
A Discussion Of The Limited Circumstances When a Strata Corporation May Be Responsible For Repairing And Maintaining A Strata Lot

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A strata corporation generally has no legal duty to repair or maintain, or to pay for repairs and maintenance, to a strata lot, except to the extent required under its bylaws, in cases of negligence by the strata corporation, or in cases where a strata corporation has had to damage strata lot property in order to undertake repairs. Even then, the strata corporation's duties may be circumscribed by the presence of a preexisting alteration and indemnity agreement.

Strata Property Act

Sub-Section 72(1) of the *Strata Property Act* (the "Act") provides that a strata corporation must repair and maintain common property and common assets.

Sub-section 72(2) provides that a strata corporation may, by bylaw, make an owner responsible for the repair and maintenance of (a) limited common property that the owner has a right to use, or (b) common property other than limited common property only if identified in the regulations and subject to prescribed restrictions. The Provincial government has not passed any regulations that would enable a strata corporation to make an owner responsible for repairs and maintenance of common property. As a result, owners can only be made responsible for repairs and maintenance of common property when such an obligation is contained within an alteration and indemnity agreement (discussed below).

Sub-section 72(3) provides that a strata corporation may, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot.

Standard Bylaws

Most strata corporations have taken on some limited responsibility for repairs and maintenance within a strata lot. Sections 2(1) and 2(2) of the Standard Bylaws make clear that an owner is responsible for repairing and maintaining their strata lot and their limit common property, except for assemblies that the strata corporation has taken responsibility for. Section 8(d) of the Standard Bylaws provides that the strata corporation must repair and maintain a strata lot in a strata plan that is not a bare land strata plan, but the duty is restricted to:

- the structure of a building;
- the exterior of a building;
- chimneys, stairs, balconies and other things attached to the exterior of a building;
- doors, windows and skylights on the exterior of a building or that front on the common property; and
- fences, railings and similar structures that enclose patios, balconies and yards.

In considering the strata corporation duty to repair and maintain strata lot property, it is important to remember that some common property is actually physically located within the boundaries of a strata lot. The Act defines "common property" to include, amongst other things, pipes, wires, cables, chutes, ducts and other facilities for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, if they are located

- within a floor, wall or ceiling that forms a boundary between a strata lot and another strata lot, between a strata lot and the common property, or between a strata lot or common property and another parcel of land, or
- wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property.

Negligence

Having established that a strata corporation is generally not responsible for repairing and maintaining strata lots, unless set out in its bylaws, we now turn to the question of whether a strata corporation can be responsible for repairs to strata lots occasioned by problems (defects, wear and tear, failure etc...) with the common property.

Current case law suggests that, if strata lot damage arises from a problem occurring on common property, the strata corporation is only responsible for paying for repairs to the strata lot if the strata corporation was negligent or in breach of its statutory duty to repair and maintain the common property.

In *Wright v. Strata Plan No. 205* the Court held that the duty to repair and maintain requires a strata corporation to act reasonably with regards to the inspection, repair and maintenance of assemblies for which it is responsible.¹ In *John Campbell Law Corporation v. The Owners, Strata Plan 1350* the Court explained:

[18]...If a strata corporation such as the defendant has taken all reasonable steps to inspect and maintain its common facilities, consistent with the practice of other such associations generally, they should not be held liable for damages arising as a result of any strict statutory liability nor should they

be put in the position of acting as an insurer by default.²

The Court in *John Campbell* went on to find that the strata corporation had not breached its duty to repair a blocked sewer because it had no reason to suspect that the sewer was blocked and there was no evidence to indicate its inspection policies were lacking.³ A similar result was reached in the recent Civil Resolution Tribunal decision in *Kantypowicz v. The Owners, Strata Plan VIS 6261*.⁴

While the above cases offer considerable deference to strata corporations, there are some cases where strata corporations have been found to have acted unreasonably.

In *Corchis v. Essex Condominium Corp. No. 28* the Ontario Court of Appeal held a condominium corporation liable for over \$700,000 in damages to a strata lot arising from a botched roof repair. In reaching its decision, the Court of Appeal ruled that the strata corporation had acted “unreasonably” by continuing to rely on a poorly conceived repair strategy, despite its lack of success, and despite the fact that its own consultants had been warning them that the repair strategy was fraught with risk.⁵

In *Paul et al. v. Riding & Strata Plan NW 612* the strata corporation was found liable for strata lot damage as it had knowledge of common property plumbing problems for many years and did not take adequate steps to address the situation.⁶ Similarly, in *Fudge v. Owners, Strata Plan NW 2636*, 2012 BCPC 409, the Court found that the strata corporation was negligent because it had knowledge of ongoing plumbing problems and failed to take steps to resolve them.⁷

Damage arising during repairs and maintenance

Beyond the duties that arise under the bylaws or as a consequence of negligence, a strata corporation may also be responsible for repairs and maintenance to

¹ *Wright v. Strata Plan No. 205* 20 BCLR (3d) 343 [1996], para. 30, aff'd 43 BCLR (3d) 1 (BCCA) (1998).

