Civil Resolution Tribunal

Date Issued: January 9, 2018

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Civil Resolution Tribunal

Indexed as: *Mellor v. The Owners, Strata Plan KAS 463*, 2018 BCCRT 1

B E T W E E N :

Karen Mellor

APPLICANT

A N D :

The Owners, Strata Plan KAS 463

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant Karen Mellor (owner) owns strata lot 8 (SL8), also known as unit 8, in the respondent strata corporation, The Owners, Strata Plan K 463 (strata)1. This dispute is primarily about the owner's access to strata records under sections 35 and 36 of the *Strata Property Act* (SPA). The owner also claims various remedies relating to the strata's alleged failure to properly repair common property and its handling of the owner's rental approval. The owner further claims a total of about $20,000 in damages relating to these claims and allegations of intimidation, bullying, and significant unfairness causing her stress and aggravation.

2. The owner is self-represented and the strata is represented by a lawyer, Emily Unrau.

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, and recognize 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 that there are no significant

1 The parties described the strata as "The Owners, Strata Plan KAS 463", but the strata plan provides the strata's legal name with the extension "K 463" not "KAS 463".

issues of credibility or other reasons that might require an oral hearing. An oral hearing was not requested.

6. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make one or more of the following orders:

   a. order a party to do or stop doing something;

   b. order a party to pay money;

   c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issues in this dispute are:

   a. Has the strata failed to properly respond to the owner's requests for documents? If so,

      i. What order should be made against the strata with respect to responding to the owner's requests?

      ii. Should I order the strata to pay the owner $2,250.00 for "distress, aggravation and inconvenience" allegedly caused by the strata's failures to comply with the SPA?

   b. Has the strata failed to reasonably repair and maintain common property? If so,

      i. Should I order the strata to comply with the SPA in terms of completing timely repairs and maintenance to common property?

      ii. Should I order the strata to repair the textured portion of the ceiling around the skylight opening in the applicant's strata lot?

iii. Should I order the strata to pay the owner $2,500.00 for the "inconvenience and nuisance" allegedly caused by the strata's failure to replace the skylight in a timely manner?

iv. Should I order the strata to pay the owner $3,500.00 for the "distress, inconvenience, unnecessary worrying and nuisance" allegedly caused by the strata's refusal to carry out chimney inspections in a timely manner?

c. Did the strata improperly require the owner to hire a property manager as a condition of hardship rental approval? If so,

i. Should I order the strata to comply with the SPA in terms of the rental approval process?

ii. Should I order the strata to pay the owner $3,556.35, being her cost of hiring a property manager, along with 10% interest?

d. Has the strata treated the owner significantly unfairly by threatening to commence a court proceeding to force the owner to sell her strata lot? If so,

i. Should I order the strata to pay the owner $6,500.00 in lost wages, because the owner was allegedly unable to work due to the stress and aggravation caused by the strata's threats?

ii. Should I order the strata to attempt voluntary dispute resolution methods set out in the SPA and the bylaws?

e. Has the strata attempted to bully, intimidate and embarrass the owner by i) disclosing inappropriate personal information about her in strata council meetings and hearings, and ii) reporting the owner to the police on several occasions. If so,

i. Should I order the strata to act respectfully with genuine concern about owners' safety and wellbeing?

ii. Should I order the strata to utilize the voluntary dispute resolution methods under the SPA and the strata's bylaws?

iii. Should I order the strata to pay the owner $3,500.00 for "ongoing attempts to bully, intimidate, cause embarrassment and state personal information" about the owner in strata documents?

f. Has the strata improperly permitted its contractors to enter the owner's strata lot without proper notice? If so, should I order the strata to comply with the relevant provisions of the SPA?

g. Do some of the strata's bylaws contravene the SPA and its regulations, and if so, should I order the strata to engage professionals to review the bylaws and rules to ensure compliance with "prevailing legislation"?

h. Should I order the strata to reimburse the owner $375 in expenses and $225 in tribunal fees?

i. Should I order the owner to reimburse the strata $130.20 in expenses?

BACKGROUND

8. I have only commented upon the evidence and submissions as necessary to give context to my reasons. The applicant bears the burden of proving her claims, on a balance of probabilities.

9. The strata is a 28-unit residential townhouse complex. As with a number of strata property disputes, this dispute reflects the owner's ongoing dissatisfaction with the strata's governance for the past several years and the strata's contrary view that the owner has been unreasonably demanding and harassing.

