



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS 354 v. Liang*, 2018 BCCRT 591

B E T W E E N :

The Owners, Strata Plan BCS 354

APPLICANT

A N D :

Qun Huan Liang

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Susan MacFarlane

INTRODUCTION

1. The respondent (owner) owns a strata lot in the applicant strata corporation The Owners, Strata Plan BCS 354 (strata). The strata has 2 sections: a commercial and a residential section. The owner's strata lot is in section 2, the residential section.

2. The strata says the owner caused water damage:
 - a. In May 2016 the owner's bathtub leaked, and
 - b. In October 2016 the owner's toilet leaked.
3. The strata wants the owner to pay for repair costs for the bathtub drain and piping. The strata also wants the owner to pay for damage to common property caused by these leaks.
4. The strata is represented by the strata council president. The respondent is self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.
8. The applicable tribunal rules are those that were in place at the time this dispute was commenced.

9. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. There are 2 issues in this dispute:
 - a. Are the owners responsible for the bathtub leak and resulting repair costs?
 - b. Are the owners responsible for the toilet leak and resulting repair costs?

BACKGROUND AND EVIDENCE

The Bathtub Leak

11. On May 8, 2016 the strata noticed water dripping from the lobby ceiling. The owner's strata lot is directly above the lobby. A contractor identified the owner's strata lot as the source of the leak. The contractor suggested it must be from the bathtub, due to the volume of water.
12. The strata says the owner refused entry to the strata lot on May 8. When the owner did permit a contractor to enter, the contractor confirmed the leak was related to the owner's bathtub.
13. In email dated June 2, 2016 the contractor confirmed that water dripping onto the lobby floor was coming from a leak related to the owner's bathtub. The contractor also said that the toilet tank in the owner's ensuite bathroom was leaking into a bucket behind the toilet. The contractor recommended repair.
14. On June 30, 2016 the contractor sent an invoice for \$1,706.36 to the strata. The invoice was related to the bathtub: flood testing, ceiling leak, leak found on bathtub, replacing and insulating piping.

15. On August 3, 2016 and again on October 4, 2016 the strata sent letters to the owner. The strata said the owner was responsible for the bathtub leak, and was responsible to pay \$1,706.36, which had been charged to the owner's strata account.

The Toilet Leak

16. On October 31, 2016 the strata noticed water damage in the building lobby and the parkade entry. On November 1 the strata called a different restoration contractor, who also did plumbing, for emergency service.
17. This new contractor identified the owner's strata lot as the source of the leak.
18. In early November 2016 there was discussion between the strata and the owner. The property manager reported to the strata that the owner had been unhappy with the contractor the strata had sent in May. The owner was unwilling to allow the new contractor to repair their toilet. The owner did agree to allow the new contractor into the strata lot on November 7, but the new contractor said that the owner did not allow enough time to properly fix the issue.
19. On November 9, 2016, the new contractor reported to strata:
 - a. The owner's toilet was dripping water onto the floor, affecting the walls and cabinetry.
 - b. The toilet tank was wrapped in newspaper, which might be to absorb the excess moisture.
 - c. The toilet should be replaced.
 - d. The owner refused to allow the contractor to remove baseboards or install any equipment to dry out the strata lot. This limited the ability to dry the lobby and parking area.
20. Photos submitted by the strata show the new contractor taking moisture readings around the toilet and the adjacent interior walls of the strata lot. The toilet tank is

visibly dripping condensation onto the floor, which shines with moisture. There are patches of black mould around the toilet tank and the floor, which also has patches of rust.

21. The owner does not dispute the accuracy of these photos. The owner admits to knowing, before the toilet leak in October 2016, that the toilet was “buggy.” The owner says that the contractor sent by the strata in May 2016 damaged the toilet.
22. The new contractor prepared a “Water Damage Incident Report” for strata, identifying areas affected by the water leak:
 - a. The lobby walls, ceiling and tile.
 - b. The parkade entry walls and tile.
 - c. The owner’s strata lot (bathroom walls and floor, interior hallway walls and carpet).
23. The new contractor tried to reschedule with the owner. The strata planned to make sure the owner’s toilet was fixed before the strata paid for the lobby repairs.
24. Neither party provided evidence that the owner’s toilet was fixed. The new contractor repaired the lobby in December 2016. The new contractor sent 2 invoices to the strata, noting the cause of the leak as the toilet in the owner’s strata lot. The invoices total \$4,771.60, broken down as follows:
 - a. \$2,607.58 dated December 30, 2016 and
 - b. \$2,164.02 dated January 25, 2017.
25. The strata sent letters to the owner saying the owner was responsible for the repair costs. For example, on September 18, 2017 the strata sent a letter to the owner enclosing copies of these 2 invoices and asking for payment for the lobby repairs. The strata wrote that these repair costs had been added to the owner’s strata account.

