



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Chan v. The Owners, Strata Plan LMS 1781*, 2018 BCCRT 306

B E T W E E N :

Yui Kwan Chan

APPLICANT

A N D :

The Owners, Strata Plan LMS 1781

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about whether an owner or the strata is responsible for repairs to the applicant's strata lot after a series of water leaks in a strata building.

2. The applicant Yui Kwan Chan is an owner of strata lot 34 (unit 801) in the respondent strata corporation, the Owners, Strata Plan LMS 1781 (strata).
3. The applicant says there were water leaks from near units 905 and 1102 (the leaks) due to the strata's negligence in failing to repair or replace original 21 year old copper piping for the hot water heating system or to take other preventive measures. The applicant asks that the strata be held responsible for the water damage repair generally and to his unit in particular.
4. It is common ground, and I find, that the leaks occurred on January 10, 2017 from a water pipe located in unit 905, and on February 14, 2017 from a pipe located between units 1102 and 1101.
5. The applicant claims
 - (a) \$500 reimbursement for the condominium insurance deductible he paid for water damage repair for the leak from unit 905;
 - (b) \$502.19 for the repair costs incurred due to the water leak from unit 1102; and
 - (c) \$85.00 for the electrical bill associated with operating restoration equipment during the emergency repairs conducted on the strata lot.
6. As well, the applicant asks that a charge of \$3,571.01, relating to repairs from the leak from unit 905, to his strata lot account, be reversed.
7. In the alternative, he says he is only willing to pay a portion of this invoice, because he believes that the strata was overcharged relative to the repair work completed.
8. The applicant also claims \$500.00 for time spent drafting the application to the tribunal, and \$2,000.00 in compensation for emotional distress.
9. The strata concedes that the leaks caused damage to the applicant's strata lot. However, the strata says it is not responsible for the repair costs, under its bylaws, because the repairs were made to the owner's strata lot.

10. The applicant included a claim about a leak from penthouse 4 as well, but as no monetary claim was particularized and no evidence filed establishing damage to the applicant's strata lot from that leak, I dismiss that claim.
11. The applicant is self-represented. The respondent appears through a member of strata council.

JURISDICTION AND PROCEDURE

12. 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.
13. 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.
14. 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.
15. 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

16. The issues in this dispute are:
 - a. Is the strata responsible for repair and maintenance of the water pipes that leaked?
 - b. If so, is the strata also responsible for the cost of repairs to the applicant's strata lot, cause by the leaks?
 - c. What is an appropriate remedy, given the repair costs and insurance deductible paid by the applicant, and the charges to the owner's strata lot account?

POSITION OF THE PARTIES

17. The applicant argues that the water leaks were caused by changes made to the temperature and pressure settings. He says the strata was negligent in (a) allowing these settings to be changed and (b) failing to provide "a hot water management guideline" to owners and the resident caretaker in 2016. I interpret the applicant's reference to hot water management guidelines to mean that the strata should have provided guidance to the building caretaker about settings for water pressure and temperature.
18. The applicant says that, as early as February 2012, the strata knew about the corrosion issue and the need to keep hot water temperature and pressure low, due to the potential impact on the building's aging copper piping.
19. The respondent argues that;
 - Bylaw 3.1 requires an owner to repair and maintain their strata lot, and that therefore the water damage repair claimed here was the owner/applicant's responsibility.

- The owner must prove negligence on the part of the strata in order to be held liable for damage to a strata lot that the owner is responsible to repair and maintain under the Bylaws.
- The strata was not negligent, and had a reasonable repair and maintenance program in place for its water piping.

20. The respondent requests that I dismiss the applicant's claim.

EVIDENCE and ANALYSIS

Is the strata responsible for repair and maintenance of the water pipes?

