



Civil Resolution Tribunal

Date Issued: November 9, 2018

File: ST-2016-00679

Type: Strata

Civil Resolution Tribunal

Indexed as: *Dunlop v. Sahmet et al* 2018 BCCRT 713

B E T W E E N :

Willie Dunlop

APPLICANT

A N D :

Evan Sahmet, Section 1 of The Owners, Strata Plan LMS 1866, and
The Owners, Strata Plan LMS 1866

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Willie Dunlop owns strata lot 70 (unit 703) in the respondent strata The Owners, Strata Plan LMS 1866. The respondent Evan Sahmet owns strata lot 57, (unit 704) in the strata. Units 703 and 704 are located beside each other in the respondent strata, within the strata's residential section.

2. Mrs. Dunlop and Mr. Sahmet are self-represented. The strata is represented by strata council member Gayle Nesbit, and the respondent Section 1 of the Owners, Strata Plan LMS 866 (Section 1) is represented by Adam Budgen, a section executive member.
3. Ms. Dunlop says this dispute is about a leak that started in the bathroom wall of Mr. Sahmet's unit. She asks that he be required to repair mould damage to his unit. The repairs have now been completed, under a Consent Resolution Order (CRO) arising from the tribunal's facilitation process.
4. Ms. Dunlop claims against the strata, Section 1 and Mr. Sahmet. She asks to be reimbursed for the mould remediation repair costs to her unit, strata fees she paid while she says her unit was "unusable", and lost rental revenue.
5. Mrs. Dunlop says Mr. Sahmet failed in his *Strata Property Act* (SPA) responsibility to repair and maintain his unit, and that she has suffered damage as a result. She also says the strata failed to enforce its repair and maintenance bylaws.
6. Mrs. Dunlop claims:
 - a. \$5,665.32 for strata fees at \$314.74 per month for 18 months, for "lack of use and excessive delays in resolving the issue";
 - b. \$36,000 in loss of "potential rental income" (18 months at \$2,000 per month);
 - c. the ability to sell or rent her strata lot;
 - d. \$1,699.93 in "dispute related expenses to repair strata lot";
 - e. \$4,250.00 in City of Vancouver Empty Homes Tax (if assessed); and
 - f. \$250.00 in Civil Resolution Tribunal (tribunal) fees.
7. Mr. Sahmet says he is not responsible for the water leak and mould contamination because it originated in a common property area behind Unit 704's washroom vanity wall, which is the strata's responsibility to repair and maintain.

8. Mr. Sahmet also says that Unit 703 suffered water damage in a previous incident involving a leak from an unknown source (September 2016) and that the strata examined his unit at that time and found no water leak.
9. Mr. Sahmet says he first learned of mould issues after an email in late October 2016 from the strata's manager. He asks that the strata be held responsible for the water and mould related damage and repairs, as he says the damage was due to a common property repair and maintenance issue. Mr. Sahmet's preferred resolution is for the strata to pay for resolving the issues in both unit 703 and 704.
10. The strata says it is not responsible for these repair issues. It says the bylaws indicate separate responsibilities as between Section 1, owners and the strata.
11. Both Section 1 and the strata say the repairs in issue are Mr. Sahmet's responsibility.

JURISDICTION AND PROCEDURE

12. 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.
13. 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.
14. 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.

15. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
16. 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

17. The parties reached an agreement on certain issues prior to this adjudication, and those issues are not before me in this decision.
18. The issues in this dispute are:
 - a. Who is responsible for the mould remediation repair needed in unit 703?
 - b. Is the strata, Section 1 or Mr. Sahmet required to reimburse Ms. Dunlop for mould remediation damage repair costs?
 - c. Are any of the strata, Section 1 or Mr. Sahmet required to reimburse Ms. Dunlop for her claimed strata fees, loss of potential rental income, inability to sell or rent her strata lot, dispute related expenses to repair the strata lot, or the City of Vancouver Empty Homes Tax?

BYLAWS

19. Under the bylaws, a strata lot owner must repair and maintain their strata lot and limited common property designated to it, and keep them in a good state of repair.
20. The bylaws also establish that units 703 and 704 are part of Section 1. Section 1 is responsible to repair any common property pipes located in Section 1.