10. A strata corporation functions through its strata council. Section 31 of the SPA states that in exercising the powers and performing the duties of the strata, each council member must act honestly and in good faith with a view to the best interests of the strata, and, exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances. To the extent the owner alleges the strata has acted in bad faith, I find there is nothing in the evidence before me to

support a conclusion the strata failed to comply with section 31 of the SPA. My reasons on the specific issues arising in this dispute follow below.

11. Given the tribunal's mandate includes recognition of the ongoing relationship between parties, the following comments are warranted at the outset. Strata councils are made up of volunteers, and mistakes will be made. Within reason, some latitude is justified when scrutinizing its conduct (see *Hill v. The Owners, Strata Plan KAS 510*, 2016 BCSC 1753). On the one hand, this strata has the benefit of the assistance of a management company, which ordinarily suggests that less latitude is necessary. On the other hand, as discussed below, more recently the strata has been left without the assistance of its property manager when it comes to retaining and producing documentation, given the owner's behaviour that I find was vexatious.

12. The strata's relevant bylaws, filed at the land title office in May 2012, are as follows:

    a. **Bylaw 2:** An owner must repair and maintain exterior door and window screens. An owner's obligations to repair and maintain their strata lot are otherwise addressed by default under bylaw 8, in that bylaw 8 expressly limits the strata's obligations to repair and maintain a strata lot to particular parts of the building that affect the overall structure.

    b. **Bylaw 3(e)**: The strata will have all chimneys inspected annually, by a licensed professional company, in the interest of fire safety and protection. All owners and residents whose chimneys are found dirty and present a reasonable risk of fire will be required to have their chimney cleaned at the owner's expense, by a professional approved by the strata, within 30 days of inspection.

    c. **Bylaw 3(g)**: The strata may levy a penalty of $25 per month (or part of a month) if an owner fails to pay their portion of the common expenses as determined under section 128 of the SPA, after the assessment's due date. [The reference to section 128 is confusing, as section 128 deals with bylaw

amendment procedures. Section 107 of the SPA addresses payment of strata fees, and the strata's ability under a bylaw to charge a maximum of 10% interest for late fees. Section 108 addresses the payment of a special levy, which if set out in a bylaw also may attract interest up to 10%.]

d. **Bylaw 3(i)**: Rental – The maximum number of strata lots that may be "on a rental basis" at any one time is 3 lots, and owners who play to "fully rent" their strata lot must first obtain council approval in writing. If the maximum of 3 lots is reached, the strata council maintains a wait list. There is nothing in the bylaws about a process for hardship approval.

e. **Bylaw 7**: An owner must allow a person authorized by the strata to enter the "strata lot": a) in an emergency, without notice, and b) at a reasonable time on 48 hours written notice, to inspect, repair or maintain common property or portions of the strata lot that are the strata's responsibility to repair and maintain. The notice must include the date, approximate time, and reason for entry. There is no bylaw that suggests the strata must give an owner notice to enter common property surrounding an owner's strata lot.

f. **Bylaw 8**: The strata must repair and maintain common property and assets, save for certain limited common property. In any event, the strata must repair and maintain, among other things, the building's structure and exterior, chimneys, and skylights on the building exterior or that front common property. Further, the strata must repair and maintain a strata lot, but that duty is restricted to: the structure and exterior of the building, chimneys, stairs, balconies and other things attached to the building exterior, fences and similar enclosures, but not window and door screens.

g. **Bylaw 23**: The strata may fine an owner or tenant a maximum of: $200 for a bylaw contravention, $100 for a rule contravention, and $500 for a rental bylaw contravention. Note, as acknowledged by the strata in its submissions, the bylaw's $100 fine for a rule contravention exceeds the maximum $50

amount set out in section 132 of the SPA and section 7.1 of the SPA regulation.

EVIDENCE & ANALYSIS

13. The owner bought her strata lot in 2005. The strata says the conflict with the owner began when in around 2006 she resigned from the strata council by shouting expletives and insults. By her own admission, the owner has sent the strata hundreds of emails since then, "most of them quite rude as I am extremely frustrated with them". As discussed further below, based on the evidence before me I am unable to conclude the strata has acted inappropriately, in the circumstances.

14. The strata says the owner's abusive behaviour includes name calling, rude gestures, profanity, and physically invading others' personal space, all often while videoing or taking photos despite being asked to stop. The owner does not particularly dispute this evidence. I accept that this is how the owner has behaved, given the evidence that includes the owner's own admissions and the documentary evidence before me. I also accept that the police have reasonably been called by other individual owners, to deal with the owner's behaviour. The strata submits, and I accept, that the owner's behaviour in late February 2016 caused its then property management company Lifestyles Strata Management (Lifestyles) to advise that its strata manager had resigned from the strata's account. Later in 2016, the strata changed property management firms to Associated Property Management (APM), and the difficulties with the owner continued.

