



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 2706 v. Duncan*, 2018 BCCRT 248

B E T W E E N :

The Owners, Strata Plan LMS 2706

APPLICANT

A N D :

Marcia Duncan

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrew Pendray

INTRODUCTION

1. The applicant, The Owners, Strata Plan LMS2706 (strata), is a strata corporation existing under the *Strata Property Act* (SPA). The respondent, Marcia Duncan (owner), owns a strata lot in the strata.

2. In July 2015, the owner identified a water leak inside her strata lot. As she initially believed the leak was related to the strata's fire sprinkler system, the owner contacted the strata to investigate. The strata eventually arranged for a restoration company to identify the location of the leak and perform repairs within the owner's strata lot.
3. Both parties are self-represented. The strata seeks an order that the owner pay the cost (\$601.08) of the repairs completed. The strata further seeks an order that the owner pay its legal fees associated with bringing this dispute.
4. The owner says that she should not have to pay for the repair. The owner's position is that the strata failed to give her the opportunity to review a quote for the repair, and did not provide her with any notice that a repair was being completed, despite the fact that the leak was located wholly within her unit and did not involve common property.
5. For the reasons set out below, I find that the strata's claim must be dismissed.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
9. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
10. 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

11. The issues in this dispute are:
 - a. Is the owner responsible for paying the chargeback amount of \$601.08?
 - b. Should the owner reimburse the strata's legal fees?

BACKGROUND AND EVIDENCE

12. In July 2015, the owner's strata lot was rented to a tenant. In late July 2015, the tenant informed the owner of a water leak in the strata lot. The owner attended her strata lot but was unable to determine where the leak was coming from. On the owner's description, the leak was a "slow drip". The owner has indicated that she "discovered" that the leak may have been coming from the strata's fire sprinkler, and as a result she telephoned the strata's sprinkler company. The sprinkler company informed the owner that she would have to enquire through the strata.
13. The owner then contacted the strata's property manager, Mr. Davies (property manager), and requested that he send the sprinkler company to investigate the leak.

14. The property manager arranged for the fire sprinkler company to investigate.
15. In a July 29, 2015 email to the property manager the sprinkler company wrote that it had observed drywall damage in the owner's strata lot from a water leak (providing a photo of that damage). The sprinkler company indicated that although it had opened the drywall in two locations, it had been unable to find the source of the leak. The sprinkler company recommended contacting a restoration company to investigate if the leak was coming from a drain.
16. Acting on that recommendation, the property manager arranged for the strata's restoration company to attend and locate the leak. The property manager informed the owner of his decision to do so via email dated July 31, 2015.
17. The owner responded, also via email dated July 31, 2015. In that email the owner indicated that she would need to know what the cost of the repairs would be prior to those repairs going forward.
18. The strata's restoration company discovered 2 water leaks leading to the hot water tank in the owner's strata lot.
19. Despite her July 31, 2015 request, the owner was not provided with a quote, or a description of the repairs to be undertaken, prior to the restoration company arranging for those repairs to be completed.
20. The restoration company's initial invoice for the repair completed in the owner's strata lot was \$1,908.96. That invoice was billed to the strata.
21. On September 8, 2015 the strata wrote to the owner and informed her that the invoiced amount would be charged to her strata account. The owner objected, noting in an October 15, 2015 email that the repair had been completed without her approval. The owner specifically noted that the leak and associated damage had not involved common property.
22. On November 26, 2015 the owner again emailed the strata to object to being charged \$1,908.96 for the repairs to her strata lot. In that email the owner advised

that she was willing to pay \$601.08 for an initial visit and a plumber's attendance. The owner suggested that the remainder of the invoiced amount ought not to be her responsibility, noting that she had not approved any of those repairs. The owner further noted that the only reason she had contacted the strata was the initial concern of the leak being related to fire sprinklers.

23. The strata was able to obtain a reduction in the amount of the invoice to the amount suggested by the owner: \$601.08. The strata then informed the owner, in February 2016, that it would reverse the initial charge of \$1,908.96, and that it would add a new charge to the owner's strata lot of \$601.08.
24. The owner has subsequently refused to pay the charge of \$601.08.

POSITION OF THE PARTIES

25. The strata argues that the leak was a serious issue that required its attention, particularly since the owner approached it to investigate. The strata suggests that given the potential of a water leak to cause damage to other areas of the strata, due diligence required it to investigate and carry out a repair once the strata became aware of the leak.
26. The respondent argues that she did not authorize the restoration company hired by the strata to complete repair work in her suite. She notes that the nature of the repair work to be done was not emergent in nature, and that all of the work to be done was within her unit, rather than being on common property.

ANALYSIS

Is the owner responsible for paying the chargeback amount of \$601.08?

27. The parties agree that \$601.08 is a reasonable amount for the repair to stop the leak. The owner's real objection to paying the bill is two-fold: First, she says that she ought to have been given the opportunity to approve the repairs prior to those being undertaken. Second, the owner says that the scope of repairs was

unnecessary, and left her strata lot requiring drywall repairs estimated at \$1,900. In the owner's view, those repairs would not have been necessary if she had been consulted on the scope of the repair.

28. In my view, this claim turns on a legal question: Did the strata, pursuant to either the SPA or the strata's bylaws, have the power to issue a charge to the owner's strata account in relation to the leak repairs undertaken on her strata lot in 2015?
29. I find the answer to that question to be "No". My reasons for having reached this conclusion follow.

Power Under the SPA?

