



Civil Resolution Tribunal

Date Issued: May 2, 2023

File: SC-2022-002752

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hopes v. The Owners, Strata Plan EPS3792*, 2023 BCCRT 363

BETWEEN:

VIKKI LORRAINE HOPES

APPLICANT

AND:

The Owners, Strata Plan EPS3792

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This small claims dispute is about vehicle damage in a strata corporation.
2. The applicant, Vikki Lorraine Hopes, says her vehicle was damaged by a leak in an underground parkade belonging to the respondent strata corporation, The Owners, Strata Plan EPS3792 (strata). Ms. Hopes says the cost of repairing her vehicle

damage was covered by her insurance, except for her deductible. Ms. Hopes asks for an order that the strata reimburse her \$300 for her insurance deductible.

3. The strata does not dispute that Ms. Hopes' vehicle was damaged by a leak in the strata's parkade. However, the strata says it is not responsible to reimburse Ms. Hopes for her insurance deductible because it was not negligent. The strata also relies on its bylaws to say that Ms. Hopes parked in the parkade at her own risk.
4. Ms. Hopes is self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
7. Section 42 of the CRTA says the CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

Withdrawn claims

9. Ms. Hopes initially named three additional parties as respondents in this dispute. However, she withdrew her claims against the three additional parties at the outset of the facilitation stage of the CRT process, and the strata consented to the withdrawal. So, I have amended the style of cause above to remove the three additional parties as respondents to this dispute.

ISSUE

10. The issue in this dispute is whether the strata is responsible to reimburse Ms. Hopes the \$300 deductible she paid arising from the water leak's damage to her vehicle.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Ms. Hopes must prove her claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.
12. It is undisputed that the strata's underground parkade ceiling leaked around December 2021 and January 2022, and caused corrosive damage to Ms. Hopes' vehicle. As noted, Ms. Hopes' vehicle insurer undisputedly covered the vehicle repair costs, except for her \$300 deductible.
13. Ms. Hopes says the strata has known about cracks and leaks in the parkade since at least 2019, and should have anticipated that vehicles parked under the leaks could be damaged. She says the strata should not have allowed those parking spots to be used.

14. The strata does not dispute that it knew about some parkade leaks. The strata says the leaks were warrantable defects that the strata reported to its warranty provider, and says it is not responsible for any delay in fixing the leaks. The strata provided a portion of a warranty defects review document it says it sent to its warranty provider. The document lists 72 warranty issues, included numerous references to cracks, leakage and “efflorescence staining” above several parking stalls in the parkade. The document does not indicate the dates that any of these issues were discovered. However, when providing this document as evidence, the strata dated it January 11, 2022. This is one day after Ms. Hopes says she reported her vehicle damage to her employer on January 10, 2022. As noted, her employer is undisputedly a commercial strata lot tenant in the strata. Given the above timing, which is undisputed, I find the strata knew about cracks, leaks and staining in the parkade before Ms. Hopes’ vehicle was damaged.
15. The strata relies on its bylaw 3(10) and says that Ms. Hopes parked her vehicle in the parkade at her own risk. Bylaw 3(10) says “private property, including vehicles and bicycles, left by an owner on common property or limited common property is done solely at the risk of the owner”. Unlike other sections of bylaw 3 that refer to owners, tenants, occupants and visitors, bylaw 3(10) only refers to owners. So, I find bylaw 3(10) does not apply to Ms. Hopes because she was undisputedly employed by a commercial strata lot tenant, and was not an owner.
16. The strata also says the leak in Ms. Hopes’ stall was reported by the owner of the commercial strata lot that Ms. Hopes’ employer was a tenant of. The strata argues that the commercial strata lot’s owner should have advised its tenant, Ms. Hopes’ employer, about the leak in the parking stall. I do not accept this submission. The strata did not say when the owner reported the leak to the strata, and provided no documentary evidence to show that it was reported before Ms. Hopes’ vehicle was damaged. Further, Ms. Hopes says the leak in her stall was the last item listed on the strata’s warranty defects review document submitted on January 11, 2022. She argues that since she reported the vehicle damage to her employer on January 10, 2022, it is likely the commercial strata lot owner reported the leak at that time. I agree.

I find the evidence does not show that the commercial strata lot owner knew about the leak before Ms. Hopes' car was damaged. More importantly, I also find the evidence does not show that the strata itself ever advised owners, tenants or residents about the parkade cracks, leaks and staining before Ms. Hopes' vehicle was damaged. The strata does not argue otherwise.

17. Ms. Hopes alleges the strata was negligent by allowing people to park in parking stalls beneath cracks and leaks without any warning when they knew or ought to have known that doing so could cause damage.
18. To prove negligence, Ms. Hopes must show that the strata owed Ms. Hopes a duty of care, the strata breached the standard of care, Ms. Hopes suffered damage, and the damage was caused by the strata's breach. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3.
19. I find the strata clearly owed its parkade users a duty of care, including Ms. Hopes. I find the applicable standard of care was to warn parkade users about any known hazards in the parkade. The strata undisputedly knew about numerous cracks and leaks with efflorescence staining in the parkade's ceiling before Ms. Hopes' vehicle was damaged. I find the strata reasonably knew or ought to have known that those issues could pose a hazard to parkade users. As discussed above, the evidence does not show that the strata ever advised owners, tenants, residents or other parkade users about the parkade's ceiling cracks, leaks and staining. I find that failing to do so is an obvious breach of the standard of care.
20. I turn then to Ms. Hopes' claimed damages. The strata does not dispute that Ms. Hopes vehicle was damaged as a result of its parkade ceiling leak. I find that such damage was reasonably foreseeable, and the strata's negligence and breach of the standard of care contributed to such damage. The strata itself argues that Ms. Hopes did not need to park in that particular stall or the parkade, and says other parking options were available outside the parkade. So, I find that had the strata advised owners, tenants, residents and other parkade users of the parkade's ceiling cracks, leaks and staining, Ms. Hopes would likely have parked elsewhere. The strata also

does not dispute that Ms. Hopes paid a \$300 deductible for her vehicle's damage repairs, and the documentary proves she did so. Therefore, I find the strata must reimburse Ms. Hopes \$300 for her paid deductible.

Interest, CRT fees and expenses

21. The *Court Order Interest Act* applies to the CRT. Ms. Hopes is entitled to pre-judgment interest on the \$300 damages award from February 27, 2022, the date she paid the \$300 deductible, to the date of this decision. This equals \$7.49.
22. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Ms. Hopes was successful in this dispute, I find she is entitled to reimbursement of \$125 in paid CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

23. Within 30 days of the date of this order, I order the strata to pay Ms. Hopes a total of \$432.49, broken down as follows:
 - a. \$300 in damages,
 - b. \$7.49 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
24. Ms. Hopes is entitled to post-judgment interest, as applicable.

25. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Leah Volkers, Tribunal Member