



Civil Resolution Tribunal

Date Issued: June 27, 2018

File: ST-2017-004032

Type: Strata

Civil Resolution Tribunal

Indexed as: *Haack v. The Owners, Strata Plan NW 2198*, 2018 BCCRT 284

B E T W E E N :

Lutz Haack

APPLICANT

A N D :

The Owners, Strata Plan NW 2198

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Lutz Haack (owner), owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 2198 (strata). The owner's strata lot is known as unit 307.

2. The owner says that renovation work in the strata lot below (known as unit 207) damaged his strata lot, caused him personal hardship, and potentially caused structural damage to the building.
3. The owner seeks \$5,683 to replace a sinking floor in his strata lot, confirmation that the building has no structural deficiencies, and reimbursement of \$6,050 in expenses.
4. The strata denies the owners' claims, and asserts there is no damage to the building and that the owner does not have a sinking floor. The strata seeks reimbursement of \$1,102 in dispute-related expenses.
5. The owner is self-represented. The strata is represented by a strata council member.
6. For the reasons set out below, I dismiss the owners' claims.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.
9. 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.

10. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
11. 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.

PRELIMINARY ISSUE – CHRISTMAS LIGHTS

12. Both parties provided evidence and submissions regarding the owner's allegation that someone cut a string of electric Christmas lights on his patio. As there is no claim about Christmas lights before me in this dispute, I make no findings on that issue.

ISSUES

13. The issues in this dispute are:
 - a. Is the owner entitled to \$5,683 for floor damage?
 - b. Is the owner entitled to confirmation that the building has no structural damage?
 - c. Is the owner entitled to reimbursement of \$6,050 in dispute-related expenses?
 - d. Is the strata entitled to reimbursement of \$1,102 in dispute-related expenses?

SUBMISSIONS AND EVIDENCE

14. Sometime in 2015, the owners of unit 207 hired a contractor to perform some renovations in their strata lot.

15. In December 2015, the owner contacted the strata council and his downstairs neighbours to raise concerns about cracks in his tile kitchen floor, which he felt was caused by renovations in the strata lot below his. In January 2016, he requested that the strata make a formal claim for the replacement of 200 square feet of tile in his strata lot, and obtain an engineering report to address possible structural damage.
16. After some discussions, the strata hired an engineer, Mr. Curran, to inspect both strata lots and report on his findings. In a March 16, 2016 report, Mr. Curran wrote as follows:
- The owner's strata lot had cracked floor tiles. The cracks were long, continuous, straight, "tight knit" cracks in the middle of the tiles.
 - The building containing the strata lots is wood-framed. Unit 207 is built on a concrete foundation, and unit 307 is built on the framed walls of the storey below, with another level above.
 - Wood structures move throughout their existence when subject to changes in temperature, humidity, ground conditions, load caused by wind and human activity, and other circumstances. When these structural stresses are removed, the building does not fully return to its earlier condition, and slight movements are not always fully eliminated. The remaining displacement is usually very small, but can accumulate over a number of years and movement cycles.
 - The cracking of the tiles in unit 307 was not caused by the modifications made in unit 207. Rather, the cracking was caused by subtle changes in the floor of unit 307 which caused stresses and ultimately cracking in the tile. Once the cracking started it probably continued along the stress lines fairly quickly.

17. Mr. Curran said the reasons for his opinion were as follows:

- No structural walls were affected by the unit 207 modifications, and the floor joists and plywood subfloor in unit 307 were not changed.
- The work done in unit 207 was largely removal of existing framing of non-structural elements, which was probably mainly achieved with crowbars. Any hammering was probably in a direction parallel, not perpendicular, the plane of the joists, and would not have caused much impact or mechanical damage to the joists or tiles.
- Unscrewing drywall on the unit 207 ceiling would have no impact on the ceiling joists, and therefore no impact on the tiles.
- Wood is known to move over time, which would induce stresses in rigid tile.
- The cumulative effect of changes in the floor (joists subsiding slightly) probably caused stress and cracking of the tile. This would explain the long, straight lines along which most of the cracks have propagated.
- A wood post was installed in unit 307 as a decorative feature after the tile was installed. There is likely no blocking supporting the plywood under the post, and in the long term the load has probably caused the plywood below to subside, and lines of tile radiating from the post to crack.
- The extent of the cracking in unit 307 is greater than the ceiling area in which the work was done in unit 207, indicating that the cracking was not directly associated with the construction activities.

18. The owner says that in January 2016 his kitchen floor had sunk down. He said it was not level, and there was a gap of 2 to 2.5 centimeters. He says he was on vacation from February 10 to March 11, 2016, and when he returned the floor tiles were almost level, and the structural problems seemed to have been solved. He says the joists underneath his floor must have been repaired or stabilized, or a partially removed wall in unit 207 must have been reinstalled. He says these

repairs must have occurred between his departure on February 10, 2016 and the engineer's inspection on February 18, 2016.

