



Civil Resolution Tribunal

Date Issued: March 14, 2019

File: SC-2018-007080

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *eheler v. The Owners, Strata Plan NW1795*, 2019 BCCRT 311

B E T W E E N :

daryle eheler

APPLICANT

A N D :

The Owners, Strata Plan NW1795

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute involves a claim by a former strata lot owner for loss of rental income due to water ingress.
2. The applicant daryle eheler owned a strata lot (unit 109) in the respondent strata corporation The Owners, Strata Plan NW1795. On November 21, 2016, there was a

leak in unit 109. The applicant says that the strata failed in its repair and maintenance obligations, causing the leak.

3. The applicant seeks \$2,700 as compensation for the 18-month long rent reduction he gave his tenant while waiting for the leak to be repaired. He sold unit 109 in May 2018. The applicant says that, at an April 2019 strata council hearing, the strata agreed to payout repair damages but declined to compensate him for rental losses.
4. The respondent says it is not liable for the applicant's loss of rental income because there is no evidence that the strata was negligent or breached its duty to repair and maintain the common property under the *Strata Property Act*. The respondent says the rent reduction was not based on unit 109's condition, but on the applicant's friendship with the tenant.
5. The respondent asks that the dispute be dismissed.
6. The applicant is self-represented. The respondent is represented by strata council member Ted Leung.

JURISDICTION AND PROCEDURE

7. 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*. 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.
8. 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.

9. 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.
10. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

11. The issue in this dispute is whether the respondent strata is responsible to reimburse the applicant for rental income lost after water ingress into his strata lot.

EVIDENCE AND ANALYSIS

12. As a preliminary issue, the respondent raised no objection to the claims against it on the basis that the applicant no longer owns the relevant strata lot. The applicant owned the strata lot when the damage occurred. However, by the time the Dispute Notice issued, he was a former owner, meaning this dispute had to be filed as a small claims matter rather than a strata dispute. Given the tribunal's small claims jurisdiction to deal with claims in debt or damages under \$5,000, I find that I have jurisdiction to consider the dispute.
13. In *Ford v. The Owners, Strata Plan LMS 215*, 2018 BCCRT 290, the tribunal noted that while the strata is responsible to repair and maintain the common property under the SPA, the standard is one of reasonableness, not perfection. While not binding on me, I agree with this decision, which follows a consistent line of authority

from the BC Supreme Court, including *Weir v. The Owners, Strata Plan VR 1008*, 2007 BCSC 669 (CanLII), that does bind me.

14. In *Ford*, the tribunal pointed out that where an applicant claims damages for loss of rental income based on the common law of negligence, the applicant must prove that the strata was negligent and that the negligence caused the loss of rental income.
15. On November 1, 2016, the applicant's tenant in unit 109, MC, gave notice that she would be moving out at the end of the month.
16. The next day, November 2, 2016, the applicant entered a rental agreement with tenants RD and RK, to rent unit 109 for either \$1,050 or \$1,000 per month. The amount of rent agreed upon was not established, as discussed further below.
17. At the time, RD and RK were renting unit 305 in the same building, which was also owned by the applicant.
18. On November 3, 2016 the applicant signed a rental agreement with SH to rent unit 305 effective December 1, 2016.
19. On November 21, 2016, the applicant was inspecting unit 109 and found a water leak which he reported to the strata's property manager.
20. On November 25, 2016, RD and RK, signed a letter indicating that their rent had been reduced, by agreement with the applicant, due to the water damage to unit 109. The letter says that once repairs are completed, the rent will "be increased to the amount on the rental agreement, plus any legal increases."
21. The letter also states that the leak was discovered after RD and RK entered into the rental agreement with the applicant, but before they moved in. The letter explains that RD and RK had previously rented unit 305 in the same building but returning there was not an option because it had been re-rented.

