



Civil Resolution Tribunal

Date Issued: November 9, 2023

File: SC-2022-008972

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *MacMillan v. The Owners, Strata Plan 1688*, 2023 BCCRT 969

BETWEEN:

ERICA MACMILLAN

APPLICANT

AND:

The Owners, Strata Plan 1688

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. The applicant, Erica MacMillan, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan 1688 (strata). Ms. MacMillan's vehicle was vandalized while parked in the strata's common property garage. Ms. MacMillan says the strata is responsible for the damage because it negligently failed to ensure the safety of

vehicles in the garage. She claims \$405.36 for her insurance deductible and other expenses that were not covered by her insurer.

2. The strata says that it was not negligent, and is not responsible for the claimed expenses.
3. Ms. MacMillan is self-represented. A strata council member represents the strata.
4. For the following reasons, I dismiss Ms. MacMillan's claims.

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.
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.

Preliminary decision

8. The strata initially alleged that Ms. MacMillan was also pursuing this claim in the BC Provincial Court (BCPC) because she had initiated a claim there against 2 strata council members about vehicle damage. In an August 2, 2023 preliminary decision, a CRT vice chair found that the BCPC action was related to a different incident from

this CRT dispute. While the preliminary decision is not binding on me, the parties did not argue this point further, and I agree with the vice chair's reasoning in any event. So, I have not addressed this further in my decision except as it relates to Ms. MacMillan's claim for dispute-related expenses, discussed below.

Other preliminary issues

9. In submissions, Ms. MacMillan says that because the damage to her vehicle was over \$10,000 and it happened while the vehicle was stored on common property, she is "curious to know" if the strata's insurance should have been engaged rather than her personal insurance. The strata's insurance policy details are not before me, and there is no evidence Ms. MacMillan asked the strata to make an insurance claim. In any event, Ms. MacMillan does not claim a specific remedy about the strata's insurance, so I make no findings about this.
10. The parties also provided submissions about another strata owner's use of a parking stall for construction projects and storage in September 2023. In final reply submissions, Ms. MacMillan says that she requested that the strata provide her with security camera footage relating to this complaint. I decline to consider Ms. MacMillan's request for security footage as the strata did not have an opportunity to respond to these arguments. In any event, I find these submissions are unrelated to Ms. MacMillan's claim about her vehicle's damage in April 2021, and again, she has not requested a specific remedy about the other owner's stall use. So, I have not addressed these allegations or Ms. MacMillan's request for security footage in this decision.

ISSUES

11. The issues in this dispute are whether the strata negligently failed to ensure the garage's security, and if so, whether it must pay Ms. MacMillan's claimed damages.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicant Ms. MacMillan must prove her claims on a balance of probabilities (meaning “more likely than not”). While I have read all the parties’ submitted evidence and arguments, I have only referred to those necessary to explain my decision.
13. The background facts are undisputed. The strata has a common property garage building. The section of the garage building where Ms. MacMillan parks consists of 5 parking stalls, G9 to G13. Ms. MacMillan uses stall G11. While each stall has its own garage door, there are no internal walls between the stalls. This means that if one stall door is opened, a person could access any of the 5 stalls in the garage. I infer that each of the owners who use the stalls has an opener for their specific door, but the garage can also be accessed by code. While the strata is responsible for maintaining the parking garages under its bylaws, it does not have specific bylaws about garage security.
14. In April 2021, Ms. MacMillan’s vehicle was parked in G11 and was vandalized at some point. Photos and a police report in evidence show that the soft top on Ms. MacMillan’s vehicle was slashed in two places, leaving a large hole.
15. As noted, Ms. MacMillan says the strata was negligent by failing to protect her vehicle from vandalism or damage. To prove negligence, Ms. MacMillan must show that the strata owed her a duty of care, the strata breached the standard of care, Ms. MacMillan sustained damage, and the strata’s breach caused the damage (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3).
16. While neither party specifically referred to it, I find the *Occupiers Liability Act* (OLA) also applies to this dispute. A strata corporation falls within the definition of “occupier” in the OLA (see, for example, *Cater (Guardian of) v. Ghag Enterprises Ltd.*, 1991 CanLII 2300 (BCSC)). Section 3(1) of the OLA says that an occupier has a duty to take reasonable care that a person’s property on its premises will be “reasonably safe”, except where the person willingly assumes a risk to their property. The

standard of care under the OLA is the same standard of care at common law for negligence, which is to protect others, or their property, from an objectively unreasonable risk of harm (see *Agar v. Weber*, 2014 BCCA 297 at paragraph 30). The standard is one of reasonableness, not perfection (see *Wilfong v. Stanger*, 2008 BCSC 1247 at paragraph 8).

17. So, for both negligence and occupier's liability, the question is whether the strata breached its duty to take reasonable care in the circumstances to ensure that Ms. MacMillan's vehicle was reasonably safe.
18. The strata was undisputedly undergoing construction at the time the vandalism occurred. Ms. MacMillan argues that the strata breached its duty of care by not creating a "safety plan" to protect the property in the garage when "workers, vendors and trades people" are using the garage. She says that a "variety of workers" use G9 and G10, and leave the stall doors open "for hours at a time with no one inside the garage or within eyesight of the garage." However, she provided no evidence in support of this, such as photographs of the open doors, witness statements, or a log of dates and times when the doors were left open. Ms. MacMillan does not say that the G9 or G10 doors were left open and unattended before her vehicle was vandalized.
19. Ms. MacMillan says that she verbally asked the strata to email other owners to inform them about the damage to her vehicle, "so that everyone could be more vigilant about their own personal security and security to their property." While the strata does not dispute that it did not send out the requested email, I find this does not assist Ms. MacMillan in establishing whether the strata's security measures were insufficient before her vehicle was vandalized.
20. The strata says that at the time of the incident, the construction on the side of the building where the garages are located had been completed and the only active construction was on the other side of the building. It says that the construction crew had originally been 4 people, but was reduced to 2 people before Ms. MacMillan's vehicle was vandalized. The strata says it changed the garage access code when the

other 2 crew members left, and that only these 2 crew members and the strata council members had the new code.

21. The strata says that this incident, while unfortunate, was the first of its kind on strata property. The strata says, and Ms. MacMillan does not dispute, that the garage doors were closed at the time of the vandalism and there was no sign of forced entry, nor was there any damage to other vehicles parked in the garage or outside of it.
22. The evidence before me, including the police report, indicates that no one knows who damaged Ms. MacMillan's vehicle or how they were able to access the garage. Ms. MacMillan argues that the strata should have a "safety plan" that includes regularly changing the access codes, but I find she has not proven that this would have prevented the damage to her vehicle as there is no evidence that the damage was caused by an unauthorized person gaining access to the garage by using an access code.
23. Overall, I find Ms. MacMillan has not proven that the strata breached its duty of care under the OLA, or that the strata was negligent in its approach to garage security at the time Ms. MacMillan's vehicle was vandalized. It follows that I must dismiss Ms. MacMillan's claim.

CRT FEES AND EXPENSES

24. 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. Neither party paid CRT fees so I make no order for them.
25. Ms. MacMillan claims dispute-related expenses for the cost to obtain documents to support her arguments about the BCPC proceeding for the preliminary decision. While Ms. MacMillan was successful in the preliminary decision, in that the vice chair declined to refuse to resolve the dispute, she provided no evidence about what documents she needed to obtain or what expenses she incurred. So, I dismiss Ms. MacMillan's claim for dispute-related expenses.

ORDER

26. I dismiss Ms. MacMillan's claims and this dispute.

Alison Wake, Tribunal Member