



# Civil Resolution Tribunal

Date Issued: July 18, 2018

File: ST-2017-003862

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan EPS 518 v. Litke*, 2018 BCCRT 342

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

The Owners, Strata Plan EPS 518

**APPLICANT**

**A N D :**

Darren Litke

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Rose Keith

## INTRODUCTION

1. This claim concerns a determination of whether an owner is responsible for reimbursing the strata an insurance deductible that it paid.

2. The applicant, The Owners, Strata Plan EPS 518 (strata) is represented by a member of the strata council.
3. The respondent, Darren Litke (owner) is self-represented.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.
6. 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.
7. 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**

8. The issues in this dispute are:
  - a. Is the owner responsible for reimbursing the strata the cost of its insurance deductible?

- b. Is the strata entitled to reimbursement of their expenses by the owner?
- c. Is the strata entitled to reimbursement of their tribunal fees by the owner?

## **BACKGROUND AND EVIDENCE**

- 9. On the morning of April 22, 2016 water from a faulty or broken pressure valve in the common garden area travelled towards the back of unit 27, the owner's unit. The water entered the unit and caused damage to the basement of unit 27. Unit 27 was vacant at the time.
- 10. The leak from the common garden area was discovered by the manager of the strata and steps were taken to clean up any damage created by the water. The repair work to the common area included initially steps to divert the flowing water away from unit 27. Further steps were taken to improve drainage and to divert storm water away from other units. Repair work to unit 27 was also undertaken.
- 11. The cause of the water damage was confirmed to be a ruptured irrigation pipe. The strata acknowledges that the cause was this ruptured line and that the line was on common property. The strata acknowledges that there was no negligence on the part of the owner that led to the loss. The strata also says that there was no negligence on their part that led to the loss as they had no prior knowledge of the faulty valve.
- 12. The strata had insurance which covered the cost of repairs resulting from the ruptured irrigation pipe. The strata paid an insurance deductible of \$5,000.

## **POSITION OF THE PARTIES**

- 13. The strata admits that the water damage was not a result of the negligence of the owner. The strata also admits that the water damage was a result of a ruptured irrigation line on common property. They say that pursuant to section 158(2) of the *Strata Property Act* (SPA) they have the right to claim back the deductible from the owner. The strata also claims reimbursement for \$790.56 legal fees incurred when

they retained legal counsel to review and advise regarding case law presented to them by the owner's legal counsel as well as \$225.00 for tribunal filing fees.

14. The owner says that the source of the water leak was not within his unit or any limited common property attached to his unit and that the strata by-laws limit the circumstances under which the strata can chargeback the deductible to an owner. He says that as he was neither negligent or in any way responsible for the cause of the damage, this is not a situation where the strata can chargeback the deductible to him as an owner. The owner requests that I dismiss the applicant's claim. The owner disputes liability for payment of legal fees, arguing that it was the strata's choice to retain counsel and that the costs should be their responsibility.

## **ANALYSIS**

**Does the *Strata Property Act* (SPA) and the strata's bylaws allow the chargeback of the deductible in circumstances where the damage is not due to the negligence of an owner?**

15. The parties agree that there was no negligence on the part of the owner that led to the damage. The parties also agree that the source of the water was from common property, not from the owner's unit. The parties disagree as to whether there was negligence on the part of the strata which led to the damage. For the purposes of this decision I do not need to determine whether there was negligence on the part of the strata. I have not been presented with the evidence that would be necessary to determine whether the strata was negligent and I make no finding in this regard.
16. Section 158(2) of the SPA gives the strata the right to sue an owner for recovery of the insurance deductible "if the owner is responsible for the loss or damage" that led to the claim. The strata does not have to prove negligence under the SPA to be entitled to repayment of a deductible from an owner.
17. The circumstances under which an owner can be deemed responsible for loss or damage are specified in the bylaws. The bylaws also make the strata responsible for repair and maintenance of the common property. The circumstances under

which the bylaws provide an owner will be deemed responsible for loss are as follows:

- a. Where the original cause of the loss or damages originated with the owner's strata lot or an occupant's vehicle, personal property of the owner, or fixtures installed by the owner (64(1)); or
  - b. Where the cause of the loss or damage is the result of an act, omission, negligence or carelessness of the owner and/or an owner's tenants, occupants, employees, agents, visitors or invitees (64(2)).
18. The strata must prove that the owner is responsible for the loss or damage that gave rise to the claim to be entitled to payment of its deductible by the owner. The strata has acknowledged that the loss arose from a faulty irrigation pipe on common property and has not provided any evidence of responsibility on the part of the owner. The cause of the loss did not originate with the owner's strata lot or personal property. There is no evidence that the owner's negligence or carelessness caused the loss.
19. I therefore find that the owner is not responsible for the payment of the insurance deductible.
20. The strata was unsuccessful in this claim and is not entitled to be reimbursed for its dispute-related expenses or its tribunal filing fees.

## **DECISION AND ORDERS**

21. I order that:
- a. The strata's claim is dismissed; and
  - b. The strata must immediately cancel the insurance deductible chargeback of \$5,000.00 from the owner's strata account.
22. I order the strata to ensure that no part of the strata's legal expenses with respect to this claim are allocated to the owner pursuant to section 189.4(c) of the SPA.

23. 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.

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Rose Keith, Tribunal Member