15. The strata submits the owner's behaviour has also made it difficult to find owners willing to stand for the strata council, with the council membership having dropped from 7 to 4. The strata submits the owner antagonizes people purposefully and has done so for about 10 years, which it says is unreasonable. Based on the evidence before me, I agree that for at least a couple of years the owner's

behaviour has been unreasonable. I have provided this background to provide context to the discussion and remedies set out below.

Requests for documentation – sections 35 and 36 of the SPA

16. Section 35 of the SPA and it's regulation 4.1 sets out specific records that the strata must prepare and retain and section 36 addresses the strata's obligations in responding to a request for records. Under the SPA, the strata has no obligation to produce records that are not listed in section 35. Further, it appears a fair portion of the owner's voluminous correspondence with the strata was in the nature of questions seeking their response, which the strata had no obligation to provide under the SPA.

17. As noted above, the strata's obligations under the SPA are to produce the enumerated documents set out in section 35, within the 2-week timeframe set out in section 36. I find the strata must only produce records under section 36 that fall within the specified retention period listed in the regulation. That the strata may happen to have boxes still in storage from a decade prior does not necessarily require the strata to go through those boxes to produce records that otherwise fall within the categories listed in section 35. In some cases, it may be unreasonable for a strata to refuse to produce records it has retained. Here, given the volume of ill-defined requests, I cannot conclude the strata's actions were unreasonable.

18. There is no express limit in the SPA as to the number of "section 35" records an owner can request to see or how often the owner can make a request. My recent decision in *Hamilton v. The Owners, Strata Plan NWS 1018*, 2017 BCCRT 141 sets out most of the specific section 35 categories and the relevant retention periods, and also provides further analysis of the types of supporting documentation that the strata is not required to produce.

19. Bylaws cannot override obligations in the SPA. In any event, the strata has no bylaws that address records retention or access to records by owners. Therefore, under the SPA the strata's obligation to make records available for inspection or provide copies of documents is limited to what is set out in section 36 of the SPA, within the retention periods specified in the SPA Regulation.

20. The owner submits that "on numerous occasions over many years" she requested copies of records and the opportunity for inspection. She submits her request were "rarely responded to and often resulted in denial". She submits that at one point it took 11 emails to receive an owners list, which based on a later email appears to have occurred in around November 2016. Apart from these descriptions, the owner provided no specific examples in her submissions and the underlying evidence is similarly lacking.

21. The owner submits that continued requests and lack of response became extremely frustrating and inconvenient "which simply prompted me to send additional emails". The owner notes the strata's bylaws allow for fines, and that she believes the strata should be accountable for not providing documents and therefore fined accordingly. As noted above, she seeks $2,250.00 for the strata's alleged failure to comply with her document requests.

22. The strata says the owner has made hundreds of requests for records, making the same request more than once and using rude and vulgar language when doing so. As noted above, the owner has admitted doing so.

23. As noted, neither party in their submissions identified a particular request or alleged failure to respond, other than the owner's general reference to it taking 11 emails to obtain an owners list. That said, I accept that given the volume of the owner's correspondence to the strata and her requests, the strata did on some occasions fail to respond to them within the 14-day time period set out in section 36 of the SPA. As discussed further below, I find that in the circumstances of the owner's increasingly vexatious behaviour there should be no order against the strata for their failure to strictly comply.

24. In the underlying evidence, June 2015 emails show the strata had sent records to the owner by email and had declined to provide hard copies as requested by the owner. A February 2016 email from Lifestyles to the owner incorrectly states that an owners list is only available to the owner if she is on council or all owners agree to it at an AGM. Section 35 of the SPA makes it clear a list of owners must be prepared and provided on request, within 2 weeks. Council minutes from March 2016 show that the strata council instructed Lifestyles to no longer respond to the owner's emails, and to inform her that all correspondence will be filed until council receives legal advice on all matters concerning her. Around the same time, the owner wrote a letter to Lifestyles that stated no council member was to approach her for any purpose save for an emergency, and, that all strata correspondence must be delivered by hand and placed in her mailbox save for certain emails notifying her documents are available.

25. The strata submits that the tone and sheer volume of the owner's document production and requests indicate she is acting vexatiously and in a manner designed to harass the strata council and the strata's property managers. I agree.

