



Civil Resolution Tribunal

Date Issued: January 17, 2019

File: ST-2018-004607

Type: Strata

Civil Resolution Tribunal

Indexed as: *Karlovits et al v. The Owners, Strata Plan KAS 1634*, 2019 BCCRT 71

B E T W E E N :

Leslie Karlovits and Lili Song

APPLICANTS

A N D :

The Owners, Strata Plan KAS 1634

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicants, Leslie Karlovits and Lili Song (owners), co-own a strata lot in the respondent strata corporation, The Owners, Strata Plan KAS 1634 (strata).

2. This dispute involves the owners' allegations that the strata has failed to comply with the *Strata Property Act* (SPA) and bylaws concerning common property repairs.
3. The owners seek an order that the strata replace 4 faulty windows of their strata lot.
4. The owner is represented by Leslie Karlovits. The strata is represented by the strata council president.
5. For the reasons that follow, I find the strata must repair 1 previously repaired window of the owners' strata lot.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 121 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.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
8. 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.

9. Under section 123 of the Act and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

10. The sole issue in this dispute is whether I should order the strata to replace the owners' 4 windows.

BACKGROUND, EVIDENCE AND ANALYSIS

11. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
12. In a civil proceeding such as this, the applicant owners must prove their claim on a balance of probabilities.
13. The strata was created in 1995 and consists of 19 residential strata lots located in a single 4-storey building in Hope, B.C.
14. The strata is self-managed.
15. The strata's bylaws are the Schedule of Standard Bylaws under the SPA. Bylaw 8 says, in part, that the strata must repair and maintain doors and windows of a strata lot which are located on the exterior of a building or that front on common property.
16. Section 72 of the SPA requires the strata to repair and maintain common property.

Should I order the strata to replace the owners' 4 windows?

17. The owners' say the strata has acted contrary to section 72 of the SPA and bylaw 8 as it has not corrected a cracked window repair and replaced 3 windows that have failed seals. They say that, although the strata replaced the broken window, it has not addressed the owners' concern that the window replacement was poorly done

resulting in the window being “loose” in its frame causing it to “rattle” when it is windy. The owners say this is a security issue.

18. As for the windows with failed seals, the owners say the strata has promised to replace them and has not done so.
19. The strata does not dispute it is responsible to repair and maintain windows generally. The strata says it took immediate steps to replace the cracked window in February 2018. It denies that it has not taken steps to address windows with failed seals as it is in the process of determining the extent of necessary repairs throughout the strata.

Repair of the cracked window

20. The owners reported the cracked window issue to the strata on February 23, 2018 declaring the repair an emergency. On February 26, 2018, the owners sent a follow up email to the strata and on the same day, the strata arranged for a contractor to measure the window for replacement. The window was replaced on approximately March 13, 2018.
21. Two months later, on May 17, 2018, the owners emailed the strata advising of the poorly installed window as described above. The strata questions why it took 2 months for the owner to report the issue but has not taken steps to address the quality of the window repair.
22. In its submissions, the strata does not directly address the issue of the window repair, but rather focuses on the replacement of the failed seals, which I discuss below, as well as the apparent difficulty it has dealing with the owners generally on strata matters.
23. While it may be true that the owners are difficult to deal with, the strata has a duty to repair the window in question. I am not persuaded the current required repairs to address the owners’ concerns are an emergency, but I appreciate that the present

condition of the repaired window, if that is still the case, is of some concern to the owners that requires the strata's action.

24. As a result, if the strata has not yet addressed the owners' concerns about the repaired window to ensure it is properly adhered to the window frame, I order it to do so within 60 days of the date of this decision.

Repair of the windows with failed seals

25. In their February 23, 2018 email to the strata identifying the cracked window, the owners also identified 3 windows with failed seals and requested they be repaired by the strata as soon as possible.
26. The parties agree that the strata issued a notice to all strata owners in August 2017 asking that any windows with failed seals be identified in order that strata could make arrangements for any necessary repairs. It is undisputed that there were no failed-sealed windows brought to the strata's attention until the owners' email of February 23, 2018.
27. The owners say that the August 2017 notice, along with the strata's email on February 26, 2013, contained promises to replace their windows with failed seals. While I agree the notice and email could be interpreted to contain promises to repair the failed-sealed windows, there was no time frame given for such repairs.
28. In fact, the strata's February 26, 2018 email to the owners stated that it would circulate another notice asking owners to identify failed window seals and then proceed with repairs based on the responses it receives.
29. In its submissions, the strata says it has now circulated a notice asking owners to identify windows with failed seals and that once it is aware of the costs, it will make an informed decision to repair or replace the affected windows. I accept that the strata will follow its described process and I find this to be a reasonable process consistent with the strata's duties under the SPA and its bylaws.

30. The test for whether strata corporation has satisfied its statutory duties is one of “reasonableness” and not perfection.
31. As noted in *Weir v. Strata Plan NW 17*, 2010 BCSC 784, a strata corporation may have several reasonable options available to undertake necessary repairs. The fact that one of the options may be a more cautious approach or even turn out in hindsight to be the less wise or preferable course of action will not give the court a basis for overturning a strata council’s decision regarding the repair option selected, if the option selected is a reasonable one.
32. The *Weir* decision also confirmed that, in assessing what is “reasonable”, a strata corporation may consider the available financial resources of the owners to undertake the necessary work.
33. There is no evidence to suggest that repair or replacement of windows with failed seals is urgent. I agree with the strata that the repair of windows with failed seals are “cosmetic” and accept that repair of the owners’ windows were not considered to be a priority in February 2018 when first brought to the strata’s attention.
34. For these reasons, I decline to order the strata to repair the owners’ windows that have failed seals.

TRIBUNAL FEES AND EXPENSES

35. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Here there was mixed success and in the circumstances of this dispute, I decline to order reimbursement of tribunal fees or dispute-related expenses claimed by the owners.
36. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner.

ORDER

37. I order that the strata, within 60 days of the date of this decision, must repair the poorly repaired window of the owners' strata lot that was previously repaired by the strata, if it has not done so already.
38. 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.
39. 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.

J. Garth Cambrey, Vice Chair