² *John Campbell Law Corporation v. The Owners, Strata Plan 1350*, 2001 BCSC 1342. Para. 18.

³ *ibid*, para. 19.

⁴ *Kantypowicz v. The Owners, Strata Plan VIS 6261*, 2017 BCCRT 29, paras 8-9 and 30-33.

⁵ *Corchis v. Essex Condominium Corp. No. 28*, 2010 ONCA 787

⁶ *Paul et al. v. Riding & Strata Plan NW 612*, 2013 BCPC 292, para. 117.

⁷ *Fudge v. Owners, Strata Plan NW 2636*, 2012 BCPC 409, para. 49

strata lot property which it, or its contractor, has had to damage during the course of repairs.

In *Lorenz v. The Owners, Strata Plan NW 2001*, a dispute arose over the cost of replacing strata lot drywall and tiles that were damaged in the course of replacing a common property shower diverter located in a boundary wall. In reaching its decision the Tribunal held:

[20] Based on the strata's bylaws and [section 72](#) of the [SPA](#), the strata has the obligation to repair and maintain common property. Contrary to the strata's submission, I find the strata has an obligation to repair and maintain the owner's shower diverter, because I have found it is common property. The fact that historically the strata charged diverter repairs back to strata lot owners is not determinative...

[21] I further find the strata must also restore the owner's bathroom drywall to a paint-ready condition as part of its repair of the common property shower diverter, given the strata had to remove the drywall in order to investigate and would need to do so in order to repair it. However, the strata is not an insurer and I find the owner is responsible for his own strata lot. Thus, I find the owner is responsible for painting the "paint-ready" drywall and any necessary bathroom re-tiling.⁸

The decision in *In Lorenz v. The Owners, Strata Plan NW 2001* is defensible on several grounds.

Standard Bylaw 7(1)(b) provides that an owner, tenant, occupant or visitor must allow a person authorized by the strata corporation to enter the strata lot at a reasonable time, on 48 hours' written notice, to inspect, repair or maintain common property, common assets and any portions of a strata lot that are the responsibility of the strata corporation to repair and

maintain under these bylaws or insure under section 149 of the Act.

If a strata corporation relied on this bylaw to gain access to strata lots, but subsequently refused to put the strata lot back into livable condition, owners would be reluctant to grant access and this could lead to a spike in disputes. Strata corporations facing a refusal to grant access that could not be cured via fines would also be left in the unenviable position of having to decide whether to apply for an injunction to compel access, or finding an alternative, more costly or more risky way of fixing the assembly. The delay in fixing the assembly could lead to an increase in resultant damage, which would ultimately make the repairs more expensive.

The decision in *Lorenz v. The Owners, Strata Plan NW 2001* does much to resolve an area of significant confusion. However, it is open to criticism on the grounds that restoring a wall to paint-ready condition, while leaving an owner to foot the bill for tile re-installation is still bound to make owners reluctant to grant access. It is for this reason that many strata corporations agree to restore tiles or re-paint walls that are damaged during strata corporation repairs, even if that might be beyond the scope of their legal responsibility.

Alteration and indemnity agreements

In considering the above, it's important to remember that a strata corporation's duty to repair and maintain strata lot property can be impacted by an alteration and indemnity agreement.

Standard Bylaws 5 and 6 address the circumstances where an owner will require written strata corporation approval before altering strata lot, common property or limited common property. They make clear that a strata corporation may require that the owner agree to take responsibility for any expenses relating to the alteration.

⁸ *Lorenz v. The Owners, Strata Plan NW 2001*, 2017 BCCRT 65, paras. 20 and 21.

To manage risk when approving a request for alterations, strata corporations typically require an owner to enter into an alteration and indemnity agreement. The wording will vary depending on the author, but typically includes:

- A provision whereby the owner acknowledges that the property on which the alteration is located is in good shape at the time the alteration and indemnity agreement is signed.
- A provision which requires the owner to maintain, replace and repair the alteration as needed, at the owner's sole cost and expense.
- A provision which requires that, if the strata corporation needs to maintain, repair, or replace the property on which the alterations are located, the owner and not the strata corporation, will be liable for and be required to pay the cost to restore or replace the alterations.

The existence of an alteration agreement can fundamentally change the circumstances in which a strata corporation may need to repair and maintain strata lot property. Depending on the wording of the alteration and indemnity agreement, the owner may actually take on responsibility for repairing the assembly in question, as well as repairing any other assemblies that may become damaged during the course of repairs.

Delineating the scope of strata corporation responsibilities for the repair and maintenance of strata lot property is challenging. When in doubt, it's always best to seek professional advice since each circumstance is unique.