26. In particular, I find it is clear that the owner's requests have exceeded what is reasonable and agree with the strata that they are vexatious in nature. I note the Dispute Notice was issued in October 2016. I will give a few examples of the owner's comments in her requests, some quoted at length to give context in support this conclusion (my bold emphasis added):

> *February 19, 2016: "*The meetings I request will likely be single issue. Appears I can request a hearing on a single issue. Looks like I am going to need another calendar what with all the meetings, the scheduling of document viewing request and then more questions from those".
>
> *February 29, 2016*: The applicant wrote the strata manager that she intended to request a hearing "once a month every month for a long long time!"

March 2, 2016 (one of multiple similar emails this date): "It is unfortunate this council chose to act so cocky and ignorant, with all their [expletive] allegations … FYI up very early this morning. Have compiled a list of 46 questions for the council. No repeats. Have compiled 31 viewing requests and that is only over a one year period of correspondence, budges, quotes, fees, etc. No repeat. It is up to me how I am going to deliver these. Oh yeah, enough issues of bylaw infractions and other issues for a minimum of 11 requests for hearings/council meetings. Got to put more energy into that one, can always cancel if something comes up, ooooooops. What a bitch huh! … And the best part, I can continue so long as I wish … **Sarcastic as I wish. Request mountains of info and not have to pay a single dime**. And as awful as this must sound, get pure enjoyment and so do the people who read my comments when I see how frustrated and pissed they get then they start really screwing up. **I've told people, don't like the way you are treated by your council? Bury them in paper**, continue to state your concerns, give them your opinion, request hearings. … Guess I should make this email legit and not just opinions Let's see Oh yeah, would like to view the minutes from the AGM of 2010 14 days from now …".

March 2, 2016: "**I can do it all over again next month !!!!!! And can send as many requests humanly possible! No limits**!!! That means that after I view the documents in about one and a half weeks I can email the request to view again."

27. As for volume, the strata's Dispute Response stated that the owner has sent up to 50 emails a day and between February and April 2016 almost 600 emails. Between March 3 and 7, 2016, the owner sent Lifestyles 53 requests for information and documents, many of them were made minutes if not seconds apart. On November 6, 2016, the owner sent Lifestyles 48 emails from the owner it had received that morning alone, which caused Lifestyles to advise the strata it would no longer respond to the owner but would simply forward her

correspondence to the council. On that day, the owner had asked for all correspondence since 2012, and given the above I find that it was more likely than not requested simply to barrage the strata and Lifestyles rather than for any good reason. At the same time, Lifestyles advised the strata council that it would have to consider terminating its contract given the owner's unreasonable and excessive requests, which is in fact what ultimately happened. The owner does not dispute the volume and nature of her requests.

28. By November 2016, the strata began trying to restrict the amount of time council had to dedicate to responding to the owner, and in one November 17, 2016 letter stated it would work with the owner to provide an opportunity to inspect requested documents in 2-hour increments at times convenient to counsel. In the circumstances, I find this was not unreasonable.

29. The strata says the owner has at times demanded that she be contacted only by mail or hand-delivery, which hampers the strata's ability to communicate with her. The strata submits that it prefers email, for easier access with the council. The owner's reply was simply that as the records are kept in a neighbouring strata lot, dropping off documents in her mailbox saves postage and delivery time. I find that in providing copies of documents to the owner, the strata may use email for the owner so long as the strata complies with section 61 of the SPA, but it cannot charge the owner to do so.

30. The strata also submits that the owner often makes non-specific blanket requests to review the strata's documents, requiring the strata council members to spend hours supervising the owner while she goes through the documents. The owner should be specific in her document requests and as noted above the strata is only required to provide the section 35 documents that fall within the applicable retention period.

31. The strata further submits that the owner's harassment with the current property manager has caused the owner to be barred by the property manager from entering their offices. The current property manager indicated it would terminate its

contract with the strata if the strata did not take possession of its records, given the owner's conduct. The strata has taken possession of the records, to avoid losing the property management contract.

32. The strata says it has been in the process of trying to scan its records into electronic records for ease of access, while organizing them. The strata submits that this is taking time, given the amount of communication it receives and other work in the strata. The strata says it started with 7 council members and after the April 2016 AGM are down to 4. The strata is hopeful the owner will become more concise with her records requests and will permit them to send her responses by email. The strata submits that despite the challenges of accommodating the owner's demands, the strata recognizes the importance of sections 35 and 36 of the SPA and has sought to reach an acceptable compromise with the owner that would allow her to make reasonable requests to view and obtain copies of documents without imposing too onerous a burden on the strata. The strata submits that to the extent the strata has not accommodated each and every one of the owner's requests, it is beyond the limited resources of the volunteer council to do so.