21. However, the bylaws provide that the strata is responsible to maintain and repair all common property.
22. I find this means that the strata is responsible for common property maintenance, but Section 1 is responsible for repair to common property pipes located within Section 1. Strictly speaking then, the strata might be responsible for mould remediation while Section 1 would be responsible for pipe repair.
23. Having said that, and despite the unclear bylaw wordings, the strata and Section 1 have agreed that, as between the strata and Section 1, any responsibility for the matters at issue in this dispute shall fall to Section 1.
24. Under SPA section 1, common property includes any facilities for the passage or provision of water within a wall that forms a boundary between a strata lot and another strata lot.
25. I find that the hot water riser behind the vanity in unit 704 is common property, which is a passage for the provision of water servicing more than one strata lot. To the extent that there was a leak in the hot water riser which caused mould, which I discuss below, I find the related repairs are not the responsibility of the strata lot owner.
26. SPA section 72 says the strata may, by bylaw, take responsibility for repair and maintenance of specified portions of a strata lot.
27. Neither the strata nor the section have passed bylaws requiring them to take responsibility for repair and maintenance of a strata lot.
28. When a strata corporation repairs and maintains common property, it is not liable to reimburse an owner for expenses an owner incurs in carrying out repairs to the owner's strata lot that are the owner's responsibility under the bylaws, unless the strata has been negligent in repairing and maintaining the common property. (*Kanye v. LMS 2374*, 2013 BCSC 51).

BACKGROUND AND EVIDENCE

29. I have reviewed all of the extensive evidence and submissions that were filed, but only refer to it to the extent needed to explain my decision.

Background Chronology

2011

30. Ms. Dunlop says both Mr. Sahmet and the strata have been aware of the mould and water issues in unit 704 since 2011, but have failed to address them.

31. Mr. Sahmet contests this assertion.

32. The only evidence on this point is a November 3, 2011 letter from the property manager to Mr. and Mrs. Sahmet informing them that a preventive maintenance inspection turned up issues with the shower, bathtub and kitchen sink caulking needing replacement. The property manager specified that the caulking was the owners' responsibility and, if not maintained properly, any resulting water damage would be the owners' responsibility.

33. I find that neither the strata, Section 1 nor Mr. Sahmet were aware of any significant mould or water issues in 2011. Mr. Sahmet was only made aware of the need to replace caulking.

2016

34. On March 4, 2016, Thomas Cheong, a contractor from Samco, inspected unit 704. He applied some caulking in the bathroom of the unit as part of general maintenance. He found no leaks in unit 704's bathroom at the time. He later offered his opinion that if there was a leak in the wall between unit 704 and 703 back in March 2016, the source of the leak must be outside the unit 704 bathroom.

35. In September, 2016, Mrs. Dunlop emailed the property managers to report a leak in unit 703, extending into the hall wall outside unit 704. She noted moisture, wet insulation and mould at that time.

36. On September 15, 2016, Elafon Mechanical (Elafon) inspected units 703 and 704 and found “nothing obvious” in terms of a source of moisture in unit 704. A few spots in the unit 704 bathroom were noted to be needing silicone, which was applied, and the tub spout was tightened. Elafon recommended both suites be closely monitored and any further moisture be reported immediately.
37. On October 6, 2016, Section 1 wrote to Mr. and Mrs. Sahmet and informed them that they were responsible for costs associated with a bathroom leak investigation and silicone application by Elafon for \$140.70.
38. On October 20, 2016, a technician from Phoenix Restorations (Phoenix) discovered “extensive mold” on the back of the bathroom wall of unit 704, when looking to begin mould remediation in unit 703.
39. On October 25, 2016, the strata’s manager wrote to Mr. Sahmet advising him that the mould appeared to be “originating from your bathroom wall” and therefore needed to be addressed.
40. On November 1, 2016, Heather Driessen of Phoenix emailed Wendy McKenzie provided her opinion that the mould was originating from the unit 704 side, and that more specifics about the cause would not be known until the wall in unit 704 was opened up.
41. Although the parties differed in their arguments about what caused the mould, I accept Ms. Driessen’s assessment that it was necessary to open up the wall in unit 704 to learn about the probable cause of the mould.
42. On November 1, 2016, Ms. McKenzie emailed Mr. Sahmet saying, in part, that the report of wet closet walls in September had been resolved under the assumption that it was not a common property issue. However, once Phoenix identified mould, this now necessitated “involvement of the Strata.” This is unusual, to the extent that the strata and Section 1 maintained that the mould was Mr. Sahmet’s exclusive responsibility, throughout their submissions.

