



Civil Resolution Tribunal

Date Issued: March 4, 2019

File: SC-2018-006638

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sandercombe v. The Owners, Strata Plan VR 286*, 2019 BCCRT 253

B E T W E E N :

Simone Sandercombe

APPLICANT

A N D :

The Owners, Strata Plan VR 286

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Volk

INTRODUCTION

1. This dispute is about repairs to a patio adjacent to a strata lot. The applicant, Simone Sandercombe, claims \$2,700 from a strata corporation, The Owners, Strata Plan VR 286, for repairs that she made to a strata lot that she previously owned.

2. The applicant is self-represented. The strata is represented by an authorized member of the strata council.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (Act). The tribunal is authorized to consider particular disputes. And, may not consider disputes outside the tribunal's jurisdiction. Section 189.1 of the *Strata Property Act* (SPA) allows the tribunal to resolve certain strata property disputes brought by a strata corporation, owner, or tenant. Since the applicant is no longer an owner, as required under section 189.1, she initiated this dispute under the tribunal's small claims jurisdiction.
4. 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 relationships between parties that may continue after the dispute resolution process has ended.
5. The tribunal may decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. I find that I can fairly resolve this dispute by writing based on the documents and written positions before me because 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 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.

ISSUE

8. The issue in this dispute is whether the applicant is entitled to \$2,700 for repairs?

EVIDENCE AND ANALYSIS

9. The applicant bears the burden of proof for the claim on a balance of probabilities. I have reviewed all submissions and evidence provided. I refer only to the relevant evidence necessary to give context to my decision.
10. The strata is a self-managed residential strata corporation with 12 strata lots in North Vancouver, B.C. The strata was created on November 5, 1975 under the *Condominium Act*, a predecessor to the *Strata Property Act (SPA)*.
11. The applicant owned strata lot 4 (SL4) from November 2011 to August 30, 2018. Adjacent to SL4 is a common property patio. It is undisputed that in 2009 the previous owner replaced the patio without obtaining permits or strata approval. And, that the strata became aware of the alterations once complete. The applicant was not aware of the alterations when she purchased SL4.
12. In February 2016 the applicant discovered a leak from the patio into SL4. An investigation revealed that the patio had been fastened to the building wall and that drains beneath the patio were blocked. The parties agree that the patio of SL4 was blocking the drains. And, that over time the blockage caused water damage to the exterior walls of the building. The strata approved a special assessment and paid for repairs to the building. The applicant paid for removal and repair of the patio, including labour costs and costs for a wet vacuum rental, power washer rental, drain flushing and supplies.
13. The applicant says that the leak and resulting damage would not have occurred if the strata had enforced their bylaws when the prior owner altered the patio. The applicant says that the alterations by the previous owner did not comply with bylaw 5.4, which prohibits structural alterations to the exterior of the building without permits and prior strata approval. I agree.

14. The SPA and bylaws do not impose a duty on a strata to enforce all bylaws in every circumstance. Instead, the strata has discretion to enforce its bylaws (see *Strata Plan LMS 3259 v. Sze Holding Inc.*, 2016 BCSC 32). Read together, sections 3, 26 and 133 of the SPA allow the strata, and the strata council exercising the powers and duties of the strata, to do what is reasonably necessary to remedy a contravention of its bylaws.
15. Although the strata had this discretion, I find the failure to enforce bylaw 5.4 when the previous owner altered the patio was unreasonable. That bylaw uses the word shall, making the requirements for permits and pre-approval mandatory. This suggests that those requirements were important, which is understandable. It was reasonable to require pre-approval and permits for structural alterations to the building given their potential consequences.
16. The strata became aware that alterations to the deck had been made, but did not take steps to enforce bylaw 5.4. Given the bylaw, it was not enough for the strata to conduct a visual inspection of the deck to see whether it blocked drains. It is likely that, if the strata had required an inspection when it learned of the alternations, the problem would have been discovered and the repair work could have been done with less urgency, distress, and confusion. As well, the damage that eventually resulted in this case would have been avoided and risks to the entire strata would have been minimized.
17. The parties disagree regarding the status of the deck. The applicant says the deck is the strata's responsibility. The strata says the deck is the owner's responsibility. The deck is common property, which is that part of the land and buildings shown on a strata plan that is not part of a strata lot. The plan does not show the deck as part of SL4. In addition, the plan identifies no limited common property. And, there is no evidence the strata altered the status by resolution or under any applicable statutory provisions.

18. Section 3 of the SPA makes a strata responsible for managing and maintaining common property for the benefit of the owners. Under section 72 of the SPA the strata corporation is responsible for repairing common property.
19. A strata corporation may adopt bylaws that make an owner responsible for common property that is specifically set out in the SPA regulations. Here, the strata adopted bylaw 8.6, which requires the owner of SL4 to maintain the deck including keeping deck drains clear of blockage.
20. However, the SPA regulations do not identify decks as a type of common property that a strata can make owners responsible to repair by passing a bylaw under section 72(2)(b). Given that, I find that bylaw 8.6 is not enforceable. Consequently, I find the strata is responsible for the repair and maintenance of the deck.
21. On the evidence, I find that the applicant acted responsibly in coordinating efforts with the strata to investigate the leak and repair the damage. The applicant understood that the joint coordination meant the strata would pay for the removal of the deck and all repairs. Ultimately, the strata council refused the applicant's request for the cost of the deck removal and repairs.
22. I find that the removal of the deck was necessary to investigate the extent of the leak and to repair the building. Given the strata's reliance on the applicant, the active leak, the weather forecast at the time for more rain, the existence of mold and the presence of a small child in the home, I find it was reasonable for the applicant to remove the deck. The applicant also says that the dismantled deck was unsafe, particularly given the presence of the small child in the home. The strata did not dispute this evidence and as such I accept it.
23. The applicant claims \$2,400 for goods and services paid by her to remove and repair the deck as well as \$200 for her own labour. The respondent does not dispute the costs but argues the applicant should have to pay for them because the deck is not common property. Given my above findings, I award the applicant \$2,400 for the expenses paid. I do not allow the claim for the applicant's own labour.

24. Given my above findings, I need not address the applicant's claim regarding her reliance on the Form B, Information Certificate in purchasing SL4.
25. 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 and award reimbursement of \$125.00 in tribunal fees, as claimed. The applicant did not claim dispute-related expenses.

ORDERS

26. I order that within 14 days of this decision, the respondent pay the applicant a total of \$2,553.45, broken down as:
 - a. \$2,400 for costs to repair the deck,
 - b. \$28.45 in interest under the *Court Order Interest Act* from May 30, 2018, and
 - c. \$125 in tribunal fees.
27. The applicant is entitled to post-judgment interest, as applicable.
28. 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.
29. 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.

Megan Volk, Tribunal Member