33. The strata says its new property manager company received its records, which the strata admits were disorganized but labelled correctly with the content. For 6 hours under supervision by the strata manager, the owner examined the records she was interested in, namely those dealing with her.

34. The strata says that it has never denied the owner access to records it is required to produce under sections 35 and 36, and I accept this evidence. It says many of the owner's requests were to view records that would not be retained or may not even exist. Because of the volume of the owner's requests, the strata's lawyer sent her a letter explaining that she was not physically allowed to view documents, as the workload to deal with her was overwhelming and because it was clear the owner's requests were not bona fide and were vexatious and amounted to harassment. The lawyer told the owner at the time that council would respond to reasonable requests, provided only one email per request was sent by her. In the

unusual and extreme circumstances here, I find the strata's approach was not unreasonable.

35. The strata denies the owner's allegation that its property manager told the owner she needed a subpoena to get documents. Rather, the property manager told the owner that if the court or the tribunal requested documents, the strata would act to the best of its ability to provide them. The strata denies suggesting that it would require the court or the tribunal to officially provide a subpoena. I accept the strata's evidence, as it is consistent with the strata's approach in attempting to provide access to the owner. There is no indication in the written documentation before me that the strata demanded a subpoena.

36. It is up to the legislature to amend the SPA to expressly limit an owner's ability to request documents. That said, I find that parties should act reasonably and in good faith. If a party fails to act reasonably in the circumstances, it is possible they may not obtain their desired remedy from the tribunal process. I say this because the spirit of the SPA is to recognize the democratic nature of strata living, with the result that the strata act in the best interests of all owners. Vexatious requests for requests unduly burden the strata, to the detriment of all the other owners. I therefore find that it is implicit in section 36 of the SPA that requests for records must be reasonable. That said, the strata should be extremely cautious in making any determination that an owner is being unreasonable, because if they are incorrect they could be found to be offside section 36 of the SPA and an order could be made against them accordingly.

37. In summary, while it likely will be rare to find an owner's requests for documentation are unreasonable and vexatious, this is one such case. As set out in the examples above, the owner's vexatious requests that were baseless and intended to simply harass and "bury council in paper" do not deserve to be supported in the form of a remedy against the strata for its failure to strictly comply with its SPA obligation to reply to documentation requests. To do so would not be in keeping with the spirit of the SPA or the best interests of all owners in the strata.

38. I dismiss the applicant's claim for an order that the strata be ordered to comply with the SPA provisions and requests for documentation by owners. I am satisfied the strata is aware of its obligations under the SPA and has reasonably complied with respect to this owner's requests. Given this conclusion, I dismiss the owner's claim for an order that the strata pay her $2,250 for alleged distress, aggravation and inconvenience.

39. Nothing in this decision prevents the owner from making future requests for documentation or other requests of the strata, under the SPA. However, she should act reasonably in doing so, and to those requests the strata should respond reasonably as required under the SPA. Whether the owner's failure to act reasonably is cause for an order that she be forced to sell her strata lot is a matter within the jurisdiction of the BC Supreme Court.

Strata's repair and maintenance of common property

40. The owner's complaints are about a) a leaking skylight, and consequential damage to her kitchen ceiling, and b) chimney inspections.

41. I will address the skylight first. The strata agrees that it is responsible to repair skylights. In 2010, it retained a contractor to assess the owner's skylight after she reported it leaking. The contractor advised that the best fix would be replacement, but that a less expensive "quick fix" to "stop the small amount of water coming in" would be to re-caulk it to make it water tight. Due to financial concerns, the strata opted re-caulk it. In 2015, the strata once again determined that re-caulking the skylight was appropriate.

42. In January 2017, the owner complained again about the leaking skylight, and a new skylight was installed before the April 17, 2017 council meeting.

43. The strata is correct in its submission that the standard is not perfection or even the "best" approach. Rather, the strata must act reasonably and take some action to complete necessary repairs. A "good" solution, if not the best, may be reasonable (see *Chapel v. The Owners, SP VIS 1517*, 2017 BCCRT 5, *The*

Owners of Strata Plan NWS 254 v. Hall, 2016 BCSC 2363, and *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784).

44. I also agree with the strata that the strata's handling of other skylight repairs is not necessarily determinative. There is no evidence before me about the condition of other skylights, and therefore I place no weight on the owner's submission that she was treated unfairly differently. Based on the evidence before me, I accept the strata reasonably relied upon the advice of its contractors and also reasonably opted to choose the less ideal but still valid option of re-caulking. I am not prepared to accept the owner's submission about the contractor's showing her "3 layers of glue on the crack" on the old skylight removed in April 2017 as being evidence that the strata acted negligently at the time it chose re-caulking.