26. Later in September 2017 the owner responded by email, asking why it was the owner's responsibility. The strata property manager replied that the damage was caused by a leak from the owner's toilet, which was the owner's responsibility.
27. There are relevant strata bylaws:
- a. Bylaw 1.5 deals with the strata's duty to repair. It says that each section of the strata must repair and maintain limited common property of that section. The duty to repair and maintain the building structure, exterior, doors and windows rests with the strata.
 - b. Bylaw 2.2 deals with an owner's duty to repair. It says that an owner must repair and maintain the owner's strata lot.
 - c. Bylaw 2.3 deals with the use of property. It says that an owner must not use a strata lot in a way that causes a nuisance or hazard. Also, an owner must not cause damage, other than reasonable wear and tear, to the common property or parts of a strata lot that the strata must repair under these bylaws.
 - d. Bylaw 2.10 deals with costs of repairs. It says that if the strata needs to make repairs to the common property, common assets or a strata lot because of the owner's negligence or carelessness, the owner will pay for those repairs. If the strata's insurance covers the cost, the owner must pay the insurance deductible.
 - e. Bylaw 7.1 deals with the use of property specifically in the strata's residential section:
 - i. Bylaw 7.1(i) says an owner must not do anything that will waste the strata's water supply.
 - ii. Bylaw 7.1(j) says an owner must not allow the owner's strata lot to become unsanitary.

- iii. Bylaw 7.1(v) says an owner must not cause damage, other than reasonable wear and tear, to the common property or those parts of a strata lot that the strata must repair. The owner will be responsible to pay for such damage and related costs.

POSITION OF THE PARTIES

28. The strata says the owner's negligence caused both water leaks.
29. The strata says that the bathtub leak was caused by a malfunction in the overflow drain of the owner's bathtub. The strata says the overflow drain malfunctioned because the amount of water coming through the overflow was substantial. The strata speculates that the owner may have been filling the bathtub and left it unattended.
30. The strata says the bathtub leak was caused by negligent use beyond ordinary regular wear and tear. Charges for repairs from that leak are \$1,706.36.
31. The strata says the toilet leak in November was caused by a faulty toilet. The strata says the owner knew there were problems with the toilet but took no action to prevent the leak. The strata says the owners should have turned off the water or used the toilet in their second bathroom.
32. The strata also says that they sent plumbers, but the owner refused to let the plumber enter the strata lot or do the necessary work. The strata says that if the owner was not satisfied with the plumber sent by the strata in May, then the owner should have made other arrangements for repair.
33. The strata says the owner is responsible to make repairs to the strata lot. The strata also says the owner is responsible for the cost of repairs to the lobby: \$4,771.60
34. The strata asks that I order the owner to pay invoices totaling \$6,477.96. The strata also asks that I order the owner to pay \$10.50 for registered-mail expenses.

35. The owner says that the bathtub leak was not the owner's fault. Nothing could have been done to prevent it.
36. The owner also says it is not negligent to fill a bathtub to the point where water flows into the overflow drain. The overflow drain appeared to be working. Water was draining. The drain was not plugged. The owner cannot be expected to know that the drain was not working as it should, or its capacity was more limited than the owner realized.
37. The owner says that the toilet leak was not the owner's fault. Although the owner knew the toilet was faulty, the owner says it was the strata's contractor who broke the toilet, and the strata knew it was broken.
38. The owner asks that I dismiss the claim.

ANALYSIS

Is the Owner Responsible for the Bathtub Leak?

39. The general law of negligence was explained by the Supreme Court of Canada in *Mustapha v. Culligan*, 2008 SCC 27. The applicant must prove 4 things:
 - 1) the respondent owed a duty of care;
 - 2) the respondent's acts fell below the standard of care;
 - 3) the applicant suffered damage; and
 - 4) the respondent caused that damage.
40. If the respondent's conduct creates an unreasonable risk of harm, that breaches the standard of care (*Mustapha v. Culligan*, 2008 SCC 27).
41. The *Strata Property Act* (SPA), in sections 3 and 72, says that the strata is responsible for maintaining common property. "Common property" is defined in section 1 to include drainage pipes and those parts of the strata's land that are not strata lots.

