This is because SPA section 1(1) defines common property to include the part of the buildings shown on the strata plan that is not part of a strata lot and section 68 says the strata lot boundary is midway between the structural portion of the wall subject to exceptions that do not apply here. That means the applicants request involved alterations to both SL45 and common property.
16. Between February 16 to 28, 2022, the applicants exchanged text messages with the president about the status of their request. On February 28, 2022, the president confirmed by text message that the majority of council had approved the request. The text message stated the president would have the strata manager confirm the approval, but the evidence suggests that did not happen.
17. The strata makes several arguments that that the applicants' email and text message exchanges with the council president do not constitute approval of the applicants' request. I disagree and address each in turn.
18. First, the strata says that communications must go through the strata manager and that council meeting minutes instruct owners to contact the strata manager and never to contact council members directly. While this is true for November 30, 2021 council minutes in evidence, the same instructions do not appear in minutes of other council minutes provided, such as for June 8 and September 13, 2023. The strata does not have a bylaw that addresses how owners may contact the strata. More

importantly, SPA section 35(1)(e) and *Strata Property Regulation* section 4.1(1) require the strata to keep a record of a method by which council members can be contacted on short notice. Since such a record is available to an owner under SPA section 36, I find the legislation permits owners to contact council members directly, despite what the council minutes might say.

19. Second, the strata says text messages do not constitute official permission because permission must come from the strata manager. There is nothing in the SPA or bylaws that support the strata's position, and I have already found that owners can communicate directly with strata council members. I also agree with the applicants that text messages are an acceptable form of correspondence. This is set out in section 5 of the *Electronic Transactions¹ Act*, which states that a requirement under law that a record be in writing is satisfied if the record is in an electronic form and accessible for subsequent reference. I also note the CRT regularly accepts text messages as correspondence. See for example, *BBR Management Inc. v. The Owners, Strata Plan KAS 3359*, 2022 BCCRT 1254, at paragraph 39, and *Chen v. The Owners, Strata Plan EPS2546*, 2025 BCCRT 731, at paragraphs 24 to 26.
20. Third, the evidence includes emails exchanged between council members that confirm the applicants' request was discussed among them. I find this confirms the decision to approve the applicants' request was made by the strata council and not the council president alone. I acknowledge that 1 council member who participated in the email exchange suggested the vote among the 4 council members was a tie vote, but I note bylaw 18.2 permits the council president to cast a seconding, deciding vote in the event of tie. Since the council president voted in favour, I infer they used their discretion to cast their second vote in favour to break the tie.
21. Finally, the strata says the applicants were required to sign an "Assumption of Liability Form" taking responsibility for their alterations before approval could be given. However, bylaws 5 and 6 do not require this. The bylaws clearly give the strata council discretion to require such a form, but the evidence suggests it did not. That the applicants offered to take responsibility for their requested alterations or that other owners took responsibility for similar alterations is not relevant here.

22. On the overall evidence and submissions, I find the email and text message exchanges between the applicants and council president clearly establish that the strata approved the applicants' request to replace their furnace and install an AC on the common property next to SL45.

Is the AC installation contrary to SPA section 71?

23. The applicants had the AC professionally installed on the common property next SL45 in April 2022. There is no evidence the strata, nor any owner objected to the installation at the time.
24. SPA section 71 requires a strata corporation to pass a $\frac{3}{4}$ vote before it approves a significant change in use or appearance of common property except in certain circumstances that do not apply to this dispute.
25. I will first address the resolution the strata considered at its annual general meeting (AGM) held on January 31, 2023, about 8 months after the AC was installed.
26. The proposed resolution sought to approve a change in use or appearance of common property to allow for ACs to be installed on common property. The preamble to the resolution mentions end units, but I find the resolution was generic in nature. In particular, the resolution did not mention SL45 nor include language that the resolution would be applied retroactively. The resolution did not pass.
27. The March 14, 2023 council minutes say the strata council instructed the strata manager to ask the applicants to remove the AC from common property and repair the exterior wall because the $\frac{3}{4}$ vote proposed at the January 2023 AGM did not pass. It is unclear if the manager sent such a letter because the applicants emailed the strata manager on March 27, 2023, in response to the minutes. They objected to the strata's request to remove the AC stating they would not pay the removal cost. They also provided the strata with the February 2022 email and text message exchange they had with the past council president which they say confirmed their request for an AC and new furnace was approved.
28. On June 5, 2023, the strata council invited the applicants to attend a council hearing on June 8, 2023, and asked them to bring anything they felt was relevant to their

