



Civil Resolution Tribunal

Date Issued: September 5, 2018

File: ST-2017-003476

Type: Strata

Civil Resolution Tribunal

Indexed as: *David v. The Owners, Strata Plan KAS 2955*, 2018 BCCRT 498

B E T W E E N :

Sebastian David

APPLICANT

A N D :

The Owners, Strata Plan KAS 2955

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant is the owner of strata lot 163 (unit 312) in the respondent strata corporation, The Owners, Strata Plan KAS 2955 (strata). The applicant is represented by a lawyer, Lanny James. The strata is represented by a non-lawyer representative of the strata's insurer.

2. This dispute arises after a water leak caused damage to unit 312. The applicant believes that the strata had an obligation to repair the damage. The applicant claims the following amounts from the strata:
 - \$2,408.87 in materials.
 - \$150 in transportation costs at \$0.75 per kilometre.
 - \$4,420.87 to compensate for the applicant's labour.
 - \$2,062.50 in lost use and enjoyment of unit 312.
 - \$10,000 in general damages.
 - \$225 in Civil Resolution Tribunal (tribunal) fees.
 - An unspecified amount in legal fees.
3. The strata asks that I dismiss the applicant's dispute.

JURISDICTION AND PROCEDURE

4. 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.
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. Did the strata have an obligation repair unit 312?
 - b. If the strata had an obligation to repair the applicant's unit, how much does the strata owe the applicant?
 - c. Did the strata act significantly unfairly or in bad faith by refusing to repair unit 312? If so, what amount of damages is the applicant entitled to?
 - d. Should the strata pay the applicant's legal fees?
 - e. Should the strata pay the applicant's tribunal fees?

BACKGROUND AND EVIDENCE

9. The strata is an 8 building complex in Kelowna, British Columbia. The strata has a total of 441 residential units. Unit 312 is on the third floor of a 4 story building. Strata lot 179 is directly above unit 312. A common property attic is above strata lot 179.
10. Within the common property attic is the piping of the strata's fire sprinkler system. The parties agree that the fire sprinkler system's pipes are common property.

11. The strata carries property insurance in accordance with section 149 of the *Strata Property Act* (SPA). The strata's insurance had a \$25,000 deductible for water damage.
12. On May 21, 2017, water leaked from the fire sprinkler pipes into strata lot 179. The water then leaked into unit 312 down the ceiling and walls. The leak caused damage to 4 units, including unit 312.
13. On May 22, 2017, a disaster relief company attended unit 312 and performed emergency work in relation to the leak. In particular, the disaster relief company removed the drywall from the ceiling and some of the walls, as well as some underlying insulation. The disaster relief company also dehumidified the area of damage.
14. The strata sent a letter to the applicant on May 24, 2017, which stated that the strata's obligation to perform further work on unit 312 was dependent on the strata's insurer's obligations. The strata took the position that if the cost of repairs was under the strata's deductible, the strata would have no obligation to make an insurance claim and no obligation to repair. At that time, the strata did not yet have an estimate as to the cost of the damage to unit 312.
15. The strata did not arrange or pay for any further remediation or repair work on the applicant's unit. Therefore, the applicant was left with exposed walls without drywall.
16. On June 27, 2017, the applicant attended the office of the strata's insurance broker demanding that they report a claim to the strata's insurer. The applicant believed that the total damage to the 4 affected units must be more than the \$25,000 deductible. The broker informed the applicant that only strata council or the strata's property manager could report a claim.
17. The strata sent the applicant a letter on July 4, 2017, advising that the estimated cost to repair the damage was below the strata's deductible. The strata declined to assist with any further repairs.

18. The strata held a hearing on July 11, 2017, at the applicant's request. Following the hearing, the strata confirmed its decision not to pay for the repairs, although the strata did agree to pay the cost of the emergency remediation.
19. The applicant did not have a comprehensive homeowners insurance policy and therefore had to cover the cost of the repairs out of pocket. The applicant chose to repair the unit themselves.

ANALYSIS

Did the strata have an obligation repair unit 312?

20. Section 149(1)(d) of the SPA states that the strata must obtain property insurance on fixtures built in a strata lot as long as the fixtures were installed by the owner developer as part of the original construction of the strata lot (original fixtures). This dispute turns on whether the strata's duty to insure original fixtures under section 149(1)(d) of the SPA includes a duty to repair original fixtures.
21. The strata's maintenance and repair obligations are set out in section 72 of the SPA, which requires the strata to repair and maintain common property and common assets. Section 72(3) of the SPA allows a strata to pass a bylaw taking responsibility for the repair or maintenance of specified portions of a strata lot.
22. Bylaw 2(1) of the strata's bylaws provide that an owner must repair and maintain their own strata lot unless the strata is responsible for the maintenance and repair under the bylaws or the SPA. Bylaw 8(d) provides that the strata must repair and maintain a strata lot, but the obligation is restricted to:
 - the structure of a building,
 - the exterior of a building,
 - chimney, stairs, balconies and other things attached to the exterior of the building, and