19. The strata denies that any such repairs were performed. It also denies that any structural wall in unit 207 was shortened.
20. The owner continued to be concerned about structural problems, so the parties agreed to share the cost of a second engineering report. Mr. Curran performed another inspection on May 3, 2017, and said he did not see any significant change in the extent of the tile cracking, or further displacement of the tiling. He said that a straight edge laid on the tile over the adjacent wood floor was not obviously out of level, and the slight difference in the floor levels is as it was when the 2 types of flooring were installed and not a result of unexpected movement of the subfloor. He concluded that there was no reason to believe there were structural problems in the kitchen and living room floors of unit 307.
21. Mr. Curran also said the tiles were thin and not very strong, and were laid on a thin base, rather than the normal 1.5 inch thick based of lightweight cement with weldmesh reinforcing. He said that in his opinion, the very slight movement in the wood frame structure under the flooring over the years had been sufficient to cause lines of stress and cracking in the tiling, and any settling of the tile edge nearing the living area was the result of cracking tiles.

REASONS AND ANALYSIS

22. As this is a civil dispute, the applicant owner bears the burden of proof. This means that he has to prove each of his claims on a balance of probabilities. Based on the evidence before me, I find the owner has not met this burden. He has not established his claims.

Compensation for Floor Damage

23. While the owner asserts that renovations in unit 207 caused his kitchen floor to settle, and the tiles to crack, I find that the evidence before me does not support

this assertion. I place significant weight on the reports of Mr. Curran. He is a certified engineer, and his expertise in the area of building structures is not contested. Mr. Curran inspected the areas the owner says were damaged, and the renovated areas in unit 207. He also reviewed the building's plans. Mr. Curran provided extremely detailed reports setting out his opinion that the tiles in the owner's kitchen did not crack due to renovations below, and that any settling in the floor was due to tile cracking. Mr. Curran provided extensive reasoning to support his opinion, and there is no contrary expert opinion before me. For these reasons, I am persuaded by Mr. Curran's opinion, and rely on it.

24. Based on Mr. Curran's expert report, I conclude that the renovations in unit 207 did not damage the owner's floor. I therefore decline to order reimbursement for floor repairs.
25. In making this finding, I note that the owner has not provided any evidence verifying that his kitchen floor actually sank, as he asserts. He has not provided photographs showing such sinking, or a report from a contractor or another engineer. While the owner says the floor was repaired and returned to level while he was on vacation in February 2016, there is no evidence before me to support that assertion.

Confirmation of No Structural Deficiencies

26. The owner requests that I order the strata to provide confirmation that the strata building has no structural deficiencies.
27. In his May 2017 report, Mr. Curran said that on the basis of his inspection, there is no reason to believe there are structural problems in the area of the kitchen and living room floors in suite 307. In his March 2016 report, he said no structural walls were affected in the unit 207 renovations, with no changes to the floor joisting and plywood subfloor in unit 307.
28. The owner disagrees with Mr. Curran, and says the unit 207 renovations caused potential structural damage to the building that Mr. Curran did not fully investigate.

However, as stated above, the burden of proof in this dispute is on the owner, and he must provide evidence to support each of his claims. He has not proven structural damage in this dispute.

29. Also, the owner's request for structural confirmation for the entire building goes well beyond the scope of this dispute.
30. For these reasons, and based on the reports of Mr. Curran, I decline to order the strata to provide further confirmation that there is no structural damage to the building.

Tribunal Fees and Dispute-Related Expenses

31. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The owner was unsuccessful and so I dismiss his claims for reimbursement of tribunal fees and dispute-related expenses. I would not order reimbursement of the owner's claimed dispute-related expenses in any event, as he has not provided any invoices, receipts, or information to support the claimed amount of \$6,050.
32. The strata requested reimbursement of \$1,102 in dispute-related expenses, which it says was for the cost of Mr. Curran's reports. However, the strata did not provide receipts or invoices to support this amount. Also, the strata requested Mr. Curran's reports before the dispute was filed. For these reasons, I do not order reimbursement of any dispute-related expenses claimed by the strata. The strata paid no tribunal fees, so none are ordered.

ORDERS

33. The owner's dispute is dismissed.
34. Further, I decline to order either party to reimburse any tribunal fees or dispute-related expenses.

35. Under section 189.4 of the SPA, an owner who brings a tribunal claim against the strata corporation is not required to contribute to the expenses the strata incurs in defending that claim or in any monetary order issued against it. I therefore order the strata to ensure that no part of the strata's expenses incurred with respect to defending this claim are allocated to the applicant.

Kate Campbell, Tribunal Member