Civil Resolution Tribunal

Date Issued: June 12, 2017

File: ST-2016-00400

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wong v. Section 1 of The Owners, Strata Plan N.W. 2320 et al*, 2017 BCCRT 25

BETWEEN:

Kimberley Wong

APPLICANT

AND:

Section 1 of The Owners, Strata Plan NW 2320 and The Owners, Strata Plan NW 2320

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1) The applicant Kimberley Wong (the owner) owns strata lot (SL) 45 (SL45), in a strata corporation known as The Owners, Strata Plan NW 2320 (the strata). The strata has created sections and SL45 is part of the respondent Section 1

of The Owners, Strata Plan NW 2320 (section 1). After this dispute was assigned to me I ordered that the strata be added as a named respondent, given issues related to the repair and maintenance of common property, as discussed further below. The owner is self- represented and section 1 and the strata are represented by Phil Dougan.

2) This dispute is about several matters regarding SL45: rental permission and related strata fines and loss of rental income, replacement of balcony doors and adjacent windows, replacement of a second handrail for limited common property balcony stairs, cigarette smoke from a strata lot (SL27) directly below, and expenses and fees associated with this application.

JURISDICTION AND PROCEDURE

3) These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness. The tribunal also recognizes any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

4) The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

5) The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I heard this dispute

through written submissions because I find there are no significant credibility issues or other reasons that might require an oral hearing.

6) Under section 48.1 of the Act, in resolving this dispute the tribunal may make

one or more of the following orders:

a) order a party to do something;

b) order a party to refrain from doing something;

c) order a party to pay money.

7) Both the owner and section 1 provided lengthy submissions about the correct interpretation of the bylaws and the *Strata Property Act* (SPA). The strata adopts section 1's submissions and section 1 agrees to indemnify the strata for any orders against it. The owner does not object to section 1's assumption of responsibility for common property. While I have read all of the evidence and submissions, I have only commented upon those I find are relevant and necessary for this decision.

ISSUES

8) The six issues in this dispute are:

a) Should section 1 permit the applicant owner to rent out rooms in SL45?

b) Is the applicant owner entitled to a reversal of $500 in fines and to reimbursement of loss of rental income, related to SL45?

c) How should the exterior balcony doors and adjacent windows of SL45 be replaced?

d) Should section 1 or the strata be required to replace a second handrail for limited common property stairs leading to the SL45 balcony?

e) What must section 1 do to address cigarette smoke from SL27?

f) To what extent are the parties entitled to reimbursement of various expenses and fees paid for the tribunal dispute?

POSITION OF THE PARTIES

9) First, the owner wants permission to rent part of SL45, so she may have one

or two "roommates". The owner says at most section 1's bylaw 123 only restricts rental of the entire strata lot, and so renting individual rooms is not prohibited. The owner wants the
$500 fine for breach of the rental bylaw reversed, submitting also that the strata has enforced the bylaw inconsistently and unfairly. The owner further wants the strata to pay
$7,300 for lost rental income to date. In contrast, section 1 says bylaw 123 prohibits rental of any part of SL45, and thus the owner has no right to a lost rental claim.

10) Second, the owner wants section 1 or the strata to replace the exterior balcony doors and adjacent windows of SL45 in the same size and location. The owner submits these are part of SL45 and not common property. However, while she agrees with section 1 that it has an obligation to repair and maintain them, she submits the respondents have no right to alter her strata lot. In contrast, section 1 says the balcony doors and windows are common property and wants them replaced with shorter ones and a higher door sill, to prevent balcony rot and water ingress into SL27 below. The owner submits section 1's proposal breaches the *BC Building Code* (Code). Section1 says it must only act reasonably and is entitled to rely upon its chosen contractor J & D Paterson Construction (J&D), including to ensure the replacement complies with the Code.

11) Third, the parties agree that the stairs to the balcony are limited common property for the exclusive use of SL45, which section 1 has a duty to repair and maintain. In around January 2016, section 1 removed two wooden handrails on the stairs, and installed a single aluminum handrail. The owner wants section 1 to pay for the installation of a second handrail, which she says she relies upon. Section 1 says only one railing is required and all of the strata lots with balconies had handrails installed or replaced with a single handrail.

12) Fourth, the owner wants section 1 to address the cigarette smoke that enters SL45 from SL27's deck, which is fenced in on three sides and is directly below the owner's bedroom windows. The owner submits SL27's "chain-smoking" is a

health hazard and nuisance, and is significantly affecting her family's enjoyment of her strata lot. Section 1 reminded owners in its minutes not to smoke within 6 metres of open windows. However, the owner wants section 1 to direct SL27 to cease smoking within 6 metres of SL45's bedroom windows, noting SL27 has never been fined. Section 1 submits it does not have a smoking bylaw and having investigated "a number of smoking complaints", without specific reference to SL27, has satisfied itself there have been no breaches of the City of Richmond bylaw or section 1's nuisance bylaw 6. Section 1 alleges bad faith against the applicant, saying that her smoking complaint is retaliation for section 1's refusal to grant rental permission.

13) Finally, the owner and section 1 ask for reimbursement of various expenses and tribunal fees associated with this application. Section 1 requests that I dismiss the owner's claims. It also asks for its legal costs as set out in the Supreme Court Civil Rules Tariff, as a reasonable expense.

BACKGROUND AND EVIDENCE

14) First, I will address why the strata was added as a party. Briefly, following the decision *Yang v. Re/Max Commercial Realty*, 2016 BCSC 2147, a section has the same powers and functions of a strata corporation, but only in respect of matters that relate solely to the section and only in the areas set out in section 194 of the SPA. Nothing in section 194 gives a section the responsibility to repair and maintain common property, even if it relates solely to the section. Section 72 of the SPA says the strata corporation must repair and maintain common property. The bylaws of Section 1 that assign it responsibility for repairs to common property are therefore *ultra vires*, given Yang and section 72 of the SPA. The issues in this dispute relevant to the strata are the repair and maintenance of common property, which I find includes the SL45 balcony stair handrail and in part includes the SL45 balcony doors and adjacent windows.

15) However, as noted in Yang, whether a section can assume responsibility for common property remains an open question in the case law. I find the

obligations under section 72 to repair and maintain common property are the strata's responsibility, given section 194 of the SPA. However, in the circumstances here where no party disputes it and given the indemnity agreement between the strata and section 1, I accept section 1 can assume responsibility for common property repair and maintenance.

16) I turn then to the relevant history in this dispute. The strata corporation was created in 1985. There are two sections of the strata created by bylaw amendments under the SPA. SL45 is part of section 1, which is made up of 54 residential strata lots. Of those 54 lots, 18 of them, strata lots 37 to 54, have limited common property stairs and balconies for the exclusive use of the adjacent strata lot. All strata lots with balconies, including SL45, are located on the third or top floor of the building. The applicant owner bought SL45 in 2005. SL45 is an end unit and shares a common wall with one other strata lot. SL27 is directly below SL45. Otherwise, SL45 does not connect to any other strata lots. The limited common property balcony and attached exterior stairs designated to SL45 are on the west side of the strata lot.

17) On April 21, 2008, the strata passed new bylaws that included two sections pursuant to the SPA and that replaced all previous bylaws of the strata. Thus, the Schedule of Standard Bylaws of the SPA (Standard Bylaws) do not apply. On the same date, each of the two sections also passed their own bylaws. Unless otherwise indicated, references to bylaws below are to section 1's bylaws, particularly with respect to the room rental and smoking issues. As noted above, I have not relied upon the section 1 bylaws that address common property repair and maintenance, because I have found those to be ultra vires.

18) The elected body responsible for a section according to the bylaws is the section executive. According to the SPA, the elected body responsible for a strata corporation is a strata council.

Rentals in SL45

19) Bylaw 123 states, "The number of strata lots within the separate section that

may be leased at any one time is limited to **NONE**" (bold and capitals are in the bylaw itself). Bylaw 124 states that an owner is subject to a $500 fine for breach of bylaw 123. Bylaw 77 states that for ongoing breaches a fine may be imposed every 7 days.

20) The owner says that in 2009 section 1 gave her permission to rent SL45. Section 1 did not specifically dispute this submission. However, I do not have any minutes or other relevant documentation from 2009 before me.

21) The owner provided the tribunal with a "roommate contract" dated October 1, 2011, between herself and her tenant A. The amount of damage deposit and rent was edited out, but the contract states the rent is payable on the first of each month. A moved out of SL45 at the end of November 2016. No other roommate contracts or tenancy agreements were provided.

22) In a November 29, 2014 letter to the owner, through its property manager section 1 advised that it had come to its attention that the owner was not residing in SL45 and had rented out rooms to three different tenants, contrary to bylaw 123. The letter demanded the owner end the tenancy agreements by the end of December 2014, or the strata would fine her $500. If the owner was going to return and stay in the unit, she would be permitted to keep her "original tenant (one only) as long as you are a resident of the unit". It is clear that the original tenant is A. Contrary to the owner's submission to the tribunal, this letter did not permit "roommate rental" generally.

23) In December 2014 and September 2015, section 1 had hearings with the owner regarding her breaches of bylaw 123, with multiple exchanges of correspondence and executive meetings during that 9-month period. The owner had a second tenant between January and March 2015 and for a month or two around October 2015. The evidence before me is not entirely clear as to how often the strata fined the owner $500. However, it is clear that section 1 gave the owner notice of the breaches in December 2014 and again in February 2015, and fined her $500 for the month of March 2015 for having a second tenant.

Later, in April 2015, section 1's lawyer advised the owner the $500 fine would be applied each week for breaches of the bylaw, and noted that the owner's "roommate" distinction was not accepted, since the SPA defined tenant as a person who rents all or part of a strata lot. In September 2015, section 1 advised the owner she could not rent any part of SL45 after A moved out.

24) On April 19, 2016, the owner wrote section 1 in response to the September 2015 hearing at the executive meeting. The owner cited permission granted to SL10 to rent between October 2014 and March 2015, which covered the same period she had rented out a room. The owner provided an email in which section 1 permitted SL10 to lease its entire unit "because [the tenants] were great people", as evidence section 1 was treating her unfairly and inconsistently.

25) The evidence is that section 1 permitted a temporary rent-back to the SL10 owner who had just sold the unit, before the new owners of SL10 took possession. The strata's permission was for the period between October 2014 and the spring of 2015, when the SL10 owner's new house was to be completed.

26) The owner also alleged there had been rentals in SL26 and SL38, with no fines issued. Section 1 says there is only one permitted rental, based on a hardship exemption. The owner states that SL26, owned by a council member, received a hardship exemption in December 2015, unfairly, because the SL26 owner was working. Other than these fairly general submissions, I have no evidence before me about rentals in SL26 and SL38.

27) The owner calculates $7,300 as her loss of rental income at $500 per month, as follows. For April to December 2015, $4,500, for a second room rental. SL45 was occupied from January to March 2015. For December 2016 until March 2017, $2,100 for two room rentals, given that A. moved out of SL45 at the end of November 2016.

Exterior Balcony doors and adjacent windows in SL45

28) The exterior balcony door unit of SL45 is a glass slider door set. The windows

beside the balcony doors are currently located at essentially the same height. In particular, the balcony doors are about two inches above the balcony floor, and the bottom edge of the adjacent windows are perhaps an inch or two higher. The tops of the windows and balcony doors are currently located at the same height.

29) Photos show mould at the bottom of the exterior SL45 wall where it meets the balcony floor, below the balcony door as well as below the adjacent windows. Mould can also be seen inside the track of the open sliding balcony door. However, some photos showing the inside of windows were provided by the owner to demonstrate they have no visible mould. Yet, another photo appears to show interior vertical blinds with mould. There appears to be a slight grade on the balcony, sloped away from the building.

30) In the December 16, 2014 executive minutes, repairs and maintenance to SL45 were briefly addressed. J&D's quote for replacing the SL43 and SL45 balconies was for $18,290.00 each, with the work to start in May 2015. Details of the proposed repair were not set out in the minutes. By September 2015, J&D had completed the SL43 balcony deck repair, and SL45's would be done after working out a schedule with the owner. There were no specifics mentioned in the September 21, 2015 executive minutes as to how the work was completed or at what cost.

31) Executive minutes for a February 2016 meeting note the owner asked that her balcony doors not be raised like the other strata lots, as she wanted the same height maintained. The executive explained that the existing design has waterproofing problems and the new design with an "elevator bottom" will reduce the chance of water ingress from the base of the balcony sliding doors. Otherwise, the owner would have to sign a waiver accepting all future responsibility for water ingress caused by leakage from the base of her balcony sliding door as a result of her keeping the original design.