43. On December 2, 2016, Ms. McKenzie emailed Mr. Sahmet inquiring about the status of repairs to his unit, and noted that the owners of unit 703 had been displaced and would like to move back into their unit.
44. On December 5, 2016, Ms. McKenzie wrote to Mr. and Mrs. Sahmet and informed them of the “Strata” council’s decision (though she may have been referencing the Section 1 council) that they were responsible for the water “escapement” from unit 704 to 703, and should provide additional information if they contested this determination.
45. Also in December 2016, Ms. McKenzie wrote to Ms. Dunlop telling her that the strata would gain access to unit 704 to try to facilitate repairs.

2017

46. On March 22, 2017, engineer and general contractor Hunt K. Tse, offered his opinion that, upon his inspection of the unit 704 bathroom, there was little chance that water had gone through the grout or tile around the tub. Mr. Tse did not notice any sign of water seeping through the grout of the ceramic tiles or any wetness from the bottom edge between the wall and the floor. He noted that the water pipes inside the wall, connecting the drain tub, could leak and cause flow into the adjacent unit that would soak up the wall. He said further investigation would be required to consider that possibility.
47. Section 1 filed a report from Phoenix, based on their site inspection of unit 704 on August 31, 2017, in which Phoenix offered its opinion that:
 - a. Some water migration could be seen in the area of the shower head;
 - b. There was mouldy drywall on the wall adjacent to the bedroom, the wall behind the toilet and vanity, and the ceiling;
 - c. There was evidence of water damage from within the unit, namely swollen door casings, rotting wood on the vanity, mould on interior walls, clogged ceiling fans and rusty screws on the light switch panel opposite the bathtub.

48. Most of Phoenix' scope of work for mold remediation outlined on September 8, 2017, for unit 704, dealt with damage behind the toilet and vanity.
49. On September 22, 2017, Elafor attended unit 704 and found a leak in a 1 inch line on the domestic hot water riser that had been "going on for quite some time." A drywall screw from the vanity had been driven into the 1 inch line and the insulation had soaked up weeping water from the line and deteriorated over time. As well, some mould was identified close to where the bathtub was installed "seemingly unrelated" to the hot water riser leak.
50. PipeRun Plumbing and Mechanical then provided a quote to replace the existing copper line for hot water coming from the floor of 704 and the pipe support and eventually this was done.
51. On October 2, 2017, BMS Plumbing & Mechanical inspected the piping in unit 704 and concluded the piping was in "inferior condition" and may have reached its lifespan and required replacement.
52. I pause here to note that the question of whether the piping in the building generally needs repair is not before me. The only issue in this claim is the mould remediation in respect of units 704 and 703. I make no finding regarding repair and maintenance of the strata piping generally, and only refer to the plumbing issues as they relate to the mould remediation question.
53. On October 19, 2017, Urban Environmental Ltd. described fungi growth in unit 704 caused by water leaks from a supply line, where drywall soaked up water and mould spread within a small bathroom.
54. On October 8, 2017, Joe Connors of Onside provided an expert opinion based on examining unit 704 that there were two source leaks contributing to mould concerns. First, the toilet or supply lines "but we were unable to determine at the time" and second, the piping behind the shower stack was responsible as the "main source of elevated moisture levels resulting in the damages seen."

55. On October 27, 2017, Elafon provided a report on the existing piping condition for suite 704 and said that the rest of the hot water riser pipe was not showing any signs of pinhole leaking or cracked pipe or fittings generally, upon examination after the crusts of insulation were removed from the pipe surface.
56. On November 2, 2017, Total Safety provided a report indicating that some mould remained in the unit 704 opened bathroom wall that still required remediation. The report also noted that the bathroom fan required replacement.
57. On July 25, 2017, the parties entered into a CRO in partial settlement of this dispute. The CRO provides that Mr. Sahmet complete repair work to his bathtub and shower wall, as approved by Section 1, within 30 days of that approval. The CRO also provides that Section 1 be permitted access to view Mr. Sahmet's strata lot after the bathtub and shower wall are removed to obtain a further opinion on the cause of the mould. The CRO then lays out a process for any remaining mould remediation work to be completed in a timely manner.
58. The CRO provides that the cost to install a temporary interior wall in unit 703 will be borne by Section 1, with Section 1 being entitled to reimbursement if the tribunal determines or the parties agree that other parties are responsible for this cost.
59. The CRO provides that costs of Mr. Samet's contractor in the CRO remediation plan be borne by Mr. Sahmet, with Mr. Sahmet being entitled to reimbursement if the tribunal determines or the parties agree that other parties are responsible for this cost.
60. On August 21, 2017, the strata manager emailed Ms. Dunlop explaining that a temporary fire wall was installed and would be replaced with regular drywall and paint once the repairs on the unit 704 side were completed.
61. Section 1 says it was aware of the ongoing mould issue in Unit 704 as of October 2016. On October 5, 2016, Phoenix Restorations provided an estimate of work to be done. Shortly thereafter, Section 1 contacted Mr. Sahmet and indicated that it was his responsibility to remediate the mould in the Unit 704 bathroom immediately.

