



Civil Resolution Tribunal

Date Issued: December 4, 2018

File: ST-2018-002044

Type: Strata

Civil Resolution Tribunal

Indexed as: *Campbell v. The Owners, Strata Plan 1086*, 2018 BCCRT 795

B E T W E E N :

Greg Campbell

APPLICANT

A N D :

The Owners, Strata Plan 1086

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicant, Greg Campbell (owner), owns a strata lot (SL88) in the respondent strata corporation, The Owners, Strata Plan 1086 (strata).

2. The owner alleges the strata is responsible to repair and maintain damage resulting from water ingress into SL88 from the balcony deck of the strata lot above. He asks for orders that the strata:
 - a. repair the ceiling damage in SL88,
 - b. put in place a plan to for similar water ingress issues, including the installation of a tarp,
 - c. reimburse him for lost rental income of \$1,100.00, and
 - d. reimburse him for time, effort, stress and lost wages totaling \$2,000.00.
3. The owner is self-represented. The strata is represented by a council member.
4. For the reasons that follow, I find the strata must repair the ceiling damage in SL88.

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. 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, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.
9. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator).
10. Tribunal documents incorrectly show the name of the strata corporation as The Owners, Strata Plan, VIS 1086, whereas, based on section 2 of the *Strata Property Act* (SPA), the correct legal name of the strata corporation is The Owners, Strata Plan 1086. Given the parties operated on the basis that the correct name of the strata corporation was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata corporation's correct legal name in these proceedings. Accordingly, I have amended the style of cause above.

ISSUES

11. The issues in this dispute are:
 - a. Is the strata responsible for repairing the water damage in SL88?
 - b. Is the strata responsible to put in place a plan to address similar water ingress issues, including the installation of a tarp?
 - c. Should the strata reimburse the owner for lost rental income of \$1,100.00?
 - d. Should the strata reimburse the owner for time, effort, stress and lost wages totaling \$2,000.00?

BACKGROUND AND EVIDENCE

12. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
13. In this tribunal proceeding, the owner must prove their claim on a balance of probabilities.
14. As shown on the strata plan, the strata corporation originally consisted of 125 strata lots, some of which have now been consolidated, in 9 separate buildings. The strata is located in Victoria, B.C.
15. The strata amended its bylaws in December 2001 when it repealed all previous bylaws and adopted a complete new set of bylaws.
16. Two separate sections were created by order of the British Columbia Supreme Court in September 2005. Section 1 of The Owners, Strata Plan 1086 (section 1) comprises residential strata lots 3, 4, 7 and 12 through 128. Section 2 of The Owners, Strata Plan 1086 comprises commercial strata lot 2.
17. All subsequent bylaw amendments registered at the Land Title Office except one, relate to section 1 only. The single strata bylaw amendment filed June 26, 2009 is not relevant to this dispute.
18. At my request, a tribunal facilitator canvassed the parties to determine if Section 1 should be added or substituted as the respondent in this dispute, however the parties failed to provide a meaningful response.
19. The section 1 bylaws mirror those of the strata and purport to make the strata corporation responsible for common property expenses, including the exterior of the buildings, even though the strata did not vote on the section 1 bylaws. Based on my review of all filed bylaws, I find I need only rely on the strata's bylaws and not the section 1 bylaws. I am satisfied that the dispute can proceed with the strata as sole respondent.

20. The owner bought SL88 in March 2011.
21. The strata remediated the balcony of the strata lot above SL88 (balcony) in 2012 with the assistance of an engineer.
22. On February 14, 2017, the owner's tenant contacted the strata property manager about a leak in the living room ceiling of SL88. A council member viewed the leak on February 15, 2017 and determined the leak should be monitored, as it was not active at the time of inspection.
23. On March 3, 2017, the owner contacted the strata property manager advising the leak was constant and requesting the leak be investigated.
24. On March 5, 2017, the strata arranged for a roofing company to investigate the balcony although limited investigation was completed, as the contractor was not able to lift the wooden deck boards located on the balcony. A council member placed a bucket under the leak.
25. On March 7, 2017, following notification from the owner's tenant that the leak was active, the strata arranged for Belfor Property Restoration (Belfor) to investigate the leak. Belfor cut open the living room ceiling in SL88 and installed a dehumidifier.
26. On March 8, 2017, a council member lifted the wooden deck boards and water tested the balcony. The water leak resumed when water was directed on to the windows of the strata lot above SL88, but the council member was unable pinpoint the source of the leak.
27. On March 20 and March 27, 2017, the strata arranged for Westcoast roof Inspection (Westcoast) to inspect the balcony. A water test was performed on March 27, 2017 that resulted in water entering SL88 when water was directed on the windows of the strata lot above.
28. On March 30, 2017, the strata arranged for a glazing contractor to remove and disassemble the window believed to be the source of the leak.