32) The owner advised the section 1 executive in April 2016 that its proposed

alteration of her balcony doors and windows (smaller size and raised sill height) were not in compliance with the Code. In May 2016 minutes, the executive stated it would let J&D make the decision about the minimum distance between the deck surface and the balcony doors to SL45, as it would be providing the warranty.

33) In a July 4, 2016 letter, J&D wrote to section 1 about "new decking and windows" for SL45. The letter stated "on the previous deck renovations" a 6' balcony door was installed in line with the top of the windows. This resulted in a curb (or sill) of about 11" between the door and the deck floor. J&D stated that if the door were lowered to reduce the curb height, the top of the door will be lower than the adjacent windows. J&D stated that this would be "unsightly", and so to keep "the proper appearance" they could lower the two windows that are on either side of the door. J&D recommended that they install the 6' balcony door about 7" above the deck floor, and then order windows 4" shorter in vertical length, with the two windows installed in line with the top of the door. J&D noted some framing and drywall would be required to lower the headers about 4".

34) On July 14, 2016, the owner obtained a quote from House Smart Home Improvements for a 6' x 6" sliding balcony door, in the amount of $1,760. This quote is just for the installation and labour involved with replacing the balcony door. The quote references "fusion welded frames and sashes" and the use of "peel & stick" membranes applied inside of all openings. However, the quote does not otherwise address the existing mould or the water ingress concerns. The quote offered a lifetime warranty for the frame, seal, installation and labour.

35) Executive minutes for a July 19, 2016 meeting address repairs to the balcony door and windows of SL45. J&D again recommended the balcony door and window be installed 7" above the deck, along with a window replacement with a vinyl window. The minutes state this will provide waterproofing on the deck as well as better insulation and less condensation inside the unit, noting there was already mould inside SL45. While the owner did not agree, after discussion the

executive decided that this minimum requirement of a 7" sill above the deck was needed for structural reasons and would be required for all deck restoration work. The plan was for J&D to start the job in August 2016.

36) In emails that the owner sent to the property manager on July 21 and 22, 2016, the owner agreed section 1 has the obligation to repair and maintain the balcony deck, windows and balcony doors, but that it had no right to alter them to a smaller size. The owner said she bought SL45 because of the "beautiful balcony doors and windows" that were standard size. The owner cited same-sized window replacements had been done in SL37 in either 2012 or 2013 and in SL49 more than 11 years prior, both with no problems. The owner also said the main reason for a leak into SL27 was because the overhang does not cover the door and all the rainwater runs into the existing walls, over a 30 year period. Along with a general submission from the respondents, the owner's July 21, 2016 email is the only evidence before me about actual water ingress into SL27.

37) The owner provided the tribunal with an August 7, 2016 letter from Siew Teh, P.eng, who according to the Association of Professional Engineers and Geoscientists of BC (APEGBC) is a professional engineer within the electrical/electronic industry. In Ms. Teh's letter, she stated section 1's proposed alteration to the size of the balcony doors and windows is not necessary. Ms. Teh stated the standard size door is 6'8" or higher and the standard sill height is 4" above the floor. Ms. Teh stated the townhouse was built in 1986 and has no known structural or leaking issues and the building and balcony are structurally sound. It is unclear how Ms. Teh came to that conclusion. Ms. Teh stated the existing balcony doors and windows are in compliance with standard sizes. She further stated that the proposed custom 6' would not meet the required standard height of 79.5" and maximum 13mm high sill height, as set out in the Code. She stated the proposed higher sill height of 7" will create a safety tripping hazard and the balcony doors will open into a step. In addition, the reduced door height and higher sill height creates a hazard in an emergency, such as fire. Ms. Teh noted the deck would be graded so that rain water would drain in the

drain hole, and thus there would be no water on the deck or walls of the deck. In her letter, Ms. Teh does not address the apparent mould on the exterior wall above the balcony floor or in the track of the balcony door. She also does not explain how the existing placement of the balcony doors and windows adequately protects against water ingress. Ms. Teh is also not a contractor providing a quote for a specific scope of work.

38) On August 7, 2016, an APEGBC staff lawyer advised section 1's lawyer that Ms. Teh's letter was defective because she failed to apply her seal with her signature and date on the letter, as required by section 20(9) of the *Engineers and Geoscientists Act*. The APEGBC did not state Ms. Teh was not qualified to provide the substantive opinion set out in the letter, although it does not appear it was asked that question.

39) On December 3, 2016, J&D wrote section 1's property manager about deck renovations done "on other units" in section 1. J&D wrote they had raised the balcony door "for several reasons" and that installing the door on a raised curb is recommended by the Canada Mortgage and Housing Corporation. J&D wrote that the new vinyl is installed up the walls a minimum 8", and, the details of raised doors similar to those planned for SL45 are in the "Best Practice Guide" for wood-frame envelopes in the British Columbia coastal climate. J&D further wrote that it would not warranty the work if the door and windows are installed at existing heights. This December 3, 2016 letter, J&D's July 4, 2016 letter, and the July 19, 2016 executive minutes contain all of the information before me about J&D's proposed alteration of SL45's balcony doors and windows.

40) Finally, the owner states that section 1 has treated balcony door and window repairs for other strata lots differently. In particular, according to April 18, 2013 executive minutes, section 1 instructed J&D to find an alternate way to waterproof the balcony without altering the size of the windows and doors in SL37. The owner submits same-sized replacements were done in SL37 by August 2013, and August 19, 2013 executive minutes state J&D had completed restoration of the balcony decks for SL37 and SL51. However, there is

no mention of doors or windows in these minutes and no cost set out. The owner submits deficiencies were completed in November 2013. Section 1 did not dispute that J&D renovated SL37's balcony doors and windows with the same size and height. Rather, section 1 submits that there are water ingress issues related to SL49 and that it will have to be re-renovated in the same manner as proposed for SL45, with a higher sill. Section 1 also states that SL44 had ingress problems from the outset and its deck was re-sloped without any subsequent issues.

Second handrail on limited common property balcony stairs

41) Photos were provided showing the limited common property stairs to the balcony of SL45. The handrail shown is the new aluminum one installed by section 1 in January 2016. There are 18 stairs to the deck, with a landing halfway. There are no photos of the former handrails before the replacement.