(a) February 14, 2017 Leak – Between Unit 1101 and 1102

21. For the reasons that follow, I find that repair and maintenance of the water pipes between units 1102 and 1101 is the strata's responsibility.
22. Bylaw 3.1 says that an owner must repair and maintain their strata lot, except for repair and maintenance that is the strata's responsibility under the bylaws.
23. Bylaw 11.1 requires the strata to repair and maintain the common property and the structure and exterior of a strata lot.
24. Section 1(1) of the *Strata Property Act* (SPA) defines common property as including "pipes...for the passage or provision of water...if they are located (i) within a floor, wall or ceiling that forms a boundary (a) between a strata lot and another strata lot, (b) between a strata lot and the common property, or (c) between a strata lot or common property and another parcel of land or (ii) wholly or partially within a strata lot, if they are capable or being and intended to be used in connection with the enjoyment of another strata lot or the common property."
25. Under section 72(1) of SPA the strata must repair and maintain common property subject to certain conditions which do not apply here.

26. Given the respondent's admission that the pipe that leaked on February 14, 2017 was located in the wall between units 1101 and 1102, I find that the pipe was part of the common property as defined in section 1(1)(a) of SPA because it carried water between strata lots. I find the strata responsible for its repair and maintenance.

(b) January 10, 2017 Leak – Near Unit 905

27. The leak on January 10, 2017 originated from the hot water riser in the wall between unit 905 and the adjacent strata lot. Given that the pipe, within a wall between 2 strata lots, carries water between a strata lot and other strata lots or the common property, I find it is part of the common property as defined in section 1(1) of SPA.

28. I find that the strata responsible for repair and maintenance of this pipe as well.

Is the strata responsible for the cost of repairs to the applicant's strata lot, caused by the leaks?

29. For the reasons below, I find that the strata was negligent in its obligation to repair and maintain the water pipes, which resulted in the leaks causing damage to the applicant's strata lot. Therefore, I find the strata is responsible for the repair work to the strata lot, caused by those leaks.

30. A strata corporation is not obliged to reimburse an applicant for expenses incurred for repairs to a strata lot, when they are, as here, the applicant's responsibility under the bylaws, unless the strata has been negligent in repairing and maintaining common property (See *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231 and *Keith et al v. The Owners, Strata Plan K 284*, 2018 BCCRT 49))

31. To succeed in an action for negligence, the applicant must show that he was owed a duty of care by the strata, that the strata breached the standard of care and that the applicant sustained damage caused by the strata's breach.

32. I have found that the strata had a duty to repair and maintain the pipes, as they were common property. It is uncontested, and I find, that there was damage to unit 801 as a result of the leaks.
33. The courts have established reasonableness as the standard of care in these circumstances. (see *Weir v. Owners, Strata Plan NW17*, 2010 BCSC 784.)
34. The remaining question is whether the strata has been reasonable in maintaining its common property. Below, I find it has not, because it knew that the water pipes required either a tube size increase or a water flow decrease and failed to take reasonable steps concerning maintenance once it learned of the probability of continued corrosion/erosion. Specifically, I find that, prior to the leaks, the strata failed to:
 - a. take steps to replace the pipes,
 - b. monitor the condition of the pipes more frequently than every 5 years given the concerning engineering report, and/or
 - c. implement a reliable system to control water pressure and temperature, pending further repair or evaluation of the pipes, to reduce the likelihood of leaks.
35. I return to the relevant factual background.
36. On December 13, 2011, the strata council voted to have a piping analysis conducted to determine if re-piping or re-lining the water pipes was necessary. The minutes note council's opinion, at that time, that it was not yet required because the building was not experiencing "...a large number of leaks."
37. I pause here to observe that the common property maintenance and repair standard is reasonableness. Reasonableness in repair and maintenance requires something more than waiting until there are a "large number of leaks", or until, as the respondent put it in argument when describing the strata's approach "there is no choice left but to put a special levy on owners...".

