



# Civil Resolution Tribunal

Date Issued: April 24, 2024

File: SC-2023-005081

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bell v. De Meirelles Leite*, 2024 BCCRT 401

B E T W E E N :

DARCY BELL

**APPLICANT**

A N D :

ALEXANDRE BONDAN DE MEIRELLES LEITE

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell

## INTRODUCTION

1. This dispute is about reimbursement for an insurance deductible.
2. The applicant, Darcy Bell, owns a strata lot in the same strata corporation (strata) as the respondent, Alexandre Bondan de Meirelles Leite. Mr. Bell says that while moving in, Mr. de Meirelles Leite shoved a box under his bathroom sink, which broke a pipe

and caused a flood. The flood damaged Mr. Bell's neighbouring strata lot. Mr. Bell requests reimbursement of a \$2,000 insurance deductible.

3. Mr. de Meirelles Leite says he is not responsible for the deductible. He says he did not damage the pipes, and the leak was caused by a pre-existing plumbing problem.
4. The parties are each self-represented.
5. For the reasons set out below, I find in favour of Mr. Bell in this dispute.

## **JURISDICTION AND PROCEDURE**

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). *Civil Resolution Tribunal Act* (CRTA) section 2 states that 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.
7. The CRT has jurisdiction (authority) over small claims under section 118 of the CRTA. The CRT has jurisdiction over strata property claims under CRTA section 121.
8. I have considered whether this dispute should be decided under the CRT's small claims or strata property jurisdiction. CRTA section 121(1) says the CRT's strata property jurisdiction applies to claims in respect of the *Strata Property Act* (SPA). As explained below, I have considered whether Mr. de Meirelles Leite is responsible for Mr. Bell's insurance deductible under the strata's bylaws, which are enacted under the SPA. I have also considered whether Mr. de Meirelles Leite is responsible under the common law of negligence, which does not engage the SPA. So, I find this dispute falls under both the CRT's small claims and strata property jurisdictions.
9. The parties were informed that I would consider the CRT's strata property jurisdiction, and the strata bylaws, in deciding this dispute. For the reasons explained below, I ultimately decided this dispute under the common law of negligence, so I find it is properly classified as a small claims dispute.

10. 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. As the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
11. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.

## **ISSUE**

12. Is Mr. Bell entitled to reimbursement of a \$2,000 insurance deductible?

## **EVIDENCE AND ANALYSIS**

13. In a civil proceeding like this one, Mr. Bell, as the applicant, must prove his claims on a balance of probabilities. I have read the parties' submitted evidence and arguments, but refer only to what I find relevant to provide context for my decision.
14. The parties agree that the leak occurred on February 19, 2022, that it damaged Mr. Bell's strata lot, and that Mr. Bell paid a \$2,000 insurance deductible.
15. Previous CRT decisions have found that where one strata lot owner seeks to recover from another for the cost of water damage, they must prove liability in negligence, nuisance, or under a specific strata bylaw making an owner liable to their neighbour for the damage (see, for example, *Ali v. Stringhetta*, 2023 BCCRT 678 at paragraph 18). I agree with this analysis and apply it here.

### ***Strata Bylaws***

16. Mr. Bell says Mr. de Meirelles Leite is responsible for the insurance deductible under the strata's bylaws. The relevant part of strata bylaw 8(b) (alternatively numbered as bylaw 7(b)), says:

Any owner of a strata lot that causes water damage to other strata lots or to common property due to their actions or inaction that has resulted in leaking and/or flooding will be held responsible for the insurance deductible and/or any clean-up and repair costs if a claim is not warranted by the strata corporation's insurance policy.

17. Based on the wording of this bylaw, I find it refers only to the strata's insurance deductible, and not to deductibles paid by individual owners. I find this because the last part of the sentence refers only to claims under the "strata corporation's insurance policy." The bylaw is silent on owners' insurance deductibles, and there is no other bylaw that addresses these.
18. So, I find Mr. de Meirelles Leite is not responsible to pay Mr. Bell's insurance deductible under bylaw 8(b).

### ***Negligence***

19. To prove negligence, Mr. Bell must prove that Mr. de Meirelles Leite owed him a duty of care, that Mr. de Meirelles Leite breached that standard of care, and that the water damage to Mr. Bell's strata lot was caused by Mr. de Meirelles Leite's breach of the standard of care. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
20. I accept that as Mr. de Meirelles Leite owed Mr. Bell a duty of care as a neighbouring strata lot owner. I find the applicable standard is to take reasonable steps to avoid causing water damage to neighbouring strata lots.
21. Since it is not disputed, I also accept that Mr. Bell's strata lot was damaged by the leak. The issue is whether Mr. de Meirelles Leite's conduct regarding the leak fell below the standard of a reasonable strata lot owner.
22. The parties disagree about what caused the leak. Mr. Bell says Mr. de Meirelles Leite shoved something under the bathroom sink and hit the valve on the pipe, causing the pipe to break. Mr. de Meirelles Leite says he did nothing to the pipe, and the leak happened because the pipe was old and fragile.

23. I find I do not need to determine whether Mr. de Meirelles Leite did anything to the pipe. This is because when he emailed the strata on February 19, 2022 to report the leak, he wrote that that a pipe burst in their apartment, and they did not know where the water shut-off was, so the apartment flooded before they could find it.
24. Similarly, in a second email to the strata on February 19, Mr. de Meirelles Leite wrote that the pipe burst “by itself”, but “since we didn’t know where the water shut off was the apartment flooded.”
25. Mr. de Meirelles Leite says he moved into the strata lot on February 1, 2022. I find it was unreasonable for him to not know where the water shut off was over 2 weeks later. In his emails to the strata, Mr. de Meirelles Leite admits this failure led to the flood.
26. For these reasons, I find Mr. de Meirelles Leite was negligent, and is therefore responsible for Mr. Bell’s \$2,000 insurance deductible.
27. In his CRT submission, Mr. de Meirelles Leite argues that the burst pipe was not located in his strata lot, but was instead inside the wall behind the sink, so the pipe and resulting leak was the strata’s responsibility. Based on the wording of Mr. de Meirelles Leite’s emails written on the date of the incident, I disagree. He specifically wrote that the burst pipe was in his apartment. Also, Mr. de Meirelles Leite provided no photos or other evidence showing that the pipe was inside a wall. Mr. de Meirelles Leite relies on the fact that the plumber reported cutting into the wall to fix the pipe. However, the February 19, 2022 plumbing report specifically says the cause of the leak was a burst water supply pipe under the sink. So, I find the pipe was inside the strata lot, and not in a common property wall.
28. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Bell is entitled to pre-judgment interest on the \$2,000 deductible from July 26, 2022 (the date of the payment receipt). This equals \$141.62.

29. As Mr. Bell was successful in this dispute, under CRTA section 49 and the CRT's rules I find he is entitled to reimbursement of \$125 in CRT fees. Neither party claimed dispute-related expenses, so I order none.

## **ORDERS**

30. I order that within 30 days of this decision, Mr. de Meirelles Leite must pay Mr. Bell a total of \$2,266.62, broken down as follows:

- a. \$2,000 as reimbursement of the insurance deductible,
- b. \$141.62 in pre-judgment interest under the COIA, and
- c. \$125 in CRT fees.

31. Mr. Bell is entitled to post-judgment interest under the COIA, as applicable.

32. This is a validated decision and order. Under CRTA section 58.1, a validated copy of the CRT's order can be enforced through the BC Provincial Court. Once filed, a CRT order has the same force and effect as an order of the BC Provincial Court.

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Kate Campbell, Tribunal Member