AC. The June 8, 2023 council minutes show the applicants attended the meeting and that the parties discussed the bylaws and the SPA. The minutes state the applicants would make another request for their AC installation with a request for an indemnity agreement. From the overall evidence and submissions, I infer the strata wanted the applicants to relocate their AC to the LCP patio at the back of SL45.

29. It is clear the strata took the position that the applicants' AC had to be removed from the common property because the January 2023 $\frac{3}{4}$ vote failed to pass. I do not share that view. I agree with the applicants that the language of the failed resolution was ambiguous because it did not indicate the proposed approval was retroactive and specifically that the applicants' AC must be removed. The resolution also does not address the strata's suggested installation of the applicants' AC on their LCP patio, as I discuss below.
30. The SPA does not define "significant change", but is it well established that the factors to consider for changes to common property are those set out in *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333. A significant change depends on several factors that may result in different outcomes for different AC installations. In *Foley*, the court set out a non-exhaustive list of factors to consider when deciding whether a change is significant:
- a. Is the change visible to other residents or the general public?
 - b. Does the change affect the use or enjoyment of a unit or existing benefit of another unit?
 - c. Is there a direct interference or disruption because of the changed use?
 - d. Does the change impact the marketability or value of a strata lot?
 - e. How many units are in the strata and what is the strata's general use?
 - f. How has the strata governed itself in the past and what has it allowed?
31. In addition to the above, several court and CRT decisions have considered the level of attachment and permanence of an alteration. For example, in *The Owners, Strata Plan v. Newell*, 2012 BCSC 1542, the court concluded that a hot tub was not a

significant change because it was not attached to the common property patio, even though the owner hoisted it onto the 37th floor with a crane. In contrast, in *Allwest International Equipment Sales Co. Ltd. v. The Owners, Strata Plan LMS4591*, 2018 BCCA 187 the court concluded that cutting a hole in a common property wall and installing pipes for a heat pump was a significant change because of the degree of permanence.

32. I find the facts here are similar to the facts in *Allwest* because the applicants' AC installation involved cutting a hole through the common property wall of the building. It follows then that the installation of the applicants' AC is a significant change to the use and appearance of common property.
33. I have also considered whether the installation of the applicants' AC on the LCP patio designated to their exclusive use, as suggested by the strata, is also a significant change. I find that in the circumstances of this dispute it is. This is because SPA section 1(1) defines LCP as common property designated to one or more owner's exclusive use, which means LCP is a form of common property. Given the AC installation on the LCP patio would also require cutting a hole through the exterior wall, I find the AC installation there would also be a significant change captured by SPA section 71.

Did the strata treat the applicants' significantly unfairly?

34. Although the parties do not use these words, I find the applicants allege the strata acted significantly unfairly by asking them to remove or relocate their AC at their cost when they feel they did nothing wrong. I also find the applicants allege the strata acted significantly unfairly by failing to put a settlement offer made September 28, 2023 before the strata owners for a vote as it said it would. The strata does not directly address the applicants' allegations about the settlement offer.
35. The CRT has authority to make orders remedying a significantly unfair decision under CRTA section 123. Significantly unfair actions are those that are burdensome, harsh, wrongful, lacking in probity and fair dealing, done in bad faith, unjust, or inequitable. The owner's reasonable expectations are relevant when considering significant unfairness but are not determinative. See *Dollan v. The*

Owners, Strata Plan 1589, 2012 BCCA 44, *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.

