



# Civil Resolution Tribunal

Date Issued: December 18, 2018

File: ST-2018-003848

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR 245 v. Foulds*, 2018 BCCRT 876

**B E T W E E N :**

The Owners, Strata Plan VR 245

**APPLICANT**

**A N D :**

Carlos Foulds

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Lynn Scrivener

## **INTRODUCTION**

1. This is a dispute about the costs associated with a water leak. The applicant, The Owners, Strata Plan VR 245 (strata) says that the respondent, Carlos Foulds (owner), who owns a strata lot in the strata, is responsible for costs of \$6,513.16. The owner's position is that he should not have to pay this amount.

2. The strata is represented by a member of the strata council. The owner is self-represented.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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.
5. 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.
6. 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**

7. The issues in this dispute are:
  - a. whether the dispute was brought in time under the *Limitation Act*; and
  - b. whether the owner must pay the strata \$6,513.16.

## **BACKGROUND AND EVIDENCE**

8. The owner purchased strata lot 40 (suite 220) in the strata in 2010. The tenant of suite 120, directly below the owner's, below reported intermittent leaks in his ceiling that appeared to be coming from a bathroom in the owner's suite. The date on which these intermittent leaks began is not clear, but I infer it was prior to 2012.
9. On November 13, 2012, the tenant reported a large leak and water pouring from his ceiling. The strata arranged for a plumber to attend on an urgent basis on that same date to investigate the leak. Subsequent visits by a remediation company and plumbers resulted in repairs in the owner's suite. No further leaks occurred after those repairs were performed. No repairs were made to common property (CP).
10. The strata determined that the water leak did not result from CP. It found that the leak originated from the owner's bathroom and charged the costs it incurred in investigating the issue back to the owner. Although the owner paid some outstanding amounts to the strata, he did not pay the \$6,513.16 assessed for the leak.

## **POSITION OF THE PARTIES**

11. The strata says the water leak originated in a toilet tank in the owner's unit, and the owner is responsible for the chargeback of \$6,513.16 it expended in addressing the leak. The strata says it has demanded payment from the owner, but the amount is still outstanding.
12. The strata requests that I order the owner to pay the outstanding chargeback amount, in addition to tribunal fees.
13. In his initial submissions, the owner agrees that the source of the leak was in the bathroom of his unit. However, in later submissions, he suggests that the source of the leak is unknown. He says that he disagrees with the way in which the matter was handled, and notes that the tenant and owner of suite 120 did not notice the

leak or report it until it was “too late”, which resulted in his insurance claim being denied. The owner says that the one of the owners of suite 120 agreed to cover the cost of damage to his own bathroom, which tells him that the other owner “feels responsible” for the matter. The owner’s submissions include audio recordings and transcriptions of a conversation with the other strata lot owner.

14. The owner submits that he did not give his permission for anyone to enter his suite to remove asbestos and that he was not given any indication of the costs of the repair. The owner disputes the amount claimed because he was never given proof that any asbestos was removed. Further, the owner suggests that the owner of suite 120 is attempting to “pass off” the costs of a bathroom renovation to him.
15. The owner requests that I order that he is not responsible to pay the strata \$6,513.16.

## **ANALYSIS**

### ***Limitation Period***

16. The *Limitation Act* applies to disputes before the tribunal, and places a limit on the time period in which a claim may be brought. If that time period expires, the claim may not be brought, even if it might have been successful.
17. The current *Limitation Act* became law in British Columbia on June 1, 2013. This version of the legislation requires, with some exceptions, that a claim be started within 2 years of when it was discovered.
18. As noted above, the leak occurred in November of 2012. The Dispute Notice was issued by the tribunal on June 13, 2018. The strata says that its claim was made in time, as a previous version of the legislation with a 6-year limitation period applies to the claim. The respondent did not make specific submissions on this issue.
19. I agree with the strata’s position. Because the claim in this case arose before June 1, 2013, the previous *Limitation Act* applies. This version of the legislation required that a claim be brought within 6 years of when it was discovered. It is undisputed

that the parties became aware of the leak on the day it occurred, being November 13, 2012. Accordingly, the limitation period began to run on that date and did not expire until November 13, 2018. The limitation period had not yet expired when the Dispute Notice was issued on June 13, 2018. Therefore, I find that the Dispute Notice was issued within the applicable limitation period.

### ***Chargeback from the Strata***

20. I acknowledge the owner's submission regarding his dealings with his insurance company and the fact that the leak issue may have been present prior to his purchase of his strata lot. However, these circumstances, if true, would not alter his responsibilities under the bylaws.
21. The owner has made submissions about the precise location of the leak, the presence or absence of asbestos, whether the owner of suite 120 accepted responsibility for the leak, and whether the scope of work amounted to a renovation to the bathroom in suite 120. However, these matters do not impact my analysis of whether the strata is entitled to charge back the costs of the leak investigation and/or repairs to the owner.
22. The strata's bylaws provide that an owner must repair and maintain the owner's strata lot except for repair and maintenance that is the responsibility of the strata. The bylaws state that the strata is responsible for the repair and maintenance of CP and limited common property (LCP), as well as specified portions of strata lots including structural, exteriors, and other structures such as doors and fences. It does not appear that the strata's obligation to repair a strata lot extended to any structures damaged by the leak or the associated investigation.
23. In this case, the strata retained service providers to complete investigations and repairs of the leak. Although the owner provided access to his suite to facilitate this process, there is no evidence to suggest that there was a discussion between the strata and the owner about the nature or extent of the work involved, or that the owner agreed to pay these costs.

24. The charge back for invoices relating to the investigation and repair of the leak is not contemplated by section 116 of the *Strata Property Act* (SPA). As a non-lienable amount, such an expense cannot be included on a Certificate of Lien filed under that section. In order to collect a non-lienable amount, the strata must have the authority to do so under a valid and enforceable bylaw or rule that creates the debt (see *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512).
25. The strata says the owner is responsible for the egress of water from his suite and the associated investigation and repair costs under the bylaws. However, it cited bylaws that were adopted in 2014, and which would not have a retroactive effect to the 2012 leak. Based on the information before me, I do not find that the version of the bylaws in force at the time of the leak, or a rule, permitted the chargeback of the invoices. Therefore, the chargeback is invalid and the strata is not entitled to the payment of the requested \$6,513.16.

## **TRIBUNAL FEES AND EXPENSES**

26. 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. The strata's claim for tribunal expenses is dismissed. As the respondent did not pay any tribunal fees and did not claim any expenses, I make no order in this regard.
27. 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 ORDERS**

28. The applicant's claim, and this dispute, are dismissed.

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Lynn Scrivener, Tribunal Member