



# Civil Resolution Tribunal

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Civil Resolution Tribunal

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

KENNETH BUTLER

**APPLICANT**

**A N D :**

KONSTANTIN NIKOLAOU and The Owners, Strata Plan NWS 3403

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

## INTRODUCTION

1. Kenneth Butler and Konstantin Nikolaou both own strata lots in the strata corporation The Owners, Strata Plan NWS 3403 (strata). Mr. Nikolaou is also the strata council president.

2. Mr. Butler alleges that the strata has failed to repair and maintain common property. He asks for 2 orders about common property. The first is clear: he wants an order that the strata fix his garage door. The second is less clear: he wants an order for “damages to building”. I find from context and the parties’ submissions that this second order is about issues with how water drains off the roof. He puts a \$2,000 value on both orders.
3. Mr. Butler also asks for an order that the strata produce copies of annual general meeting (AGM) minutes, insurance forms, and work orders, from 2010 to 2021.
4. Mr. Butler makes several claims against Mr. Nikolaou personally. He says that Mr. Nikolaou has neglected his duties as strata council president. He asks for an order that Mr. Nikolaou be removed as strata council president. He also asks for an order that all work in the strata must not be done by Mr. Nikolaou’s “friends”.
5. Mr. Butler is self-represented. Mr. Nikolaou represents himself and the strata.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised because I find that nothing in this dispute turns on credibility. I therefore decided to hear this dispute through written submissions.

8. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction.
9. 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.
10. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the tribunal 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.

### ***Admissibility of Late Evidence***

11. Mr. Butler uploaded several pieces of evidence after the CRT's deadline. The respondents object to the CRT considering this late evidence. They argue that Mr. Butler was disrespectful of the CRT's process and should not benefit from his failure to abide by the CRT's directions. Mr. Butler says that he uploaded the evidence in response to the respondents' evidence, and he did not know he would need it until he saw what the respondents had provided.
12. Most of the late evidence was largely redundant with other evidence Mr. Butler had already provided about what happened with the gutters when it rained. The CRT's mandate includes informality and flexibility. The respondents had an opportunity to review and respond to the late evidence. Given that, I considered this late evidence although it was only marginally relevant. It did not ultimately affect the outcome of my decision.
13. Mr. Butler also provided an email he sent Mr. Nikolaou on October 26, 2021. I find this email entirely irrelevant, so I have not admitted it into evidence.
14. Mr. Butler continued to email CRT staff more evidence after the CRT chair had assigned this dispute to me on December 13, 2021. This happened twice. I understand it was mostly more videos. The CRT's mandate includes the speedy and efficient resolution of disputes. If I admitted this further late evidence, I would have to

pause the process to give the respondents an opportunity to make submissions about the new evidence, delaying a final decision. Also, given my conclusions, I determined that it was unlikely that this further evidence would change my decision. So, I declined to view it and have not admitted it into evidence.

## **OTHER PRELIMINARY ISSUES**

15. I will briefly address Mr. Butler's claims against Mr. Nikolaou. As mentioned above, Mr. Butler asks for an order that Mr. Nikolaou be removed as strata council president. This is based on Mr. Butler's allegation that Mr. Nikolaou has been negligent in his duties. Section 31 of the *Strata Property Act* (SPA) sets the standard expected of strata council members, which is to act honestly and in good faith with a view to the strata's best interests. In *The Owners Strata Plan LMS 3259 v. Sze Hand Holding Inc.*, 2016 BCSC 32, the court concluded that a strata council member owes these duties to the strata, not to individual owners. This means that an owner has no standing, or legal right, to make a claim against a strata council member for breaching section 31 of the SPA. I therefore dismiss this claim.
16. I also find that Mr. Butler's claim about Mr. Nikolaou allegedly hiring his "friends" to do work on the strata is essentially a claim under section 32 of the SPA. Section 32 sets out a process for when a strata council member has an interest in a contract or transaction. In *Wong v. AA Property Management Ltd.*, 2013 BCSC 1551, the court found that the only remedies for breaching section 32 are found in section 33 of the SPA. Section 122 (1)(a) of the CRTA says that the CRT does not have jurisdiction to make orders under section 33 of the SPA. For this reason, I refuse to resolve this claim.
17. I note that Mr. Butler makes several allegations about the strata's compliance with the SPA. Mr. Butler asks for no orders about the strata's governance, so I will not comment further on these issues.
18. Finally, I note that Mr. Butler and Mr. Nikolaou both provided evidence and submissions about their poor personal relationship. Mr. Butler repeatedly referred to

Mr. Nikolaou as a “criminal”. Mr. Nikolaou defended himself against that accusation. I find that these issues are not relevant to the outcome of this dispute, and also likely outside the CRT’s jurisdiction, so I will not address them in this decision.

