



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Crichton v. The Owners, Strata Plan KAS431*, 2017 BCCRT 33

B E T W E E N :

Patricia Crichton

APPLICANT

A N D :

The Owners, Strata Plan KAS431

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant Patricia Crichton (the owner) owns unit 202 or strata lot 16 (SL16), in a strata corporation known as The Owners, Strata Plan KAS431 (the strata). The owner's car keys were stolen from her coat at a seniors centre and her car was stolen. As her car contained papers showing her home address, the strata re-

keyed the strata building and charged the owner \$246.75 for the expense of re-keying the security locks.

2. The owner wants an order that the strata remove the \$246.75 charge from her account with the strata. She does not claim reimbursement of any tribunal fees.

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 or stop doing something;
 - b. order a party to refrain from doing something;
 - c. order a party to pay money.

ISSUES

7. There is one issue in this dispute: should the owner be required to reimburse the strata for its expense of re-keying the building, after her car keys were stolen?

POSITION OF THE PARTIES

8. The owner says she was a victim of theft, and that there is nothing in the strata's bylaws that make her responsible for the theft of her keys. In particular, the strata has not established that the theft of her keys was due to her "act, omission, negligence or carelessness", as described in the strata's bylaw 4.4.
9. The strata submits the owner is responsible for the security key regardless of how she lost it, and that is why she has insurance. The strata states the owner is responsible for the strata's costs in re-keying the building locks due to her loss of her security key.

BACKGROUND, EVIDENCE, AND SUBMISSIONS

10. The parties agree:
 - a. In December 2015, the owner's car keys were stolen from her while she was at a seniors centre and her car was stolen.
 - b. At the time of the car theft, the applicant had personal papers in her car that disclosed her home address.
 - c. The strata had the strata building's security locks re-keyed.
11. In the owner's application to the tribunal, she stated the keys were stolen from her coat. At my request through the tribunal facilitator, the owner provided these further details:

My coat was hung on a rack adjacent from the Reception Desk which was manned by 3 volunteers. At the time I always put my keys in my pocket as

sometimes I did not have my purse. For your information at least one purse was stolen in the area where I play bridge. It happened during an exercise class. The coat rack is in the reception area adjacent to the room where we play bridge.

12. The owner also advised the tribunal that she did not make an insurance claim herself due to her deductible.
13. The strata's expense in re-keying the building was around \$806.75, but it has charged only \$246.75 of that to the owner for re-keying the building's locks. The difference related to reprogramming the garage door fobs and for replacement keys, expenses that the strata agreed to cover. The strata felt this was reasonable as the owner was deemed responsible for the loss of her keys.
14. The strata's relevant bylaws are summarized as follows:
 - a. *Bylaw 4.4*: An owner must indemnify and save harmless the strata from the expense of any replacement rendered necessary to the common property or common assets by the owner's "act, omission, negligence or carelessness", but only to the extent that such expense is not reimbursed through insurance. Any insurance deductible paid by the strata is chargeable to the owner.
 - b. *Bylaw 11.1*: The strata must repair and maintain common property, and this obligation must not be interpreted to prevent the strata from claiming or seeking any form of indemnification, damages, set-off or any other form of reimbursement, for the cost of repairing or maintaining any item for which the owner may be held responsible at law.
15. The owner's lawyer wrote to the strata, stating that section 72 of the *Strata Property Act* (SPA) permitted bylaws making an owner responsible for the repair and maintenance of common property "only if identified in the regulations". Her lawyer pointed out that the legislature had to date not identified any common property in the *Regulations*. Thus, her lawyer wrote that the strata could not enforce bylaw 4.4 because the SPA does not allow it. He further argued that the

strata could not show it was the owner's act, omission, negligence or carelessness that led to the repair or re-keying of the security locks.

16. The strata does not address the SPA or section 72, and instead relies upon its bylaws 4.4 and 11.1. The strata simply says the owner is responsible for the expenses flowing from the loss of her security key, regardless of the fact that it was stolen from her.

ANALYSIS

17. It is undisputed that the strata's building locks are common property. The strata has a \$1,000 insurance deductible, and so no insurance claim was made here as the strata's cost fell below that amount. In any event, the \$246.75 charge to SL16 falls within the strata's deductible amount.
18. I will first address the argument raised above about section 72 of the SPA. Section 72 is not relevant here. I say this because the strata is not seeking, by bylaw, to make the owner responsible for the repair and maintenance of the building's locks. Rather, the strata maintains that responsibility and is seeking indemnity from the owner for an expense in this particular instance, given the theft of her keys. The strata's doing so is not prohibited by section 72 of the SPA.
19. Moreover, if I were to agree with the owner's lawyer's submission in his letter to the strata, that would mean that no owner could ever be held responsible for any damages done to common property. I find that is clearly not the intention in the SPA. The prohibitions against damage to common property, as described in the Schedule of Standard Bylaws appended to the SPA, must logically come with an enforcement mechanism that allows the owner(s) responsible to be charged for the related costs.
20. In any event, section 158(2) of the SPA expressly provides for a charge-back: the strata remains free to sue an owner in order to recover the deductible portion of an insurance claim if the owner is "responsible" for the loss or damage that gave rise

to the claim. Sections 130 to 133 of the SPA also contemplate chargebacks to an owner where an owner is considered responsible. Overall, I find the relevant point is that under the SPA an owner can be held responsible for their own conduct.

21. However, by enacting bylaw 4.4, the strata has narrowed the owner's exposure to reimbursement to instances where she has been careless or negligent, and not just where she is "responsible" for it (see *The Owners Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 0519 that considered the bylaw 4.4 language and found it imported a negligence standard). In other words, section 158(2) of the SPA has been interpreted so that a strata may look to recover the insurance deductible even where the owner's responsibility for the loss falls short of establishing negligence. However, as noted in *Morrison*, the indemnity clause in bylaw 4.4 imports only a negligence standard.
22. I turn then to the crux of this dispute and whether the strata's bylaws provide for recovery from the owner here. It is undisputed that the theft of the owner's car keys reasonably necessitated the re-keying of the strata's building locks. The owner's car keys were stolen from her coat that she had left hanging on a coat rack by a reception desk staffed by volunteers. Was the owner careless or negligent in the circumstances that gave rise to the theft of her keys? I find the answer is yes, for reasons that follow.
23. I find that it was negligent or careless of the owner to leave her keys in her coat given she chose to leave her coat out of her possession on the coat rack outside of the room in which she was playing bridge. I pause to note that I draw no conclusions about the owner's evidence about the theft of another person's purse during an exercise class, as it appears that episode had not occurred by the time the owner left her keys in her coat pocket. In any event, another person's conduct does not establish the standard of care here, as that other person was arguably also negligent if she left her purse accessible while attending an exercise class. I find a reasonable person would not leave their keys unattended and accessible to others, just as a reasonable person would not do so with their purse or wallet.

What matters here is that the owner failed to reasonably safeguard her keys. That she did so is what provided the opportunity for their theft and in turn the required re-keying of the building. The owner could have brought her purse or kept her keys with her. That the owner should bear the burden of the re-keying expense, rather than all of the owners, is in keeping with bylaws 4.4 and 11.1. Given my conclusions, the owner is not entitled to an order that the strata reverse the \$246.75 charge against SL16.

DECISION AND ORDER

24. I order that the applicant's dispute is dismissed.

Shelley Lopez, Tribunal Vice Chair