38. On February 7, 2012 the Acuren Group Inc. prepared an engineering opinion to the strata's mechanical engineering contractor Honeywell Building Solutions (Honeywell), after examination of water pipe samples from the strata building (the Report). The Report says that the water pipes were corroded and needed either (a) a tube size increase or (b) a water flow decrease to reduce the likelihood of continued erosion-corrosion. The Report says "At higher temperatures there is much greater metal loss with increasing velocity."
39. The Report notes that the inside of some pipe samples taken from the building showed "...significant material loss by erosion-corrosion" and, in one sample, a location where "a through hole was discovered after plastic bead blasting indicating the remaining wall thickness was very thin." Given that the strata council minutes reflect it authorizing Honeywell to obtain the pipe analysis, I find that the strata was aware of these conclusions in February 2012.
40. It is undisputed, and I find, that the strata did not replace the pipes to facilitate a tube size increase. I also find that the strata did not solicit any further examination of the pipes or any further expert opinion between February 2012 and early 2017 (about 5 years later), when the leaks occurred.
41. In January and February 2017, the leaks occurred. Multiple units were damaged.
42. At the AGM on February 15, 2017, a resolution to raise funds for re-piping was defeated.
43. At a strata council meeting on April 22, 2017, an owner reviewed a "number of concerns related to leaking pipes including re-piping..."
44. At a strata council meeting on in June 2017, the council decided that "effective immediately" neither the caretaker nor a council member would have the authority to adjust the water pressure or water temperature "...as professional recommendations are important in determining standards for safety reasons." A resolution was passed to obtain 3 quotes from engineers regarding managing a planned re-piping project.

45. The March 11, 2017 strata council meeting minutes record that the strata passed the costs of repairs to the damaged strata lots along to the owners, and asked that they contact their personal insurance providers.
46. The Minutes go on to reveal that the strata council, as a reaction to this cluster of leaks, decided to set the water pressure to 30 PSI from the previous level of 45 and to turn down the hot water temperature to help alleviate further pipe leaks, until re-piping could be arranged.
47. At a July 6, 2017 strata council meeting the strata manager was directed to "...investigate how the hot water and temperature and PSI increased last year."
48. At the August 10, 2018 strata council meeting, council was informed that the previous caretaker had instructed Honeywell to increase the hot water temperature and pressure, without authorization from strata council. As I understand it, the request for increased water temperature and pressure came from an owner directly to the caretaker, in about October 2016. Following that request the hot water temperature and pressure were turned up without regard for consequences to the piping.
49. I find that, prior to the leaks, the strata attempted to decrease water flow through the pipes by limiting water pressure and temperature. However, the system they put in place to manage temperature and pressure pending more definitive repair of the pipes was unreliable, because Honeywell turned the hot water temperature and pressure up above the chosen level. I find that a reasonable standard for repair and maintenance required the strata, once it received the findings in the Report, to ensure that the building caretaker and Honeywell were informed not to increase the water pressure and temperature. The strata failed to meet this standard, given there is no evidence Honeywell or the caretaker were given any such direction.
50. Although not helpful to his position, the applicant referred to the 2015 Depreciation Report listing the water piping as "still within its service life." Neither party filed the 2015 Depreciation Report in evidence. Having said that, the service life would be based on running the hot water at a manageable temperature and pressure.

51. The respondent strata filed in evidence a “Water Management Program Copper Corrosion Control” agreement with Hytec Water Management Program making Hytec responsible for water management for 36 months from April 1, 2011. While this contract may have covered maintenance and review of the water piping system, there is no evidence before me that it did, or that the contract continued past the initial three year term. The strata made no submissions about what service Hytec provided. On its face, the contract appears to provide for water Ph monitoring and adjustment to treat hard water.
52. The respondent says that the water leaks were due to the building’s age. The respondent asserts “Everyone living in lower mainland is aware that any high rise or low rise building is subject to repiping any time after 15 year of its life depending on corrosion, its hot water supply system and several other factors.” If this is true, then the strata admits it ought to have known that repiping was likely required in a 21 year old building with original copper piping.
53. The respondent says that there is no such thing as a “Hot Water Management Guideline.” As I have noted above, I interpret the applicant’s submission to mean that he thinks the strata should have given instructions about hot water temperature and pressure, and not that there is a precise document that should have been communicated.
54. The respondent also submits that keeping the temperature and pressure low is a band aid temporary solution that was intended only to slow down corrosion. Again, this submission does not support the strata’s position. The water temperature and pressure were turned up, unbeknownst to strata council, and then the leaks occurred. I have found this was due to a negligent system put in place by the strata, which failed to communicate crucial information to the caretaker and Honeywell.
55. I have found that the strata was negligent in failing to put a reliable system in place to ensure that water pressure and temperature were not changed such that the copper piping would be put under stress and leaks would occur, prior to

considering whether to complete a more extensive re-piping project. Given the concern about erosion-corrosion in the report, and the timing of the increase in water pressure and temperature relative to the leaks (within the same year), I find it more likely than not that the failure to implement an appropriate system of maintenance and monitoring caused the leaks.

