



# Civil Resolution Tribunal

Date Issued: June 12, 2017

File: ST-2016-00400

Type: Strata

Civil Resolution Tribunal

Indexed as: *Kantypowicz v. The Owners, Strata Plan VIS 6261*, 2017 BCCRT 29

BETWEEN:

Mark Kantypowicz (Kanty)

**APPLICANT**

AND:

The Owners, Strata Plan VIS 6261

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Shelley Lopez, Vice Chair

### INTRODUCTION

- 1) The applicant Mark Kantypowicz or Kanty (the owner) owns strata lot 169 (SL169) in a strata corporation known as The Owners, Strata Plan VIS 6261 (the strata). This dispute arose because the ceiling of the owner's strata lot was damaged by a water leak after the building exterior had been power washed on the level above the owner's.

- 2) In addition to reimbursement of \$225 in tribunal fees, the owner wants an order that the strata repair his ceiling, which the owner estimates will cost about \$1,200.

## **JURISDICTION AND PROCEDURE**

- 3) These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 3.6 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. The tribunal also recognizes any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
- 4) 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.
- 5) The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I heard this dispute through written submissions because I find there are no significant credibility issues or other reasons that might require an oral hearing.
- 6) Under section 48.1 of the Act, in resolving this dispute the tribunal may make one or more of the following orders:
  - a) order a party to do something;
  - b) order a party to refrain from doing something;
  - c) order a party to pay money.

## **ISSUES**

- 7) There are two issues in this dispute:
  - a) Should the strata be required to repair at its expense the owner's ceiling, which was damaged following the strata's exterior power washing?

- b) Should the strata reimburse the owner the \$225 in fees he paid the tribunal?

### **POSITION OF THE PARTIES**

- 8) The owner says the strata was negligent in maintaining the building exterior and provided inadequate training of the workers doing the power washing that the parties agree caused the water leak in SL169. As such, the owner says the strata should pay for the repairs to his strata lot ceiling.
- 9) The strata denies it was negligent in any way. The strata says it provided adequate training and met its duty to repair and maintain common property, noting the incident was isolated and had never happened previously. In the result, the strata says the responsibility for repair of the owner's strata lot falls to the owner, even though the power washing was the cause.

### **BACKGROUND, EVIDENCE, AND SUBMISSIONS**

- 10) The strata was created in 2007. There are three buildings in the complex: building A has 5 strata lots, building B has 114 strata lots, and building C has 66 strata lots. The owner's SL169 is on the 7<sup>th</sup> floor of building C, a tower with 9 floors.
- 11) In building C, the entrances to the strata lots are in hallways on the building exterior that are only partially covered. The parties agree that on July 7, 2016, workers hired by the strata were power washing the common property building exterior. The parties also agree that on the same day, the applicant noticed water leaking from his SL169 ceiling and that he contacted the strata's building maintenance manager who instructed the workers to stop. Finally, the parties agree that the water leak in SL169 resulted from the July 7, 2016 power washing of the building's exterior on the 8<sup>th</sup> floor, directly above SL169.
- 12) As discussed further below, the parties do not agree as to whether the strata ought to have anticipated this leak and taken steps to prevent it. They also do not agree about whether the strata failed to provide adequate training of the workers.
- 13) The strata's relevant bylaws, most recently updated in 2015, are summarized as

follows:

- a) *Bylaw 5*: an owner must repair and maintain the owner's strata lot, except for where the bylaws say it is the strata's responsibility.
  - b) *Bylaw 12*: the strata must repair and maintain common property, including certain parts of a strata lot, including the building structure.
- 14) In his submissions, the owner describes the July 7, 2016 power washing in the outdoor semi-enclosed hallway as having broken through a caulking barrier that forced water between the floor above and his ceiling. The owner had the damage assessed at just over \$1,200 to repair: drywall, texture, painting, and site preparation and clean-up.
- 15) Photos show water drops on the owner's desk in his den, which I infer are below the ceiling area that was leaking, along with a crack line in the owner's ceiling drywall.
- 16) Immediately upon noting the water leaking, the workers stopped power washing and the owner contacted the building manager who inspected the water leak. In his July 7, 2016 email to the strata's property manager, the owner invited inspection by "appropriate professionals" but he also stated he "would not want any current members of council" in his strata lot. The strata says on July 7, 2016 it advised the owner that in-suite damages would not typically be the strata's responsibility "as per the last water incident", but that ultimately it would be up to the strata council. The owner went on holiday July 8, 2016.
- 17) On July 14, 2016, after his return from holiday, the owner emailed the strata that the ceiling crack in his den appeared to have dried up, which he said made sense as the water inside presented only with the exterior power washing and stopped when the power washing stopped. The owner advised that he had run into the strata's workers who had "apologized for their mistake" and had told the owner the leak happened because of "too much pressure in the wrong place while they were cleaning above" the owner's strata lot. The owner wrote that the workers had since changed their power washing method to avoid the problem happening again. The owner advised he wanted his ceiling repaired.

- 18) On July 28, 2016, following a strata council meeting, the strata advised the owner that council was “open to considering the repair” of his ceiling, but that council would require access to his unit to investigate the damage before any decisions were made. The strata says that it obtained legal advice and ultimately determined that as the amount of damage was below the strata’s insurance deductible, the strata was not liable to pay for the repairs to the owner’s strata lot in the circumstances.
- 19) I pause to note that there is some disagreement between the parties about whether proper access to SL169 was provided for an inspection. As this decision turns on the strata’s liability to repair the damage, nothing turns on whether the strata council was permitted the required access to inspect as set out in the strata’s bylaws. I also note that there is no suggestion in the evidence that after July 7, 2016 there was any ongoing damage occurring.
- 20) The owner cites an online article that noted power washers can be dangerous if used incorrectly. The owner submits that after the leak into his strata lot the building manager created a new protocol for those areas to be cleaned by hand for all units. A photo appears to show new caulking applied in the exterior hallway on the joint between the hallway flooring and the interior flooring that extends past the exterior door. It appears the owner provided this photo to demonstrate the strata addressed the problem after the leak in his ceiling, which is not disputed.
- 21) The owner submits the caulking in the area where the power washing occurred had not been inspected, repaired, or had any maintenance since construction in 2007. In support of his position that the strata was negligent in this matter, the owner provided a copy of a 2013 depreciation report that totals 135 pages. The owner notes Appendix E of this report says most caulking has an average life span of 7 to 20 years and that hardened and cracking caulking can allow water penetration and heat loss. Appendix E notes “some caulking is loose and dry”, and that regular upkeep of seals will prevent problems. The owner says the strata failed to address the identified caulking issue properly before the leak occurred. The owner says that the strata replaced new caulking in April 2017 is evidence that there was a building-wide maintenance issue that requires attention.

- 22) The strata says the depreciation report does not identify the areas where caulking was loose and dry. The strata says that the areas in question identified in the report turned out to be associated with one of the townhouses, caulking around hose bibs, irrigation lines, and windows, which was repaired. There were no issues with caulking around the doors. This evidence is not disputed.
- 23) The strata says power washing around all buildings in the complex was done yearly since 2009, and at no time had there been any indication that there were any issues around doors or anywhere else in the buildings. The issue with the owner's SL169 was the first occasion. The strata says that after this leak incident, the caulking of the 185 door sills was inspected in October 2016. The inspector advised that the caulking in the building was in very good shape and would remain so for at least another 10 years. However, as a safeguard the strata says it decided to replace the caulking to all door sills. The strata denies it was negligent in any way.
- 24) The strata denies its staff was inadequately trained. The strata relies on two invoices from May and October 2014 to show that the staff were trained. The invoices show 2.25 hours for "operation tutorial" in May 2014 and 1 hour of a site demonstration and operation of the unit in October 2014. The strata also says the new employee was also instructed and trained by the building manager prior to any power washing. The strata says the other buildings in the complex were power washed using the same procedure by the same building staff in the week prior and no issues arose. The strata submits that there were no expectations that any issues would arise.
- 25) The owner says the invoices do not indicate what type of training was provided or if the employees were instructed not to apply high pressure water to caulking. He submits that if they had been instructed, they "obviously disregarded" it. The owner says they were not aware that the high pressure commercial power washer could easily penetrate the building envelope through cracks, gaps, caulking et cetera. It is unclear on what basis the owner makes this particular assertion.
- 26) Finally, the owner says the strata's legal opinions are irrelevant to his dispute, because