42) It is undisputed that there were two wooden handrails present on the stairs leading to the SL45 limited common property balcony, and that they were there when the owner bought the unit in May 2005. Section 1 removed the second handrail in around December 2015 while the owner was out of town, and the owner says she was surprised to see it missing when she returned on January 7, 2016. The owner states section 1 had no right to remove this second railing without notice, given it is on limited common property for her exclusive use. Section 1 states that it believes the owner was aware of the change but was not present, as she lived in another province for at least 12 months during which time this work was completed.

43) In a series of January 2016 emails to section 1, the owner stated she needed both handrails for safety, especially when she carried heavier things including her infant daughter. The owner stated there was nothing wrong with the wooden handrails, which she said was confirmed by J&D's assessment in July 2016.

44) As set out in January and February 2016 minutes, the executive decided that as the previous owner had installed the second handrail himself and all other

strata lots had only one railing, it would not install a second handrail. The owner could apply for permission, if she agreed to pay for the cost of installation and sign an assumption of liability form.

45) Section 1 states that J&D advised that the stair handrails needed to be replaced and the Code only required one railing. Section 1 saw a cost-savings opportunity and installed only one aluminum handrail. The original construction in the strata complex had apparently no railings at all or at most one wooden railing. Section 1 states that aluminum railings are less expensive and are longer lasting and require less maintenance than wooden railings.

Cigarette smoke from SL27

46) Photos taken from SL45 of the deck attached to SL27 directly below shows what appears to be an ashtray on a sill just outside the front door to SL27. The SL27 front door and sill area are immediately below the owner's bedroom windows.

47) Section 1 does not have a specific bylaw restricting smoking. It is undisputed that the owner complained of smoking from SL27 below on many occasions. The owner states no fines were ever issued to SL27 or any other strata lot, because the violators are council (or executive) members. The owner states section 1 is essentially "playing favourites" with certain strata lots and is failing to enforce the bylaws fairly.

48) The owner states she tried to come up with a compromise with the SL27 owner, without success. She states she made a formal complaint about the smoking in 2008 and 2009, but nothing was done and the people in SL27 continue to smoke on their deck as before.

49) The owner states that at least two people are chain-smoking on SL27's deck at all times of the day, especially during the mornings and evenings, and even during the winter. In the summer, the owner says they are smoking on their deck anytime from 2 to 9 pm daily. The smoke enters her open bedroom windows

and spreads through the rest of her home. Further, the neighbor from SL26, another council member, joins the SL27 owners to smoke on their deck.

50) In minutes for executive meetings in each of February, April, and June 2013, the executive reminded all owners that smoking is prohibited within 6 metres or about 20 feet of an entryway, open window or air intake, with reference to a City of Richmond bylaw. The February 2013 comment arose from a complaint from the resident of SL32 about smoking in common areas. In the June 2013 minutes, the executive wrote "Basically, the distance from your balcony or deck is within 20 feet from the windows of the unit above your unit. Therefore, please do not smoke from your balcony or deck if the distance [is] within 20 feet from the windows or doors of your neighbouring units."

51) I have addressed the issue of fees and expenses at the end of this decision.

ANALYSIS

Rentals in SL45, associated fines, and claim for lost rental income

52) Sections 141 and 144 of the SPA address rentals. One permitted restriction is a bylaw that prohibits rentals of residential strata lots. An owner may apply to the strata for an exemption on grounds of hardship, which may be granted for a limited time.

53) To the extent the owner argues that bylaw 123 can be read such that the rental restrictions are "NONE", as in there are no rental restrictions, I disagree. I find that bylaw 123 provides that there are no rentals allowed in section 1. I say this because the capitalization and bolding of the word "NONE" in the bylaw indicates that "NONE", or zero, is an answer to the question of how many rentals are permitted. I find that bylaw 123 complies with the SPA.

54) Bylaw 124 provides that the owner is subject to a $500 fine and that section 1 must take all necessary steps to terminate the tenancy. Bylaw 77 provides section 1 can impose the $500 fine every 7 days.

55) I turn now to the owner's "roommate" argument. I find it is irrelevant that the *Residential Tenancy Act* may exclude roommates. The SPA is the relevant statute here, as it governs the relationships between section 1 and owners. Section 1 of the SPA clearly defines "tenant" as a person who "rents all or part of a strata lot". The owner's roommates each rented part of her strata lot, as shown in the 2011 roommate rental contract between the owner and A. I find that the owner's "roommates" fall within the definition of "tenant" within the SPA. Bylaws 123, 124, and 77 therefore apply to the owner's rental of any part of SL45.

56) I acknowledge the owner's argument that section 1 permitted rentals in 2009. However, I find I have inadequate evidence as to the terms of any such permission, if it was indeed granted. In any event, I find the relevant timeframe for this dispute is after 2011 when A moved in. As A moved out at the end of November 2016, I do not need to address whether the owner was properly permitted an exemption for rental to her. No fines were issued based on rental to A. The issue here is the other "roommates" and any future rentals of part or all of SL45.

57) Based on the SPA and bylaw 123, I find section 1 had the right to prohibit all rentals in SL45 (save for proper exemptions for hardship or family members) after A moved out. Similarly, while A was living in SL45, I find section 1 had the right to prohibit any other rentals in SL45. Thus, the owner is not entitled to have any roommates or other tenants in SL45, except for any proper exemptions under the SPA. Given these conclusions, I find the owner's claim for loss of rental income must be dismissed.

58) Next, what about the reversal of the $500 fine? I have already decided the owner breached the rental restriction bylaw 123. The issue now is whether section 1 ever properly imposed a $500 fine, given that is the amount the owner seeks reversed.

59) Section 135 of the SPA states that a fine must not be imposed for a bylaw

contravention unless a complaint has been received about it, and the owner has been given the particulars in writing and a reasonable opportunity to answer, including a hearing if requested. Section 1 must, as soon as feasible, give notice in writing of the decision about the fine. Contrary to the owner's submission, the notice requirements set out in section 34.1(3) of the SPA do not apply here.

