



# Civil Resolution Tribunal

Date Issued: July 20, 2020

File: ST-2020-000610

Type: Strata

Civil Resolution Tribunal

Indexed as: *Buchanan v. The Owners, Strata Plan KAS 1309*, 2020 BCCRT 802

**B E T W E E N :**

EDITH BUCHANAN

**APPLICANT**

**A N D :**

The Owners, Strata Plan KAS 1309

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Kathleen Mell

## INTRODUCTION

1. This dispute is about a depreciation report. The applicant, Edith Buchanan, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan KAS 1309 (strata). Ms. Buchanan says that many parts of the building will need future repairs. Ms. Buchanan says that the strata does not have a proper plan in place for these

repairs. Ms. Buchanan requests an order that the strata immediately obtain a depreciation report. Ms. Buchanan represents herself.

2. The strata says that it has properly been gathering quotes for projects and carrying out repairs to the building. It says that the owners have voted by a large majority to waive the depreciation report and that it has listened to its owners. The strata is represented by a strata council member.

## **JURISDICTION AND PROCEDURE**

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the tribunal's process has ended.
4. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, 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.
5. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
6. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

7. I note that in her submissions Ms. Buchanan requested document disclosure under *Strata Property Act* (SPA) section 36. This was not brought up in the Dispute Notice and I have no evidence that Ms. Buchanan requested documents from the strata and it denied their disclosure. Therefore, I will not address this issue in my decision.

## **ISSUE**

8. Should I order the strata to obtain a depreciation report?

## **EVIDENCE AND ANALYSIS**

9. In a civil dispute such as this, the applicant, Ms. Buchanan, must prove her claim on a balance of probabilities. I have reviewed all of the evidence provided but refer only to evidence I find relevant to provide context to my decision.
10. In January 2019, Ms. Buchanan sent the strata a letter itemizing the projects she said needed to be completed within the next 10 years. These included cooling units, window and patio doors, the elevator, siding and insulation. She estimated that this would cost \$549,385. Ms. Buchanan did not suggest that anything had to be done immediately or that the strata was not properly repairing and maintaining the property. Her concern was that she wanted the strata to plan ahead and she was fearful that an unexpected event would occur. She asked the strata to be proactive and order a depreciation report.
11. According to the January 10, 2019 strata council meeting minutes, the depreciation report was discussed, and the strata council president suggested having speakers come in to talk about depreciation reports.
12. The strata sent a letter to the owners in April 2019 updating them on the condition of the elevator. The strata noted that the elevator door operator was not going to be manufactured anymore and questioned whether they should buy it now to prolong the life of the elevator. The strata noted that it needed a plan for the replacement of the entire elevator system and the strata needed to decide how to fund this expense as well as future costs.

13. At an April 16, 2019 Special General Meeting, 24 were in favour and 1 opposed to the motion to abandon the resolution for a using a special levy as well as the Contingency Reserve Fund to purchase the elevator door operator. The resolution to purchase a lowering system which would bring the elevator to the ground floor in the event of an emergency was passed with 24 in favour and 1 opposed.
14. A vote was taken at the November 28, 2019 Annual General Meeting on a resolution to waive the requirement of a depreciation report. 22 votes were in favour and 1 opposed. The strata also provided evidence that the owners voted at general meetings in 2015, 2016, 2017 and 2018 to waive the requirement of obtaining a depreciation report. The vote was always either unanimous or with 1 vote opposed or abstaining.
15. The strata says that it is dealing with the elevator issue and it says that it is proposing options for the elevator rebuild. It also submits that no other owners expressed concerns about replacing glass, doors, or siding. The strata notes that the carpets and roof were replaced. The strata also says it is still open to have a professional come to the council meeting to talk about the benefit of a depreciation report.
16. Essentially, the strata says that it has repaired and maintained the building. It also says that it put to a proper vote whether to obtain a depreciation report, but the owners waived this requirement.
17. Under the *Strata Property Act* (SPA) section 94 and *Strata Property Regulation* 6.2(7), the strata may waive the requirement to obtain a depreciation report for 18 months by a 3/4 vote at an annual or special general meeting. Under the SPA, the strata will be required to obtain a depreciation report unless the owners continue to vote for a waiver at least every 18 months. Further, if persons holding at least 20% of the strata's votes wish to obtain a depreciation report sooner, they may call a special general meeting and propose a resolution under sections 43 and 46 of the SPA. There is no evidence that Ms. Buchanan ever showed that owners holding 20% of the strata's votes wished to obtain a depreciation report at any point.

18. The undisputed evidence is that the strata has, at successive annual general meetings, waived the SPA requirement for a depreciation report. The owner has not alleged that any of these waiver votes were invalid, or that the strata contravened its bylaws or the SPA in waiving a depreciation report, so I have not considered that matter.
19. The owner says a depreciation report is a good idea in order to properly plan for the strata's maintenance. The strata says it has been proactive in planning for major maintenance projects, and as a result the strata owners have continued voting in successive years to defer obtaining a depreciation report.
20. Based on the evidence, I find that the strata has followed proper procedure under the SPA and therefore the waiver of the requirement to obtain a depreciation report is valid. I dismiss Ms. Buchanan's claim that the strata be ordered to obtain a depreciation report.

## **CRT FEES AND EXPENSES**

21. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Because Ms. Buchanan was unsuccessful in her claims, she is not entitled to reimbursement of the CRT fees she paid. There was no claim for expenses, so I order none.
22. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against Ms. Buchanan.

## **ORDER**

23. I dismiss Ms. Buchanan's claims and this dispute.

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Kathleen Mell, Tribunal Member