



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Robillard v. The Owners, Strata Plan NES 2402*, 2018 BCCRT 452

B E T W E E N :

Clayton Robillard

APPLICANT

A N D :

The Owners, Strata Plan NES 2402

RESPONDENT

A N D :

Clayton Robillard

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. The Owners, Strata Plan NES 2402 (strata), is a strata corporation consisting of 3 buildings developed in 3 phases, in Nelson, British Columbia. The strata is the respondent in the initial dispute and the applicant by counterclaim. The strata is represented by the strata council president.
2. Clayton Robillard (tenant) is a former tenant in strata lot 70 in Building C. He is the applicant in the initial dispute and respondent by counterclaim. He is representing himself.
3. The tenant claims that property stored in his storage locker was damaged by water and mould, due to the negligence of the strata. The strata disputes the claim and says it was not negligent. The strata counterclaims for the time spent by the strata's general manager addressing the tenant's concerns and dispute.

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. Does the tribunal have jurisdiction over a dispute of a former tenant?
 - b. Is the strata responsible for damage to the tenant's personal property?
 - c. If so, what is the appropriate remedy?
 - d. Is the tenant responsible to pay the strata for time spent dealing with the tenant's complaints and/or the filed dispute?
 - e. Is either party responsible for paying the CRT fees or related expenses of the other party?

BACKGROUND AND EVIDENCE

9. While I have reviewed all the submissions and materials submitted, I will refer only to the facts needed to make my decision.
10. A strata plan for Building C (Phase 2) was filed with the Land Title Office in April 2004. According to the strata plan, Building C has an underground parking garage. The strata plan designates a parking stall as limited common property (LCP) for the use of strata lot 70.
11. Storage locker cages including an access gate have been built using wire fencing material against the wall end of each parking stall. Given the storage lockers are located on the limited common property parking stalls, I find they are also limited

common property. Video clips provided by the tenant show that many residents of Building C use the storage cages to store various items such as small appliances, boxed items, and items in plastic bins. Many of the storage lockers have drop cloths or tarps draped over the contents.

12. The strata amended its bylaws in March 2016, and filed them with the Land Title Office in October 2017. The notice filed indicates that, but for the amendments filed, the bylaws of the strata corporation are the Standard Bylaws, as set out in the *Strata Property Act (SPA)*. *Bylaw 8* of the Standard Bylaws states that the strata has the responsibility to maintain and repair limited common property in regard to the structure of the building. The strata did not amend *Bylaw 8*.
13. The tenant says that, in December 2017, he went down to his parking stall and observed a large amount of flooding in his storage locker, destroying his stored items. He says that the flooding continued for over one week.
14. According to a chronology provided by the strata, the tenant spoke with the general manager of the strata on December 30, 2017. The tenant advised that water was leaking into his storage cage through a crack in the ceiling and wall of the parkade and that his property had been damaged by the water. The general manager advised the tenant to move his items from the area of the leak and contact his landlord.
15. The tenant says that the general manager told him that this was an ongoing issue that the strata was aware of and that the strata did not have the money to fix the badly damaged foundation.
16. According to the strata, the president of the strata council went to the area of the leak within 15 minutes of the tenant's phone call. He took photographs and sent them to the general manager. Within a short time the general manager determined that the leaking water was likely melted snow coming through a crack in the garage from snow build up against the main floor slab over the parking garage. The caretaker removed the snow from the area of the leak, as well as around all building areas within the following 2 hours.

17. In an email to the owner of strata lot 70 the general manager explained what had happened and wrote that the situation was a surprise to all involved. He wrote that, to the best of his knowledge, Building C had no history of such issues. He advised that the tenant's claim for damaged items would be discussed and reviewed at the next scheduled strata council meeting.
18. In the morning of January 3, 2018 the tenant told the strata that his cage was full of moulding items and that the contents and the storage cage needed to be remediated by a hazmat team as soon as possible. The tenant had taken photographs of each of the approximately 150 damaged items and found replacement costs on the internet. On the same day the general manager and president observed items spread out in the tenant's parking stall, as well as many items still stored in the storage locker.
19. The tenant took a video clip on January 4, 2018, showing that water continued to drip steadily from the ceiling into the storage locker. Items in the storage cage, including a spread out sleeping bag and cardboard boxes were visibly wet. The floor of the storage locker was also visibly wet.
20. The tenant says that he talked to other residents of Building C, who said that they also had items damaged from flooding in the storage lockers. The other residents told the tenant that the strata council refused to address the flooding issue previously.
21. On January 8, 2018 the tenant emailed a letter of demand to the strata council, asking for reimbursement for his damaged items in the amount of \$6,893.47 plus \$50 per month for loss of use of his storage locker until the issue was resolved. He provided photographs of each item as well as the replacement cost for each item, as obtained from various internet sites. From the tenant's email correspondence with the strata it is clear that the photographs were taken on or before January 3, 2018.
22. The strata council granted the tenant a hearing during its January 11, 2017 council meeting. Under the heading of New Business in the minutes of the meeting, it is

