



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Bowles v. The Owners, Strata Plan NW 227*, 2018 BCCRT 484

B E T W E E N :

Ingrid Bowles

APPLICANT

A N D :

The Owners, Strata Plan NW 227

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Samuel A. Hyman

INTRODUCTION

1. On October 13, 2016, a copper pipe within the strata lot of the applicant, Ingrid Bowles (owner), failed. The pipe failure caused significant water damage to the applicant's strata lot.

2. The owner claims the strata is responsible to pay the \$10,000 insurance deductible that resulted from the flood. The owner asks the Civil Resolution Tribunal (tribunal) for orders that the owner is not responsible to pay the strata's insurance deductible and the strata remove the \$10,000 charge from the owner's account. The owner also asks to be reimbursed for tribunal fees of \$225.00 and legal expenses incurred.
3. The strata claims the owner is liable under its bylaws for the insurance deductible. They ask the tribunal to dismiss this dispute.
4. The owner is self-represented. The strata is represented by an authorized council member.
5. For the reasons that follow, I find the owner is not responsible to pay the strata's deductible and that the strata must remove the insurance deductible from the owner's strata lot and reimburse the owner for the tribunal fees paid but not its legal expenses.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the 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 is responsible to pay the strata's \$10,000 insurance deductible.

POSITION OF THE PARTIES

11. The owner says that the strata's bylaws require an owner to be negligent for the strata to charge an insurance deductible back to an owner. The owner admits the insurance loss resulted from a pipe wholly within the owner's strata that was original to the building. The owner says that they had no indication of any issues with the pipes, and that they did nothing to cause or contribute to the loss. As a result they say their actions do not fall within the scope of the bylaw.
12. The strata says that the owner ought to have known that the pipes were aging in the building. The strata says the owner is responsible for any leaks, or that the owner's failure to take any steps, makes them liable under the bylaw. The strata says the owner is therefore responsible to pay the strata's \$10,000 insurance deductible.

BACKGROUND, EVIDENCE and ANALYSIS

13. I have read all of the submissions and evidence provided, but refer only to information I find relevant to provide context for my decision.

14. In a civil proceeding such as this, the applicant must prove their claim on a balance of probabilities.
15. The essential facts of this matter are not in dispute. The owner acknowledges that a pipe failure caused damage to her strata lot. There is no issue regarding the cause of the damage and that the repairs were covered by the strata's insurance policy less a \$10,000 deductible.
16. It is also undisputed that section 158(2) of the *Strata Property Act* (SPA) provides for recovery of the strata's insurance deductible where an owner is "responsible" for damage occurs.
17. Both the strata and the owner rely upon the bylaws filed December 21, 2001 and February 20, 2014 respectively. The applicable bylaws are:
 - 3.1 An Owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the responsibility of the strata corporation under these bylaws.
 - 4.4 An owner shall indemnify and save harmless the strata corporation from the expense of any maintenance, repair or replacement rendered necessary to the common property, limited common property, common assets, or to any strata lot by the **owner's act or omission** or by that of any owner's visitors, occupants, guests, employees, agents, tenants or a member of the owner's family, but only to the extent that such expense is not reimbursed from the proceeds received by operation of any strata corporation insurance policy. In such circumstances, and for the purposes of bylaws 4.1, 4.2 and 4.3 (emphasis added):
 - (i) any insurance deductible paid or payable by the strata corporation shall be considered an expense not covered by the proceeds received by the strata corporation as insurance coverage and will be charged to and be payable by the owners.

- (ii) Any expenses incurred that are not reimbursed from the proceeds received by operation of any strata corporation insurance policy will be charged to and by (sic) payable by the owner
18. Of note, the amendments to bylaw 4.4 in 2014 removed the terms “negligence or carelessness” to determine whether an owner was responsible for a deductible.
19. Bylaw 4.4 was repealed and replaced on April 9, 2018, but that amendment is not applicable to this dispute because the leak occurred in 2016.
20. I agree with the owner the interpretation of “owner’s act or omission” in the strata’s applicable bylaw is necessary to determine the outcome of this dispute.

Interpretation of Bylaws

21. For the reasons that follow, I find that bylaw 4.4 as set out above, imports the stricter standard of negligence for the strata to succeed in recovering the \$10,000 insurance deductible from the owner. In doing so, I accept this tribunal’s analysis in *Clark v. The Owners, Strata Plan LMS 3938*, 2017 BCCRT 62 and find that it also applies here.
22. In the absence of filed bylaws, the standard bylaws of the SPA apply. The owner directs me to, and I agree that the issue of responsibility for insurance deductibles has been tested in the courts by *Wawanessa Mutual Insurance Co v. Keiran* 2007 BCSC 727 (*Keiran*) and *The Owners of Strata Plan LMS 2835 v Mari* 2007 BCSC 740 (*Mari*). In both cases the strata corporation was successful in collecting amounts paid out by the strata corporation. However, in both cases the court only considered what was meant by “responsible” under section 158(2) of the SPA and did not consider the strata corporation’s bylaws.
23. The strata asks me to apply similar reasoning to *Keiran* and *Mari* in this dispute. Their submissions indicate that I should take the broader interpretation of “responsible” and apply it to the present facts.

24. For their part, the owner submits that the strata's bylaws are not the standard bylaws and that bylaw 4.4 requires an owner to be negligent before the strata can charge an owner the amount of the insurance deductible. In *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 0519 (*Morrison*), the Court found that a strata corporation that had adopted different bylaws than the standard SPA had imported a stricter standard on the strata corporation that required negligence and not simply "responsibility" when charging an owner with an insurance deductible.
25. In order to decide this dispute, I must determine whether *Morrison* applies to these facts.