those opinions reference water damage caused by defective pipes causing water ingress into strata lots whereas in this case the owner says the damage was caused by the strata's negligence in maintaining the common property and in instructing its employees as to the proper use of a power washer.

## **ANALYSIS**

- 27) It is undisputed that ordinarily the owner is responsible for repairing and maintaining the interior ceiling of SL169, as required under bylaws 5 and 12. Here, the damage is to the drywall that required repair and repainting.
- 28) I turn now to the nature and extent of any obligations on the strata to repair and maintain in circumstances such as this. Neither the bylaws nor the SPA address claims by owners for damage caused by the strata or by others associated with it.
- 29) The strata is not an insurer. As noted in my earlier decision in *Rawle v. The Owners, Strata Plan NWS 3423*, 2017 BCCRT<sup>1</sup> 15, courts have held that a strata is not held to a standard of perfection. Rather, it is required to act reasonably in its maintenance and repair obligations, which in this case arise under bylaw 12. If the strata's contractors fail to carry out work effectively, the strata should not be found negligent if it acted reasonably in the circumstances. The strata has no liability to reimburse an owner for expenses that the owner incurs in carrying out repairs to their strata lot that are the owner's responsibility under the bylaws, unless the strata has been negligent in repairing and maintaining common property. In other words, I find the strata is correct in their submission that it is not responsible for the damage or repairs to SL169, unless it is established that the strata acted negligently (see *Kayne v. LMS 2374*, 2013 BCSC 51, and *John Campbell Law Corp v. Strata Plan 1350*, 2001 BCSC 1342, and *Wright v. Strata Plan No. 205*, 1996 CanLII 2460, aff'd 1998 CanLII 5823 (BCCA)).
- 30) So, was the strata negligent here? Did it fail to act reasonably in the circumstances? Should the strata be responsible for any of the costs claimed by the owner to repair his ceiling? The answer is no, and my reasons follow.

---

<sup>1</sup> Originally the citation was 2017 CRTBC 15, but has changed to 2017 BCCRT 15.

- 31) First, it is undisputed that this incident was a first time occurrence and an isolated incident. There was no reason for the strata to expect that power washing would cause this sort of leak and in particular that it would be due to failing caulking around a door sill. Second, while the 2013 depreciation report identified “some loose caulking” in its 135 page report, I do not find that reference to have been sufficiently specific so as to warrant a complex-wide investigation. Again, the standard is reasonableness.
- 32) Third, based on the invoices and the strata’s evidence, I accept the strata provided reasonable training to its workers, including the new employee. Again, while it may be tempting for the owner to look back in hindsight as to what could have been done differently, a standard of perfection is not required.
- 33) In summary, I have concluded that the strata acted reasonably and was not negligent in directing repair and maintenance, even though the power washing caused the leak. The strata is therefore not liable for the cost of repairs to the owner’s ceiling area in SL169.

## **DECISION**

- 34) The owner is not entitled to an order that the strata repair his SL169 ceiling nor is he entitled to any reimbursement for any of his costs associated with the repair of his strata lot ceiling.
- 35) As the owner was not successful in this dispute, I find that he is not entitled to reimbursement of the \$225 he paid for tribunal fees.

## **ORDER**

- 36) I order that the applicant’s claims are dismissed.

---

Shelley Lopez, Tribunal Vice Chair