62. Section 1 says that an October 2017 inspection determined that there were two source leaks in Unit 704 contributing to mould (a) the toilet and (b) the shower. Section 1 says both source leaks are the respondent Sahmet's responsibility.
63. On November 27, 2017, OnSide reported a post-remediation fungal assessment saying the "fungal contamination within the bathroom" had been successfully remediated, provided that all sources of water ingress and/or humidity had been identified and repaired.
64. On December 18, 2017, Hunt Tse offered his further opinion that:
- a. The pipes in unit 704 were badly rusted and contained pin holes.
 - b. Water leaking from failed pipes behind the vanity in the unit promoted fungi and mould growth. Mould had "spread along the walls around the failed pipes to the southeast corner of the washroom and to all the sides near the common hallway and into the close of the unit 703."
65. On January 1, 2018, Ms. Dunlop was invoiced by Phoenix for repair of water damage at unit 703 in respect of the claim made October 13, 2016, in the total amount of \$1,618.98, which she paid in full.
66. Ms. Dunlop filed photographs dated January 3, 2018 showing the closet of unit 703 "after completion of all repair work".

What Caused the Mould In Units 703 and 704?

67. A central issue between the parties is whether the mould in units 703 and 704 originated from inside Mr. Sahmet's strata lot, for example from his bathtub overflowing or grout being in poor repair causing leaks, or whether the mould propagated after a piece of common property pipe leaked.
68. The majority of the expert opinions filed in evidence establish that there was no obvious moisture source inside unit 704 when it was inspected in March 2016 or September 2016. Mould was identified by Phoenix as probably coming from the unit 704 bathroom wall in October of 2016. Hunter Tse examined the unit again in

December 2017 and offered his view that the leak behind the vanity wall was the likely cause of the mould issue including over in unit 703.

69. In its August 31, 2017 report, Phoenix agrees that the vanity wall in unit 704 is the source of significant mould needing remediation. This is consistent with the revelation, in late September 2017, of a leak in a hot water riser likely caused when a drywall screw was installed into the riser pipe.
70. The fact of the leak from the drywall screw is uncontested and I find that a leak was identified in the hot water riser in the bathroom wall of unit 704, and that the leak had been present for some time by September 2017.
71. Urban, in an October 2017 report, notes the supply line leaks and offers the opinion that mould from that slow leak, which developed when water absorbed into the drywall and insulation, then contaminated the small bathroom area in general.
72. Upon reviewing the strata plan with markings showing the location of the mould, which overlaps with the location of a pipe leak identified in the hot water riser behind the vanity in the unit 704 bathroom, and with the benefit of the expert opinions, I find that the leak and the related mould arose mainly from a common property pipe in the wall of unit 704.
73. I find that the strata is primarily responsible for the mould remediation costs that arose from a failure to repair and maintain the hot water riser.
74. Section 1 owed a duty of care to Ms. Dunlop to reasonably repair and maintain the hot water riser in unit 704. Section 1 took over a year to identify a definitive cause of the water problem giving rise to the mould. This delay impacted the ability to move forward with an appropriate scope of repair. I find the Section 1 fell below a reasonable standard of care in not identifying the leak and effect repair earlier, and insisting that Mr. Sahmet was responsible which caused further delays and occasioned the need for more expert opinions, and was therefore negligent in its repair and maintenance obligation regarding the unit 704 hot water riser, such that it is responsible for the mould remediation repairs within Ms. Dunlop's strata lot.

