



Civil Resolution Tribunal

Date Issued: November 6, 2017

File: ST-2017-00280

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan K 77 v. Bourgault du Coudray*,
2017 BCCRT 105

B E T W E E N :

The Owners, Strata Plan K 77

APPLICANT

A N D :

Gerard Bourgault du Coudray

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Wendy Baker

INTRODUCTION

1. The applicant strata corporation, The Owners, Strata Plan K 77 (strata), seeks payment of certain fines and repair costs from an owner who failed to allow the strata representative to enter his unit to investigate two separate water leaks.

2. The respondent owner Mr. Bourgault Du Coudray disputes responsibility for the repair costs, and objects to the fines on the basis that the requests for entry were unreasonable.
3. The applicant is represented by an authorized strata council member. The respondent is self-represented.

JURISDICTION AND PROCEDURE

4. 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, 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. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
8. Under section 48.1 of the Act and the tribunal rules, 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 pay money;
- c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

- 9. The issues in this dispute are:
 - a. Were the fines against the respondent Mr. Bourgault Du Coudray properly assessed by the strata?
 - b. Has the strata proven that the respondent Mr. Bourgault Du Coudray is responsible for the two water leaks?
 - c. Is the strata entitled to judgment against the respondent Mr. Bourgault Du Coudray for the fines assessed and the repair costs associated with the two water leaks?
 - d. Is the strata responsible for expenses claimed by the respondent Mr. Bourgault Du Coudray in the amount of \$1,500?

BACKGROUND AND EVIDENCE

- 10. On July 8, 2016 the owner of a unit below the unit of Mr. Bourgault Du Coudray experienced a water leak through the ceiling.
- 11. The strata was informed of the leak and wrote to Mr. Bourgault Du Coudray on July 8, 2016 advising that a person would be at his unit at 2 pm that day to determine the source of the leak.
- 12. The strata sent a representative to Mr. Bourgault Du Coudray's unit on July 8, 2016 to investigate whether the leak was originating from his unit.
- 13. Mr. Bourgault Du Coudray denied the strata representative entry.
- 14. On July 9, 2016 the strata wrote to Mr. Bourgault Du Coudray advising him of their disappointment that he failed to allow access to his unit to allow for investigation

and repair of the water leak, demanding access to his unit, and advising a representative would be at his unit at 2 pm on July 12, 2016 to perform the investigation. Mr. Bourgault Du Coudray did not allow the strata representative entry on July 12, 2016.

15. The strata wrote to Mr. Bourgault Du Coudray on July 13, stating that he had contravened the strata bylaw 7.1(a) and (b) and advising that he would be fined each week he failed to allow access to his unit.
16. By July 20, 2016 Mr. Bourgault Du Coudray had still not allowed access to his unit, and the strata issued another letter advising that he was not in compliance with the bylaw and a fine would be assessed against him.
17. On July 25, 2016 Mr. Bourgault Du Coudray did allow a plumber hired by the strata to enter his unit and investigate to see if the source of the leak could be found.
18. The plumber could not locate a source of the leak within Mr. Bourgault Du Coudray's unit and was unable to recreate the leak into the unit below.
19. The plumber advised Mr. Bourgault Du Coudray that it was important when investigating a leak that access be granted immediately so the source of the leak could be located. The plumber charged the strata \$72.45 for the visit to investigate the leak.
20. The strata repaired the ceiling of the unit below Mr. Bourgault Du Coudray's unit in the summer of 2016.
21. On January 8, 2017 the owner of the unit below Mr. Bourgault Du Coudray again experienced a leak in the ceiling.
22. The strata sent a representative to Mr. Bourgault Du Coudray's unit requesting access to investigate the leak. Mr. Bourgault Du Coudray refused access to the strata because he was busy with his breakfast.
23. On January 9, 2017 the strata wrote to Mr. Bourgault Du Coudray again specifying his breach of the SPA in failing to provide access in an emergency and assessing

him a resulting fine. The strata demanded that Mr. Bourgault Du Coudray pay the outstanding fines, and reimburse the strata for the cost of repairs to the ceiling in the unit below Mr. Bourgault Du Coudray. The claim amount was described as:

Fines for failure to provide access 2 x \$50 July 13 2017 and July 20 2017 [sic]	\$100.00
Repairs to date including plumber	316.23
Additional fine January 8 2017 for failure to provide access	<u>50.00</u>
Total due	\$466.23

POSITION OF THE PARTIES

24. The applicant strata says its bylaws require an owner to let a strata representative into a unit in certain circumstances, and if the respondent Mr. Bourgault Du Coudray fails to let the strata representative into the unit, Mr. Bourgault Du Coudray is liable for any fines levied by the strata.
25. The strata also says that Mr. Bourgault Du Coudray is responsible to pay all costs associated with damage to unit below.
26. The applicant strata requests that I order Mr. Bourgault Du Coudray to pay it \$466.23, plus tribunal fees of \$225.00.
27. Mr. Bourgault Du Coudray says that the applicant's claim should be dismissed as there is no evidence that anything he did caused the leak in the ceiling of the unit below him.
28. Mr. Bourgault Du Coudray also claims \$1,500 against the applicant for expenses which he says relate to "stress, deformation [sic] of character, loss of wages, etc." all flowing from the steps taken by the strata, which steps he says are discriminating, bullying, intimidating, abusing, threatening, humiliating, belittling, or giving people in the building a hard time.

