



# Civil Resolution Tribunal

Date Issued: January 8, 2025

File: ST-2023-003836

Type: Strata

Civil Resolution Tribunal

Indexed as: *Feminger v. The Owners, Strata Plan VIS6718*, 2025 BCCRT 20

B E T W E E N :

GYULA ATTILA FEMINGER

**APPLICANT**

A N D :

The Owners, Strata Plan VIS6718

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. This strata dispute is about flooring.
2. Gyula Attila Feminger owns a strata lot in The Owners, Strata Plan VIS6718 (strata). In 2023, Mr. Feminger renovated their strata lot. The renovations included replacing the tile flooring, which Mr. Feminger says had been damaged by an

unknown cause. Mr. Feminger says that after removing the damaged tiles, they discovered the underlying concrete floor slab was cracked and the cracking had caused the tile damage. Mr. Feminger claims \$3,900 for labour and materials to remove the damaged tiles and repair and level the concrete slab, and for the cost of their family's accommodations during the repairs.

3. The strata acknowledges that it is responsible for repairing the concrete floor slab, but says Mr. Feminger completed the repair himself without responding to the strata's request for a professional report and estimate. The strata says it offered to reimburse Mr. Feminger for their reasonable labour and materials costs for repairing the concrete slab on the condition that Mr. Feminger sign an indemnity agreement, which they refused to do. The strata says that in these circumstances it does not owe Mr. Feminger anything, but it agrees to reimburse Mr. Feminger \$125 for their CRT fees.
4. Mr. Feminger is self-represented, and the strata is represented by a strata council member.

## **JURISDICTION AND PROCEDURE**

5. 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). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that

includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.

7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Under CRTA section 123, 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.

## **ISSUE**

9. The issue in this dispute is whether Mr. Feminger is entitled to \$3,900 for removing the damaged tiles, repairing the concrete floor slab, and related expenses.

## **EVIDENCE AND ANALYSIS**

10. As the applicant in this civil proceeding, Mr. Feminger must prove their claims on a balance of probabilities, which means more likely than not. I have read all the parties' submissions and evidence but refer only to what I find necessary to explain my decision.
11. The strata was created in 2008. It is a multi-building residential strata with 16 strata lots. Mr. Feminger's strata lot is on the ground floor in a building with 3 other strata lots.
12. The Standard Bylaws under the *Strata Property Act* (SPA) apply to the strata, subject to various amendments the strata has filed with the Land Title Office over the years. I address the relevant bylaws below.
13. On March 10, 2023, Mr. Feminger notified the strata of their plans to renovate their strata lot between March 21 and April 21. On March 13, the strata asked Mr. Feminger to provide more details about their proposed renovations, including the

fire rating, any electrical and plumbing components, any required permits, who would perform the actual work, and any other important details. Mr. Feminger responded that they were “just changing our floor and refinishing the kitchen”.

14. On March 25, Mr. Feminger started the renovations. While removing the tile flooring that day, they discovered the cracked concrete floor slab. They notified the strata immediately and sent photos. On March 27, Mr. Feminger told the strata they were planning to install glue down vinyl flooring in the living room, kitchen, and hallway, and tile flooring in the bathroom. They said the cracked concrete floor slab was the strata’s responsibility, and they needed the strata to repair it before they installed the new flooring.
15. Later on March 27, a strata council member who is also an architect emailed Mr. Feminger on behalf of the strata stating that it was not unusual for a concrete slab on grade to crack as a building settles. They said the foundation had not cracked, just the concrete slab, and that most flooring professionals would apply a coating of self-leveling concrete in the cracked areas before installing new flooring. They said other strata lots in other buildings in the strata complex had experienced the same issue. They said, “It is my opinion that this is not a strata issue”.
16. Mr. Feminger says that based on this email, they went ahead and finished their renovations. They say they repaired the cracked concrete slab on March 28. On March 29, they submitted a signed indemnity agreement to the strata for the renovation. It described the flooring work only as “Changing the Flooring”. The indemnity agreement in evidence appears to be missing a page, so the extent of its terms is unclear. However, I find nothing turns on this. Mr. Feminger says the cracked concrete slab had caused some parts of the floor to sink, so on April 3 they applied self-leveling material. Between April 6 and 9 they installed the new flooring, baseboards, and trim, and started painting.
17. On April 8, Mr. Feminger notified the strata by email that the cracked concrete floor slab had damaged their original tile flooring. They said if the tile flooring had not been damaged, they would not have replaced it. This is the first time they notified

the strata about the tile damage or that the damage was the reason they had replaced the flooring.

18. On April 11, the strata asked Mr. Feminger to provide a report from a flooring professional indicating the preparations required for the concrete slab before installing their new flooring, and an estimate of those preparation costs. It said it would take no further action on the repair until Mr. Feminger provided the requested information. It also said it reserved its right to hire a professional flooring specialist to provide a second opinion.
19. Mr. Feminger did not respond to the strata's April 11 email, and the parties did not communicate about this issue again until June 29, when Mr. Feminger requested a hearing with the strata council. The hearing was held on July 9, and the strata learned that Mr. Feminger had already repaired the concrete slab on their own and installed new flooring.
20. Between July 16 and August 6, Mr. Feminger submitted invoices, receipts, and bank records to the strata. Their most recent revised invoice totals \$3,855.86 for labour and materials to remove the tile flooring and repair the concrete slab, a damping fee, and accommodation costs for their family to stay elsewhere during the concrete slab repair work (invoice). Mr. Feminger does not explain the discrepancy between the \$3,855.86 invoice amount and the \$3,900 they claimed in the Dispute Notice. However, given my findings below, I find nothing turns on this discrepancy.