22. The letter also says “As the leak was discovered after the rental agreement was entered into and before moving in date, it was decided that this was preferable to not allowing them to move in and deal with the legal implications that this would involve for all concerned.”
23. I interpret this sentence to mean that the tenants were willing to move in, but that the applicant was entertaining “not allowing them to move in” due to the leak. I find that this is different than saying the tenants objected to moving in at the full rent because of the leak.
24. On December 1, 2016, RD and RK moved in as tenants of unit 109 at the agreed upon reduced rent of \$860 per month.
25. The applicant implemented a rent increase from \$1,000/month to \$1,030/month on December 1, 2017.
26. On February 6, 2017, Gevers Engineering submitted a site assessment report (Gevers Report) about unit 109 to the strata’s then property manager, TC. The Gevers report found that there had been a general lack of maintenance of the building’s wood exterior over many years, resulting in building envelope failure causing extensive water ingress into unit 109 causing damage to floor and wall coverings.
27. On March 29, 2018, the applicant sent the respondent strata a notice requesting a strata council hearing under section 34.1 of the SPA.
28. On April 18, 2018 the hearing was held. The strata council decided to offer the applicant \$4,269 for repairs to his unit. The strata council also decided not to reimburse the applicant for rental loss, saying it was not a strata responsibility and that he should have obtained insurance including a loss of rental income rider.
29. The parties agree that the exterior of the strata building is common property, which the strata is responsible to maintain. A strata is not responsible to reimburse an

owner for damages except where the strata has acted negligently in fulfilling this obligation (see *Kayne v. LMS 2374*, 2013 BCSC 51).

30. Here, I find the Gevers Report provides reliable evidence that the building's wood exterior was neglected by the strata, in terms of routine painting maintenance that would have been expected every 5-7 years and in terms of general repairs, such that the strata's negligence in its repair and maintenance obligation is proven.
31. Having said that, the burden is on the applicant to establish, on a balance of probabilities, that the strata's negligence in its repair and maintenance obligations caused his loss of rental income. I find that he has not met this burden.
32. Specifically, the applicant did not provide evidence that RD and RK would have moved elsewhere if charged the full \$1,000 or \$1,050 in monthly rent. He did not provide evidence of any attempt to find alternate tenants willing to pay the full amount. Rather, he provided evidence that he voluntarily reduced the rent for RD and RK, because he wanted to offer them the reduction given the water ingress. This voluntary decision does not establish a causal link between the water ingress and a need to accept reduced rent, on the evidence.
33. In addition, there are shortcomings in the applicant's quantification of his claim. The applicant claims \$2,700 in rental loss income over 18 months. He did not explain how he reached this amount.
34. The applicant did not file the portion of the rental agreement showing the rent that RD and RK paid during the 18-month period. The evidence on this point was unclear. The applicant also refused to provide strata council with the rental agreement. In this proceeding he filed two pages identifying the tenants and the date the agreement was signed, but not the amount of monthly rent.
35. On the one hand the applicant increased the rent in December 2017 from \$1,000 to \$1,030, but he also said the rent discount was originally \$860. He did not explain or provide bank statements showing the amounts that were paid to him in rent, or when the change from \$860 to \$1,000 occurred.

36. At the strata council hearing, the applicant asked to be reimbursed for 18 months of reduced rent from his tenants, at \$860/month from November 2016-April 2018, down from \$1,050, for a total of \$190 per month or \$3,420. The difference between this figure and the \$2,700 he claims here was not explained.
37. The strata says the applicant's decision to reduce rent was not based on the unit's condition, but due to his friendship with the tenant. The strata provided no evidence about the friendship.
38. However, there was evidence that the applicant took the tenants on because he already knew them. They had rented his other unit. He did not provide evidence of advertising the suite for rent more widely, whether RD and RK would have paid the full rent if asked, nor describing any other effort to find tenants willing to pay full rent.
39. For all of these reasons, I dismiss the applicant's claims and his dispute.
40. 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. As the applicant was not successful, I find he is not entitled to reimbursement of tribunal fees or expenses.

ORDER

41. I dismiss the applicant's claims and this dispute.

Julie K. Gibson, Tribunal Member