29. On or about April 15, 2017, the owner reported the leak was still occurring.
30. On April 19, 2017, the strata arranged for Westcoast to perform another water test and it was discovered that water leaked into SL88 from an electrical outlet in the exterior wall next to the balcony. Plastic sheeting was taped to the wall to cover the outlet.
31. On April 27, 2017, the strata arranged for an electrical contractor to remove the electrical outlet, cover the area with a metal plate, and apply caulking to the area.
32. On April 28, 2017, the metal plate was water-tested again and did not result in a leak into SL88.
33. On May 1, 2017, at the request of the strata, Belfor attended SL88 to treat the exposed plywood decking in SL88 for mould and remove the dehumidifier.
34. There were no further reports of water entering SL88.
35. On June 14, 2017, the strata council conducted a hearing with the owner about repairing SL88's ceiling.
36. On June 15, 2017, the strata wrote to the owner through its manager stating it would not facilitate or pay for the ceiling drywall repairs in SL88 because the strata bylaws make the owner responsible for the repairs.

POSITION OF THE PARTIES

37. The owner says the strata has been negligent in its repair and maintenance of the balcony above SL88 because of the multiple times the balcony has leaked into SL88 and the length of time the leak continued before the strata repaired it. He also says the strata is responsible to repair the damage and replace the insulation as it was the strata's contractor that cut a large hole in the ceiling of SL88 and removed the wet insulation when investigating the leak.
38. The owner seeks for orders that the strata:

- a. repair the ceiling damage in SL88,
 - b. put in place a plan to address similar water ingress issues, including the installation of a tarp,
 - c. reimburse him for lost rental income of \$1,100.00, and
 - d. reimburse him for time, effort, stress and lost wages totaling \$2,000.00.
39. The strata denies it was negligent and says it took reasonable steps to attend to the water ingress into SL88. It says the issue is really between the owner and the strata lot owner immediately above SL88. It says if the owner had insurance in place, the cost of the repairs would likely be covered under his insurance policy.
40. The strata asks that the owner's claims be dismissed.

ANALYSIS

Is the strata responsible for repairing the water damage in SL88?

41. I disagree with the strata and find the owner of the strata lot above SL88 is not involved in the dispute. I also find that the owner's insurance policy is not relevant to the dispute.
42. The building's exterior wall is common property of the strata. Section 72 of the SPA states the strata is responsible to repair and maintain its common property and may, by bylaw, take responsibility for repair and maintenance of specified portions of a strata lot. The strata has no such bylaws.
43. Strata bylaw 2.1 says that the owner is responsible for repair and maintenance to his strata lot except for repair and maintenance that is the responsibility of the strata.
44. Bylaw 19.1(b) says the strata must repair and maintain common property that has not been designated as limited common property.

45. The owner's position is that the strata was negligent in repairing the source of the leak because of the time it took to repair it and that multiple leaks occurred before the repair was completed. It is not clear if by "multiple leaks" the owner is referring to the number of occurrences between February 14, and April 28, 2017 or if the reference is to leaks that may have occurred prior to 2012. I will address both.
46. To be successful in an action for negligence, the owner must demonstrate that the strata owed a duty of care to him, that the strata breached the standard of care, that the owner sustained damage, and that the damage was caused by the strata's breach. (See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.)
47. The strata has a duty to repair the leak under section 72 of the SPA and bylaw 19.1(b). The standard of care is reasonableness, which I find was not breached by the strata. Therefore, I do not find that the strata was negligent in its actions to locate and repair the source of the water leak at the exterior electrical outlet as described above.
48. The evidence shows that the owner's tenant notified the strata when they first noticed the water entering SL88. The strata took immediate steps to attempt repairs by retaining a roofing contractor, roofing inspector, glazing contractor, and electrician. It also retained a restoration contractor to control the water damage that was occurring in SL88. I find the steps taken by the strata to investigate and repair the leak by covering and waterproofing the exterior electrical outlet located on the common property wall above SL88 over a 2 ½-month period between February and April 2017 were reasonable. This is especially true considering the strata retained and relied on contractors to assist it in determining the exact source of the leak. That the source of the leak proved difficult to locate and may have caused additional overall repair time does not mean the strata was negligent.
49. Further, the courts have found that if a strata corporation's contractor or consultant fails to carry out work effectively, the strata corporation should not be found negligent if it acted reasonably in the circumstances. (See *Kayne v. LMS* 2374, 2013 BCSC 51, *John Campbell Law Corp v. Strata Plan 1350*, 2001 BCSC 1342,

and *Wright v. Strata Plan #205*, 1996 CanLii 2460 (BC SC), affirmed 1998 BCCA 5823).