- doors, windows and skylights on the exterior of a building or that front on the common property, not including routine cleaning of the interior of such fixtures.
23. None of the repairs claimed by applicant fall within the strata's obligation to repair and maintain a strata lot under bylaw 8(d).
 24. The applicant's argument is that the strata's obligation to insure original fixtures under section 149 of the SPA necessarily creates a duty to repair the original fixtures in the event that the cost of the damage is less than the strata's deductible. In those circumstances, the applicant says that the strata is essentially self-insuring.
 25. The applicant does not allege that the strata was negligent in its obligation to repair and maintain the common property pipe. The applicant submits that the strata's obligation to repair original fixtures flows from its obligation to insure even if the strata is not at fault.
 26. At the strata council hearing, the strata relied on two cases in support of their position that it had no duty to repair: *John Campbell Law Corp. v. The Owners, Strata Plan No. 1350*, 2001 BCSC 1342 and *Wawanesa Mutual Insurance Co. v. Keiran*, 2007 BCSC 727.
 27. In *John Campbell Law Corp.*, a strata lot was damaged following a sewer backup that originated from a common property sewer line. The owner made a claim based on the strata's obligation to repair and maintain common property and the law of nuisance. The Court found that the strata acted reasonably in discharging its repair and maintenance obligations for the sewer line and dismissed the claim.
 28. In *Keiran*, the BC Supreme Court dismissed an appeal of the BC Provincial Court decision *Strata Plan KAS 1019 v. Keiran, Simkus and Wawanesa*, 2006 BCPC 360. I will refer to the Provincial Court decision because it provides the relevant analysis to the issues in this dispute. In *Keiran*, a problem with a pipe in the owner's unit caused a leak that damaged the owner's original fixtures. The cost of

the repairs were less than the strata's \$10,000 deductible so the strata paid for the repairs itself, and sought recovery of those amounts from the owner and the owner's insurer. The Court concluded that the repairs were the responsibility of the owner and the owner's insurer.

29. The applicant seeks to distinguish *Keiran* on the basis that the source of the damage in that case was the owner's pipe as opposed to a common property pipe. I do not agree that the ownership of the failed pipe had any bearing on the Court's decision. Rather, the Court found that the owner was responsible for the repairs because the damage was within the owner's lot and therefore falls within the owner's responsibility for maintenance and repair under the SPA. Therefore, I find that *Keiran* is directly applicable to this dispute.
30. The Court in *Keiran* makes it clear that the strata's obligation to repair and maintain and the strata's obligation to insure do not overlap perfectly. In particular, section 149(1)(d) of the SPA requires the strata to insure original fixtures within a strata lot but section 72 of the SPA places no obligation on the strata to repair or maintain original fixtures unless the strata passes a specific bylaw to that effect. The applicant essentially asks that a duty to repair and maintain original fixtures be read into section 72 of the SPA by virtue of the strata's obligation to insure them. I find that if the legislature had intended to place such an obligation on the strata, it would have done so explicitly. The strata has not passed a bylaw that places an obligation on the strata to repair the damage to unit 312.
31. The applicant also relies on section 68 of the SPA for the proposition that the strata has a duty to pay to repair a strata lot's undecorated interior floor, wall or ceiling. In fact, section 68 of the SPA sets out how to determine the boundary between strata lots, common property, or other land and says nothing about the scope of the strata's duty to repair.
32. Furthermore, if the strata's duty to insure original fixtures created a duty to repair, the strata would, in effect, be strictly liable for any damages arising from leaks originating from common property. The Court in *John Campbell Law Corp.*

considered and rejected an argument that the duty to repair common property created a strict liability obligation on a strata. Rather, the Court found that a strata need only act reasonably in repairing and maintaining common property. Again, the applicant does not allege that the strata failed to take reasonable steps to repair and maintain the common property pipes. Therefore, a finding that the strata was obliged to repair unit 312 absent fault would be contrary to the finding in *John Campbell Law Corp.*, which is binding on me.

33. Therefore, I find that the duty to insure original fixtures in section 149(1)(d) of the SPA does not create a duty to repair original fixtures in circumstances where the cost to repair falls below the strata's deductible.
34. The applicant's arguments appear to be a novel one that no previous Court or tribunal has considered. That said, my conclusion is consistent with the cases that have come before the Court and the tribunal where an event in common property causes damage to an individual unit: see, for example, *John Campbell Law Corp., Kantypowicz v. The Owners, Strata Plan VIS 6261*, 2017 BCCRT 29, and *Tam v. The Owners, Strata Plan BCS 282*, 2017 BCCRT 93.
35. My conclusion is also consistent with the Continuing Legal Education Society's BC Strata Property Practice Manual, which states that when there are claims that fall below a strata's deductible, the claims become effectively uninsured. In those circumstances, the owner is responsible for repairing their own strata lot unless the strata has taken responsibility in a bylaw.
36. The applicant also argues that the total cost to repair the 4 affected units exceeded \$25,000 and that therefore the strata had a duty to make a claim. However, the applicant's own evidence shows that the combination of the cost of the emergency repairs and the quote for the non-emergency repairs fell below the deductible, albeit not by much. The applicant was only able to bring the total cost over \$25,000 by adding in the cost of his own labour and materials, which exceeded the quote to repair unit 312. The applicant submits that the strata knew or ought to have known that the cost to repair the 4 units would exceed \$25,000, but the only evidence that

the applicant points to is their own belief that the repairs must be more than \$25,000.

37. I therefore find that the total cost of the repairs did fall below the deductible and that the strata had no obligation to make a claim under its insurance.
38. Because the applicant's remaining claims all rest on a finding that the strata was responsible for repairing the damage to unit 312, I need not address any of the other issues in this dispute.

DECISION AND ORDERS

39. The applicant's dispute is dismissed.
40. 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. The strata has been successful, but the strata has not incurred any tribunal fees and has not claimed any dispute-related expenses. I therefore make no order for reimbursement of tribunal fees or dispute-related expenses.
41. 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 strata in defending this claim are allocated to the applicant.
42. 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.

43. 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.

Eric Regehr, Tribunal Member