



Civil Resolution Tribunal

Date Issued: November 23, 2018

File: ST-2018-003110

Type: Strata

Civil Resolution Tribunal

Indexed as: *Thompson v. The Owners, Strata Plan LMS 2349*, 2018 BCCRT 759

B E T W E E N :

Richard Thompson

APPLICANT

A N D :

The Owners, Strata Plan LMS 2349

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Volk

INTRODUCTION

1. The applicant, Richard Thompson (owner), is an owner of strata lot 71 (unit 1401) in a strata development known as The Owners, Strata Plan LMS 2349 (strata). In November 2017 pinholes in a common property pipe caused water to leak into a common property corridor. The strata repaired and then later replaced the pipe.

The investigation, repair and replacement of the pipe required 7 sections of drywall in the owner's strata lot ceiling to be cut out.

2. The owner's claim is that the bylaws require the strata to repair the ceiling. The owner also asks for reimbursement of fees paid relating to this dispute. The strata disagrees and says that the bylaws do not require the strata to repair the ceiling. The strata says that the ceiling repairs are the responsibility of the owner.
3. The owner is self-represented. The strata is represented by an authorized member of the strata council.
4. For the reasons that follow, I find that the strata is responsible for the repairs to the strata lot ceiling. I order the strata to repair the damage to the ceiling within 90 days. I also order the strata to reimburse the owner's tribunal fees of \$225.

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 relationships between parties that may 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 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 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

10. The issues in this dispute are:
 - a) Is the strata responsible to repair the strata lot ceiling?
 - b) Should the owner be reimbursed for tribunal fees?

BACKGROUND AND EVIDENCE

11. I have reviewed all submissions and evidence provided. I refer only to the evidence and submissions necessary to give context to my decision.
12. The strata is an 81-unit residential strata corporation comprising a 15-storey high rise in North Vancouver. The strata plan shows conventional strata lot boundaries. The owner's strata lot is located on the 13th floor and is one floor in height. The front entrance to the strata lot is next to a common property corridor. Directly above the strata lot are other strata lots.
13. The strata registered a complete set of new bylaws at the Land Title Office on December 6, 2001. Amendments were filed May 5, 2003 relating, in part, to repair and maintenance. Other unrelated amendments were filed between 2004 and 2016. I find that the Schedule of Standard Bylaws does not apply.
14. The strata's relevant bylaws are:

Bylaw 2(1): An owner must repair and maintain the owner's strata lot, ... except for repair and maintenance that is the responsibility of the Strata Corporation under these bylaws.

Bylaw 8: The Strata Corporation must repair and maintain all of the following: ...
(b) common property ... (d) a strata lot ... but the duty to repair and maintain
it is restricted to (i) the structure of a building ...

Bylaw 37(3): In the event that an owner ... causes damage to common property
... the owner ... shall be held responsible for such loss and promptly re-
imburse the Strata Corporation for full costs of repair or replacement of the
damage done. (a) Exceptions ... are ... where the damage originates from
common property. These are not the responsibility of the strata lot owner as
previously defined, and all damages shall be the responsibility of the Strata
Corporation.

15. The definition of "common property" in section 1 of the *Strata Property Act* (SPA) can be narrowed, in this case, to ... (b) pipes, ... for the passage or provision of water, ... if they are located (i) within a ... wall or ceiling that forms a boundary (A) between a strata lot and another strata lot, (B) between a strata lot and the common property, ... (ii) wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property.
16. Some time before April 2013 the strata became aware of pinhole leaks in the copper water supply system piping. The strata says that to extend the life of the piping a water conditioning system was installed. Following that installation, the strata reports one or fewer incidences of pinhole leaking per year. The strata's 2017 depreciation report forecasted replacement of the piping in the next 4 to 7 years. In the meantime, as pinhole leaking occurs the strata repairs and replaces the section of damaged pipe.
17. On November 14, 2017 water was observed dripping into the common area corridor outside of the owner's strata lot. The owner says that several hallway ceiling tiles fell onto the carpet after filling with water. The strata hired a plumbing repair company to come after hours to investigate the leak.