***Is Mr. Feminger entitled to \$3,900 for removing the damaged tiles, repairing the concrete floor slab, and related expenses?***

21. The SPA and the strata's bylaws set out the strata's and owners' repair and maintenance obligations. SPA section 72 and standard bylaw 8 require the strata to repair and maintain common property and common assets. Standard bylaw 8 also requires the strata to repair and maintain certain parts of limited common property and strata lots, including the structure of a building.
22. In fulfilling its repair and maintenance duties under SPA section 72 and the bylaws, the strata is held to a standard of reasonableness, not perfection.

23. In assessing the strata's repair and maintenance decisions, the starting point is deference to the strata council. This is because the strata must often balance competing interests between owners. It is not the CRT's role to second guess the strata's decisions unless they are unreasonable. See *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784, *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363, and *Swan v. The Owners, Strata Plan LMS 410*, 2018 BCCRT 241.
24. Individual owners are not entitled to dictate how the strata fulfills its repair and maintenance obligations. However, in some circumstances a strata is required to reimburse an owner for an owner's repair of something that is the strata's responsibility. For example, in *Stanescu v. The Owners, Strata Plan EPS1617*, 2024 BCCRT 996, a tribunal member found an owner acted reasonably by unilaterally repairing a common property heat pump after the strata mistakenly told her it was her responsibility to do so. The tribunal member ordered the strata to reimburse the owner for the cost of replacing the heat pump.

#### Concrete floor slab

25. The strata agrees that it is responsible for the cracked concrete floor slab. Although the parties do not expressly say so, I find they agree that the concrete floor slab is part of the building's structure, and so it falls within the strata's repair and maintenance obligations.
26. The strata agrees in principle to reimbursing Mr. Feminger for their reasonable costs to repair the concrete floor slab. However, it says that since Mr. Feminger ignored the strata's April 11 request to provide a professional report or estimate about the required repairs, Mr. Feminger must sign an indemnity agreement for the repairs. Bylaw 5 requires that before an owner alters the structure of a building, they must obtain the strata's written authorization, satisfy any conditions attached to that authorization, and sign an indemnity and alteration agreement, among other things.
27. Mr. Feminger disagrees. They say they reasonably relied on the strata's March 27 email stating that the cracked concrete slab was not a strata issue, and they

completed the repairs and installed new flooring before the strata's April 11 request for a professional report and estimate.

28. I agree with Mr. Feminger. The strata knew at the time of its March 27 email that Mr. Feminger's floors had already been removed and they were in the middle of a renovation. The strata does not explain what happened between March 27 and April 11, what caused it to change its position, or why it took over 2 weeks to take responsibility for the concrete floor slab. The strata did not file a counterclaim for Mr. Feminger to sign an indemnity agreement. I find these circumstances are similar to those in *Stanescu*. That decision is not binding on me, but I find its reasoning persuasive and adopt it here. In the circumstances, I find it was reasonable for Mr. Feminger to rely on the strata's March 27 email and proceed with repairing the concrete slab. So, I find Mr. Feminger is entitled to be reimbursed for their reasonable labour and material costs to repair the concrete slab. The question is whether the amount Mr. Feminger charged the strata in their invoice was reasonable.
29. The invoice charged the strata \$198 for 6 hours of Mr. Feminger's labour at \$33 per hour on March 28 to prepare the concrete slab for self-levelling. The invoice also charged the strata \$800 for labour on April 3 to self level the concrete slab, and a \$112 damping fee. The invoice charged the strata \$716.86 for materials, but I find the receipts in evidence total \$715.95.
30. The strata says Mr. Feminger charged a contractor's rate for their work, but they were not qualified to perform the work. However, it provided no evidence about the industry standard rate for such work, or what qualifications are required to perform the work.
31. The strata says the material costs were excessive, and some of those costs were for filling and trenching required to locate plumbing for the other parts of their renovation. However, the strata provided no evidence to support these allegations. Mr. Feminger says all material costs included in the invoice were for repairing the concrete slab. They say they did not relocate or reconfigure their kitchen, so they

did not relocate the plumbing. Without evidence to the contrary, I find Mr. Feminger's explanation is reasonable and consistent with the evidence.

32. The strata also says some of Mr. Feminger's receipts included toys and other items unrelated to the repairs. However, Mr. Feminger says they deducted these amounts before calculating their material costs in the invoice, and I find the evidence supports this.
33. The strata says that even if the concrete floor slab was not cracked, some self levelling would have been required to install the new flooring. However, they provided no further explanation or evidence about what that work would cost or what amount should be deducted from the invoice to account for that work.
34. On the evidence before me, I am satisfied that Mr. Feminger's invoice charged a reasonable amount for their labour and material costs to repair the concrete floor slab. So, I find the strata must reimburse Mr. Feminger \$998 for labour, \$112 for a damping fee, and \$715.95 for materials, for a total of \$1,825.95.