noted that the strata council will be looking at solutions to reduce and/or eliminate water from coming into all parkades, beyond what was already being done in the parkade of another building. The strata council stated it would have the issue addressed in the upcoming depreciation report. Notices were to be posted informing owners and tenants of the situation and asking them to continue to apply due diligence to protect their belongings stored in parkade storage lockers.

23. In a letter dated January 17, 2018 the strata denied the tenant's request for reimbursement for his damaged items or for loss of use of his locker.
24. The strata council met again on January 28, 2018. The minutes of the meeting indicate that there had been water infiltration into the parkade of another building through cracks in the concrete in January 2016. The council felt this might be the same issue that was occurring in Building C. It was seeking a contractor to fix the foundation in the other building. The minutes indicated that the last depreciation report did not identify any foundation issues.
25. The tenant provided a March 15, 2018 video clip of water dripping from a crack in the garage ceiling over top of his storage cage. The video showed items stored in the cage loosely or in cardboard boxes. Several other video clips from March 15 and 16, 2018 showed wet patches on the garage ceiling as well as dry areas with white stains or cracks or what appears to be mineral deposits.
26. The strata provided a detailed log of the general manager's time spent in dealing with the tenant. The log indicates that the general manager spent approximately 6 hours responding to the complaint of water leaking and another resident's complaint of a potential bylaw infraction by the tenant. He spent a further 16 hours responding to the tenant's dispute notice, preparing the strata's counterclaim and participating in the tribunal process. The log indicated an hourly rate of \$35 for the general manager.
27. In its' responses submissions the strata advised that the tenant removed his items from the storage locker. The strata confirmed with the owner of strata lot 70 that

the tenant had moved out of the unit. The submissions were provided after March 12, 2018.

POSITION OF THE PARTIES

28. The tenant argues that the parkade in Building C had been flooding for a long time, as evidenced by the calcium and hard water deposits on the walls and ceilings, evidence of mold in the parkade, and the reports of other residents. He argues that the strata was negligent in failing to fix the faulty foundation issues and that negligence caused the items stored in his storage locker to be damaged by water and mold. He argues that he could not use or sell the listed items and, as such, should be reimbursed for that loss in the amount of \$ 6,893.47.
29. The tenant also argues that the strata is responsible to pay for the cost of removing the moldy and water damaged items and remediating the storage locker area, in the amount of \$446.25. He also requests payment of \$50 per month for his loss of use of the storage locker and reimbursement of his tribunal filing fees. He further requests an order requiring the strata to retain an engineer to inspect the current fitness of the foundation.
30. The strata argues that it took appropriate steps, in a timely manner to address the leak in the parkade. It disputes that there were any reports of leaks in the parkade or water damaged property in that building in the 2 years leading up to the December 2017 water ingress. It states that there are no visible mold issues in the parkade, and no indication of mold issues identified in the March 2018 depreciation report.
31. The strata argues that the tenant did not take appropriate steps to store his belongings in a protective manner or remove them from the storage locker when the flooding started in December 2017. It submits that the tenant has not proven that the listed items were damaged to the point of destruction.
32. In its counterclaim, the strata requests the applicant pay \$770 for the 22 hours of time the general manager, as paid staff, spent dealing with the tenant's complaint

about the leak, as well as the tribunal claims. The strata argues that the respondent contacted the strata council repetitively on numerous occasions and also filed a dispute with the tribunal which unnecessarily caused the strata to incur further costs. The strata argues that the strata owners, as a whole, should not be responsible for the increased hours paid to the general manager to deal with this issue. The strata also asks for reimbursement of its tribunal filing fees.

ANALYSIS

Does the tribunal have jurisdiction over a dispute of a former tenant?