50. Finally, that there may have been earlier leaks in 2012 before the balcony was repaired also does not mean the strata was negligent. There is no evidence before me to suggest a leak occurred at all between 2012 and February 2017.
51. For these reasons, I find the strata was not negligent in repairing the source of the leak into SL88 as claimed by the owner.
52. The owner also says the strata is responsible for the ceiling repairs in SL88 because it was the strata's contractor that opened the ceiling and removed the insulation. I agree.
53. It is undisputed that the strata retained Belfor to investigate the source of the leak, which resulted in Belfor cutting open the ceiling of SL88. There is no evidence before me that the strata advised the owner that he would be responsible for repairing and damage sustained to SL88 caused by Belfor's investigation. That is, the strata did not advise the owner at the time of Belfor's involvement that he would be responsible for repairing the damage to the living room ceiling of SL88 caused by Belfor's investigation.
54. It is significant that the strata caused the ceiling damage. I find that strata is responsible for the ceiling damage to SL88 because the strata, through its contractor, intentionally caused the damage during its investigation of the water leak. Had the strata obtained the owner's prior consent to open the ceiling of SL88 at his cost, I would reach a different conclusion.
55. For these reasons, I find the strata is responsible to repair the living room ceiling of SL88, including replacement of the removed insulation, texture and paint, at its cost.

Is the strata responsible to put in place a plan to address similar water ingress issues, including the installation of a tarp?

56. A common way to address water ingress problems, as was used by the strata here, is to assess the source of the leak and then have it repaired. I do not find that a more detailed plan would provide a more effective solution as every water leak is unique.
57. The owner submits that the installation of a tarp to cover the balcony would have stopped the water leak from re-occurring during the 2 ½-month period the strata was investigating the leak. While this may be true, I accept the strata's submission that it acted on the advice of its contractors that a tarp could not be installed.
58. Water leaks can be difficult to locate as was evidenced here. It is unlikely that all water leaks can be stopped by installing a tarp. Building design, and in some cases wind and weather, may result in the installation of a tarp not serving any meaningful purpose. I am not convinced that the installation of a tarp in these circumstances would have reduced the amount of damage to SL 88. It also appears that no additional damage was sustained to SL88 as a result of the leak recurring, given it was draining into a bucket. I find the installation of a tarp is best left to the discretion of the strata and its contractors to determine after considering all circumstances of the leak in question.
59. For these reasons, I decline to order the strata to develop a plan to address water leaks. I am satisfied the strata will have learned from the circumstances in this dispute and leave it to the strata's discretion to develop a plan if it deems a plan is required.

Should the strata reimburse the owner for lost rental income of \$1,100.00 or for time, effort, stress, and lost wages totaling \$2,000.00?

60. Given I have found the strata was not negligent in addressing the leak, I decline to order the strata to reimburse the owner for alleged lost rent or for time, effort, stress and lost wages as claimed. Even if I had found the strata negligent, I would dismiss the owner's claims in this regard.

61. The owner provided a copy of a tenancy agreement commencing March 17, 2016 showing rent of \$1,100 per month for a fixed term of 1 year with an option for the tenancy to continue on a month-to-month basis thereafter. He says he reduced his tenant's rent to \$1,000 for the "last 2 months" but did not provide evidence to support the reduction.
62. It is unclear when the owner's tenant moved out but the owner submits he moved into SL88 himself on or about March 31, 2017.
63. The owner also submits the leak was causing him stress and that he was frustrated about the length of time the leak repair was taking in that he was unable to set up his living room furniture. He submitted a doctor's certificate dated May 18, 2017 that stated he was "unable to work for medical reasons." He says this supports his claim for stress and lost wages but admits the subject leak was not the sole cause of his stress. He provides no support of his calculation of \$2,000 other than it involved over 24 hours of his time making phone calls and writing correspondence in dealing with his tenant and the strata.
64. For these reasons, I would not order these damages even if the strata were negligent.

TRIBUNAL FEES AND EXPENSES

65. 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 expenses related to the dispute resolution process. I see no reason in this case to deviate from the general rule. Given the partial success of the owner, I find the strata must reimburse the owner one-half of his tribunal fees, which is \$112.50. Other than the expenses noted above, which I have denied, the owner did not claim dispute-related expenses.

66. 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.

DECISION AND ORDER

67. I order that, within 30 days of the date of this decision, the strata:
- a. Reimburse the owner \$112.50 for tribunal fees, and
 - b. At its cost, arrange for the living room ceiling to be repaired, including replacement of the insulation, texture and paint, in SL88. The owner is not exempt from contributing to this repair on a unit entitlement basis.
68. I order that the owner's remaining claims are dismissed.
69. The owner is also entitled to post judgement interest under the *Court Order Interest Act* R.S.B.C. 1996, c. 79, as amended, as applicable.
70. 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.
71. 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.

J. Garth Cambrey, Vice Chair