## ISSUES

19. The remaining issues in this dispute are:

- a. Did the strata fail to repair and maintain the gutter system?
- b. Did the strata fail to repair and maintain Mr. Butler’s garage door?
- c. Did the strata fail to provide Mr. Butler with records under section 36 of the SPA?

## BACKGROUND

20. In a civil claim such as this, Mr. Butler as the applicant must prove his case on a balance of probabilities, which means “more likely than not”. While I have read all the parties’ evidence and submissions, I only refer to what is necessary to explain my decision.

21. The strata consists of 9 residential strata lots in 2 buildings, with 3 in one building and 6 in another. Mr. Butler owns strata lot 8, which is a 2-storey townhouse-style strata lot in the larger buildings. All of the allegations in this dispute related to the larger building. In that building, each strata lot has a garage designated as limited common property.

22. The strata filed several bylaw amendments on June 9, 1992. None of them deal with the repair and maintenance of common property, so I find that Standard Bylaw 8 applies under section 120 of the *Strata Property Act* (SPA) and section 17.11 of the *Strata Property Regulation*. I find that Standard Bylaw 8 and section 72 of the SPA both make the strata responsible for repairing and maintaining the gutter system and garage door. The strata does not dispute this.

## EVIDENCE AND ANALYSIS

23. Before turning to the specific issues, I will address the law about the strata's repair and maintenance obligations under section 72 of the SPA. The standard is reasonableness. When assessing whether the strata fulfilled its repair and maintenance obligations, the starting point for the CRT is to defer to the strata. The reason for this deference is that the strata must act in the owners' best interest, which often requires it to balance competing interests and work within a budget that the owners can afford. With that in mind, the strata may prioritize different maintenance projects and may choose a lower standard of maintenance for financial or practical reasons, as long as the decision is reasonable. Just because an individual owner is unhappy with the strata's choice does not necessarily mean that the strata has breached its duty under section 72 of the SPA. The obligation to repair can include replacement. See *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784, at paragraphs 28 and 29.

### ***Did the strata fail to repair and maintain the roof or gutter system?***

24. Mr. Butler argues that the building's gutter system is not functioning properly, causing water to pour over the gutters and off the roof. According to the videos Mr. Butler provided from 2019 and 2020, water streamed off the roof, some of it running down the building's siding and some of it pouring onto his deck. Some water also poured off the back of the building, landing near Mr. Butler's garage. Mr. Butler blames this splashing water for damaging his garage door.

25. Mr. Butler has been raising issues with the gutters since at least 2018. I find that I do not need to address any of the parties' discussions about the gutters that took place before February 2021. This is because in February 2021, the strata hired Burrard Roofing and Drainage Inc. (BRD) to work on the building's gutter system to address the ongoing issues with overflow.

26. On February 27, 2021, Mr. Nikolaou emailed the owners about BRD's work. There is no evidence directly from BRD about what work it did. Mr. Nikolaou said that the gutter guard was not functioning properly. BRD also recommended more regular cleanings.

Mr. Nikolaou also said that there was moss buildup on the down drains around their openings. Finally, Mr. Nikolaou said that the downpipes were too small for the roof size, which led to overflow. Mr. Nikolaou said that changing all the downpipes would be a “huge expense”, so BRD only changed the ones that it identified as the “biggest problem”.