33. The tribunal only has jurisdiction over specific persons and types of disputes as set out in the Act and the SPA. Section 189.1 of the SPA allows for a “strata corporation, owner, or tenant” to file a claim with the tribunal to resolve certain strata property disputes. As such, the tribunal has jurisdiction to consider certain strata property disputes by a tenant living in a strata. The SPA is less clear on whether the tribunal has jurisdiction over former tenants who previously lived in a strata.
34. It is clear that the tenant no longer resides at the strata. He did not dispute the strata’s assertion of having left the property, but argued that it was irrelevant to the dispute. It is also clear that the tenant was residing at the strata when he filed his dispute notice on January 17, 2018.
35. The issue of whether the tribunal has jurisdiction over disputes by former owners has been considered by other tribunal members. While previous tribunal decisions are not binding on me, they provide useful guidance in legal interpretation. This tribunal has found that it has jurisdiction over disputes filed when an owner was an owner, as defined by the SPA, at the time the dispute notice was issued. See, for example, *542456 BC Ltd v. Section 2 of the Owners, Strata Plan VIS 5030 et al*, 2018 BCCRT 84 and *Somers v. The Owners, Strata Plan VIS 1601*, 2017 BCCRT 28.

36. The same reasoning was applied to the status of a former tenant in *Kelly v. The Owners, Strata Plan K218*, 2018 BCCRT 412. There the tribunal found that it has jurisdiction over, and can consider disputes filed by, a former tenant, so long as that tenant was living in the strata when the dispute notice was filed. Though not binding on me, I accept the decision of the tribunal in *Kelly* and find it applies here.
37. In this dispute the tenant was residing in the strata when the dispute notice for his claim was issued. He was also still living in the unit on March 1, 2018, when the dispute notice was issued for the strata's counterclaim. For these reasons I find that the tribunal has the jurisdiction to decide these disputes.

Is the strata responsible for damage to the tenant's personal property?

38. In a civil dispute such as this, the applicant has the burden of proving their case on a balance of probabilities. In other words they must show that it is more likely than not that their position is correct.
39. The strata has not disputed that the cause of the leaking water in the tenant's storage locker is seepage through cracks in the concrete walls and ceiling of the parkade. It is clear that the walls and ceiling of the parkade form part of the structure of Building C. As such, bylaw 8 applies and the strata has a responsibility to maintain and repair the concrete walls and ceiling around the limited common property parking stall and storage locker designated for the use of strata lot 70. The issue then becomes whether the strata failed to repair and/or maintain the parkade walls and ceiling.
40. The strata is not an insurer. The courts have held that a strata corporation is not held to a standard of perfection. Rather, it is required to act reasonably in its maintenance and repair obligations which, in this case, arise under bylaw 8. See *Kayne v. LMS 2374*, 2013 BCSC 51, *John Campbell Law Corp. v. Strata Plan 1350*, 2001 BCSC 1342, and *Wright v. Strata Plan No. 205*, 1996 CanLII 2460 (BCSC), affirmed 1998 Can LII 5823 (BCCA). In other words, the strata is not liable for damages to the tenant's items unless the strata was negligent in its duty to

repair and maintain the structure of the parkade, resulting in water ingress into the tenant's storage locker.

41. In order to be successful in an action for negligence, the tenant must demonstrate that the strata owed a duty of care, that the strata's behaviour breached the standard of care, that the tenant sustained damage, and that the damage was caused by the strata's breach of care. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27. As noted above, the standard of care owed by the strata is one of reasonableness. In determining whether the strata was negligent, I must consider what is reasonable in these circumstances. Again, the standard is not one of perfection.
42. The tenant argues that the strata knew, prior to December 30, 2017 that there had been water leaking into the parkade as a result of a faulty foundation. He relies on what he has been told by other residents of the building, however, has not provided the names of any of those witnesses, or statements from them. He also states that the general strata manager advised him that water leaking in the parkade was an ongoing issue, which is inconsistent with the general manager's email to the owner of strata lot 70. I place little weight on the hearsay evidence provided by the tenant.
43. The tenant also refers to mineral deposits and water stains on the walls and roof of the parkade to show that leaks have been occurring over a long period of time. He has not, however, provided me with any evidence setting out what the marks in the parkade are, how old they are, and what they represent. I note that these marks and stains were present in March 2018, more than two months after the initial leak occurred. I do not accept that tenant's opinion that the marks observed in the parkade indicate ongoing water ingress which predated the December 2017 leak.
44. The president of the strata council states that, in 2 years' worth of communication records, the strata has not received any complaints or reports of water leaking into the parkade of Building C. This is consistent with the general manager's January 2018 statement to the owner of strata lot 70 that the situation was a surprise to all

involved. It is also consistent with the January 11, 2018 minutes showing that the strata council considered the issue of water coming into all parkades as new business, not as an ongoing concern. I accept that the strata council had not received any complaints of, or observed any, water leakage in the parkade of Building C prior to the December 30, 2017 phone call by the tenant.

