



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Mahasen v. The Owners, Strata Plan KAS 3485*, 2020 BCCRT 1230

B E T W E E N :

SHALINA MAHASSEN

APPLICANT

A N D :

The Owners, Strata Plan KAS 3485

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about maintenance of common property. The applicant, Shalina Mahasen, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan KAS 3485 (strata). Ms. Mahasen says the strata is responsible for maintaining the exterior windows, soffits, and crossbeam that have been damaged by birds. She seeks an order that the strata set aside \$15,000 to install effective bird deterrents,

remove bird droppings and nests, and paint a front external crossbeam near the front window of her strata lot.

2. The strata says although it is willing to clean the exterior and install bird deterrents, the affected area of the building is inaccessible since the building is on the edge of an embankment. The strata says that it will take time to determine how to complete the work requested by Ms. Mahasen.
3. Ms. Mahasen is self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

4. 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 CRT's process has ended.
5. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
6. 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.
7. 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.

Is Ms. Mahasen's issue moot?

8. As discussed below, at the May 25, 2020 annual general meeting (2020 AGM) the strata owners approved a resolution to use up to \$15,000 from the contingency reserve fund (CRF) to repair the gutters, repair bird nest damage, and install bird deterrents. An issue is considered moot if after a proceeding is initiated, subsequent events occur that affect the relationship of the parties so that no live controversy exists which affects the rights of the parties (see *Binnnersley v. BCSPCA*, 2016 BCCA 259 citing *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R 342 at paragraph 22).
9. I asked the parties for submissions on whether the resolution affected Ms. Mahasen's complaint. Ms. Mahasen denies that the issue is moot. She says that while the strata cleaned the gutters and repaired woodpecker holes in the exterior of the buildings, it did not address the bird nests and droppings or install bird deterrents. This is confirmed in the July 21, 2020 strata council meeting minutes.
10. The strata says the \$15,000 was inadequate to address all of the bird related issues and that it spent \$11,697.30 for "gutters & repairs". It did not explain how (or if) it spent the remaining \$3,302.70. The strata says access to the affected area is very difficult and would require expensive scaffolding. It also says there is no guarantee that bird deterrent strategies will be effective long term. The strata agrees that the bird issues have not yet been fully addressed or remediated. It says that the solution lies in further exploring options and available service providers, and then making further recommendations to the strata lot owners regarding CRF-funded projects at the next AGM or special general meeting.
11. Given the strata's response and that the CRF was not used to address the bird issue, I find Ms. Mahasen's complaints are not moot.

ISSUE

12. The issue in this dispute is whether the strata is required to remove bird nests, install bird deterrents, and clean and paint a crossbeam.

EVIDENCE AND ANALYSIS

13. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision. In this decision, witnesses and others are identified by their initials, which are known to the parties.

Background

14. The strata was created in 2008. It consists of 142 strata lots in 4 separate buildings. Buildings 1, 2, and 3 are each 3 storeys. Building 4 has 4 storeys. Ms. Mahasen has owned and lived in strata lot 140 (SL 140) since 2018. SL 140 is located on the 4th floor of building 4, which backs onto a steep embankment.
15. The following facts are undisputed by the parties:
- a. Birds have nested in crossbeam extensions outside Ms. Mahasen's living room window, master bedroom window, and in the soffits above her balcony. This has resulted in an accumulation of bird droppings on the windows, crossbeam, soffits, and siding.
 - b. The previous owners of Ms. Mahasen's strata lot informed the strata about the bird problem in April 2017. Despite numerous requests, the problem was still not resolved when they sold the strata lot to Ms. Mahasen.
 - c. Ms. Mahasen contacted the strata numerous times since May 2018 about the bird problem but aside from cleaning the windows, did not take any steps to remove the nests, install bird deterrents, or clean and paint the crossbeam (bird control and clean up).
 - d. The strata had effectively resolved bird problems in other buildings by installing decoys and bird spikes.