75. Based on the overall evidence, I find that 90 per cent of the remediation costs were a common property maintenance issue and therefore falls to the strata and/or Section 1. Given that the strata and Section 1 agreed, in submissions, that Section 1 would bear the responsibility, my finding is made against Section 1.
76. I also find Mr. Sahmet 10 per cent responsible for the extent of the necessary mould remediation costs in his suite and unit 703. I say this because there was some evidence that silicone needed to be placed and shower fixtures tightened, Elafor noted some mould near the bathtub, and Phoenix identified that the fan in the bathroom was not functioning properly.
77. Because ventilation is an important factor in abating moisture, I accept Phoenix's opinion and rely upon it to find that Mr. Sahmet ought to have replaced or repaired the fan and had other minor maintenance issues addressed at some point before August 2017. Had he done so, the mould remediation required probably would have been less extensive.

ANALYSIS

78. I now turn to Ms. Dunlop's claims. I decline to make any order between Ms. Dunlop and Mr. Sahmet, two strata lot owners. This dispute over mould remediation repair expenses is about who, as between Section 1 and Ms. Dunlop, is responsible for unit 703 mould remediation repair costs.
79. Because Mr. Sahmet made no counterclaim, any repair costs he paid for mould remediation remain to be resolved between him and Section 1.

Claim for Mould Remediation Costs

80. Ms. Dunlop claimed for repair costs in her Notice of Claim, but did not articulate the claim in detail in her submissions.
81. I find that Ms. Dunlop paid Phoenix \$1,618.98 for mould remediation costs. I find that Section 1 must pay this amount to Ms. Dunlop within 10 days of this decision,

given my findings that it was primarily responsible for the mould as a common property maintenance issue.

82. The Section may then determine whether it wishes to pursue Mr. Sahmet in respect of my finding regarding his 10% contribution.

Claim for Empty Homes Tax (If Assessed)

83. The only evidence is that no empty homes tax was assessed against Ms. Dunlop's strata lot for 2017. I find that as no tax was assessed as owing, Ms. Dunlop's claim for recovery of the Empty Homes Tax is dismissed.

Claim for Ability to Sell or Rent Strata Lot

84. The applicant, Section 1 and the strata agree, and given that there is no evidence to the contrary, I find that:

- a. On October 1, 2016, the applicant and her husband moved out of unit 703.
- b. Unit 703 has been vacant since then.

85. By September 30, 2016, Phoenix Restorations taped off the affected area of Unit 703, drywall inside a bedroom closet.

86. Once this occurred, Section 1 says unit 703 could have been rented.

87. The applicant does not agree, and says that the wall needed to be replaced before the unit could be rented.

88. The temporary wall was installed in about August 2017.

89. The only other evidence provided on potential rental of the unit was an email from an interested renter, offering to pay \$1,950 to rent the unit in October 2016. Ms. Dunlop says she could not rent the unit because of the mould, but there is no evidence that the rental could not proceed once the area was taped off.

90. On the evidence before me, I do not find that a claim for 18 months of lost rental income has been established, on a balance of probabilities.

91. As far as sale of the strata lot, Ms. Dunlop offered no evidence aside from her assertion that she was unable to sell the strata lot due to the mould remediation. Therefore, I dismiss this aspect of her claim.

Claim for Strata Fees

92. I dismiss Ms. Dunlop's claims for strata fees. SPA section 99 requires that they be paid. From the time she noticed the leak to the time the area needing remediation was taped off was relatively short, in the neighbourhood of a few weeks. As well, strata fees cover all common expenses relating to the strata and are only partially related to repair costs.

93. As well, the area that was taped off was within a closet, not within a bathroom or kitchen, which might have more impact on use of a strata lot.

94. Therefore, I find that Ms. Dunlop has not established that she was prevented from using her strata lot if she wished to do so, and her strata fees were paid appropriately.

TRIBUNAL FEES AND EXPENSES

95. 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 Section 1, as the primarily unsuccessful respondent, to reimburse Ms. Dunlop for tribunal fees of \$250.00.

96. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner, unless the tribunal orders otherwise.

97. I have also calculated prejudgement interest owing on the mould remediation repair amount from the date it was paid by Ms. Dunlop (January 1, 2018) to the date of this decision, November 9, 2018 for a total of \$18.12.

DECISION AND ORDERS

98. I order that, within 10 days of this decision, Section 1 pay Ms. Dunlop a total of \$1,887.10, broken down as:

- a. \$1,618.98 for mould remediation repair within her unit;
- b. prejudgement interest of \$18.12; and
- c. tribunal fees of \$250.00.

99. The applicant Ms. Dunlop is entitled to post-judgement interest as applicable.

100. 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.

101. 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.

Julie K. Gibson, Tribunal Member