27. BRD sent an invoice on March 2, 2021, for this work. According to the invoice, BRD refastened gutter straps, installed and re-routed 6 downpipes and elbows, installed 4 funnels to divert water on the roof, and cleaned all debris. BRD charged \$2,625 for this work.
28. On September 12, 2021, Mr. Butler emailed the owners photos showing that water was still pouring down off the roof onto his garage door. He suggested more repairs were necessary.
29. Mr. Butler says that he phoned a company called Gutter Pros about the strata’s gutter issues. He says that Gutter Pros told him that the strata should not be using gutter guards and needs to deal with the wood rot around the gutters on the roof. There is no statement from a Gutter Pros employee in evidence. Even though the CRT can accept hearsay evidence, I find that it would be inappropriate to accept hearsay evidence of expert opinions on a central issue. I have therefore not considered this evidence.
30. Mr. Butler says that he also phoned BRD about the gutters. He says that the BRD employee told him that Mr. Nikolaou did not “want to fix gutters”. Mr. Nikolaou provided an email from the BRD employee who spoke to Mr. Butler. This employee denies Mr. Butler’s account of this conversation. I find that Mr. Butler has not proven that the strata is unwilling to fix the gutters.
31. Mr. Butler also provided a quote from September 2021 from BRD for it to remove the existing gutter guard replace it with a leaf guard, and clean up all debris, for \$2,800 plus GST. This suggests that BRD believes that a leaf guard system may be preferable to the existing system.

32. The strata denies that there is anything else wrong with the gutter system. The strata says that it chose a leaf guard system over a gutter guard system. It says that both systems have own pros and cons.
33. The strata relies on a short, October 21, 2021 report from structural engineer, Brian Lytton, who inspected the exterior of the 2 strata buildings. Brian Lytton described the gutters as being in “fair condition” with no safety concerns. The strata says that it provided Brian Lytton with all of Mr. Butler’s “accumulated evidence”, although it does not say specifically what. There is also no evidence about what the strata asked Brian Lytton to provide an opinion on. The CRT’s rules about expert evidence require a party to provide all correspondence with that expert. CRT rule 1.2(2) allows me to waive strict compliance with the CRT rules. Ultimately, I accept Brian Lytton’s report as expert evidence about whether the building’s gutter system is a safety hazard but find this opinion of little use. I find that the strata’s obligation to repair and maintain common property is not triggered only when something becomes unsafe.
34. I find that Mr. Butler has proven that BRD’s February 2021 work did not resolve the issues with the strata’s gutter system. Based on the photos and videos in evidence, I find that the same issue persists. There is no evidence that the strata has taken any further steps to address it. In light of the obvious drainage problem, I find that the strata’s failure to do so falls below a reasonable standard. However, I find that Mr. Butler has not proven what steps the strata could or should take to address the ongoing roof drainage issues. It may be that some or all of the gutter system needs to be repaired or replaced. However, it may simply be that the strata needs to clean the gutters more often. The evidence is not clear on this point.
35. I find that the appropriate remedy is to order the strata to hire a gutter contractor to provide an opinion on the strata’s options for addressing the building’s ongoing gutter drainage problems. The strata will have 90 days to do so. I make no comment about what the strata should do with those recommendations because that is the strata’s decision, although as noted it must act reasonably.



***Did the strata fail to repair and maintain the garage door?***

36. It is undisputed that Mr. Butler's wooden garage door is in poor condition. He has been complaining to the strata about it since at least 2017. The photos in evidence show what appears to be rot along the bottom and mold on the inside of the door. According to videos in evidence from both parties, Mr. Butler's garage door is the only one in the strata with noticeable damage. I make no finding about why this is. It ultimately does not matter.
37. The strata's position about the garage door is unclear. On the one hand, the strata argues that Mr. Butler's close-up photos of the garage door are misleading and make the damage seem worse than it is. I disagree on this point. Even in the wide-angle photos that Mr. Nikolaou provided, it is apparent that Mr. Butler's garage door is in considerably worse condition than the garage doors on either side.
38. Somewhat contradicting itself, the strata also seems to accept that it must do something about the garage door. It says that it is "still considering" whether it is necessary to replace the door. Based on the emails in evidence, the strata has been "considering" whether to repair or replace Mr. Butler's door since at least April 2020. There is no evidence that the strata has done anything to determine whether the garage door can be repaired, such as hiring a contractor to look at it.
39. Contradicting itself again, the strata also says that it will replace the garage door "upon his formal presentation" of a quote from Mr. Butler. Mr. Butler has already provided the strata with 2 quotes from Casp Enterprises Ltd., one from October 2020 and one from September 2021. Both quotes contemplate replacing the door. The 2021 quote is for \$1,215.90.
40. On the question of whether replacement is necessary, Mr. Butler provided an email from "Fred" at Casp. While Mr. Butler's initial email to Fred is not in evidence, based on the subject line of the email I find that he provided Fred with 3 photos of his garage door. Fred said that the door was not salvageable and would need to be replaced. Fred's qualifications and job title are not in evidence but given that they work at a garage door company, I find they likely are qualified to determine whether the door

