



# Civil Resolution Tribunal

Date Issued: August 31, 2018

File: ST-2017-005355

Type: Strata

Civil Resolution Tribunal

Indexed as: *Meybodi v. The Residential Section of The Owners, Strata Plan BCS 3261*,  
2018 BCCRT 490

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

Nasser Khan Mohseni Meybodi

**APPLICANT**

**A N D :**

The Residential Section of The Owners, Strata Plan BCS 3261

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Salima Samnani

## **INTRODUCTION**

1. The respondent is a section of the strata corporation established under the *Strata Property Act* (SPA) located in Vancouver, BC (section). The applicant is the owner

of strata lot 30 (owner). The owner is self-represented and the respondent is represented by Lorne Campbell.

2. The owner lives in unit 311. A water spill in his strata lot caused damage to the ceiling of unit 211. The respondent charged the owner for the costs associated with repairing the damage. The owner brings this claim for an order that the respondent reverse the charges to his account and instead charge the owners of unit 211 for the repairs.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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.
5. 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.
6. 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**

7. The issue in this dispute is who is responsible to pay for the repairs to unit 211?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

8. As a preliminary matter, I must comment on the parties to this dispute. Based on my detailed review of the evidence, I am satisfied that the section is the correct and only respondent in this dispute. I say this despite correspondent evidence from the respondent stating the letters were written on behalf of the strata corporation, because the damage is entirely within the section.
9. Further, the section provided a Response Notice and participated in tribunal proceedings for the entirety of the dispute.
10. In September 2016, the owners of unit 211 contacted the applicant about a leak into their unit that seemed to be coming from the applicant's strata lot. The applicant does not dispute the leak was caused by some carelessness in his unit. The applicant also does not dispute that he is responsible for the cost of the repair. The applicant argues that his contractor could have repaired the damage for \$300, but because a more expensive contractor was chosen, he should not have to pay for any of the repairs. The cost of the repair was \$787.50. Further, the applicant argues that the owners of unit 211 should bear the cost of the repairs because they chose to use a more expensive contractor and did not keep the applicant informed.
11. The applicant must prove his case on a balance of probabilities.
12. The applicant has not provided any evidence that his chosen contractor could have completed the repair work for \$300. There is also no evidence or argument that the contractor that was used did more work than what was necessary or overcharged.
13. The owner of unit 211 has a responsibility to mitigate its damages and is only entitled to be placed back into the position that they were in before the damage. I do not have any evidence that the owner of unit 211 failed to mitigate their damages or is in a better position.

14. In an attempt to resolve this issue, the section offered to pay \$500 towards the cost of the repair, if the applicant had to provide a letter from his insurer that it would not cover the cost of the damage. The applicant would be responsible for the rest of the cost. This offer was made to the applicant twice. The applicant refused the offer because he did not feel it was an appropriate use of the section's operating fund.
15. In its submissions, the section argues that the cost of the repair is fair, that they have a duty to fix strata property in a timely fashion, and they acted reasonably in working with the unit 211 owner to hire a contractor that regularly completes repair work for the strata.
16. Land title documents show the bylaws of the strata corporation are the Schedule of Standard Bylaws, as amended on a few occasions. There are no registered bylaws that apply only to the section. The damage in unit 211 was restricted to the owner's strata lot and not to common property given the definition set out in the SPA. Based on the bylaws, I find that the section did not have a duty to repair the damage. Even if the strata corporation was a party to this dispute, I would find it also does not have a duty to repair unit 211 given the bylaws.
17. The applicant also argues that it is unfair to charge him for the costs of the repair, given he was not kept informed of the costs. The applicant says that he did not know unit 211 had been repaired until he saw the cost listed in the section's financials. I accept the applicant's argument that he was not aware of the repairs being completed in unit 211, given he was the one following up on the repairs. It was not until after he enquired of repair status the section charged the invoice back to his strata lot.
18. The applicant has made substantial arguments regarding the duty of the section not to use operating funds to pay for damage to individual strata lots. The section erroneously paid for the repair from the operating fund, and has tried to correct its error by charging the applicant. Strata councils and section executives are comprised of lay people and errors are expected. However, as stated in *Ward v. The Owners, Strata Plan VIS #1165* 2011 BCCA 512, the strata corporation must

have permission in the bylaws to charge back costs they have paid. I find the decision reached in *Ward* applies equally to a section. Here, the section's bylaws do not allow it to charge back the costs they paid.

19. For these reasons, I find that the section cannot charge the applicant \$787.50.
20. I find the issue of the water damage was between the applicant and the owners of unit 211. The applicant admits to causing the damage and agreed to pay a reasonable amount to repair the damage and later withdrew his offer. The section inserted themselves into the issue and eventually erroneously paid for the repair. The applicant was not kept informed of the cost and only discovered it when reviewing the section's financial statements. Given the bylaws, the section does not have the authority to charge the respondent for the repair.
21. The section makes substantial arguments implying that the applicant is bringing this action to avoid making a claim to his insurer. This argument is not relevant.

## **DECISION AND ORDER**

22. Given my findings above I order the section to reverse the charges to the applicant's strata lot account in the amount of \$787.50.
23. I dismiss the applicant's claim that the tribunal order the section to charge unit 211 for the repair as the owner of unit 211 is not a party to this dispute.
24. 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. I therefore order the section to reimburse the applicant for tribunal fees of \$225.

25. 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 find this applies equally a separate section of a strata corporation. I order the section to ensure that no expenses incurred by it in defending this claim, are allocated to the applicant owner.
26. 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.
27. 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.

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Salima Samnani, Tribunal Member