45. I also accept that the interior ceiling of the owner's strata lot falls within her responsibility to repair and maintain, under the strata's bylaws. The strata is not an insurer. The exception would be if the strata negligently failed to repair and maintain the common property, the skylight in this case.

46. The owner has not established the strata acted negligently in its handling of the skylight repairs. Again, that the strata chose the less expensive option of re-caulking, which its contractor described as a "quick fix" to stop the small amount of water coming in, was not unreasonable. Even if that contractor turned out to be wrong, the evidence before me does not establish that the strata was negligent for relying upon the contractor's advice that caulking was an option, albeit not the best one. The owner did not complain about her skylight after the 2015 fix until January 2017, which suggests that the re-caulking was a reasonable solution at the time, as for over a year it was effective. Moreover, I agree with the strata that the owner has failed to establish that a leak from her skylight caused damage to her kitchen ceiling.

47. I turn to the chimney inspection issue. The strata concedes that through oversight it failed to conduct annual chimney inspections for a number of years. As noted above, while the strata's bylaws require the strata to conduct the inspections, the individual owner is responsible for cleaning the chimney.

48. Based on the evidence before me, the owner's chimney was inspected in 2008 and in October 2016, following the owner bringing the inspection issue to the strata's attention in May 2016. I accept the strata's undisputed evidence that at no time was there any issue with respect to the owner's chimney, as only one other strata lot was identified as being in need of cleaning. While the owner submits she emailed the strata many times over the years about the chimney inspections, she did not introduce any of those emails into evidence and did not mention the strata's submission in that respect in her reply. I find the owner first raised the chimney inspection issue in April 2016, and the strata's October 2016 inspection was not unreasonable given it was done before the chimney's use in winter. I cannot conclude the owner sustained any harm as a result of the strata's oversight with respect to chimney inspections.

49. Finally, in her submissions the owner makes a passing reference to the strata's alleged failures to: deal with noxious weeds, repair a fence in a timely manner, to deal with a wasp issue, and deal with birds and small animals accessing the building through a mesh vent. However, I note the owner has elsewhere stated the strata dealt with minor maintenance within 2 to 3 weeks, a timeframe I find to be reasonable. The owner has not provided any evidence in support of these allegations, or any relevant details. Given the above, I dismiss this particular claim.

50. In summary, I dismiss the owner's claim about her skylight and related ceiling repair. I accept the strata failed to do chimney inspections for a number of years due to oversight, but as of 2016 has resumed doing them in accordance with the bylaws. Given the failure was due to simple oversight, I cannot conclude it is necessary to order the strata to comply with its bylaws as I find the strata is aware of this requirement. I dismiss the owner's claim for such an order. I also dismiss

the owner's related claim for a total of $6,000 in damages, as she has not proven any harm resulted from the strata's failure to inspect the chimneys between 2009 and 2016. I also dismiss the owner's claim that the strata must repair her ceiling around her skylight. I have also dismissed the owner's claims with respect to the minor maintenance concerns.

Hardship rental approval – property manager requirement

51. The owner submits the strata "forced" her to hire a property manager as a condition of hardship rental approval. I agree with the strata that it did not do so, for reasons set out below.

52. As noted above, the bylaws address rentals, but not hardship rentals. I find the underlying documentation, taken as a whole, is consistent with the strata's submission that it merely reduced to writing in the agreement the owner's own stated preference for a property manager. Namely, in 2011 the strata's property manager wrote the owner after she applied for a hardship rental and among other things asked whether she intended to hire a property manager or have a local emergency contact person. The owner replied the next day that she would be hiring a property manager. The October 21, 2011 hardship rental request agreement lists as the 3rd term "Owner to arrange for the services of a Property Management company". I accept that in asking the owner about her intentions, the strata simply wanted to know who the contact person would be for the owner's strata lot. The evidence before me does not support the owner's allegation that it compelled the owner to hire a property manager. It simply reduced to writing the owner's stated intention that she planned to hire one.

53. Certainly, different wording in the agreement may have been better to make it clear the strata did not require the owner to use a property manager. However, I find it disingenuous of the owner to submit the strata forced her to agree to a property manager, given the correspondence summarized above. There is no indication in the evidence before me that the owner ever questioned the inclusion of the 3rd term in the agreement, which she signed after the email exchange about

its contents. There is no evidence before me to suggest the owner did not want to hire a property manager or that the strata ever purported to require her to do so.