60) First, from section 1's November 29, 2014 letter to the owner that it had "come to its attention" the owner was renting SL45, I infer there had been a complaint about rentals in SL45. There is no requirement that a complaint be in writing or that the complainant be identified. Second, I find that by September 2015 the owner had received multiple notices that she was in breach of the rental restriction bylaw in renting part of SL45 to someone other than A. The owner had at least two hearings before the executive, and exchanged correspondence with the property manager and section 1's lawyer. Section 1 was clear it intended to fine the owner $500 for the bylaw violation. Bylaw 56 states that the section executive must give the owner a written decision within two weeks of the hearing, which was done here. Taking into account bylaws 123, 124, and 77, and the December 2014 and February 2015 executive minutes, I find section 1 was entitled to fine the owner $500 for the month of March 2015, when she had a second tenant.

61) Section 1 may have fined the owner an amount more than $500 for breaches of the rental restriction bylaw. However, the evidence before me shows it has reduced the fine owing to $500. Given my conclusions above, I find that the owner is not entitled to a cancellation or reversal of the $500 fine imposed under bylaw 124.

62) I turn now to the owner's submission that section 1 treated her unfairly and inconsistently, as it permitted rentals to the owners of SL10, SL26, and SL38. The applicant submits section 1's argument for allowing rental of SL10 was that a situation unexpectedly arose, and that she should similarly benefit because her situation was also temporary and unexpected. I do not accept this argument,

as elsewhere the owner has submitted that she regularly travels for work.

63) Moreover, section 1's permission for temporary rent-back to the seller of SL10 reasonably falls within a hardship exemption under the SPA. There is insufficient evidence before me regarding permission to rent being given to other strata lot owners, and in particular whether a hardship exemption was fairly granted to SL26. I also note bylaw 62 that states observers may not attend a hearing that deals with a request for exemption under the rental restriction bylaw. This suggests section 1 is required to maintain some confidentiality over exemptions granted. Overall, I cannot find section 1 or its executive has inconsistently or unfairly applied the rental restriction bylaw to the owner.

64) In summary, I find the owner is not permitted to rent any part of SL45 without permission from section 1 as described in the SPA. I dismiss the owner's claims for lost rental income and the reversal of the $500 fine. However, as section 1 did not file a counterclaim, I make no order that the owner must pay the $500 to section 1.

Exterior balcony doors and adjacent windows in SL45

65) This is the most complicated issue in this dispute. While section 1 submits the balcony doors and windows are common property, it is essentially undisputed that section 1's proposed method of replacement also involves some alteration to the owner's strata lot.

66) There are no provisions in the SPA or in any of the bylaws that set out the strata's or section 1's right to alter a strata lot. Section 1 relies upon section 70 of the SPA and its bylaws 29 through 32 as support for their right to alter the windows and balcony doors as proposed. However, quite apart from my finding that those bylaws addressing common property repair are ultra vires, those sections address only changes an owner or owners want to make. They do not address changes proposed by section 1.

67) So, are the balcony doors and windows common property or are they are part

of the owner's strata lot? The SPA's definition of "common property" does not expressly deal with windows, doors, and skylights. Again, while on this issue they are ultra vires, I note section 1's bylaws on the point do not address windows or doors, although they do include skylights.

68) As noted in the Continuing Legal Education Society of BC's "*BC Strata Property Practice Manual*", the repair and maintenance of exterior facing windows and doors pose particular problems for typical strata corporations, given the strata's duty to repair and maintain common property as set out in section 72 of the Act.

69) The problems arise because unless otherwise shown on the strata plan, under section 68 of the SPA, the boundary of a strata lot is at the midpoint of the walls. Contrary to the owner's submission, the strata plan here does not contain a notation that indicates the boundaries SL45. Thus, section 68 of the SPA applies to SL45.

70) Based on the photos, there are two possible scenarios. One, the balcony doors and adjacent window assemblies extend across the midpoint, from the interior to the exterior walls. Or, two, they sit in the outer half of the wall flush with the building exterior. In other words, at most the owner only owns the interior half of the balcony doors and adjacent windows in SL45. For readability, at this point forward I may refer to the balcony doors and adjacent window sets as the assemblies.

71) For the purposes of this decision, I do not need to resolve which of the two scenarios applies. I say this because, from a practical perspective, this dual ownership is of little assistance given the assemblies are each an indivisible unit. Thus, I turn now to who has the duty to repair and maintain those assemblies.

72) Based on section 72 of the SPA and case law discussed below, I find the strata must repair and maintain certain aspects of the owner's strata lot, including the structure and exterior of a building. The parties here do not dispute this conclusion.

73) The decision in *Mackin v. The Owners, Strata Plan 374*, 1998 CanLII 3985 (BCSC), considered the SPA's predecessor statute, the *Condominium Act*, which did not contain the Standard Bylaws that expressly include exterior facing windows and doors as being the strata's responsibility to repair and maintain. In that sense, the facts of Mackin are similar to the facts here. In Mackin, the court concluded the strata was responsible for repairs and maintenance related to the prevention of water ingress into the building envelope. This is because the component (casing, frame, and sill) is practically one unit, and it would be unfair to burden individual owners with the repair or replacement of assemblies where the repair was necessary to address water ingress issues potentially affecting all owners.

74) While the parties here agree section 1 must repair and maintain the doors and windows of SL45, the reasoning in Mackin is helpful as to who bears the responsibility as between the strata and an owner. I find that the strata has an obligation to repair and maintain the assemblies, including those of SL45. Where necessary, this obligation includes replacement.

75) So, what should that replacement look like? The whole assemblies must be replaced, and so the common property and the owner's strata lot are both affected.

76) Section 71 of the SPA states the strata cannot make a "significant change" in the use or appearance of common property unless one of two things occurs: the change is approved by a resolution passed by a ¾ vote of the owners at an annual or special general meeting (a ¾ vote), or, there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage. Based on the evidence before me, there has not been a ¾ vote about section 1's proposed replacement of SL45 assemblies. It also appears there has been no ¾ vote about any of section 1's replacements of assemblies.

77) Past decisions have considered the meaning of significant change in the use or appearance of common property. The decision in *Anthony v. Schnapp*, 2016

BCSC 1839 set out a summary of the relevant guideline criteria:

a) A change would be more significant based on its visibility or non-visibility to residents and its visibility or non-visibility towards the general public.

b) Whether the change to the common property affects the use or enjoyment of a unit or a number of units or an existing benefit of a unit or units.

c) Is there a direct interference or disruption as a result of the changed use?

d) Does the change impact on the marketability or value of the unit?

e) The number of units in the building may be significant along with the general use, such as whether it is commercial, residential or mixed use.

f) Consideration should be given as to how the strata has governed itself in the past and what it has allowed. For example, has it permitted similar changes in the past? Has it operated on a consensus basis or has it followed the rules regarding meetings, minutes and notices as provided in the SPA.

