



Civil Resolution Tribunal

Date Issued: February 20, 2018

File: ST-2017-00127 and ST-2017-002173-A1

Type: Strata

Civil Resolution Tribunal

Indexed as: *Lake v. The Owners, Strata Plan LMS 445*, 2018 BCCRT 47

BETWEEN:

Ronald Lake

APPLICANT

AND:

The Owners, Strata Plan LMS 445

RESPONDENT

AND:

Ronald Lake

RESPONDENT BY COUNTERCLAIM

AMENDED REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant and respondent by counterclaim, Ronald Lake, owns strata lot 16 in the strata corporation, The Owners, Strata Plan LMS 445 (strata).
2. While installing a television bracket on a bedroom wall in his strata lot on June 7, 2016, the applicant drilled a hole into a water pipe in the wall which resulted in a leak.
3. The applicant claims that the water pipe was incorrectly installed, which caused flood damage to his strata lot. He requests that the strata pay \$5,000.00 in repair costs. He also requests an order that the strata notify owners that there is danger in drilling a hole or hanging a picture on the wall, and an order that the strata map the location of all water pipes in his strata lot.
4. In its counterclaim, the strata claims that the applicant caused damage to his strata lot and an adjoining when he drilled a hole in the water pipe. The strata requests an order that the applicant pay \$8,281.87 for emergency restoration services and pipe repair.
5. Both parties request reimbursement of their tribunal fees.
6. The applicant is self-represented. The strata is represented by the strata council president.
7. For the reasons set out below, I dismiss the applicant's dispute. I allow the strata's counterclaim, and order that the applicant must pay \$8,281.87 in restoration and repair costs.

JURISDICTION AND PROCEDURE

8. 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.

9. 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.
10. 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.
11. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
12. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

ISSUES

13. The issues in this dispute are:
 - a. Is the applicant entitled to \$5000 in water damage repair costs from the strata?
 - b. Is the applicant obligated to pay the strata \$8,281.87 for pipe repair and restoration work?
 - c. Is the applicant entitled to an order that the strata notify all owners that there is danger in drilling a hole or hanging a picture on their walls?
 - d. Is the applicant entitled to an order that the strata map the location of all water pipes in his?

EVIDENCE, FINDINGS & ANALYSIS

14. I have read all of the evidence provided, but refer only to evidence I find relevant to provide context for my decision.

Water Damage Repairs

15. Before the applicant purchased his strata lot, the copper water pipes in the strata building were replaced with PEX pipes. The work was overseen by an engineering firm, and was carried out by a mechanical contractor. The City issued permits for the piping work in September 2007, and it was completed by August 2008. The City completed its final inspection on August 14, 2008, and accepted the piping work. The engineering firm issued a certificate of completion on August 25, 2008.
16. The applicant says the water pipe was installed incorrectly, as it was routed along the inside of the drywall with no clearance, and instead should have been routed through the centre of the wall stud.
17. After the pipe was breached, the strata brought in a cleanup crew and drying equipment, and the applicant paid for repairs to his strata lot. The applicant says he should not have to pay for these costs because the problem was caused by incorrectly installed plumbing approved by the strata, and it was reasonable to expect to be able to mount a television on a bedroom wall. He says there was no way to determine where the water pipes were in the wall.
18. The strata says the applicant did not obtain strata approval before attempting to mount the television bracket on his wall, contrary to bylaw 1(4)(p). They say an owner is responsible for ensuring there are no service lines in a wall before any drilling, and the applicant failed to consult with a professional installer or use a stud finder. They say the plumbing was installed by an experienced company, was overseen by an engineering firm, and was done to plumbing code requirements.

19. I do not agree that the applicant contravened bylaw 1(4)(p). That bylaw says an owner, occupant, or tenant may not erect or fasten “any television or radio antenna or similar structure or appurtenance” to the strata lot without approval. A television wall mount bracket is not an antenna and is not similar to an antenna. Rather, it is similar to wall-mounted shelving or furniture, which I find do not require approval under the bylaws.

20. However, the bylaws state that the strata is not responsible for water leak damage caused unless the strata has been negligent. Bylaw 36(3) states as follows:

The strata corporation shall not be responsible to an owner for any loss, damage or expense caused by an overflow or leakage of water from any adjoining strata lots or buildings or by the breaking or bursting of any pipes or plumbing fixtures, or in any other manner whatsoever, unless such damage shall result from the negligent act or omission on the part of the strata corporation, its servants or agents.

21. The applicant says the strata is negligent because they approved improper water pipe installation, in which the pipes are located too close to the surface of the wall. I do not agree.