54. Given my conclusions above, I dismiss the owner's claim that the strata forced her to hire a property manager. I dismiss the owner's claim for an order that the strata comply with the SPA in terms of hardship rental applications, which I consider unnecessary. Accordingly, I also dismiss the owner's claim for $3,556.35 which she submits was her cost for hiring a property manager. Similarly, I dismiss the owner's claim for 10% interest on her property manager expenses.

Significantly unfair treatment – court proceeding threats

55. The owner submits the strata treated her significantly unfairly by threatening to commence injunctive court proceedings to force the owner to sell her strata lot. She seeks $6,500 in damages for lost wages for being unable to work, in addition to an order that the strata attempt voluntary dispute resolution methods set out in the SPA and in the bylaws.

56. The strata denies it has acted unfairly towards the owner, and I agree. Given the owner's behaviour documented above regarding document requests, in addition to other offensive behaviour described by the strata in its submissions (videotaping people, shouting at them, placing weeds on council members' doorsteps, entering their front entranceways either for no purpose or to take photos, verbal attacks), it was not unreasonable for the strata to in April 2016 put forth a resolution to all owners to raise funds for legal fees to take action against the owner. Whether the vote passed is not relevant, and neither is the fact that the strata did not attempt to assess fines against the owner under the existing bylaws.

57. An analysis of what is "significantly unfair" is set out in several earlier tribunal decisions. I find it is clear here that simply because the owner is unhappy that the strata took the steps it did, it was not "significantly unfair" of the strata to put the raising of legal funds to the owners for a vote. I find it is clear on the evidence before me that a number of owners and the strata council were troubled by the owner's ongoing behaviour and the strata was properly seeking legal advice about

how to best address it, in the best interests of all owners. The strata's lawyer's correspondence to the owner was direct and firm, but civil in tone. It was not inappropriate in the circumstances.

58. I dismiss the owner's claims that she was treated in a significantly unfair manner. Given the tribunal's mandate that recognizes ongoing relationships, I also note the strata is correct that voluntary dispute resolution is, by definition, not mandatory. I would not order these parties to use voluntary dispute resolution in future, regardless of my findings.

Bullying and intimidation claims

59. The owner says the strata attempted to "bully, intimidate, and embarrass" her by: a) disclosing inappropriate personal information about her in strata council meetings and hearings, and b) reporting the owner to the police on several occasions. The owner seeks an order that the strata deal with owners respectfully and not attempt to embarrass them. The owner seeks an order that the strata pay her $3,500 in damages for the alleged ongoing bullying and harassment.

60. The owner also seeks an order that the strata use voluntary dispute resolution, which as noted above I decline to order. I say this here because I do not think it will be effective, given the parties' history. By definition, it is a voluntary process and I will not compel the parties to use it.

61. I will first address the allegations of improper disclosure of personal information in strata council meetings and hearings, namely her bedtime. The October 1, 2015 council meeting minutes reflect the owner's decision to read several emails into the meeting record, and one of her emails included her bedtime. Those emails were set out verbatim in the minutes. The strata is required to keep minutes of council meetings. While the strata was not required to copy verbatim the owner's emails, in the circumstances I cannot conclude it was inappropriate to do so. I agree with the strata's submission that in these circumstances the strata could not have reasonably been expected to know the owner wanted to keep her bedtime confidential. I dismiss this claim.

62. I turn then to the calls to the police. The owner submits that 3 separate calls were made to the RCMP with allegations that the owner says were ultimately not pursued by the police. In particular, the owner says the police simply told her to drive more slowly, in response to the call that the owner tried to run someone down in the complex. The owner also says she is entitled to take pictures on the common property. The owner in her submissions also objects to the strata's lawyer sending her a letter "threatening action for alleged name calling", given the lawyer allegedly failed to respond to the owner's request for specific dates and times. The owner objects to the strata's lawyer's letter to the owner "making its way into the minutes of strata". The owner alleges that the strata council members are simply trying to harass her by calling the police needlessly.

63. On the above issue, the strata submits that the calls to the police and the lawyer's letter to the owner are outside the control of the strata, as they were made by an individual owner and not on behalf of the strata. The owner has not provided sufficient evidence to support her allegation the strata is responsible for these calls, or even that they were made inappropriately. I say the same for the lawyer's letter. As the strata was provided a copy of the lawyer's letter to the owner, I find that it was not inappropriate for the strata to note it in rather general terms in the council meeting minutes. I dismiss this particular claim.