56. I therefore allow the applicant's claims for
 - a. \$500 reimbursement for the condominium insurance deductible paid for water damage repair for the leak from unit 905; and
 - b. \$502.19 for the repair costs incurred due to the water leak from unit 1102.
57. The applicant did not provide a receipt for the claimed \$85.00 for hydro costs associated with the fans and dehumidifier running in his strata lot during remediation and repair. However, I accept that there were increased hydro demands and associated costs to him, given the record of air movers and dehumidifiers used. I accept there were some additional electrical costs and award him a nominal amount of \$40.00.
58. I dismiss the applicant's claims for time spent on the tribunal application (\$500) and process and for compensation for emotional distress (\$2,000). There was no objective or expert evidence provided regarding the distress damages, and therefore the claim is not substantiated.
59. Generally, the tribunal does not make awards for time spent dealing with a dispute, consistent with the Act's general requirement for self-representation and the tribunal's practice not to reimburse legal fees. I see no reason to deviate from that general practice here.
60. The applicant's second claim was for alternative relief, namely a reduction in the charge to his strata lot account for the water damage repairs, in the event that I found in favour of the strata on the main claim. Because I found in favour of the applicant, I need not address his second claim except to find that the strata must

reverse any charge to his strata lot account for repairs to his strata lot resulting from the leaks.

61. On my review of the documents, the charges for \$3,571.01 representing invoice 01331 against the applicant's strata lot account should be reversed immediately, unless it has already been paid by the applicant's own insurer, in which case I order the strata to reimburse the applicant the deductible he paid to his insurer.
62. I recognize that my decision about the leaks may impact other owners. I order that where the strata has charged owners personally for the repair of damage to their strata lots, caused by the leaks from the hot water heating pipes on January 10 and February 14, 2017, those charges be reversed within 14 days.

DECISION AND ORDERS

63. Within 14 days of this order, the strata is ordered to:
 - a. reverse the \$3,571.01 charge to the applicant's strata lot, unless it has already been paid by the applicant's own insurer, in which case the strata must repay the \$500 deductible paid by the applicant;
 - b. pay the applicant \$502.19 for the repair costs incurred due to the water leak from between units 1101 and 1102;
 - c. pay the applicant \$40.00 for the increased electrical bill associated with operating restoration equipment during the emergency repairs conducted on the strata lot;
 - d. pay the applicant pre-judgment interest of \$11.76;
 - e. pay the applicant tribunal fees of \$225; and
 - f. reverse charges to any owner's strata lot for repair of the damage caused by the leaks on January 10 and February 14, 2017.

64. The date when the insurance deductible and repair costs were paid is unclear. Given that the chargeback letter was sent to the applicant April 5, 2017, I used that date to calculate the applicant's entitlement to pre-judgement interest under s.48(3) of the *Court Order Interest Act* (COIA) at \$11.76.
65. The applicant is entitled to post-judgement interest.
66. 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. I see no reason in this case to deviate from the general rule. I therefore order the respondent strata to reimburse the applicant for tribunal fees of \$225.
67. Under section 189.4 of the SPA, an owner who brings a tribunal claim against a strata corporation is not required to contribute to any monetary order issued against the strata corporation or to any expenses the strata corporation incurs in defending the claim. I order the respondent to ensure that no part of the amount ordered to be paid by the respondent, or any other expenses incurred by the respondent in defending this claim, are allocated to the applicant owner.
68. 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.
69. 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.

Julie K. Gibson, Tribunal Member