



# Civil Resolution Tribunal

Date Issued: April 3, 2018

File: ST-2017-002140

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan KAS 1357 v. Amos*, 2018 BCCRT 105

**B E T W E E N :**

The Owners, Strata Plan KAS 1357

**APPLICANT**

**A N D :**

Evy Amos

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell

### INTRODUCTION

1. The applicant, The Owners, Strata Plan KAS 1357 (strata) is a strata corporation existing under the *Strata Property Act* (SPA). The respondent, Evy Amos (owner), is an owner of a strata lot in the strata.
2. The strata seeks an order that the owner pay \$5,000 for an insurance deductible, as well as dispute-related fees and expenses.

3. The owner is self-represented. The strata is represented by the strata council president.
4. For the reasons set out below, I find that the owner is not required to pay the insurance deductible.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
7. 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.
8. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
9. 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

10. The issues in this dispute are:
  - a. Must the owner pay the \$5,000 insurance deductible?
  - b. Is either party entitled to reimbursement of dispute-related fees and expenses?

## REASONS AND ANALYSIS

### *Water Leak*

11. A water leak occurred in the strata complex in June 2015. Water was discovered in the parkade ceiling on June 14, 2015, and later in the laundry room of unit 106. On June 17, 2015, the strata president and two others confirmed that the water leak originated from the owner's strata lot (unit 306).
12. The owner had replaced her washing machine the week before the leak was discovered. She says she used it on June 16, 2015 and it did not leak. Both parties agree that the washing machine did not cause the leak. The strata says the leak came from the cold water tap on the wall, to which a washing machine hose was attached. Photographs provided by the owner show that the cold and hot water taps for the washing machine hookup were located in a framed box recessed into the laundry room wall in the owner's strata lot.
13. The July 8, 2015 invoice from the washing machine repair company hired by the owner says the washing machine and its hoses were fine with no leaks, but the packing on the cold faucet was leaking and needed to be replaced. Similarly, the November 26, 2017 letter from the owner's plumber says he discovered a leak at the valve handle in the laundry box on the wall. Based on this evidence from two tradespeople who inspected the tap in question, I find that the source of the leak was the washing machine hookup water tap.

## *Insurance Deductible*

14. The leaked water from the tap caused damage to units 106 and 206. The strata hired a restoration company to do emergency clean up, and to repair drywall and other damaged surfaces. The strata says it claimed the cost of this work under its insurance policy and paid a \$5,000 deductible, which it says the owner must now reimburse.
15. Section 158(2) of the SPA provides for recovery of the strata's insurance deductible where an owner is "responsible" for damage that occurs.
16. The owner says that under the strata's bylaws, an owner is not responsible to pay the insurance deductible unless she has been negligent, and she was not negligent. The owner cited *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 519 (CanLII), 2011 BCPC 0519 (*Morrison*) where the Provincial Court found that a strata corporation that had adopted a negligence bylaw imported a stricter standard on the strata corporation to prove negligence and not simply "responsibility" when charging an owner with an insurance deductible under section 158(2) of the SPA.
17. The owner cites bylaw 5(5), which states as follows:

Where an Owner, his/her tenant or invitee causes damage to a Strata Lot or to common property or to common assets by carelessness or negligence the, this Owner shall be responsible for costs of the repair of the damage.

For the purpose of this Bylaw; carelessness is: thoughtless, negligent indifference and negligence is: a) the failure to use such care as a reasonably prudent and careful person would use under the same circumstances; or b) the doing of some act which a person of ordinary prudence would not have done under the same circumstances.

[Quote reproduced as written]

18. The records show that bylaw 5(5) was repealed and replaced with a new provision in April 2017. However, because that new provision was not in force at the time of the June 2015 leak, I find that it does not apply here. The previous bylaw 5(5), as cited above, applies to this dispute. Under bylaw 5(5) and the reasoning set out in *Morrison*, the owner is not responsible to pay the insurance deductible unless she was careless or negligent in relation to the water leak.
19. The strata says the owner was negligent because the owner did not report the leak when it happened, and allowed water to leak for days. The strata says the leak would have been obvious.
20. The owner says she did not know about the leak until the strata president came to investigate on June 17, 2015. I accept that evidence. Photographs provided by the owner show that the hookup taps are located behind the washing machine. They are invisible unless the machine is pulled away from the wall, as the control panel of the machine entirely covers the taps and hoses. Therefore, it is not reasonable to conclude the owner could have known about the leak. I find that a “person of ordinary prudence” would not have checked for such a leak.
21. Based on these facts, I find that the owner was not careless or negligent in relation to the leaking tap. In *Clark v. The Owners, Strata Plan LMS 3938*, 2017 BCCRT 62, a tribunal vice chair concluded that a strata lot owner was not negligent when their aging washing machine overflowed, as there was no indication that they should have known the washer’s overflow sensor would fail. Although this prior tribunal decision is not a binding precedent, I find that the facts are analogous to the leaking tap situation in this dispute, and I rely on its reasoning.
22. I note that bylaw 5(5)(d) says that the strata council shall at its sole discretion determine whether carelessness or negligence of an Owner, tenant, or invitee caused damage. However, the evidence before me does not establish that the strata council made a decision about owner’s negligence. The only evidence on this subject is a June 17, 2015 email from the strata council president to the remediation contractor and some other individuals, stating that the owner must be

held responsible because of faulty washing machine installation or her used washing machine. This does not constitute a determination by the strata council.

23. Following the principles in *Morrison* and under bylaw 5(5), I conclude that the owner is not required to reimburse the \$5,000 insurance deductible. Accordingly, I order the strata to remove the \$5,000 charge from the owner's strata lot account, plus any interest or fees arising from that charge.
24. The owner requested reimbursement of \$131.25 she paid to have her washing machine inspected. Because the owner has not filed a counterclaim, and because the strata did not require her to hire the inspector, I do not make this order.

#### *Expenses and Fees*

25. The strata has claimed reimbursement for dispute-related expenses. Because the strata has not provided evidence to identify or support these expenses, I do not order reimbursement.
26. The tribunal's rules provide that the successful party is generally entitled to recovery of their tribunal fees. The strata was unsuccessful and so I dismiss its claim for reimbursement of tribunal fees. The owner did not pay any tribunal fees.
27. The owner requested reimbursement of dispute-related legal fees. As set out in the tribunal's rules, the tribunal generally does not order reimbursement of legal fees. This follows from the general rule in section 20(1) of the Act that parties are to represent themselves in tribunal proceedings. I see no reason to depart from this general rule in this case, and therefore I do not order reimbursement of legal fees.

#### **DECISION AND ORDERS**

28. I order that within 30 days of this decision, the strata remove the \$5,000 charge relating to the insurance deductible.

29. 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.
  
30. 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.

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Kate Campbell, Tribunal Member