ANALYSIS

Were the fines against the respondent Mr. Bourgault Du Coudray properly assessed by the strata?

29. Bylaw 7(1) of the strata requires owners to let the strata representative into their unit in two circumstances:
- The first circumstance is in the case of an emergency or to prevent significant loss or damage, and no notice needs to be given to the owner in this case.
 - The second circumstance requires the owner to give access at a reasonable time, on 48 hours notice, to inspect, repair or maintain common property, common assets and any portion of a strata lot that are the responsibility of the strata to repair and maintain.
30. The strata relied on both subsections of bylaw 7(1) when it issued its notices of fine to Mr. Bourgault Du Coudray in 2016.
31. If the strata required access to Mr. Bourgault Du Coudray's unit because of an emergency or to avoid significant loss or damage, no notice was required.
32. In its July 8, 2016 letter the strata did give Mr. Bourgault Du Coudray short notice of the need for entry to the unit, although it was not obliged to do so under the bylaw.
33. In the July 9, 2016 letter seeking access to the unit, the strata gave Mr. Bourgault Du Coudray 48 hours' notice, presumably in compliance with bylaw 7(1)(b).
34. No letter of notice was provided in this proceeding relating to the strata's efforts to gain access to Mr. Bourgault Du Coudray's unit in 2017. The statement of the strata is that when the strata contacted Mr. Bourgault Du Coudray on January 8, 2017, the strata was refused entry because Mr. Bourgault Du Coudray was "busy eating his breakfast". This statement was not disputed by Mr. Bourgault Du Coudray, and I accept it is accurate.

35. The strata is responsible to maintain and repair common property under section 72 of the *Strata Property Act* (SPA). Common property is defined under section 1(1) of the SPA to include pipes and other facilities for the provision of water and drainage which are located within a wall or ceiling that forms a boundary between two strata lots or wholly or partially within a strata lot if they are used in connection to another strata lot of common property.
36. In this case, the strata lot boundaries are located at the mid-point between the structural portion of the ceiling of the unit below Mr. Bourgault Du Coudray's unit and the floor of Mr. Bourgault Du Coudray's unit.
37. It is not clear from the evidence presented whether a repair was made to a common property pipe or other such facility within the ceiling at issue or within the owner's strata lot. However, I find it was reasonable for the strata to approach the leak as if a pipe or drainage facility requiring repair was common property. As such, I find that the strata was entitled to rely on s. 7(1)(b) of the bylaws when issuing its notice on July 9, 2016.
38. I further find that on July 8, 2016 and January 8, 2017, when the leak was active, the strata was entitled to treat the leak as an emergency and was not required to give prior notice to Mr. Bourgault Du Coudray of the need to access his unit.
39. The strata bylaws provide that the maximum fine for each contravention of a bylaw is \$200, and that where a contravention is continuous for at least seven days, a new fine may be issued each seven days.
40. The strata has fined Mr. Bourgault Du Coudray for two contraventions of bylaw 7(1)(a) and (b) in 2016, and one contravention in 2017, all of which relate to the obligation of an owner to allow the strata access to a unit in the circumstances described above.
41. I find that the strata did have authority to require Mr. Bourgault Du Coudray to provide access to his unit in accordance with bylaw 7(1)(a) on July 8, 2016 and

January 8, 2017, and in accordance with bylaw 7(1)(b) on July 12, 2016 as set out in the notice on July 9, 2016.

42. I further find that Mr. Bourgault Du Coudray contravened bylaw 7(1)(a) and (b) when he denied access to his unit as requested by the strata.
43. I also find that Mr. Bourgault Du Coudray's failure to allow the strata entry from July 8, 2016 until July 25, 2016 was a continuous contravention of the bylaw which entitled the strata to issue a further fine on July 20, 2016.
44. Section 135 of the SPA requires a complaint to be made, and notice of the complaint to be given, before a fine may be imposed. The SPA does not expressly clarify how a complaint is to be made or who may make a complaint. However, I rely on the statement of the modern principle of statutory construction by Driedger to find that a member of the strata council is entitled to make a complaint where it is presented with evidence of non-compliance:

Today there is only one principle or approach, namely, the words or an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

Driedger, E.A. *Construction of Statutes*. Butterworth & Co. (Canada) Ltd., 1983, p. 87, as accepted by the Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27

45. I find that the SPA creates a regime wherein the strata is obliged to manage and maintain common property and common assets for the benefit of the owners, and as part of the strata's authority in this respect it is given the power to enforce strata bylaws. I find that it is consistent with the purpose of the SPA that a complaint may issue from a member of the strata council itself. To find otherwise would result in an absurdity wherein any person except a member of the council may make a complaint. I also find that the complaint may be made by a member of the council in his or her official capacity as a member of the council.
46. I find that the letters delivered to Mr. Bourgault Du Coudray on July 13 and 20, 2016 and January 9, 2017 were delivered in compliance with the s. 135 of the

SPA. The letters from a member of the strata council clearly set out the nature of the complaint, the bylaw which was contravened and how it was contravened, and that a fee would be assessed in relation to the contravention.