30. The SPA sets out a number of provisions for enforcing a strata corporation's bylaws or rules. Those provisions include section 133(1), which enables a strata corporation to do "what is reasonably necessary" to remedy a contravention of bylaws or rules, including doing work on or to a strata lot. Section 133(2) provides that the strata corporation may require that the reasonable costs of remedying a bylaw contravention be paid by the person who may be fined for the contravention under section 130.
31. Although it did not specifically cite section 133 of the SPA in its materials, I consider that the strata could be seeking to rely on that section as providing it with the ability to charge the owner for the costs of the repairs mad to the owner's strata lot.
32. The first question to answer then, is whether the owner contravened a strata bylaw.
33. The strata has not, in its materials, indicated which, if any, of its bylaws it considers the owner may have violated. I am unable to identify any such bylaw.
34. Bylaw 4.1 sets out that an owner must repair and maintain its strata lot, except for repair and maintenance that is the responsibility of the strata. The evidence before me is that the actions of the owner in late July 2015 were precisely intended to

engage in the repair and maintenance of her strata lot. Rather than failing in her duty to repair and maintain her strata lot, the owner was proactively taking steps to address the leak in her unit. I do not consider the owner can be found to have been in violation of bylaw 4.1.

35. Strata bylaw 15 addresses the strata's insurance. Bylaw 15.7 sets out that owners are responsible to repair, maintain and replace items such as hot water tanks, as well as hoses and water supply tubes to such an appliance/fixture. Bylaw 15.7 further explains that a failure to repair and provide maintenance on an item such as a hot water heater will be deemed negligence, and the owner of the strata lot will be responsible to pay for the cost of any insurance deductible paid as a result of any damage to a strata lot, common property, or interior strata lot property.
36. The strata has not provided any evidence suggesting that the owner had failed to maintain and repair her hot water tank and pipes generally, such that she could be deemed to have been negligent as contemplated by bylaw 15.7.
37. Rather, the only evidence before me is that a leak was discovered in the owner's strata lot, and that the owner was proactively taking steps to have that leak repaired as soon as that discovery was made. The owner's actions strike me as steps that were in compliance with bylaw 15.7. In sum, she was undertaking her responsibility to arrange and pay for the maintenance and repair of her hot water tank and associated pipes. I do not consider the owner can be said to have contravened bylaw 15.7 in the circumstances.
38. As indicated above, I am unable to identify any other bylaws of the strata which would appear to have application to the circumstances of the leak in the owner's strata lot.
39. As the owner did not contravene a bylaw, I do not consider that the strata is able to rely on section 133 as providing it with the ability to require the owner to pay the costs of the repair.

Power under the Bylaws?

40. The strata's bylaws do provide it with the power to charge the account of owner's in various circumstances. In my view, none of those bylaws have application to this case.
41. I note in particular that in addition to bylaw 15.7, bylaw 15 goes on to provide that damage done and requiring repair that is under the strata's insurance deductible will be considered an expense chargeable to the owner (bylaw 15.8). Any costs arising from damage due to an owner's negligence as contemplated by bylaw 15.7 that is not otherwise recoverable by insurance claim may be charged to the responsible owner's strata lot account (bylaw 15.9).
42. Certainly, I consider that if I had found the owner had failed to repair and provide maintenance as required by bylaw 15.7, the strata would have been empowered by bylaw 15.9 to charge the owner's account for the cost of the repair of the leak. My finding, however, is that the evidence does not support a conclusion that the owner failed to repair and maintain her hot water tank and associated pipes. As a result of that finding, I do not consider that the strata may rely on bylaw 15.9 to charge the owner's account in this case.
43. There is nothing in bylaw 4.1 that would empower the strata to charge an owner's account.
44. In reaching the conclusions that I have regarding bylaws 4.1 and 15, I wish to acknowledge the strata's submission that it had a duty to investigate the leak, given the general potential that exists for a water leak to cause damage to other strata units. The strata's position in that respect is understandable, as it has a general responsibility to repair and maintain the common property and common assets pursuant to section 72 of the SPA and bylaw 13.
45. On the other hand, the evidence before me is that the leak was associated with pipes from a hot water tank in the owner's strata lot. Those pipes do not meet the definition of common property set out in section 1 of the SPA. The area affected

by the leak was around a door frame located completely within the owner's strata lot. There is no indication on the evidence before me that the leak involved pipes which were capable of being used in connection with the enjoyment of another strata lot or the common property of the strata. In the circumstances, the strata's general responsibility to repair and maintain common property did not exist.

46. The responsibility for undertaking the repair required in this case lay with the owner. The owner specifically informed the strata that she wished to receive a quote informing her of the cost of any proposed repairs proceeding. For reasons that remain unexplained, the strata did not provide the same to the owner.
47. The strata at no point obtained any agreement from the owner as to the scope and cost of the repairs that were undertaken. Rather, the strata elected to proceed with and approve repairs to the owner's property on its own initiative, without consulting with the owner further. While the strata may have felt that to be the most prudent course of action, that fact does not give the strata the power to charge the cost of the repair to the owner. The strata simply does not have such a power in the circumstances of this case.
48. As a result, the strata's claim must be dismissed.

Legal and Tribunal Fees

49. 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.
50. Although the strata has indicated that it is seeking reimbursement of \$600.00 for legal fees, it has not provided any submissions explaining why I should depart from the tribunal's general rule. I see no reason to depart from this general rule in this case, and therefore I do not order reimbursement of legal fees.
51. 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 dispute-related expenses. As the owner was the successful party, and did not incur any tribunal fees, I make no order regarding such fees.

DECISION

52. The strata's claim is dismissed.

Andrew Pendray, Tribunal Member