Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rae v. The Owners, Strata Plan BCS 3372,* 2019 BCCRT 553

B E T W E E N :

Jodi Rae

APPLICANT

A N D :

The Owners, Strata Plan BCS 3372

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This small claims dispute is about vehicle damage resulting from alleged negligence in maintaining a ceiling ventilation fan (fan). The applicant, Jodi Rae, says that on November 3, 2018 she found the fan had fallen from the parkade ceiling of the

respondent strata corporation, The Owners, Strata Plan BCS 3372 (strata), and damaged her parked car. The applicant claims $1,523.32 for car repairs.

2. The respondent denies liability and says it was not negligent in its maintenance of the fan.

3. The applicant is self-represented. The respondent is represented by a strata council member. For the reasons that follow, I find the applicant's claims must be dismissed.

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 118 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

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 9.3(2), 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 is whether the respondent strata was negligent in maintaining the parkade fan, and if so, whether it should reimburse the applicant $1,523.32 for the cost of her car repairs.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.

10. It is uncontested that the fan fell from the parkade ceiling onto the applicant's car, damaging it. The applicant provided a photo of the fan sitting on the parkade floor below where it fell from the ceiling. The fan and its surrounding metal cage is large, covering the width of a parking space, and its height reaches the bottom of the driver's window in an adjacent parked car. The photo appears to show thin metal straps attached to the exterior case of the fan, which appear to have broken loose.

11. The applicant says the straps holding the fan in place were insufficient, particularly given the vibration of the fan over time effectively worked out the screws, which allowed the fan to fall on her car. I accept the straps breaking is likely why the fan fell, which is not particularly disputed.

12. I also accept that those metal straps were an inadequate installation method, as set out in a February 2019 email from an HVAC company Modern Niagra (MN), which the applicant contacted after the fan fell. It appears the applicant thought MN's

predecessor company had installed the fan, but MN says this was not the case. In any event, MN stated it had reviewed photos of the fan and was clear that it had not been installed properly and that the "hanger straps" were insufficient.

13. MN also stated that if the fan was vibrating excessively due to lack of maintenance, other issues could arise that would produce a similar result (the fan dislodging and falling). The applicant says the fan vibrated every time it stopped and started, though the strata denies excessive vibration. While I accept the fan vibrated, I have insufficient evidence before me that there was excessive vibration, and no evidence that the strata knew or ought to have known there was excessive vibration. In particular, there is no negative or adverse inspection report about the fan.

14. MN stated that a visual inspection of the entire unit is part of a service so a technician may have noted it was installed improperly. There is no such 'incorrect installation' note in evidence before me. MN also added, "that being said, generally we assume equipment is installed properly and passed by an inspector".

15. I turn to the relevant legal analysis. To prove negligence, the applicant must show the strata owed her a duty of care, that it breached the relevant standard of care, and that the strata's breach foreseeably caused her loss.

16. I find it is clear the strata owed the applicant a duty of care to reasonably secure the safety of parkade users. It is also clear the strata's fan falling on her car caused the applicant's loss. I further find the fan was an obvious hazard given its apparent weight and size and its location suspended over the parking stalls. Thus, the damage was reasonably foreseeable.

17. This dispute turns on the applicable standard of care and whether the strata breached it. For the reasons that follow, I find that the applicant has not proved a breach.

18. The respondent strata exists under the *Strata Property Act* (SPA). While the strata's bylaws were not filed in evidence, I find it is uncontested that the parkade and the

fan were common property and a common asset, which the strata had an obligation to repair and maintain, as set out in section 72 of the SPA.

19. Here, the question is whether the strata was negligent in handling its repair and maintenance obligations with respect to the fan, either by unreasonably not doing anything or by unreasonably relying on others' actions or opinions. I note the same 'reasonableness' standard applies under the *Occupier's Liability Act*. In other words, was the strata's maintenance schedule for the fan reasonable?

20. The standard is not perfection (see *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74). Rather, the strata must act reasonably in all of the circumstances. Significantly, the strata may rely on the advice and guidance of the professionals it reasonably retains to assist with repairs. If the strata has several reasonable options available for undertaking necessary repairs or maintenance, it may not be faulted for taking a more cautious approach or for taking an approach that in hindsight turned out to be a less preferable course of action, as long as the option it chose was reasonable in the circumstances at the time (see *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784).