45. I acknowledge that the strata knew of water seepage in the parkade of a different building in the strata, in January 2016. I do not find that the strata should have taken any further steps with regard to the parkade in Building C as a result of the leak in a separate building in the strata. I am mindful that the standard is not one of perfection, but of reasonableness.
46. I find that the strata acted reasonably in the circumstances of responding to the tenant's December 30, 2017 complaint. They investigated, determined a potential source of the water, and took steps to rectify the situation in less than 24 hours. I accept that the water continued to leak into the storage locker, as evidenced by the tenant's January 4, 2018 video clip. I am satisfied that the strata acted reasonably in deciding, at the January 11, 2018 council meeting, to continue to investigate the source of the leak. The strata also advised the tenant to move his belongings.
47. Overall, I am satisfied that the strata acted reasonably in addressing the December 30, 2017 complaint of water seepage. I find that the strata was not negligent in failing to repair or maintain the structure of Building C prior to December 2017. As the strata was not negligent in its repair and maintenance of the structure of the parkade in Building C, it is not liable for any damage to the tenant's personal property resulting from the water leak.
48. The same area of the parkade leaked again in March 2018. Prior to that second leak the strata had advised the tenant to remove his belongings from the storage locker and he chose not to. It had advised other residents to apply due diligence to protect their belongings stored in the parkade. The strata also took steps to have the foundation of Building C inspected and the water ingress addressed in the upcoming depreciation report. As above, I find that the strata acted reasonably in

the circumstances and took steps to address the matter of water ingress into the parkade structure. I find that the strata was not negligent in failing to repair or maintain the parkade structure between January and March 2018. As such, the strata is not responsible for any damages sustained by the tenant as a result of the second water leak in March 2018.

What is the appropriate remedy?

49. I have determined that the strata is not responsible for any damage to the tenant's property arising from the December 2017 or March 2018 leaks in his storage locker area. As such I need not consider any remedy. I dismiss the tenant's claim.

Is the tenant responsible to pay the strata for time spent dealing with the tenant's complaints and/or the filed dispute?

50. I accept the strata's statement that the general manager is a paid staff. I accept that he spent time dealing with the tenant's report of water ingress into his storage locker and communicating with parties about that leak. While the strata argues that the owners, as a whole, should not be responsible for paying that cost, it has not provided any legal basis for the tenant to be responsible for paying that cost. The strata's bylaws do not include a requirement for owners, tenants, or occupants to reimburse the strata the cost of having the general manager address their concerns. The tenant is not responsible for the leak in the parkade and he was correct in reporting it to the strata.
51. The strata argues that the tenant continuously and repetitively contacted the strata, demanding reimbursement for his damaged property. The general manager's time log does not list repetitive communications with the tenant. Furthermore, part of the general manager's time listed is to deal with investigating a potential bylaw infraction of the tenant, which is not an issue which is before me in this dispute.
52. Overall, I am not persuaded that the tenant is responsible to reimburse the strata the cost of approximately 6 hours of the general manager's time in dealing with the actual leak, or an alleged bylaw violation by the tenant.

53. The strata has also requested reimbursement of approximately 14 hours of the general manager's time spent dealing with the dispute. This is more appropriately dealt with as a dispute-related expense.
54. Tribunal rule 132 states that, except in exceptional circumstances, the tribunal will not award representation fees as a dispute-related expense. I accept that the general manager did not represent the strata in this dispute; the strata is represented by the strata council president. However, the work conducted by the general manager in corresponding with the tribunal, searching records, and preparing documents is the work typically conducted by the representative of the party. As such, I find that rule 132 applies to the general manager's fees. I am not persuaded that there are any exceptional circumstances in this dispute which justify awarding the strata reimbursement of the general manager's fees. I dismiss the strata's claim for reimbursement of the general manager's fees.

Is either party responsible for paying the CRT fees or dispute-related expenses of the other party?

55. 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. Neither party was successful in this dispute. As such I find that neither party is entitled to reimbursement of their tribunal fees.
56. I declined to order reimbursement of the strata's dispute-related expenses above. The tenant has not claimed any dispute-related expenses and, under the tribunal rules, he would not be entitled to reimbursement of any such expenses in any event.

ORDERS

57. I order that the tenant's claims are dismissed. I further order that the strata's counterclaim is dismissed.

Sherelle Goodwin, Tribunal Member