42. This strata has sections, and Bylaw 3.1 assigns responsibility for repairing and maintaining limited common property to individual sections. Common property, however, remains the responsibility of the strata.
43. The strata bylaws say that the owners will be liable if they use a strata lot in a way that causes a nuisance, or causes damage beyond reasonable wear and tear to the common property (Bylaw 2.3).
44. The phrase “causes damage beyond reasonable wear and tear” sets a threshold of liability that is lower than negligence. It does not require the strata to prove negligence (*The Owners of Strata Plan LMS 2835 v. Mari*, 2007 BCSC 740).
45. The owners and the strata clearly owe each other a duty of care. Also, there is no question that there was damage, and that it originated from the owner’s strata lot.
46. The bathtub overflow drain that the strata says malfunctioned is connected to pipes that run between the floor of the strata lot and the ceiling of the lobby below. I find these pipes are common property.
47. I find that the owners filled their bathtub more than once to the point where water escaped through the overflow drain. I also find that the owners saw water draining from their bathtub, and had no reason to worry that the drain was malfunctioning.
48. I find that allowing water to surge through the overflow drain caused damage to the drain and piping, which is common property. I also find that the owners were not aware that allowing water to escape through the overflow drain could cause the drain and pipes to malfunction.
49. I further find that the owner was not negligent concerning the bathtub leak. Filling a bathtub to where water escapes through an overflow drain puts that drain to its intended use, and does not pose an unreasonable risk of harm. It does not breach the standard of care.
50. Finally, although the acts of the owner caused the damage, those acts were in keeping with regular use, and were not excessive wear and tear. It seems the

drain and piping had limited capacity. That is something that would only be apparent after the water had left the owner's strata lot and travelled into the pipes.

51. I find that the owner is not liable to pay for the costs of the drain repair.
52. Now that the parties know the overflow drain has limited capacity, continuing to overload it might be excessive wear and tear, or even negligent.
53. I order that the strata's claim concerning the bathtub leak is dismissed.

Is the Owner Responsible for the Toilet Leak?

54. The strata bylaws say that an owner must repair and maintain that owner's strata lot (Bylaw 2.2). The SPA, section 133, says that the strata may do what is necessary to remedy a contravention, including doing work in a strata lot.
55. I find that the owner knew that the toilet needed repair, and the owner failed to repair it. The photos of the toilet show that the disrepair had persisted for some time. I find the owner is in breach of Bylaws 2.2 and 7.1(j).
56. As in the case of *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 519, the owner was able to monitor the working condition of the toilet. The owner owed a duty to the strata to maintain it. Their failure to do so caused damage.
57. I also find that the owner was negligent. Knowing the toilet needed repair and failing to get it repaired does create an unreasonable risk of harm. I find the owner did breach the standard of care.
58. The dripping toilet caused water damage to the lobby. The strata plan shows the lobby under the owner's strata lot as property that is not part of any strata lot. I find that the lobby is common property.
59. The strata has a duty to repair that common property. I find that under Bylaw 7.1(v) and Bylaw 2.10 the strata is entitled to charge back the costs of those repairs to the owner.

60. The strata is divided into sections. Strata bylaw 3.1 says that the strata must repair common property, but not limited common property that is the responsibility of a strata section. I have found that this dispute concerns who is responsible to pay for repairs to common property. For that reason I confirm that the strata (and not the residential section) is indeed the proper party to bring this claim.

DECISION AND ORDERS

61. I order that:

- a. The strata's claim for reimbursement of \$1,706.36 for the bathtub leak is dismissed.
- b. Within 30 days of the date of this order, the owner must pay the strata \$4,771.60 for the toilet leak.

62. 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.

- a. I see no reason in this case to deviate from the general rule. I therefore order the owner to reimburse the strata for tribunal fees of \$225.00.
- b. The strata is claiming reimbursement of \$10.50 in dispute-related expenses. The strata has not provided receipts. The only explanation is that the expense relates to registered mail for the tribunal process. Without a receipt, I decline to order reimbursement.

63. Under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, as amended, the party who is awarded money is entitled to interest. I am awarding the strata pre-judgment interest of \$56.16 for the period from September 18, 2017 to the date of this decision.

64. The strata is entitled to post-judgment interest, as applicable.

65. 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.
66. 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.

Susan MacFarlane, Tribunal Member