



Civil Resolution Tribunal

Date Issued: December 1, 2017

File: SC-2017-002505

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Garbutt v. The Owners, Strata Plan BCS 3444*, 2017 BCCRT 126

B E T W E E N :

Valerie Garbutt

APPLICANT

A N D :

The Owners, Strata Plan BCS 3444

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant Valerie Garbutt is a former owner¹ in the respondent strata corporation, The Owners, Strata Plan BCS 3444 (the strata). Ms. Garbutt claims

¹ This is a small claims dispute rather than a strata property dispute, because the *Strata Property Act* (SPA) does not govern former owners in the circumstances arising in this dispute.

reimbursement of \$5,000.00 that had been charged to her strata lot 88 (unit #1107) for repair costs, which she paid so the sale of unit #1107 would not collapse. Ms. Garbutt says she is not responsible for the cost of those repairs. Ms. Garbutt is self-represented and the strata is represented by Mr. Alin Stana, strata council president.

JURISDICTION AND PROCEDURE

2. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.
4. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
5. Under tribunal rule 121, 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 tribunal considers appropriate.

ISSUES

6. The issue in this dispute is whether the strata properly held Ms. Garbutt responsible for repair costs for: a) water damage to unit #1107, and b) damage to the common property visitors parking gate.

EVIDENCE AND ANALYSIS

7. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
8. The repair costs total \$5,112.94, with the amount over \$5,000.00 abandoned by the applicant. They relate to 2 separate incidents:
 - a. *December 2014*: water damage to unit #1107. This resulted in a \$2,413.13 plumbing invoice dated January 16, 2015 from Gordon Latham's Ltd. (Latham's) and a \$1,029.00 drywall and painting invoice from Radiant Home dated "February 2015".
 - b. *January 23, 2015*: damage to the common property visitors' parking gate after the applicant's tenant's truck caught a suspended wire attached to the gate. This resulted in a repair invoice for \$1,670.81, dated February 28, 2015.
9. The Latham's invoice identified the source of the water leak, noting wet insulation was found on the domestic hot water and recirculation piping, with a weeping leak on the recirculation line. Elsewhere in Latham's invoicing it is clear the leak occurred from a pipe located within the ceiling area of #1107, rather than within unit #1107 itself. I do not have the strata plan before me, but I note it would appear the recirculation pipe is common property and as such the strata's responsibility.
10. The applicant says she was first told of these charges against her unit #1107 on April 24, 2017, 5 days before the completion of the sale of her unit. Based on the evidence before me, the strata first made a decision to pursue the applicant for the

repair costs at an April 2, 2017 strata council meeting, following council's review of the strata's records with Latham's and Radiant Home. I accept the applicant's evidence that it was not until April 24, 2017 that she was advised of the strata's intended charge-back of the repair costs.

11. The applicant says that while she disputed the repair cost charges, she paid them to the strata so that the strata would issue a Form F that would allow her sale to complete. The strata acknowledges that it would not issue the Form F without the charges being paid, so as to comply with section 115 of the SPA that Ms. Garbutt did not owe money to the strata. I accept the applicant's evidence that she paid the charge-back under protest so that the sale of her unit #1107 could complete.
12. The strata filed bylaws in January 2013. Bylaw 31 stated that where an owner or the owner's guests are "responsible" for loss or damage to "insured property", the strata may make a claim with its insurer, repair the damage, and deliver written notice to the responsible owner for the amount of the repair costs. Bylaw 31 does not apply in this case, as there is no evidence of an insurance claim. There is no other bylaw enabling the strata to charge back to a strata lot owner repair costs the strata paid. Subsequent bylaw amendments were filed, but none of those enable the strata to charge-back an owner.
13. The applicant says in February 2015, the council approved the strata's bearing the expense of repairing the water damage to unit #1107. The strata disputes this, saying that council meeting minutes do not note such approval and yet the minutes do note much smaller expenditures. Given my conclusions below, I find nothing turns on the fact that the council minutes do not reflect council approval of the strata's responsibility for the repair costs at issue in this dispute.
14. I accept the applicant's evidence that she initially understood it was a sprinkler that caused the damage, but later realized it was a leaking recirculation pipe, after review of the Latham's plumbing invoice. Contrary to the strata's submission, nothing turns on this distinction. To the extent the strata may be arguing the

applicant failed to act honestly while she was on council or an owner within the strata, I do not accept that allegation on the evidence before me.

15. I further accept the applicant's evidence that while she was strata council treasurer for much if not all of the material period of time, she did not act alone on the council. The strata at any given time functions through its strata council, as set out in the SPA.
16. I find I do not need to determine whether the strata or the applicant was in fact responsible for the damage caused at the material time, to either unit #1107 or the parking gate. I say this because the undisputed fact is that the strata paid the repair costs in February 2015. As noted, bylaw 31 is not engaged and the strata did not have an appropriate bylaw to charge back its expenses to an individual strata lot. I find the strata had no legal basis to charge back the applicant in April 2017.
17. Further, as noted by the applicant there is a limitation issue. The tribunal Dispute Notice was issued on June 13, 2017. The *Limitation Act* provides a 2-year limitation period to bring a claim. I find it is undisputed that the strata did not try to claim these repair costs back from the applicant until April 2017, at which time the strata was out of time to do so given the strata paid the expenses in February 2015. I have accepted above the applicant paid the charge to the strata under protest so the sale of her unit could complete within the next few days.
18. In all of these circumstances, I find the strata inappropriately charged back \$5,112.94 to the applicant. Given the tribunal's small claims monetary jurisdiction of \$5,000.00, the applicant has abandoned the excess and reduced her claim to \$5,000.00. I order the strata to reimburse her that amount, within 30 days.
19. The applicant was successful in this dispute. In accordance with the tribunal's rules, I find the strata must also pay the applicant \$175 as reimbursement for tribunal fees. There were no dispute-related expenses claimed.

ORDERS

20. I order that, within 30 days of this decision, the respondent strata pay the applicant a total of \$5,195.71, comprised of:
 - a. \$5,000.00 as reimbursement of the April 2017 charge-back against strata lot 88,
 - b. \$20.71 as pre-judgment interest under the *Court Order Interest Act* (COIA),
 - c. \$175.00 as reimbursement for tribunal fees paid.
21. The applicant is also entitled to post-judgment interest under the COIA.
22. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
23. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair