



Civil Resolution Tribunal

Date Issued: December 19, 2018

File: SC-2018-002745

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Siguenza v. The Owners, Strata Plan NW1809*, 2018 BCCRT 884

B E T W E E N :

Jose Hector Montes Siguenza

APPLICANT

A N D :

The Owners, Strata Plan NW1809

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant, Jose Hector Montes Siguenza, is a former owner of strata lot 55 in the respondent strata corporation, The Owners, Strata Plan NW1809 (the strata). The applicant says the strata breached its duty to repair and maintain common property by refusing to remediate mould in the attic above the applicant's strata lot, and by requiring the applicant to sign an Assumption of Liability form (AOL) for the

mould remediation work. The applicant paid \$2,028.17 to remediate the mould and wants the strata to reimburse him for this cost.

2. The strata does not dispute the presence of mould in the attic above strata lot 55 or the fact that the attic is common property. The strata says that by signing the AOL the applicant assumed liability for the cost of remediating the mould.
3. The applicant is represented by Juan Enrique Montes Langlois, his son. The strata is represented by Robert Schofield, a strata council member. The applicant initially named the respondent as The Owners, Strata Plan The Owners, Strata Plan NW1809. I canvassed this issue with the parties as it appeared to be a typographical error. Neither of the parties dispute that the correct legal name of the strata is The Owners, Strata Plan NW1809. I order that the style of cause is amended accordingly.

JURISDICTION AND PROCEDURE

4. 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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.

6. 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.
7. Under tribunal rule 126, 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

8. The issues in this dispute are:
 - a. Did the strata meet its obligation to repair and maintain common property in accordance with the *Strata Property Act* (SPA) and the strata's bylaws?
 - b. Is the AOL enforceable under the SPA?

EVIDENCE AND ANALYSIS

9. In a civil claim like this, the applicant must prove their claim on a balance of probabilities. This means the tribunal must find it is more likely than not that the applicant's position is correct. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the reasons that follow, I find the strata breached its duty to repair and maintain common property, and I find the strata cannot rely on the AOL to delegate that duty to the applicant.
10. The strata says it did not receive any legal documents in this case, however it filed a Dispute Response and made submissions in response to the applicant's submissions. I am satisfied the strata received the applicant's Dispute Notice and submissions. The strata also says it did not receive the applicant's evidence, however the case manager sent the applicant's evidence to the strata on August 31, 2018. On September 5, 2018 the strata's representative asked the case manager to

re-send the applicant's evidence because their computer had crashed. The case manager re-sent the applicant's evidence to the strata on September 6, 2018. I am satisfied the strata received the applicant's evidence. The strata chose not to provide its own evidence, despite numerous reminders from the case manager.

11. The applicant says that in November 2017, in anticipation of selling their strata lot, they had a home inspection which revealed extensive mould affecting the attic above their strata lot. The applicant submitted a microbial report by PuroClean dated November 25, 2017 with photographs of the attic. The report indicates the attic is 680 square feet and contains numerous photographs depicting mould. The invoices for the mould remediation work indicate that 80 percent of the attic space (544 square feet) was affected by mould. I accept the attic was negatively impacted by mould.

Did the strata meet its obligation to repair and maintain common property in accordance with the Strata Property Act (SPA) and the strata's bylaws?

12. It is undisputed that the attic is common property. Section 72 (1) of the SPA and the strata's bylaw 13 require the strata to repair and maintain common property. In fulfilling its obligation to repair and maintain common property the strata must act reasonably in the circumstances. A strata corporation may have several reasonable options available for undertaking necessary repairs or maintenance, and it may not be faulted for taking a more cautious or less preferable course of action, as long as the option it chose was reasonable in the circumstances. See *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784. In *Taychuk v. Strata Plan LMS 744*, 2002 BCSC 1638 (*Taychuk*), the court suggested that if the problems with the common property pose a serious and imminent health risk, a strata may be obligated to take immediate steps to solve the problem. Where the problem is aesthetic only, it is reasonable for the strata to take more time. In either case the strata is entitled to rely on reasonable expert evidence.
13. When it first learned of the mould in the attic on November 16, 2017, the strata initially refused to investigate or remediate it until the situation worsened

significantly, despite the applicant's claim that it posed a serious health risk. There is no evidence about the existence or extent of the health risk from the mould in the attic above the applicant's strata lot specifically. However, the applicant submitted a report on mould from Health Canada which states that indoor mould growth is generally a significant health risk. The report states that if a single patch of mould is larger than 3 square meters it requires expert assessment and cleanup. The applicant's invoices for the mould remediation says that mould affected 544 square feet (80 percent of the attic space), which is over 50 square meters. In the circumstances I find the applicant's concern about the mould potentially posing a health risk was justified.

14. At a strata council meeting on December 4, 2017, the applicant asked the strata to reconsider its position not to remediate the mould, or else allow the applicant to have the necessary remediation work done. The strata asked a contractor that had previously conducted extensive repairs to the strata in 2013 to inspect the attic. At some point on or before December 13, 2017, the contractor sent a message to the strata stating there was nothing it could do about the mould. The contractor referred to two studies that supposedly showed that stopping the mould is "next to impossible" because there are many factors that can cause it. Those studies are not in evidence.
15. It is unclear from the contractor's message to the strata whether they actually inspected the attic, or whether their information was based on their familiarity with the building from the contractor's work in 2013. The applicant says the contractor "never showed," although it is unclear from the applicant's submission if or when a date was scheduled for the inspection. The strata submitted no evidence. On balance, I find the contractor did not inspect the attic.
16. Evidently the strata relied on the contractor's message and chose to do nothing about the mould. The reports the contractor relied on are not in evidence, so I have no way of assessing them. In these circumstances, and particularly considering the

potential health risk the mould posed, I am not satisfied the strata acted reasonably by doing nothing.

Is the AOL enforceable under the SPA and the strata's bylaws?

17. According to section 72 (2) of the SPA, a strata corporation can only make a strata lot owner responsible for the repair and maintenance of common property through its bylaws, and only if identified in the regulations and subject to prescribed restrictions. No regulation has been passed under this section of the SPA to date, and so there is no mechanism for the strata to delegate its duty to repair and maintain common property to the applicant. The applicant says that by requiring them to sign the AOL, the strata improperly delegated its duty to repair and maintain the mould in the attic to the applicant.
18. On December 18, 2017 the strata informed the applicant that it would allow the applicant to remediate the mould on the condition they signed the AOL before starting the repairs. On January 8, 2018, the applicant and the strata signed the AOL. The first paragraph of the AOL states, ““The Owner(s)” of the above-noted strata lot has requested permission from the Strata Plan NW1809 to construct, install or place within or annexed to the above noted Strata Lot or the common property of: We request permission to clean the mould off the plywood in the attic above our strata lot.” The applicant says they had no choice but to sign the AOL because they were in a weak bargaining position and had no other options to mitigate their losses.
19. The applicant submitted two invoices dated January 10, 2018 for the work performed to remediate the mould in the attic. The total of the two invoices is \$2,028.17. After the mould remediation was completed the applicant asked the strata to reimburse them for the cost, and the strata refused on the basis that the applicant had signed the AOL and that the repairs were only required to sell their unit.

20. The wording of the AOL refers to the applicant making alterations to common property, but that is not what the applicant did by remediating the mould. The invoices for the mould remediation indicate that the work performed included vacuuming, cleaning, scrubbing, and applying a mould encapsulant. There is no evidence to indicate the applicant planned to or made any alterations to common property. Based on the clear wording of section 72 of the SPA, the strata cannot contract out of its duty to repair and maintain common property in these circumstances. I find the AOL is unenforceable.
21. The strata's representative repeatedly emphasized their volunteer status as a member of the strata council and their lack of legal training. I note that strata council members are not held to a standard of perfection. The SPA requires only that the strata acts reasonably in its duty to repair and maintain common property. However, in these circumstances I find the strata has not acted reasonably. There was no legal basis to hold the applicant responsible for remediating mould on common property. I find the strata breached its duty to repair and maintain common property and that it must reimburse the applicant for the cost of the mould remediation.
22. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125 in tribunal fees. The applicant has not claimed any dispute-related expenses.

ORDERS

23. I order the name of the strata in the style of cause is amended to its correct legal name, The Owners, Strata Plan NW1809.
24. Within 14 days of the date of this order, I order the strata to pay the applicant a total of \$2,178.50, broken down as follows:
 - a. \$2,028.17 as reimbursement for the cost of remediating the mould,

- b. \$25.33 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in tribunal fees.

25. The applicant is entitled to post-judgment interest, as applicable.

26. 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.

27. 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 it is an approved consent resolution order, or, 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.

Sarah Orr, Tribunal Member