78) I find section 1's proposed change is highly visible to the owner and I accept it would negatively affect her use and enjoyment of her unit. I also accept the heightened sill creates a greater tripping hazard and would cause a direct interference or disruption. I have no evidence before me about the marketability of the unit. The only factor in favour of the change being considered insignificant is that the section executive appears to have permitted similar changes in the past.

79) Given the limited evidence of only a passing reference to a past leak into SL27, I find there is not an immediate need for replacement of the windows and balcony doors adjacent to the SL45 deck. Section 1 did not argue immediate need.

80) I therefore find that section 1's proposed replacement of the balcony doors and adjacent windows in SL45 amounts to a significant change in the use and appearance of common property, which requires a ¾ vote under section 71 of the SPA.

81) I find I must now consider a further question in this case: what should the proposed resolution(s) contain for the ¾ vote? In other words, is it sufficient to include only J&D's proposal or even J&D's proposal together with Ms. Teh's opinion and the quote from House Smart Home Improvements as set out above? I find the answer is no, for reasons discussed further below.

82) A strata may consider the cost for each proposed repair option and the impact on owners, and implement necessary repairs within an affordable budget for all the owners. The reasonableness test requires balancing competing interests, such as those of the individual owner against the rest of the owners in controlling the budget (*Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784 at paras. 28 and 29).

83) In *Harvey v. Elgin Condominium Corporation No. 3,* 2013 ONSC 1273, the court held that the strata corporation had some latitude in carrying out its duty to repair and maintain, given evolving construction knowledge and methods. As such, the strata corporation there did not have to replicate an existing deck arrangement and appearance when doing so would lead back to the same problems and damage.

84) Having considered the above evidence, submissions, and case law, I accept that there could be a reasonable ¾ vote to replace the SL45 assemblies in a manner that results in a significant change to the owner's strata lot, even over her objection. I say this because the door and window assemblies are each one indivisible unit, at least half of which falls on the exterior side of the building owned by the strata. I also say this because the parties agree section 1 bears the responsibility of repairing and maintaining the door and window assemblies in their entirety, which here includes replacement, so as to maintain the integrity of

the building envelope.

85) However, I acknowledge the owner's evidence that the assemblies in SL37 were ultimately replaced by J&D in their existing location, and section 1 did not refute this evidence. No evidence has been provided as to how this was accomplished, at what cost, and whether it was done successfully. It is relevant that replacement of the assemblies in the same size and location was apparently done in SL37 in considering what is reasonable for SL45.

86) I also accept Ms. Teh's evidence that J&D's proposal does not comply with the Code, which I consider particularly significant. Section 1 has provided no explanation as to how J&D's proposal will comply with the Code. I do not accept the simple assertion that section 1 should be entitled to rely upon J&D to comply, given the specific evidence from Ms. Teh that has not been addressed. While Ms. Teh's opinion was defective in that it did not bear her seal as required by the APEGBC, I find that does not detract from the weight I may give the content of her opinion in this case. I also acknowledge that she is an electrical engineer, rather than a structural engineer. However, I am satisfied that she is competent to interpret the Code and provide the opinion that J&D's proposal does not comply with it.

87) On the other hand, I am not satisfied that Ms. Teh's opinion can reasonably be relied upon to proceed with replacement of the balcony doors and windows in their current locations. It is not clear to me that Ms. Teh's scope of expertise as an electrical engineer extends to envelope repair. Ms. Teh's opinion is also very brief and does not address the visible mould on the exterior walls of SL45. Further, the owner mentioned the absence of an adequate overhang over the doors and windows as an explanation for past water ingress, yet Ms. Teh stated the building had no known structural or leaking issues. Moreover, there is no cost proposal attached to Ms. Teh's opinion, which is a legitimate consideration for the owners to weigh. As for the quote from House Smart Home Improvements, I find that it does not adequately address water ingress concerns or the existing mould. The significant difference of about

$16,000 between their quote and J&D's quote also suggests that there are some repairs contemplated by section 1 that are not covered by House Smart Home Improvements' quote.

88) In short, I find both J&D's proposal and Ms. Teh's opinion and the quote from House Smart Home Improvements to be inadequate. None are a reasonable or fair basis upon which to order the replacement of the balcony doors and windows in SL45. To that extent, the owner's claim is allowed in part. I find that more detailed quotes are required for the ¾ vote.

89) I acknowledge the owner's concern that J&D is a relative or otherwise connected to a strata council (or section executive) member. However, I am not prepared to entirely exclude J&D from the process. The strata or section 1 has used J&D in the past with apparently no other complaints from other owners about any conflict, and there may likely be a cost efficiency to having J&D continue to do work for section 1 or the strata.

90) In all of the circumstances, I order the strata to first obtain at least two quotes from qualified professionals detailing the manner of replacement in compliance with the Code. One of those two quotes may be from J&D. All quotations must explain how the work will be done in compliance with the Code, with reference to the required minimum door height and maximum sill height measurements. Further, the quotes must explain whether the SL45 assembly replacements can be done in the existing locations, and if not, why not. The strata should include in the general meeting notice package to the owners the basis upon which the assemblies in SL37 were replaced.

91) These two quotes, and any other appropriate quotes obtained and provided to the strata, should then be presented at a general meeting together with a ¾ vote resolution to approve the work so that the owners may decide which replacement method is fair and appropriate. For clarity, any change in the SL45 window size and raised door sill requires a ¾ vote resolution to be passed. If a resolution to replace the window and door assemblies does not pass, the

parties are free to bring the matter back to the tribunal for a further decision, providing the evidence of the further quotes and the relevant minutes related to the ¾ vote. Again, given the parties' agreement in this case, on the balcony doors and adjacent windows issue section 1 is free to assume responsibility for the strata's obligations.

92) Neither the strata nor section 1 is entitled to claim from the applicant owner any costs associated with obtaining the further quotes or calling the general meeting. I have otherwise addressed the claims for fees and expenses below.

Second handrail for balcony stairs

93) Limited common property must be defined on the strata plan, and it may be that a balcony handrail sitting on a wall above limited common property is itself common property and not limited common property. I find I do not need to answer that question, because here the parties agree that section 1 is required to repair and maintain the balcony handrails. In other words, nothing turns on it, particularly given my ultimate decision on this issue.

94) First, while I acknowledge section 1's evidence that it believes the owner was aware of the handrail replacement, I find it is essentially undisputed that section 1 made the handrail replacement without any notice to or consultation with the owner, bearing in mind she was temporarily away from her unit at the time. Certainly, it would have been preferable for section 1 to have consulted with the owner prior to removing the two wooden handrails and replacing only a single aluminum handrail. However, for reasons set out below I find the outcome would not have been any different had they consulted with the owner.

95) Section 1 submits that the change from two to one handrail on the stairs to the deck for SL45 is not a significant change in use or appearance, and thus a resolution passed by a ¾ vote was not required. Rather, section 1 submits the change is minor and does not change the use of the stairs as stairs. The change to one aluminum handrail made the stairway to SL45's balcony consistent with all the other stairways in the complex. Section 1 agrees to consider an

application by the owner that an additional railing be added, if the owner pays for it. I find that it was reasonable for section 1 to decide to replace all the handrails in a similar fashion. In particular, I accept for safety reasons section 1 made the reasonable decision for all affected units to have handrails, given that some did not have any and section 1's undisputed evidence that the Code requires one handrail. I also accept section 1's undisputed submission that aluminum is cheaper to install and maintain. I acknowledge the owner says she did not need a "fancy" aluminum handrail, and what she cares about is having two handrails. However, I conclude the owner has no reasonable objection to an aluminum handrail instead of a wooden one.I do not consider the change from wood to aluminum to be a significant change in the use or appearance of common property.

96) An inference from the owner's argument is that section 1 should have just left her second wooden handrail in place, if not both handrails. However, I have already accepted above that it is reasonable for section 1 to prefer aluminum over wooden handrails. Quite apart from the lack of consistency in appearance with the aluminum handrail, if the second wooden handrail had been left in place, section 1 would have had the obligation to maintain it.

97) Having concluded section 1 was entitled to install aluminum handrails in place of any existing wooden ones, the remaining question is whether the owner is entitled to have a second aluminum handrail at section 1's expense. The answer here is no. Section 1 has an obligation to act reasonably in the best interests of the separate section owners, as does the strata in respect of all owners. This includes fiscal responsibility. I accept only a single handrail is required by the Code, which is undisputed. In turn, I accept that the change from two to one handrail on the balcony stairs is not a significant change that would require a ¾ vote. The handrail appears to only be visible when someone is using the stairs. I find the use of the stairs is not directly disrupted by the removal of one handrail. I say this because I do not accept the owner uses both handrails at the same time. There is no evidence that the unit's marketability is affected as a result of there being only 1 aluminum handrail instead of 2 wooden ones. It

appears all of the handrails for the balcony stairs of section 1 were replaced without it being considered a significant change, although this is only one factor to consider. I find support in this conclusion in the decision of *Frank v. The Owners, Strata Plan LMS 355*, 2016 BCSC 1206, aff'd 2017 BCCA 92, where the court concluded the addition of a roof deck railing did not amount to a significant change within the meaning of section 71 of the SPA.

98) I find that if the owner wishes to have a second handrail installed, she must make the appropriate application and the associated cost must be at her own expense. That said, nothing in this decision prevents the owner from taking steps under the SPA to pursue a

¾ vote approving the installation and cost of a second handrail on the SL45 balcony stairs.

99) The owner's claim that section 1 or the strata pay for the installation of a second handrail for the limited common property stairs to the SL45 balcony is dismissed.

Smoke from SL27 deck

100) The parties agree neither the strata nor section 1 has a bylaw that prohibits smoking. However, bylaws 6 (a) and 6 (c) state that an owner, tenant, occupant or visitor must not use a strata lot or the common property in a way that causes a nuisance or hazard to another person or where it unreasonably interferes with the rights of others to use and enjoy the common property or another strata lot. I also note bylaw 21 (d) states that an owner, tenant or occupant must not cause or produce undue smell in or around any strata lot or common property or do anything that will interfere unreasonably with any other owner, tenant or occupant.

101) The owner submits that the smoke from SL27 below is a nuisance. She says it also affects her family's health and enjoyment of SL45, and in particular the owner is concerned about her young child. The applicant submits that SL27 is owned by a council (or executive) member and for that reason section 1 has

permitted the smoking to continue without fines or specific request to the owner of SL27 that they stop smoking on their deck. Further, the applicant submits that the other smoking "violators" were on strata council also, and thus no investigation occurred and no fines were issued.

102) Section 1's submission is that it has investigated "a number of smoking complaints" and is satisfied that "any smoking" is not in breach of the City of Richmond's bylaw nor can it be a nuisance under bylaw 6. Section 1 does not address the owner's particular evidence or submissions about smoking on SL27's deck and its relative distance from her bedroom windows directly above. Further, as set out in various minutes, section 1 says it has reminded owners of the requirement that smoking must only occur at least 6 metres from a window, door or air intake. Section 1 submits that the applicant's motive in bringing smoking complaints is a bad faith retaliation for section 1's refusal to permit rentals in SL45.

103) I find section 1 has not provided an adequate explanation regarding the owner's specific complaints about smoke from the deck of SL27. It has not denied that smoking takes place on the deck. It seems clear to me from the photos that any smoke from SL27's deck, and particularly from the area of the apparent ashtray seen on the photos, would reasonably enter the owner's bedroom windows directly above. In any event, section 1 accepts that a deck is within 20 feet from the windows of the applicant's unit above. It also accepts that owners should not smoke on their deck within 6 meters or 20 feet from open windows. This acceptance is evidence supporting the conclusion that smoking within 20 feet constitutes a nuisance or a hazard. Yet, section 1 has not explained how smoke from SL27's deck does not violate that requirement, nor has it provided any evidence as to what investigation it has done, if any, with respect to smoking on the SL27 deck.

104) On a balance of probabilities, I find smoke from SL27 and its deck is a nuisance to the owner and that it affects her use and enjoyment of SL45. Based on the evidence before me, I also find that section 1 has failed to adequately respond to

the owner's complaints as required under the bylaws. I do not accept section 1's unsupported submission that the owner has complained about smoke merely out of retaliation for section 1's refusal to permit rentals.

