



Civil Resolution Tribunal

Date Issued: November 15, 2018

File: ST-2018-000542

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wunderlich v. Malik et al*, 2018 BCCRT 732

B E T W E E N :

Nicholas Wunderlich

APPLICANT

A N D :

Urooj Malik, The Owners, Strata Plan BCS 4175, and Shahryar Kamal Malik

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Nicholas Wunderlich owns a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS 4175 (strata). The respondents Urooj Malik and Shahryar Kamal Malik (the Maliks) also own a strata lot in the strata, located 1 floor above Mr. Wunderlich's strata lot.

2. Mr. Wunderlich says a leak from the shower in the Malik's strata lot caused \$1,491 in damage in his strata lot. Mr. Wunderlich seeks an order for payment of \$1,491.
3. The Maliks say they are not liable, as there is no proof that the water came from their strata lot.
4. The strata says it is not liable, as under the *Strata Property Act* (SPA) it is not responsible to pay for repairs to strata lots. The strata says the Malik's are responsible for the damage, as their strata lot was deemed responsible for the leak.
5. Mr. Wunderlich is self-represented. The Maliks are represented by their rental property manager, Chi-Fu Chen. The strata is represented by a strata council member.
6. For the reasons set out below, I dismiss Mr. Wunderlich's claim.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.
9. 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.

10. 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

11. The issue in this dispute is whether the owner is entitled to \$1,491 for water damage in his strata lot.

EVIDENCE, FINDINGS & ANALYSIS

12. I have read all of the evidence provided, but refer only to evidence I find relevant to provide context for my decision. As this is a civil claim, the applicant, Mr. Wunderlich, bears the burden of proving his claim, on a balance of probabilities.
13. Mr. Wunderlich says a water leak occurred in his strata lot on June 2, 2017. He said he could hear noise from above, including the sound of a running shower, and after a few minutes water poured through the light fixture in Mr. Wunderlich's shower. Mr. Wunderlich says he went to the Malik's strata lot, which is directly above his, and knocked on the door. He says the Malik's tenants opened the door, and they were both wet and wrapped in towels. Mr. Wunderlich asked them to turn off the shower, and they did so.
14. Mr. Wunderlich says he went back downstairs, and the water was no longer pouring in through the light fixture, but water was dripping and the drywall was saturated. Mr. Wunderlich then advised the strata's property manager of the leak, and the property manager sent a restoration company, Onside Restoration, for emergency cleanup, including placement of dryers and dehumidifiers.
15. The Maliks and the strata agree with Mr. Wunderlich's account of events. However, the Maliks say there is no evidence that the leak came from their strata lot. The

strata says that while the chargeback for the restoration company was initially assigned to Mr. Wunderlich, this was an error and these costs were later reversed and charged to the Maliks. This is confirmed by the correspondence provided in evidence.

16. The records from Onside Restoration confirm that there was wet drywall in Mr. Wunderlich's strata lot, below the Malik's shower drain. The wet drywall was removed and repaired, at a cost of \$1,491.
17. In general, an owner is responsible for all repairs to their own strata lot. There is no provision in the SPA for owner-to-owner damage or repair claims. Rather, the general law of negligence applies. A person is liable for damage caused by negligence when they owe someone a duty of care and fail to meet that duty of care, resulting in damage.
18. When water escapes from a strata lot in the exclusive control of the respondents or their tenants and causes damage, the respondents' negligence is assumed, unless the respondents can provide an explanation to show otherwise: see *Westsea Construction v Billedeau*, 2010 BCPC 109 at paragraph 39 and *Fontaine v ICBC* [1998] 1 SCR 424.
19. I find that the evidence before me does not establish that the water came from the Malik's strata lot, or that the Maliks or their tenants were negligent. In making this finding, I rely on the June 12, 2017 invoice and report from Highmark Plumbing, which was hired to investigate the source of the leak. The invoice says the plumber examined both strata lots, and could not recreate the leak, or find its source. The plumber wrote that he ran shower while standing inside it, trying to trigger the leak, but could not. He also splashed buckets of water at different directions on the wall, and checked for cracks and missing grout or silicone. He also checked the other bathroom fixtures.
20. While Mr. Wunderlich submits that the evidence clearly shows that the water originated from the Malik's strata lot, this is not accurate. The plumbing reports show that the source of the leak is unknown. While it appears likely to have come

from the Malik's strata lot, there is no evidence to confirm this. Mr. Wunderlich says the tenants likely allowed the shower to overflow onto the bathroom floor. The plumber's invoice says it was "quite possible that this might have been a human error or shower may have overflowed etc." This is speculative, and the fact that something is "quite possible" does not meet the evidentiary standard of "on the balance of probabilities" (meaning more likely than not).

21. For these reasons, I find Mr. Wunderlich has not established that the Maliks are liable for water damage to his strata lot. I dismiss Mr. Wunderlich's claim against the Maliks.

Strata Liability

22. As set out in *Rawle v. The Owners, Strata Plan NWS 3423*, 2017 BCCRT 15, repairs to an owner's strata lot are generally the owner's responsibility, unless the strata has been negligent in maintaining or repairing common property. There is no evidence before me that the water came from common property such as shared water or sewer pipes, and there is no evidence of negligence by the strata. For that reason, I find the strata is not responsible to pay for water damage to Mr. Wunderlich's strata lot. I dismiss the claim against the strata.
23. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. Mr. Wunderlich was unsuccessful and so I dismiss his claim for reimbursement of tribunal fees. None of the respondents paid fees, and there were no dispute-related expenses claimed by any party.

ORDER

24. I dismiss Mr. Wunderlich's claim and this dispute.

Kate Campbell, Tribunal Member

