



Civil Resolution Tribunal

Date Issued: August 28, 2018

File: ST-2017-006138

Type: Strata

Civil Resolution Tribunal

Indexed as: *Lawrence v. The Owners, Strata Plan NW 1662*, 2018 BCCRT 480

B E T W E E N :

Rebecca Lawrence

APPLICANT

A N D :

The Owners, Strata Plan NW 1662

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Helene Walford

INTRODUCTION

1. The applicant Rebecca Lawrence (owner) owns strata lot 20 (unit 207) in the respondent strata corporation, The Owners, Strata Plan NW 1662 (strata). The owner claims the strata authorized SWR Drain Service Ltd. (plumber) to perform repairs of \$598.50 (repairs) to the owner's hot water tank (tank) that were not necessary. The owner seeks an order prohibiting the strata from seeking

reimbursement of the repair costs. The owner also seeks an order that the strata revise the minutes of the March 7, 2017 strata council meeting (meeting).

2. The strata says that the repairs were required on an emergency basis, that the repair costs were reasonable, and that the owner is responsible for the repair costs. The strata says that the meeting minutes are accurate.
3. The owner is self-represented. The respondent is represented by an authorized strata council member.

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.

8. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator). Tribunal documents incorrectly show the name of the respondent as The Owners, Strata Plan, NWS 1662, whereas, based on section 2 of the *Strata Property Act* (SPA), the correct legal name of the strata is The Owners, Strata Plan NW 1662. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the style of cause above.

ISSUES

9. The issues in this dispute are:
- a. Is the strata entitled to charge back the owner \$598.50 for the invoice repair costs?
 - b. Does the strata have to revise the meeting minutes?; and
 - c. Is the strata responsible to reimburse the owner for tribunal fees paid?

BACKGROUND AND EVIDENCE

10. While I have reviewed all of the evidence and submissions provided, I have only set out below what is necessary to give context to my decision.
11. The strata's bylaws are substantially those filed in November 2001, when the strata repealed and replaced all of its bylaws, plus subsequent amendments.
12. Bylaw 7(1) permits the strata to enter a unit without notice, in an emergency, to prevent significant loss or damage.

13. The strata submitted emails dated February 13, 2018 between the strata manager and a strata council member. In the emails, the strata manager states that she left an urgent voicemail for the owner advising that her tenant phoned the management company on November 23, 2016 indicating that there was a water leak in the owner's unit. The strata manager says that routinely the owner is advised to meet repairmen at their tenanted unit, but in cases where the owner is unreachable, the strata does not let a water leak go unchecked, but has the leak clamped or repaired as needed.
14. The owner filed screen shots of her cell phone indicating calls from the agent to her on November 23, 2016 at 4:47 pm and three calls between 9:11 am and 1:08 pm on December 8, 2016. The strata also filed a phone log indicating that another call was made to the owner on November 24, 2017 at 2:27 pm.
15. The strata arranged for investigation of the water leak reported by the owner's tenant and for repairs to be completed to the tank on November 23 and 24, 2016 at a cost of \$598.50. The plumber's invoice dated November 24, 2016 indicates charges of \$427.50 for two hours work on November 23, 2016 and \$142.50 for one hour on November 24, 2016.
16. The invoice indicates that on November 23, 2017 the plumber attended, identified the source of the leak to be a cracked tank drain fitting. The invoice indicates that the plumber emptied the tank to stop the leak then returned on November 24, 2017 to install a new drain cock, reconnect the tank, and ensured that it was fully operational. The invoice indicates that the replacement drain cock was supplied at no cost and the plumber only charged for labour.
17. The strata sent the owner a letter dated December 5, 2016 enclosing the invoice and advising that the invoice amount of \$598.50 was charged back to the owner's account.
18. By cheque dated December 8, 2016, the strata provided payment to the plumber of \$598.50. The owner sent a letter to the strata manager dated December 8, 2016

asking the strata manager to withhold payment from the plumber and to obtain photos of the damages.

19. The owner also wrote to the strata on January 9 and 21, 2017 disputing the chargeback to her account.

POSITION OF THE PARTIES

20. The owner says that the strata manger works for the strata and not the owners directly. The owner says that the strata manager acted improperly in authorizing repairs that were not required on an emergency basis, so the strata is responsible for the cost of the repairs.
21. The owner says that the strata manager hired a dishonest plumber, and then unreasonably refused to withhold payment from the plumber until the owner could investigate the situation.
22. The owner says that the tank was relatively new, still under warranty, and in perfect operating condition and did not require any repairs. The owner filed an invoice from Hillcrest Plumbing (Hillcrest) dated September 15, 2012 indicating that she purchased the tank in 2012 and that it came with an 8-year warranty.
23. The owner says that there is no evidence of water leaking outside of the drain pan/drain pipe containment feature of the tank. The owner says that the tank has a drain pain with a drain in it, which would allow time for her to investigate any water leak and no emergency repairs were required.
24. The owner says that the photos provided by the plumber demonstrate that the tank valve was working as it was supposed to. The owner says that the plumber must have tampered with the obsolete part on the intake pipes causing them to continually drip from the time of repairs until the owner was able to get hilltop to come in January 2017. The owner says that Hillcrest spent 10 minutes to “delete” the obsolete part, free of charge.