64. The owner also alleges the strata improperly referenced her prescribed medication in a letter the strata sent to her following a hearing, during which the owner described that medication. The strata submits that the letter was addressed only to the owner and not distributed to other owners, and its contents was simply to summarize what happened at the hearing, in accordance with section 34.1 of the SPA. The owner never told the strata she wanted the information kept confidential, although the strata confirms it has not been shared with anyone. I accept the strata's submissions, and cannot conclude the strata acted inappropriately. I find the strata took reasonable steps to minimize any potential embarrassment. It was the owner's own decision to offer her emails into the record of a council meeting and the strata's letter following the hearing was not made public.

65. I dismiss the owner's claims under this heading. The owner has not established the strata attempted to bully, intimidate or embarrass her and she is not entitled to the damages or orders claimed.

Strata's access to the owner's strata lot

66. The owner submits the strata's contractors entered her strata lot without proper notice. She seeks an order that the strata comply with the notice provisions for access to a strata lot, as set out in the SPA and bylaws.

67. In particular, the owner submits that "on numerous occasions", workers and contractors would appear unannounced "in the rear of my strata lot" for non-emergency purposes, with no advance notice. The owner submits it was alarming and inconvenient, if she had guests sitting in her patio area. She says she emailed the strata many times about this, with no response. She also wrote a letter to all owners about the issue. The owner objects to a council member's response that it would be impossible to get any work done if all workers had to advise each owner what time the gardeners and other workers were attending.

68. The strata submits the owner's yard adjacent to her strata lot is common property, which the owner concedes. The strata submits there is no notice requirement for the strata to work on common property, and I agree. Contrary to the owner's submission, there is no requirement for the strata to give notice of entry onto common property, in bylaw 7 or otherwise. Further, there is no evidence the strata has authorized contractors to access the owner's strata lot without proper notice.

69. I dismiss the claims under this heading.

Whether the bylaws contravene the SPA and its regulations

70. The owner submits that "certain provisions" of the bylaws contravene the SPA and its regulations. In particular, the owner notes that bylaw 23 provides for a $100 fine for a rule contravention, and yet as noted above the maximum permitted under the regulation is $50. The owner asks for an order that the strata engage professionals

to review the bylaws and rules in their entirety to ensure compliance with the SPA and regulation.

71. The strata concedes the bylaw exceeds the maximum and says it intends to propose a resolution to correct it at its next annual general meeting (AGM). The strata says it has not assessed any owner or resident with a fine that exceeds the maximum allowable under the SPA or regulation and does not intend to do so.

72. I find the strata's bylaw 23(1)(b) must be read down so as to comply with the SPA and regulation, namely a maximum of $50 for a rule contravention. However, in the circumstances, and particularly since the owner has not been fined any amount in excess of the maximum permitted, I decline to make the order requested as I consider it unnecessary to do so. I agree with the strata that the bylaw 23(1)(b) concern is isolated. I have considered whether it is necessary to order the strata to take steps to amend bylaw 23(1)(b) at the next AGM. In the circumstances I accept the strata's evidence that it will do so voluntarily and therefore an order is not necessary. Further, itt appears the strata has had the benefit of legal advice in this dispute, and I consider it appropriate to leave it to the strata to decide whether it would benefit from further legal advice in the form of a bylaw review.

73. I dismiss the owner's claim for an order that the strata engage professionals to review its bylaws.

Applicant's expenses and tribunal fees

74. Under section 49 of the Act, and tribunal rules 129 and 132, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. I see no reason in this case to deviate from the general rule.

75. The applicant owner was not successful in this dispute. I dismiss the applicant owner's claims for reimbursement of her tribunal fees and $375 in expenses. Even if the owner had been successful or partially successful, I would not have awarded

the $375 claimed as the owner provided no explanation of the amount claimed and no receipts, saying, “Will not have receipts until invoiced by other parties”.

Respondent’s claimed expenses

76. The strata claims $130.20 for photocopying charges (434 copies at $.30 per page), which it incurred in the process of defending this dispute. This amount is reasonable. I see no reason to deviate from the tribunal’s general practice in awarding the successful party their reasonable expenses. The strata did not pay any tribunal fees. I order the applicant owner to reimburse the strata $130.20 within 30 days of this decision.

DECISION AND ORDERS

77. I order that the applicant owner’s claims are dismissed.

78. Within 30 days of the date of this decision, I order the applicant to reimburse the strata $130.20 for its reasonable photocopying costs. Otherwise, as provided by section 167 of the SPA, I order the strata to ensure that no part of the strata’s expenses of defending the dispute are allocated to the owner.

79. 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.

80. 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 $35,000). 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, Vice Chair