21. The strata's first argument is that the fan required no maintenance, because the only downside if it stopped working was that the fan was not operational. The strata submits that it was reasonable to defray the maintenance costs and if needed, replace the fan. I disagree. Given the obvious hazard presented by the fan's location relative to the cars and drivers below, an indefinite "no maintenance" approach would have been unreasonable.

22. However, the strata's relatively new council member later located maintenance logs for the fan from March 2018 onwards. The strata submits its maintenance contractor D.M.S. Mechanical Ltd. (DMS) did maintain the fan "in line" with the quarterly or twice a year service recommended by MN, since December 2015 when the strata hired DMS. I accept the DMS log book as accurate, and reject the applicant's speculation that it was "highly suspect".

23. The DMS log book sets out its scope of work and includes a term that the log book will be filled in after each service. The scope of work states that "all equipment" was to be "inspected and tested as per checklist" 4 times per year, and "fans 2 times per year".

24. The applicant says at most the fan was "checked", in that on a visual inspection it was found operating, and that the fan was not actually serviced after March 2014. However, the applicant does not explain how she determined what "checked" meant on the DMS log. In any event, again MN's evidence is that while a technician "may" have noted improper installation, the technician would also generally assume proper installation. That may be problematic in terms of standard of care for a technician, but here the issue is whether the strata reasonably relied on DMS' logs that showed no concerns.

25. From an email the applicant sent to the strata's property manager on November 3, 2018, it appears the applicant determined that the last service date was March 10, 2014 based on a photo of the fan. However, the applicant did not provide a photo or any other evidence showing a last service date of March 10, 2014. I infer the March 10, 2014 was something noted on the fan itself, such as on a sticker. Since DMS took over maintenance in December 2015 and used a log book system to record maintenance, I find the weight of the evidence does not show the fan's last "service" was March 10, 2014.

26. DMS' log shows that on March 7, July 19, and September (date unspecified), 2018, the parkade exhaust fan was "checked". The "checked" description is similarly used for other items, though a pressure reading was noted in equipment where pressure was relevant. However, other entries for other types of equipment read "tested".

27. Significantly, MN's email about improper installation did not address what would have been appropriate at the time the fan was installed. The parties' evidence is not clear about the installation date, but the applicant suggests it might have been 2009 when the building was built. I have no evidence before me about what was required

in 2009. I note the applicant stated in her email to MN that "it may have been ok then as it would have had to pass an inspection".

28. On balance, I find the strata reasonably hired a contractor (DMS) to maintain the fan. There is no evidence that twice yearly was insufficient. Nothing turns on the fact that the particular council member initially was unaware of the DMS contract, which had been in place since 2015.

29. The issue here is the original installation was inappropriate, at least according to current standards. Based on the evidence before me, I cannot conclude the strata is responsible for the original incorrect installation. Rather, the question is whether the strata failed to properly identify it through maintenance. DMS never noted any concerns about it, which MN suggests is not unreasonable as it is usual to assume the installation was approved. While the applicant questions DMS' qualifications, she has not provided any evidence that would allow me to conclude the strata ought to have determined DMS was unqualified. The strata says DMS has been in the HVAC business since 2003, and its journeyman are certified, bonded, and insured. There is no evidence to the contrary. While the fan in question remains out of service, that does not mean DMS is incompetent but rather that the strata has not yet given instructions to re-install it.

30. I find the applicant failed to prove the strata was negligent, because I find the strata met the applicable standard of care. It reasonably relied on its contractor to maintain the fan. I do not agree that the strata ought to have 'second-guessed' DMS as to what "checked" entailed on its log books. If DMS had identified a problem, I find it likely would have alerted the strata to it. As referenced above, while the particular strata council member dealing with the applicant about this issue did not originally realize the logs existed, I find that does not show that the strata breached the standard of care with respect to the fan's maintenance.

31. The applicant was not successful in her claim. In accordance with the Act and the tribunal's rules, I therefore dismiss her claims for reimbursement of tribunal fees. I note that under sections 167 and 189.4 of the SPA, an owner who sues the strata is

not required to contribute to the strata's expense of defending the suit (or tribunal proceeding, as the SPA applies to the tribunal).

ORDER

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

Shelley Lopez, Vice Chair