18. The invoice for the November 14, 2017 investigation and repairs itemizes the work done by the company as: investigating the leak, cutting insulation, locating a copper hot water line with three pinhole leaks, and, clamping and stopping the leaks in that pipe. The company recommended replacing the section of copper pipe. As a part of the investigation and temporary repairs, the company cut 3 holes in the ceiling of the strata lot.
19. On January 9, 2018 the repair company returned to replace the pipe. The invoice records the work done as re-piping a section of a hot water line in the strata lot. The work is itemized as: partial water shut off, cut more drywall in the strata unit, locate more “bad spots” in the strata unit, cut out the pipe from the common area just outside the entrance door to the main bathroom riser, pull out the pipe, install a new pipe and fittings, and, turn water on to test for leaks. No leaks were found on re testing. As a part of the replacement, the company cut 4 holes in the ceiling of the strata unit.
20. On March 21, 2018 the owner requested a hearing before the strata council regarding expenses “to repair damage caused to unit 1401 while replacing leaking common property pipes above our strata unit.” The owner was invited to attend a strata council meeting the following week. An undated letter to the strata council sets out the owner’s perspective of the events and damage as well as the bylaws relied on by the owner in requesting the strata repair the ceiling in his strata unit.
21. On April 11, 2018, the strata’s management company, on behalf of the strata council, wrote the owner. The strata council informed the owner that his request for repairs was denied based on section 72 of the SPA and bylaw 2.1. The strata council also stated their position that bylaw 37 was not applicable in this case as it is intended to make owners responsible for damage caused to common property.
22. No evidence was provided regarding the strata’s insurance.

POSITION OF THE PARTIES

23. The owner says that the strata's refusal to pay for the damage to the ceiling in his strata lot is contrary to the bylaws. More specifically, the owner contends that bylaw 37(3) requires the strata to repair the ceiling in his strata unit. The owner asks the tribunal to award him \$1,000 to repair the ceiling. The owner also asks that the strata reimburse him for his tribunal fees.
24. The strata disagrees and says that an owner is responsible for repairing their strata lot except where the repair is the responsibility of the strata. The strata says that these repairs to the ceiling in the strata lot are not the responsibility of the strata. The strata also opposes reimbursement of the tribunal fees.

ANALYSIS

25. In a civil claim such as this, the owner bears the burden of proof, on a balance of probabilities.
26. Responsibility for the repair and maintenance of property in the strata is assigned by the SPA and bylaws. SPA section 72 and bylaw 8 impose responsibility on the strata to repair and maintain common property.
27. Conversely, bylaw 2(1) imposes responsibility on the owner to repair and maintain the strata lot. Ordinarily, the owner's requirement to repair and maintain the strata lot extends to situations where damage to it originates from common property.
28. It is undisputed that the strata had an obligation under the bylaws to repair and maintain the water supply system piping. No claim is made regarding the strata's maintenance or repair. As such, I did not consider the owner's submissions regarding the necessity of certain work done.
29. The owner says that the damage to the strata lot originated from common property. I disagree. There is no clear evidence before me that any leaks in the pipe caused damage in the strata lot. The owner observed no leaking or wetness in the strata lot.

To the extent that wetness and staining was observed, there is no evidence that it went beyond the pipe insulation or other common property adjacent to the pipe.

30. The strata says that the pipe and its replacement were above the ceiling of the strata lot and that opening the ceiling was necessary to repair the pipe. I find that the strata intentionally caused damage to access common property. The damage did not originate from the common property.
31. The responsibility for repairing damage to a strata lot caused by the strata is not explicitly addressed in the SPA or bylaws. Generally, the question of liability then turns on whether the strata was negligent. However, in this case the strata intentionally caused damage and for this reason the question of liability does not turn on negligence.
32. I find that a component of the strata's responsibility to repair and maintain common property includes repairing new damage that the strata intentionally causes in carrying out that responsibility. The bylaw requiring an owner to repair and maintain the strata lot does not relieve the strata from responsibility to repair new damage that the strata intentionally causes to a strata lot.
33. I do not accept the owner's position that bylaw 37(3)(A) imposes a requirement on the strata to repair all damage to strata lots when the damage originates from common property. I agree with the strata's interpretation of the bylaw and find that it does not apply in this case. The subsection is an exception to damage of common property and does not apply to damage of a strata lot. The damage here is not damage to common property and as a result the bylaw does not apply.
34. The owner asks for \$1,000 for estimated repairs as the repairs have not yet been done. No estimates or other evidence were provided to assess the estimated repair costs. No particulars were provided to explain the claimed expenses. For those reasons, I decline to order the requested \$1,000.
35. Given the findings above, I order the strata to repair the damage to the strata lot ceiling at its cost within 90 days of this decision. In making this finding, I note that

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.

36. In summary, I find that the strata is responsible for the repairs to the ceiling in the owner's strata lot and order the strata to repair the ceiling.

TRIBUNAL FEES AND EXPENSES

37. 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. Accordingly, I order the strata to reimburse the owner for tribunal fees of \$225.00.

DECISION AND ORDERS

38. I order that:

- a) The strata repair the damage to the strata lot ceiling at its cost within 90 days of this decision,
- b) The strata pay the owner \$225 for tribunal fees within 30 days of this decision,
- c) The strata ensure that no part of the amount ordered to be paid by the strata, or any other expenses incurred by the strata in defending this claim, are allocated to the applicant owner,
- d) The owner is entitled to post-judgment interest, as applicable.

39. 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.

40. 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.

Megan Volk, Tribunal Member