36. The applicants say they did nothing wrong by installing their AC on common property where they did. I agree. I have found they received the strata's approval to do so. Further, there is no evidence the applicants breached any bylaws or any provisions of the SPA. On the contrary, it is the strata that failed to seek approval from its owners to permit a significant change to use and appearance of common property before permitting the AC to be installed. For these reasons, I find the applicants reasonably relied on the strata's approval and had an objectively reasonable expectation that their AC installation could continue at its current location. Therefore, I find it significantly unfair for the strata to now require the applicants to pay the cost of removing or relocating the AC.
37. Given my conclusion, I find I do not need to consider the applicants settlement offer made in September 2023.

What is an appropriate remedy?

38. As I have mentioned, it is the strata's obligation to determine whether a common property alteration is significant. The fact that the strata may not have considered SPA section 71 when it approved the applicants' request or incorrectly determined the alteration was not significant is not the applicants' fault. I find it reasonable for the strata to pay the costs of removing or relocating the applicants' AC if that is what the strata owners decide based on my discussion below. The lack of an agreement making the applicants responsible for expenses relating to the AC installation means repair of the exterior wall remains that of the strata under SPA section 72 and bylaw 8(1)(b). I agree with the applicants that the strata is also responsible for repairing the interior drywall of SL45, given the strata's obligation to address section 71 matters. The applicants value relocating the AC to the SL45 LCP patio at \$2,650.
39. Following *Foley*, I find it appropriate for the strata to hold a general meeting to propose a $\frac{3}{4}$ vote to approve the applicants' AC installation at its current location. A second $\frac{3}{4}$ vote must also be proposed to approve the AC installation at the LCP

patio location in the event the first $\frac{3}{4}$ vote fails to pass. The resolutions must be clear that the strata is responsible for all costs related to the removal or relocation of the AC.

40. If the first resolution passes, that is the end of the matter. If the second resolution is considered, the strata must have the AC removed from common property or relocated to the patio within 90 days of the general meeting, depending on the vote's outcome.
41. I acknowledge that the foregoing remedy could result in the strata lot owners approving the removal of the applicants' AC. The evidence is clear that the strata has approved the installation ACs on LCP patios for several other strata lot owners, but it is not clear if those installations were approved by $\frac{3}{4}$ vote under SPA section 71, which I have found is required. Therefore, if the applicants feel the strata has approved similar AC installations for other strata lot owners it is open to them to make a fresh claim for significant unfair treatment if the strata decides to remove their AC and not replace it on their LCP patio, provided such a claim is made within *Limitation Act* timelines.

CRT FEES AND EXPENSES

42. 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. The applicants were successful and paid \$225 in CRT fees. The strata did not pay CRT fees, so I order the strata to pay them \$225.
43. Neither party claimed dispute-related expenses, so I order none.
44. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

DECISION AND ORDERS

45. Within 14 days of the date of this decision, I order the strata to pay the applicants \$225 for CRT fees.

46. Within 90 days of the date of this decision, I order the strata to hold a general meeting to propose a $\frac{3}{4}$ vote to approve the applicants' AC installation at its current location. The strata must also propose a second $\frac{3}{4}$ vote to approve the AC installation at the LCP patio location in the event the first $\frac{3}{4}$ vote fails to pass. The resolutions must be clear that the strata is responsible for all costs related to the removal or relocation of the AC. If the first resolution passes, that is the end of the matter. If the second resolution is considered, the strata must have the AC removed from common property or relocated to the patio within 90 days of the general meeting, depending on the vote's outcome.
47. The applicants are entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.
48. 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 19 was amended to correct an accidental error under the authority of *Civil Resolution Tribunal Act* section 64