



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *van Bodegom v. The Owners, Strata Plan LMS 2704* 2018 BCCRT 406

B E T W E E N :

Peter van Bodegom

APPLICANT

A N D :

The Owners, Strata Plan LMS 2704

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Peter van Bodegom is an owner of strata lot 71, which is unit 202 in the respondent strata, the Owners, Strata Plan LMS 2704.

2. This dispute is about whether the owner or the strata is responsible for damage to the owner's car caused when it came into contact with the strata parkade's overhead door.
3. The applicant says he reversed down the ramp when, on December 31, 2016, when his car failed to "make it" out of the strata parkade. His evidence is that he decided to put the car in reverse and slowly back down the ramp. He contends that he would not have had to do so if the ramp had been properly cleared of snow and salted. He asks for an order that the strata remove the overhead gate repair levy from his account (\$551.25), and pay for his car repairs (\$2,665.85) and tribunal fees (\$225.00).
4. The strata says the ramp was cleared of snow and ice at least twice that day, that there was a weather warning advising people not to drive, and that the applicant should not have reversed into the parkade door before it was fully open. The strata says it met its maintenance responsibilities regarding clearing snow and ice, and keeping the overhead door functioning normally. It asks that I dismiss the dispute.
5. The applicant is self-represented. The respondent appears through its building site manager.

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. 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.

ISSUE

10. The issue in this dispute is whether the owner should be reimbursed for the repair costs for his vehicle and the parkade door.

BACKGROUND AND EVIDENCE

11. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. The question is whether the strata was negligent in failing to clear snow and ice from the parkade ramp. To succeed in his dispute, the applicant must establish that the strata owed a duty to him, failed in that duty, and that the failure caused his loss.
12. The applicant says that on December 31, 2016 it was snowing. According to the government weather report filed in evidence, it snowed continuously between about 16:00 and 20:00 hours. It is uncontested, and I find, that Environment Canada issued a severe weather/snowfall warning, advising people not to drive, which was in effect by 19:30 that New Year's Eve.
13. At around 19:30, as the applicant tried to drive his car out of the strata parkade, he says his car "failed to make it" up the ramp due to slippery conditions.

14. He says he activated the overhead gate remote button to ensure the gate would open again, and started to slowly back down the ramp. He says the gate sensors did not work properly and the gate came down on top of his car, causing damage.
15. In its Response Notice, the strata explained that the gate sensor is located 2 inches on the interior side of the parking gate structure. They say this makes sense, given the usual use of the door to depart with cars moving forward, and for them to re-enter, moving forward, from the ramp side. The strata also says the sensor is designed so that the gate will stop and go back up if the light beam is interrupted. Therefore due to the sensor's location, a vehicle backing down the ramp must wait until the gate is completely open before proceeding.
16. The applicant says, and I accept, that his car has tires marked for M&S (mud and snow), all relatively new and matched. He says these are "winter" tires by British Columbia standards.
17. Based on a link to a provincial government website provided in the applicant's evidence, I find that M&S is the "minimum requirement" for winter driving in British Columbia. The province recommends using "mountain snow flake" rated tires for travel anywhere that "...severe winter conditions are likely to occur". Severe winter conditions were in effect at 19:30 on December 31, 2016.
18. Another strata resident provided a statement saying he had no trouble with the ramp or the gate on January 1, 2017, despite about 4 inches of snow on the ramp at 14:30 and 4-6 inches of snow on the ramp at 19:30. This evidence deals with the day after the incident involving the applicant, at which time the gate was functioning normally. I accept this evidence that the gate was working as expected and that, even with 4-6 inches of snow on it, the ramp was safely passable by some vehicles.
19. On his own evidence, I find that the applicant reversed into the parkade door. Because he was reversing down the ramp, which is not the usual way vehicles enter and exit the parkade, I find that he should have waited until the door was fully

open before driving under it. There was no evidence before me of a malfunctioning sensor or door, aside from the applicant's assertion.

20. I find that it was the applicant's responsibility to (a) ensure he had a car capable of travelling safely in severe winter conditions, before deciding to drive that evening and (b) to ensure the parkade door was sufficiently open to pass safely under it, before doing so.
21. I will now turn to the applicant's argument that he never would have had to reverse down the ramp if it had been sufficiently cleared and salted. The parties agree that the strata is responsible for repair and maintenance of the common property, including keeping the parkade ramp reasonably clear of snow and ice.
22. The strata has a duty to ensure that owners using the parkade ramp are reasonably safe. In terms of clearing snow and ice, it is impractical to require a standard of perfection. Section 3 of the *Occupier's Liability Act* sets a standard of reasonableness.
23. In *Chamberlain v. Jodoin* 2012 BCCA 108, the British Columbia Court of Appeal upheld the dismissal of a claim against an occupier where a pedestrian slipped and fell on snow and ice in front of a hair salon. The trial judge accepted the defendant's evidence that she was diligent in addressing snow removal in front of the shop. The question is what is reasonable is based on the particular circumstances.
24. The strata has a contract with the site manager which provides that the site manager will, "on a daily basis", attend to "snow control (shoveling sidewalks, and parking area, salting) ensuring ramp is kept cleared and salted." The site manager's obligations are chiefly between 9:00 and 5:00, but he is also on call for resident issues after hours and 24/7 for emergencies if on site.

25. As one guide in determining reasonableness, in Abbotsford, where this incident occurred, the municipal bylaw regarding removal of snow from sidewalks require that they be cleared of snow and ice not later than 12:00 noon the day after the snow falls.
26. The strata's site manager is responsible, by contract, for snow control, including ensuring the ramp was cleared and salted. The applicant contends that there is an inconsistency in the evidence where the respondent claims the ramp was shoveled 3 times that day, but filed a Response Notice saying it was shoveled twice. Given my findings below, I do not consider the discrepancy relevant.
27. In a letter to the applicant dated April 11, 2017, the strata notes that the ramp was cleared and salted twice on December 31, 2016. A resident observed the site manager employing a snow blower, shovel, salt, and sand, including to the underground parking ramp, during the subject snowstorm.
28. Based on the eye witness statement and the statement of the site manager, I find that the ramp was cleared and salted at least twice on December 31, 2016, the latest at 17:00 hours. I find the contractual obligation to clear snow and ice at least daily was met.
29. As one guide in determining reasonableness, in Abbotsford, where this incident occurred, the municipal bylaw regarding removal of snow from sidewalks require that they be cleared of snow and ice not later than 12:00 noon the day after the snow falls. I infer that, for to meet a reasonableness standard, a strata parkade ramp need not be kept completely clear of snow and ice at all times during an active snowfall.
30. I find that the strata met its obligation to maintain the parking ramp reasonably clear of snow and ice, by contracting with the site manager, who cleared the snow at least twice on New Year's Eve 2016.
31. In making these findings I place particular weight on the evidence of at least 2 snow clearings by the site manager that day, along with salting and sanding the

ramp, and in the context of residents having been cautioned by Environment Canada not to drive their cars in the severe winter conditions. Given the winter weather warning, I find that a reasonable person, using a car without four wheel drive and mountain snowflake (rather than only M & S) tires, would not have attempted to exit the parkade that evening.

DECISION AND ORDERS

32. I dismiss the applicant's dispute.
33. 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 strata to ensure that no expenses incurred by the respondent in defending this claim, are allocated to the applicant owner.

Julie K. Gibson, Tribunal Member