- e. At the 2020 AGM, the strata lot owners approved the use of \$15,000 from the CRF to reseal the gutters, repair damage, and install bird deterrents. The strata provided notes to the 2020 AGM that stated that the funds were sought to rent a lift to clean and repair leaking gutters, repair bird nesting damage, and install bird deterrents.
 - f. After the 2020 AGM, the strata rented scaffolding to clean and repair the gutters but did not address the bird issue.
16. The following quotes were obtained by the parties from different contractors to address the bird issue:
- a. February 1, 2018 quote from ECWC, window cleaners, for \$1,050 to install bird spikes and clean SL 140's windows and crossbeams. The quote included the lift cost.
 - b. March 10, 2019 quote from VEWC, window cleaners, for \$2,940 to power wash the affected areas and install bird spikes using a lift.
 - c. March 6, 2020 quote from VEWC for \$10,716 to use a lift to clean inaccessible windows, \$3,800 to clean gutters, \$5,400 to reseal gutter corners, and \$75 per bird hole repair for building 4. There is no explanation for the price increase from its previous quote.
 - d. August 24, 2020 quote from JES, an eavestrough service, for \$7,968.80 for a 28 day scaffolding rental, and \$3,150 plus materials to remove nests, install wire mesh, and scrub and paint surfaces coated with bird droppings.

Strata's Duty to Repair and Maintain Common Property

17. Under section 72 of the *Strata Property Act* (SPA), a strata corporation has a duty to repair and maintain all common property. It is undisputed that the windows, soffits, and the crossbeam are common property. As mentioned, the strata admits that it is responsible for addressing bird control and clean up but says it has not done so because the location is inaccessible by conventional means. It says it would have to rent scaffolding which is prohibitively expensive. The strata did not explain why it did

not attend to the bird control and clean up when it recently rented scaffolding to clean and repair the gutters.

18. The strata's obligation to repair and maintain is measured by the test of what is reasonable in all circumstances (see *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363). The standard is not one of perfection. When deciding whether to fix or replace common property, the strata has discretion to approve "good, better or best" solutions to any given problem. The court will not interfere with a strata's decision to choose a "good," less expensive, and less permanent solution, although "better" and "best" solutions may have been available. (*Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784 at paragraphs 28 and 29).
19. Based on the evidence before me, I find that the strata's response to Ms. Mahasen's complaints was not reasonable in the circumstances. I find that at the 2020 AGM, the strata lot owners directed the strata to address bird control and clean up and the strata failed to do so. I find based on the strata's submissions that it has no plans to take further steps.
20. A strata corporation is expected to clean up bird droppings in a timely manner. In *1049442 B.C. Ltd. v The Owners, Strata Plan LMS 1669*, 2018 BCSC 1631, aside from obtaining quotes, the strata corporation did not address bird droppings that had accumulated on a loading bay and the commercial strata owner ultimately addressed the issue itself. The court noted that the strata corporation's response was slower than it should have been and ordered that the strata owner could deliver a claim to the strata corporation for its expenses and the strata corporation had to "reasonably consider these claims" (see paragraphs 17 and 18).
21. Based on the evidence before me, I find the strata has been aware of the bird problem since 2017 and has not taken reasonable steps to remove the bird nests, install bird deterrents, or clean and paint the crossbeam. I find the strata's excuse that the cost is prohibitive is unsubstantiated. As mentioned above, the parties provided several quotes for addressing bird control and clean up ranging from \$1,050 to approximately \$11,000. I note that the most expensive part of some of these quotes was for renting

a lift or scaffolding. The strata did not explain why it did not attend to bird control and clean up when it recently rented scaffolding to clean and repair the gutters and repair woodpecker holes.

22. I order the strata to arrange for a qualified contractor remove the bird nests and debris, install bird deterrents, clean the bird droppings, and paint the crossbeam outside strata lot 140. I acknowledge this may not be possible in the coming months since winter is approaching and so I order this work to be completed by June 30, 2021.

CRT FEES, EXPENSES AND INTEREST

23. 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. I see no reason in this case not to follow that general rule. I therefore order the strata to reimburse Ms. Mahasen for CRT fees of \$225. She did not claim dispute-related expenses.
24. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Mahasen.

ORDERS

25. I order that by June 30, 2021, for building 4, the strata have a qualified company remove bird nests, install bird deterrents, and clean and paint the crossbeam outside strata lot 140.
26. I also order the strata to pay Ms. Mahasen \$225 in CRT fees within 30 days of this decision.

27. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Rama Sood, Tribunal Member