25. The owner says that the plumber overcharged for his repairs. The owner says that she contacted hillcrest and another plumber and they both told her that the plumber's invoice was excessive.
26. The strata manager says that the plumber is a qualified and vetted vendor, and that she does not receive any benefit from referrals to the plumber.
27. The strata says that the tenant contacted the strata manager on November 21, 2016 reporting a leak from the tank. The plumber was working in the building at the time, so he attended at the owner's unit and could not find a leak. The strata says that the tenant contacted the strata manager again on November 23, 2016 and advised that the tank was leaking and the drain pan was overflowing. The strata says that the tenant and the agent's attempts to contact the owner about the leak were not successful.
28. The strata says that in order to prevent damage to the building, the strata had the plumber investigate further. The strata says that the plumber determined that the valve at the bottom of the tank was cracked and was the source of the leak. The plumber replaced the cracked valve. The strata says that the repair costs are the owner's responsibility.
29. The strata says that the repair costs of \$598.50 were reasonable and if the leak had not been fixed at that time, the damage and costs could have been significant.
30. The strata says that it also contacted hilltop and asked them to quote on the work done performed by the plumber. The strata says that hilltop would have charged \$599 plus tax which is comparable to the repair costs charged by the plumber. The strata says that the owner is not being over charged for the work done by the plumber.
31. The strata says that owner was permitted a hearing and her concerns and objections to the repair bill were considered. The strata says that the minutes accurately reflect the decision made at the meeting and the factual background upon which the decision was based.

ANALYSIS

Is the strata entitled to charge back the owner \$598.50 for the invoice repair costs?

32. The crux of this dispute is whether the strata is entitled to the chargebacks for the repairs of \$598.50 against the owner under SPA or its bylaws.
33. Section 158(2) of the SPA expressly provides for a charge-back of an insurance deductible but there are no provisions in the SPA for chargebacks unrelated to insurance deductibles, so the strata's ability to claim them must be provided for in the bylaws.
34. Bylaw 8 requires the strata to repair and maintain common assets of the strata, common property that has not been designated as limited common property, and limited common property subject to certain restrictions. However, there is no bylaw requiring the strata to fix the owner's tank.
35. I find that the strata tried to contact the owner without success and went ahead with the repairs without the owner's permission. While the strata manager may have been concerned about the potential damage to common property and the unit below the owner's, there was no obligation for the strata to repair the tank.
36. In order for the strata to chargeback the repairs, it must have the authority to do so under a valid and enforceable bylaw or rule that creates the debt. (See *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512).
37. As the owner did not authorize the repairs and there is no bylaw that gives the strata the authority to charge back the repair costs, I find the charge back of the plumber's invoice to the owner's account was not permitted and is therefore invalid.
38. Although I find that the repair costs were reasonable for the work performed, as the chargeback of the invoice to the owner's account was not valid, I conclude that the

strata is not entitled to seek reimbursement of the invoice of \$598.50 from the owner.

39. Given my finding that the charge back for the invoice was invalid I do not need to address the owner's claims that the strata manager acted improperly or that the strata manager hired a dishonest plumber.

Does the strata have to revise the meeting minutes?

40. The minutes indicate that the owner is disputing a chargeback for emergency plumbing repairs made to the tank in her unit, which had sprung a leak at floor level due to a faulty relief valve. The minutes indicate that the owner was unreachable by phone when the tenant reported the leak, and the strata made emergency repairs to prevent water damage to the building. The minutes indicate that council reviewed the matter, determined the repair costs were reasonable and appropriately charged back to the owner, as repairs of this type are an owner responsibility.
41. The owner says that the minutes should say that she is disputing a chargeback for non-emergency plumbing repairs to a 4 ½ year old tank in her unit, which had water leaking from a drain valve after the plumber called in by the strata manager turned the drain valve to the open position.
42. The owner says that the minutes should indicate that the relief valve located at the top of the tank was functioning normally by releasing water when the pressure changed, as was the case when the plumber was working on the plumbing in the building, which triggered an alarm in the drain pan. The owner says the minutes should say that the evidence showed there was a drain in the drain pan permitting the water, which was released during the proper functioning of the relief valve, to drain away.
43. The evidence demonstrates that the tenant reported water leaking from the tank on November 24, 2016 and that the strata manager called the owner on November 23, 2016 at 4:47 pm and on November 24, 2017 at 2:27 pm without success. The

evidence indicates that the strata paid the invoice and sought reimbursement from the owner. The letters from the owner indicate that she disputes the chargeback for the repairs.

44. Although I found that the charge back for the invoice was not permitted, I find that the minutes accurately describe the circumstances surrounding the repairs and the concerns of the strata manager in authorizing the plumber to perform the repairs. I find that the strata does not have to revise the meeting minutes.

Is the strata responsible to reimburse the owner for tribunal fees paid?

45. 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 expenses related to the dispute resolution process. As the owner was partially successful I find that the owner is entitled to reimbursement of \$225 that she paid in tribunal fees.

DECISION AND ORDER

46. I order that:
- a. The strata reverse the charge back amount of \$598.50 to the owner's account; and
 - b. The strata reimburse the owner \$225 for her tribunal fees.
47. The owner's remaining claim is dismissed.
48. The applicant is entitled to post-judgement interest under the *Court Order Interest Act* as applicable.
49. 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.

50. 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.

51. 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.

Helene Walford, Tribunal Member