### ***Removing the damaged tiles***

35. Mr. Feminger says the only reason they replaced their floors was because of a visible damage line across the flooring tiles. They say the damage line across the tiles was directly on top of the crack along the concrete floor slab, and that the crack obviously caused the damage to the tiles. They submitted several photos which I find support this allegation.
36. However, the tile flooring was undisputedly a non-structural part of Mr. Feminger's strata lot. It is well-established that absent a bylaw, the strata is only responsible for repair and maintenance of a strata lot if the strata has been negligent in its own repair and maintenance obligations (see *John Campbell Law Corp. v. The Owners, Strata Plan No. 1350*, 2001 BCSC 1342). I find there is no bylaw here that is inconsistent with this general principle for non-structural parts of strata lots. This means that to be entitled to reimbursement for their labour costs to remove the tile flooring, Mr. Feminger must prove the strata was negligent. For the following



reasons, I find Mr. Feminger has failed to do so, and I find they are not entitled to reimbursement for these costs.

37. Mr. Feminger submitted an undated report from Henry Kitchell, an architect, titled “Assessment of Flooring Damage and Repair”. I accept this report as expert evidence under CRT rule 8.3, but for the following reasons I place no weight on it. First, it is unclear from the report if or when Henry Kitchell inspected Mr. Feminger’s floor. The report says the “finish floor would never be accepted as safe or ready for occupancy” and it instructs the reader to refer to site inspections and original project specifications for acceptable levels of cracking in slabs on grade. Those documents are not in evidence, and it is not clear if Henry Kitchell read them, or how they reached their conclusion.
38. Second, Henry Kitchell’s report says the extent of the concrete slab’s cracking and differential settling was “not within code”. However, they did not refer to any specific sections of the relevant building code or provide any measurements or other details about how they reached this conclusion.
39. Finally, the report says a large structural crack in a concrete floor slab can be caused by erosion from inadequate bearing capacity in foundations. However, Henry Kitchell said there is no report about this, so I find this is merely speculation. Overall, I find Henry Kitchell’s report is vague and it is unclear what specific information, if any, its conclusions are based on. Even if I accepted Henry Kitchell’s conclusions, which I do not, I find they do not establish that the strata was negligent in its repair and maintenance duties. This is because they do not identify anything the strata should have done to prevent the damage.
40. The strata provided a rebuttal report from Patrick Jost, who is an architect and a strata council member. While I accept this report as expert evidence under CRT rule 8.3, I place no weight on it as I find it is not neutral. I also find that since I do not rely on Henry Kitchell’s report, the responses in Patrick Jost’s report do not help my analysis.

41. Mr. Feminger does not explain how the strata was negligent in its repair and maintenance duties related to the concrete slab, and I find there is nothing in the evidence to establish the strata was negligent. So, I find Mr. Feminger is not entitled to be reimbursed for their labour costs to remove the damaged floor tiles.

### ***Accommodation Costs***

42. Mr. Feminger says repairing the cracked concrete slab added extra time to their project, and they had to stay at an Airbnb for 2 weeks. Mr. Feminger claims \$764 for the Airbnb costs. They submitted their bank statement showing a March 31 Airbnb charge for \$532.58 and an April 3 Airbnb charge for \$232.12. However, they did not specify the exact dates their family was required to stay at the Airbnb. They also failed to provide evidence about the status of the other ongoing renovations in their strata lot at the time, and whether and to what extent those other renovations affected the amount of time they were displaced from their home. Without more, I find Mr. Feminger has failed to establish that the \$764 they claim for Airbnb charges were incurred because of the concrete floor slab repairs. So, I find Mr. Feminger is not entitled to reimbursement for any Airbnb expenses.

### **CRT FEES, EXPENSES AND INTEREST**

43. 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. Mr. Feminger paid \$225 in CRT fees but was only partly successful. However, in its Dispute Response and submissions the strata agrees to reimburse Mr. Feminger \$125 for their CRT fees. I find this is reasonable in the circumstances, so I find the strata must reimburse Mr. Feminger \$125 in CRT fees. The strata did not pay any CRT fees, and neither party claimed any dispute-related expenses.
44. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Feminger is entitled to prejudgment interest on the \$1,825.95 owing starting from July 16, 2023, which is

when Mr. Feminger first invoiced the strata, to the date of this decision. This equals \$136.14.

45. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Feminger.

## **ORDERS**

46. Within 14 days of the date of this decision, I order the strata to pay Mr. Feminger a total of \$2,087.09, broken down as follows:

- a. \$1,825.95 as reimbursement for labour and material costs to repair the concrete slab,
- b. \$136.14 in pre-judgment interest under the COIA, and
- c. \$125 in CRT fees.

47. Mr. Feminger is also entitled to post-judgment interest under the COIA.

48. This is a validated decision and order. 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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Sarah Orr, Tribunal Member