could be repaired. I reject the strata's argument that Mr. Butler influenced Fred's opinion by stating in the subject line of his email that the garage door was a write off. I find that this is not sufficient to call Fred's neutrality into account.

41. I find that it is appropriate to admit Fred's email as expert evidence despite Mr. Butler's imperfect compliance with the CRT's rules. It is the only neutral evidence before me about whether the door can be repaired. Also, given the relatively low cost of a new garage door, I find it unsurprising that it would be uneconomical or impossible to repair the existing door.
42. With that, I find that the strata acted unreasonably by failing to repair and maintain Mr. Butler's garage door. I find that Mr. Butler has proven that the door must be replaced. I order the strata replace Mr. Butler's garage door with a garage door similar to the one in Casp's September 24, 2021 quote within 60 days of this decision.

***Did the strata fail to provide Mr. Butler with records under section 36 of the SPA?***

43. Section 35 of the SPA set out what records and documents the strata must prepare and retain. Section 36 says that the strata must provide copies of those records to an owner on request. Section 36(3) says that the strata must comply with a request within 2 weeks.
44. On July 26, 2021, Mr. Butler emailed the strata and requested a list of owners and strata council members (including when they were voted in), minutes of all AGMs, special general meetings and strata council meetings, "building insurance", minutes of the meeting held to install security cameras, and all expenditures from the previous 5 years. Neither party addressed this issue much in their submissions. I infer from context that the strata has not provided the requested records.
45. In this dispute Mr. Butler only asks for AGM minutes, "insurance forms", which I interpret as insurance policies, and "work orders", which I interpret as contracts where the strata hired contractors to work on the strata. I find that these are the only requests before me in this dispute.

46. Mr. Butler also asks for records dating back to 2010, but there is no evidence that he ever requested records from before July 2016 before starting this dispute. There is also no evidence that Mr. Butler requested any “work orders” or contracts before starting this dispute. The strata’s obligation to provide records is triggered by an owner request, so I find that it would be inappropriate for me to consider new records requests in this dispute.
47. I note that under section 4.1 of the *Strata Property Regulation*, the strata must retain AGM minutes and copies of insurance policies for 6 years.
48. I find that the strata breached section 36 of the SPA by failing to provide the requested AGM minutes and insurance policies. I therefore order the strata to provide Mr. Butler with the following records:
- a. AGM minutes from July 26, 2016, to the present, and
  - b. Insurance policies in place since July 26, 2016.
49. Nothing in this decision prevents Mr. Butler from making new requests under section 36 of the SPA.

## **TRIBUNAL FEES AND EXPENSES**

50. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. However, neither party paid any CRT fees or claimed any dispute-related expenses.
51. I note that Mr. Butler claimed interest under the *Court Order Interest Act* (COIA). I find that he is not entitled to prejudgment interest because I have not awarded him any money. I dismiss his claim for prejudgment interest.
52. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Butler.

## DECISION AND ORDERS

53. Within 90 days of the date of this order, I order the strata to hire a drainage contractor to provide an opinion on the strata's options for addressing the building's ongoing gutter drainage problems.
54. Within 60 days of the date of this order, I order the strata replace Mr. Butler's garage door with a garage door similar to the one in Casp's September 24, 2021 quote.
55. Within 2 weeks of the date of this order, I order the strata to provide Mr. Butler with the following records:
  - a. AGM minutes from July 26, 2016, to the present, and
  - b. Insurance policies in place since July 26, 2016.
56. I refuse to resolve Mr. Butler's claim prohibiting Mr. Nikolaou from hiring his friends for strata work under section 10 of the CRTA.
57. I dismiss Mr. Butler's remaining claims.
58. 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.

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Eric Regehr, Tribunal Member