Does Morrison apply?

26. For the reasons that follow, I find that *Morrison* does apply and I must look to the strata's bylaws to determine if a stricter standard than the standard on the part of the owner is necessary for the strata to succeed in recovering the \$10,000 insurance deductible from the owner.
27. In *Morrison*, the court looked to the strata corporation's bylaws before determining if the strata corporation could recover its insurance deductible from an owner. The relevant bylaw contained a clause that referred to carelessness or negligence, which the court found imported a negligence standard that was narrower than simply finding the owner was "responsible". Under the narrower bylaw at issue in *Morrison*, the court found that the strata must prove an owner was negligent in order to hold them responsible to pay the strata's insurance deductible.
28. As a result, I must follow the principles in *Morrison* to determine if the strata's bylaws import a stricter standard than the SPA.

Do the strata's bylaws import a stricter standard of negligence on the part of the owner?

29. Unlike *Morrison*, the bylaws here do not specifically refer to "negligence or carelessness". As a result, I must determine what, in the context of bylaw 4.4 the

words “owner’s act or omission” require before a deductible can be charged back to an owner.

30. In *Mari*, the court distinguished legislation in Alberta that required the standard of negligence in order for an owner to be liable to repay a deductible to a strata. The court determined that the Alberta legislation, “requires a finding of negligence by virtue of the use of the phrase “act or omissions.”” No such wording is found in the SPA. However, the words “act or omission” are found in bylaw 4.4. I did consider that the strata amended its bylaw to specifically remove the words “negligence and carelessness” in 2014. However, I must still decide what the effect of “act or omission” in bylaw 4.4 means for a deductible being charged to an owner.
31. The owner directs me to *The Owners, Strata Plan BCS 1589 v. Nacht et al.* 2017 BCCRT 88. I agree with the reasoning there and I consider that if the strata had intended to have the standard of “responsible for” loss or damage (as contemplated in *Mari*) be applied to determinations of whether an owner was liable to repay the deductible portion of an insurance claim, it would have adopted a bylaw which echoed the language set out in section 158(2) of the Act. It did not do so. Rather, the strata chose to adopt bylaw 4.4, which set out a more stringent standard of responsibility in order for an owner to be required to repay the deductible portion of an insurance claim.
32. I find the words “owner’s act, or omission...” in Bylaw 4.4 as considered in *Mari* require a standard of negligence. While section 158(2) of the SPA allows the strata to sue an owner who is simply responsible for damage, here the strata’s bylaws narrow that application. In effect, they determine the type of responsibility that attracts liability. In other words, I find that proof of negligence on the part of the owner is required for the strata to recover its insurance deductible from the owner, as contemplated by bylaw 4.4.

WAS THE OWNER NEGLIGENT?

33. I find that the evidence does not show negligence on the part of the owner, and for the following reasons, I cannot accept the strata’s position.

34. In order to be successful in an action for negligence, which is what I have found bylaw 4.4 requires, I must determine that the owner owed the strata a duty of care, that their behaviour breached the standard of care, that the strata sustained damage, and that the damage was caused, in fact and in law, by the owner's breach. See: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
35. I find that the owner owed the strata a general duty of care regarding maintenance and repair of their strata lot so as to avoid causing damage to the strata as contemplated by bylaw 3.1. I further agree that the strata sustained damage.
36. The real issue is whether the owner breached their duty of care to the strata. The strata says that the owner did so by failing to take steps to address the pipe issue when they knew or ought to have known that the pipes were aging, and that they did not take steps to address the leak as quickly as possible when it was discovered.
37. In support of this position, the strata says the owner is aware of the age of the building, that a plumber was not on site until 3 days after the leak, and that they cannot be certain that no alterations were made to the strata lot that may have caused the leak by the owner. Further, they argue that as this was a slow leak, she should have been aware.
38. I do not agree. I do not find that the general age of the building would have suggested to the owner that there was any specific need for repair on the pipe in question. In addition, there is no indication in the strata minutes provided, or in the submissions, that prior to this leak the strata was of the view that any particular repairs should be undertaken by owners.
39. On the contrary, I find that the owner acted reasonably in the circumstances. First, I accept that upon discovering the leak she turned the water off to the unit, contacted the property management company, and a plumber. There is no indication that she was aware of a slow leak and took no action, so I find the strata's argument about that to be unpersuasive. There is also no dispute about the extent of the damage, so I find that the strata's argument that the plumber did

not arrive quickly enough to be irrelevant. Finally, I note that in a subsequent council meeting on April 3, 2017, the steps undertaken by the owner are the very steps the strata itself suggested that owners take in similar situations.

40. I agree with the owner's position that she acted properly. I find that she did not do or fail to do anything that led to the damage in her strata. As a result, I find that she is not liable for the \$10,000 insurance deductible under bylaw 4.4.

Responsibility for Tribunal Fees and Expenses

41. 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. The owner was entirely successful in this dispute. I therefore order the strata to reimburse the owner for tribunal fees of \$225.00.
42. The owner also seeks an order that the strata reimburse them for their legal expenses.
43. I decline to make the order requested by the respondent. As noted in the tribunal's rules, generally speaking the tribunal does not award reimbursement of legal expenses except in extraordinary circumstances, which I find do not exist here.

DECISION AND ORDERS

44. I order that, within 14 days of the date of this decision, the strata:
- a. Remove the \$10,000 charge back to the owner's strata lot; and
 - b. Reimburse the owner's tribunal fees in the amount of \$225.00.
45. 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 expenses incurred by the respondent in defending this claim, are allocated to the applicant owner.

46. 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.
47. 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.

Samuel A. Hyman, Tribunal Member