105) In *Chorney v. Strata Plan VIS 770*, 2011 BCSC 1811, a resident smoked occasionally both on her balcony and in her unit. Two neighbouring strata lot owners, one of them a doctor who is allergic to smoke and the other a two-time cancer survivor, complained. The court held that the proper procedure was a letter to the resident under section 135 of the SPA, giving notice of the complaint and an opportunity to respond, and then fines if necessary. I find that is the appropriate solution here.

106) I order section 1 to deliver a letter to the owner of SL27 under section 135 of the SPA, demanding that they stop permitting smoking on their deck anywhere within 20 feet of the SL45 owner's open windows, doors, or air intake. If the SL27 owner fails to comply, then I order section 1 to issue the applicable fines under its bylaws. If that letter and fines are unsuccessful in remedying the problem, the owner may file a further dispute with the tribunal. Thus, I allow the applicant owner's claim regarding smoking from SL27.

Expenses and fees

107) Section 49 of the Act and tribunal rules 14,15, 16, and 125 permit me to make an order that one party pay another party some or all of the fees paid under the Act and any other reasonable expenses I consider directly relate to this proceeding.

108) The applicant was partially successful in this dispute. She was successful in her claim about smoking and she was partially successful in her claim about the replacement of her balcony door and adjacent windows. However, she was not successful with respect to claims about the rental restriction or the second handrail. I consider the success of the parties to be evenly divided. I will not address the strata's expenses, if any, as none are separately claimed and because section 1 has indemnified the strata.

109) Section 1 submits that it should not have to pay any fees or expenses because the owner did not come to the tribunal with "clean hands". It is not entirely clear what is meant by section 1's submission, but I find there is insufficient evidence to support a conclusion the applicant owner filed her dispute in bad faith or for any improper reason.

110) The owner states she incurred following expenses totaling $402.62: $85.58 to obtain a copy of the strata plan, $57.04 to obtain a copy of the strata's bylaws, $10 for "register mail to lawyer", $50 for "lawyer referral fee", and $200 for Ms. Teh's letter and assessment. The owner does not have any invoices or receipts.

111) The owner obtained the strata plan and bylaws at the outset of this dispute. I find the amounts claimed are typical and reasonable expenses. I understand the $10 expense relates to serving the dispute notice on section 1, which is reasonable.

112) Two of the owner's expenses I find are at issue. First, the owner seeks $50 for a "lawyer referral fee". Under the Act and tribunal rule 15, legal fees are generally not recoverable from another party, and I see no reason to deviate from that rule in this dispute, both for the owner and for section 1's claim for legal fees.

113) Second, the applicant seeks $200 for Ms. Teh's "letter and assessment". I find Ms. Teh's letter was reasonable to obtain and was somewhat useful in that it set out the Code issue, even though it unfortunately did not have her seal as required by APEGBC and I ultimately found I could not rely upon it to make the order the owner wanted. Ordinarily, I would require an invoice and a receipt before ordering another party to pay the expense. However, as the owner apparently did not understand she would need to produce an invoice and receipt, and given the relatively low fee of $200 for the engineer's opinion, I am satisfied that $200 is a reasonable expense.

114) I find the owner's reasonable and permissible expenses amount to $352.62, which represents all of her claimed expenses, less the $50 lawyer referral fee. I

order section 1 to pay the owner half that amount, $176.31.

115) The owner paid a total of $225 in fees to the tribunal: $125 was to file the dispute notice and $100 was to request this decision. I order section 1 to pay to the owner half this amount or $112.50. Section 1 did not pay any fees to the tribunal and did not claim any expenses other than legal fees which I do not allow.

116) In summary, I find the respondent section 1 must pay the owner a total of $288.81.

DECISION AND ORDERS

117) I order that:

a) The applicant's claim that she be permitted to rent any part of SL45 is dismissed. The applicant's claim for reversal of a $500 fine against SL45 is dismissed.

b) The applicant's claim for $7,300 in lost rental income is dismissed.

c) The applicant's claim about the SL45 balcony doors and adjacent windows is decided as follows.

i. The strata must use its best efforts to obtain within 30 days of this decision at least two quotes from qualified professionals, detailing the proposed method of replacement in compliance with the Code, with reference to the required minimum door height and maximum sill height measurements.

ii. The quotes must explain whether the replacements can be done in the existing locations, and if not, why not.

iii. Within 14 days of receiving the quotes, the strata must call a general meeting of the owners to consider a ¾ vote resolution in accordance with sections 45 to 50 and section 71 of the SPA to proceed with

replacing the balcony door and windows of the owner's strata lot. The general meeting notice package must contain copies of the quotations received and the resolution must include the quotes as options for the owners to decide which is the most fair and reasonable method of replacement.

iv. Any change in the size or location of the SL45 assemblies requires a ¾ vote resolution to approve it.

v. Section 1 is free to assume responsibility for the strata's obligations on this issue, given section 1's indemnity of the strata and the parties' overall agreement regarding section 1's responsibility.

vi. The strata must include in the general meeting notice package the basis upon which the balcony doors and windows of SL37 were replaced.

vii. If a resolution does not pass, the parties are free to bring the matter before the tribunal in a fresh dispute.

d) The applicant's claim for the installation of a second handrail for her balcony stairs, at section 1's or the strata's expense, is dismissed.

e) The applicant's claim regarding smoke from the deck of SL27 is decided as follows.

a) Within 21 days of the date of this decision, section 1 must deliver a letter to the owner of SL27 under section 135 of the Act, and request that the owner of SL27 stop permitting smoking on their deck within 20 feet of the owner's open windows or doors or air intake.

b) If the owner of SL27 fails to comply, section 1 must assess a fine against SL27 in accordance with its bylaws 6 (a), 6 (c), 21 (d), 75 (a), 76, and 77.

118) I further order the respondent section 1 to pay the applicant for tribunal fees of $112.50 and expenses of $176.31, for a total of $288.81. Section 1 must pay the $288.81 within 21 days of the date of this decision.

119) Under section s.167 of the SPA, an owner who brings a tribunal claim is not required to contribute to the strata's expenses incurred while responding to that claim. Bearing in mind also my authority to make orders under section 48.1 of the Act, I order section 1 and the strata to ensure that no part of its expenses with respect to this claim are allocated to the owner.

120) Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

121) Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently $25,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Tribunal Vice Chair