22. The documents provided by the strata show that the installation was inspected by the municipality and approved in August 2008. The engineering firm also issued a certificate of completion on August 25, 2008. I find that the strata was not negligent in relying on these documents, particularly since there is no evidence before me of other water pipe problems until June 2016.

23. The burden of proof is on the applicant in this dispute, and I find he has not established that the water pipes were incorrectly installed. He asserts that two plumbers who attended the site said the pipes were installed incorrectly, but he did not provide evidence from either plumber. The June 7, 2016 invoice from the plumber who repaired the pierced pipe does not mention any plumbing problem, other than the fact that the applicant hit the pipe with a drill.

24. The applicant provided a copy of a universal plumbing code and printouts from a PEX installation guide, but these documents do not prove that the water pipe in question was installed contrary to the codes applicable in the applicant's jurisdiction.
25. Finally, the applicant provided a copy of a text exchange he had with Derek Bradford. Mr. Bradford's qualifications were not provided in evidence. Mr. Bradford said that where piping is installed less than 1.5 inches from the wall, they should be protected by shield plates. Mr. Bradford also wrote, "if you are not drilling into the stud but somewhere between the studs then there is nothing to prevent you from penetrating a pipe."
26. In his November 9, 2017 statement, the applicant wrote that he found the stud but deliberately drilled into the drywall and not the stud, in order to install a toggle bolt. He said he did this on the advice of installers from Home Depot and Best Buy. His own expert, Mr. Bradford, said there is nothing to prevent pipe penetration when drilling between wall studs.
27. Based on this evidence, I find that the strata was not negligent in regard to the water pipe, and is protected from liability for water damage under Bylaw 36(3). Accordingly, I do not order payment for repairs to the applicant's strata lot.

Restoration Costs

28. The strata provided invoices showing \$7,990.49 for emergency restoration services and \$291.38 to replace the damaged section of pipe. They say that under bylaws 1(3)(g) and 36(4), the applicant is responsible for cleanup, repair, and replacement costs necessitated by his own actions. The strata says that between June 2016 and April 2017 they invoiced the owner for the \$8,281.87 in cleanup and repair charges and made multiple requests for him to pay. On April 24, 2017 they held a hearing at the applicant's request regarding the charges. The strata council voted to maintain the charges, and advised the applicant of that decision on April 26, 2017.

29. The applicant says he is not responsible for the restoration or repair costs because of incorrectly installed plumbing. However, as set out above, I find that he has not established that the water pipe in question was installed incorrectly.
30. Bylaw 1(3)(g) says that owners are responsible for additional cleaning costs not part of regular cleaning duties resulting from their acts. Bylaw 36(4) states as follows:

An owner shall indemnify and save harmless the strata corporation from the expense of any maintenance, repair or replacement rendered necessary to the common property or to any strata lot by his act, neglect or carelessness or by that of any member of his family or his or their guests, servants, agents or tenants, but only to the extent that such expense is not met by the proceeds of insurance carried by the strata corporation.

31. I find that the restoration fee and pipe repair costs were rendered necessary by the applicant's act in drilling into the wall. In their October 17, 2016 letter to the applicant, the strata property manager said the strata's insurance deductible at the time of the pipe incident was \$25,000 which the applicant did not dispute. I accept that evidence, and find that the applicant is obligated to pay \$8,281.87 in cleanup and repair costs under the provisions of bylaw 36(4).

Order to Notify Other Owners and Order to Map Pipes

32. The applicant has requested an order that the strata notify all owners that there is danger in drilling a hole or hanging a picture on their walls. He also requested an order that the strata map the location of all water pipes in his strata lot.
33. The applicant's requests are based on his assertion that the water pipes are incorrectly installed. As explained above, the applicant has not established that the water pipes were installed incorrectly. For that reason, I do not make the requested orders.

DECISION AND ORDERS

34. I order that the applicant's dispute is dismissed. The strata's counterclaim is allowed. I order that within 30 days, the applicant pay the strata \$8,218.87 in cleanup and repair costs.
35. The *Court Order Interest Act* (COIA) applies to the tribunal and prejudgment interest must be awarded. Prejudgment interest is calculated on the debt owing as of the date the cause of action arose up to the date of this order.
36. I find the cause of action arose on April 26, 2017, as that was when the strata council communicated its final decision regarding the cleanup costs. I calculate prejudgment interest payable by the applicant to be \$52.92.
37. The strata is also entitled to post-judgment interest.
38. Under section 49 of the Act, and the tribunal rules, 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. I see no reason in this case to deviate from the general rule. The strata has been the successful party. I therefore order the applicant to reimburse the strata \$125 for tribunal fees.
39. 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.

Kate Campbell, Tribunal Member