47. There is no evidence before me that Mr. Bourgault Du Coudray was prevented from raising his concerns about the assessment of fees with the strata, and no evidence that Mr. Bourgault Du Coudray requested a hearing which was refused by the strata.
48. In the result, I find that the strata properly assessed three fines to Mr. Bourgault Du Coudray.
49. I find that the strata acted reasonably and in accordance the bylaws and the SPA in dealing with Mr. Bourgault Du Coudray, both in requesting access and in dealing with his refusal to grant entry in the face of a leak which reasonably required entry into his unit to complete the investigation.

Has the strata proven that the respondent Mr. Bourgault Du Coudray is responsible for the two water leaks?

50. The strata has provided a copy of the invoice of the plumber who investigated the first leak. The invoice totalled \$72.45.
51. No evidence has been provided to support the strata's claim for additional costs up to the amount of \$316.23.
52. The plumber did not conclude that the water leak originated in Mr. Bourgault Du Coudray's unit. In fact, the plumber was unable to replicate the leak when he finally was given access to Mr. Bourgault Du Coudray's unit.
53. The strata is empowered under its bylaw 26 to claim expenses against an owner which the strata incurred in remedying an owner's bylaw contravention. The plumber's invoice does not represent costs incurred in remedying Mr. Bourgault Du Coudray's bylaw contravention, i.e. Mr. Bourgault Du Coudray's failure to

provide access to his unit. The plumber costs relate to the investigation of the leak by the strata.

54. No evidence has been brought forward sufficient to establish that Mr. Bourgault Du Coudray was responsible for the leak. The speculation of the plumber as to whether Mr. Bourgault Du Coudray splashed water on his floor which ultimately created the leak is not sufficient to establish liability on the part of Mr. Bourgault Du Coudray, particularly in circumstances where the plumber himself could not recreate the leak. No evidence was brought forward regarding the cause of the leak in 2017.
55. I find the strata has failed to prove that it was more likely than not that Mr. Bourgault Du Coudray's actions created the leak in the unit below him in either 2016 or 2017.
56. Because the strata has not proven that Mr. Bourgault Du Coudray is responsible for the leak, I do not have consider whether the strata has the authority to pass on any costs of the investigation of the leak or repairs of the ceiling to Mr. Bourgault Du Coudray.

Is the strata entitled to an order for the fines issued and the repair costs associated with the two water leaks?

57. For the reasons stated above, I find that Mr. Bourgault Du Coudray contravened bylaw 7(1)(a) and (b) and the strata properly issued fines totally \$150 in relation to such contraventions. The strata is entitled to an order in the amount of \$150 for the fines issued.
58. For the reasons stated above, I find that Mr. Bourgault Du Coudray is not responsible for the repair costs associated with the two water leaks.

Is the strata responsible for expenses claimed by the respondent Mr. Bourgault Du Coudray in the amount of \$1,500?

59. Mr. Bourgault Du Coudray seeks to recover expenses totalling \$1,500 which he says arise from "stress, deformation [sic] of character, loss of wages, etc."

60. Mr. Bourgault Du Coudray provided a photograph of some medication he takes. That is the only evidence he provided in relation to his claim for expenses of \$1,500. I was not provided with sufficient evidence to establish that the medication taken by the respondent has anything to do with the issues in this case, and I have been provided with no evidence to establish any other of the expenses claimed.
61. Mr. Bourgault Du Coudray has not commenced a claim for the expenses sought and has not established a basis for an award of any of the expenses claimed. As such, I deny the relief sought.

DECISION AND ORDERS

62. I order the respondent Mr. Bourgault Du Coudray to pay the strata \$150.00 in relation to unpaid fees within 30 days of this decision.
63. Under section 49 of the Act, and tribunal rules 14 and 15, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. The strata was partially but not wholly successful in this case. I therefore order the respondent Mr. Bourgault Du Coudray to reimburse the strata for tribunal fees of \$100.00, also payable within 30 days of this decision.
64. The strata is entitled to prejudgment interest under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, as amended on the fines accruing from the date each fine was issued until the date of this decision. I order the respondent to pay the applicant strata prejudgment interest on the fines in the amount of \$1.25.
65. In summary, the respondent Mr. Bourgault Du Coudray is ordered to pay the strata within 30 days of this decision the following amounts:

a.	unpaid fees	\$150.00
b.	tribunal fees	\$100.00
c.	prejudgment interest	<u>\$ 1.25</u>
	TOTAL	\$251.25

66. The strata is also entitled to post judgment interest on the total judgment amount of \$251.25 under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, as amended.
67. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.
68. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Wendy A Baker, Tribunal Member