



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Taylor et al v. The Owners, Strata Plan 1801 et al*, 2018 BCCRT 925

B E T W E E N :

Angela Taylor and Gordon Link

APPLICANTS

A N D :

The Owners, Strata Plan 1801 and Steve Bartyiks

RESPONDENTS

A N D :

Angela Taylor and Gordon Link

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicants, and respondents by counterclaim, Angela Taylor (owner) and Gordon Link (tenant) reside in a strata lot owned by Angela Taylor in the respondent strata corporation, The Owners, Strata Plan 1801 (strata). The respondent, Steve Bartyiks (respondent owner), co-owns a strata lot in the strata next to the applicants and is a past strata council president. The strata is the applicant in the counterclaim.
2. This dispute involves repair and maintenance to common property and to the applicants' strata lot as well as the applicants' allegation that a parking stall has been improperly re-designated.
3. The applicants seek an order that the strata reimburse them \$100,000 for costs to repair their strata lot because of water issues causing mould and wood rot they say are the strata's responsibility. They also seek orders totalling \$200,000 for aggravated damages and punitive damages.
4. In a counterclaim, the strata seeks orders that the applicants pay it \$5,000 for an insurance deductible, \$1,600 in dispute-related expenses and \$500,000 for defamation and harassment of strata owners and council members. The respondent owner is not a party to the counterclaim.
5. The applicants are represented by Gordon Link. The strata and Steve Bartyiks are represented by the same strata council member.
6. For the reasons that follow, I find the strata must pay the applicants \$23,483.89 for repair costs, fees associated with this dispute, and interest. I refuse to resolve the applicants' claim for defamation for lack of jurisdiction and dismiss the applicants' claims against the respondent owner. I also dismiss the strata's counterclaim.

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 10 of the Act, the tribunal must refuse to resolve a claim that it considers is not within the tribunal's jurisdiction. A dispute that involves one or more issues that are within the tribunal's jurisdiction and one or more that are outside its jurisdiction may be amended to remove those issues that are outside its jurisdiction.
11. 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.
12. 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).
13. Tribunal documents incorrectly show the name of the respondent as The Owners, Strata Plan, VIS 1801, whereas, based on section 2 of the *Strata Property Act* (SPA), the correct legal name of the strata is The Owners, Strata Plan 1801. Given the parties operated on the basis that the correct name of the strata was as used in

their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the style of cause above.

ISSUES

14. The issues in this dispute are:

- a. Do the applicants have a valid claim against the respondent owner?
- b. What are the strata's repair obligations under the SPA and bylaws?
- c. Was the strata negligent in its duty to repair common property?
- d. What repairs did the applicants complete, or are outstanding, and what amount, if any, should I order the strata to pay to the applicants?
- e. Has the strata re-designated a parking stall previously assigned to the applicants' strata lot contrary to the SPA or bylaws?
- f. Is the strata responsible to the applicants for aggravated and punitive damages?
- g. Are the applicants responsible for the strata's \$5,000 water damage deductible?
- h. Are the applicants responsible for loss of property value due to defamation and harassment?

POSITION OF THE PARTIES

15. The applicants claim the strata and/or the respondent owner is responsible for the cost of water damage and mould remediation to the owner's strata lot. They say the strata is responsible for water damage sustained as the result of rodents chewing through water lines located in the crawlspace below the owner's strata lot.

16. The applicants also say that the strata is responsible for mould remediation in their master bedroom wall and the crawlspace, including related structural repairs to floor joists. They say such damage was caused from other sources of water ingress into the crawlspace, such as poor connections of a downpipe to a gutter and perimeter drain line, and from water entering the crawlspace over the top of the concrete foundation wall from the building's exterior. They say the strata's refusal to attend to mould repairs caused the issues. They also say the respondent owner may have contributed to the water ingress over the foundation wall because of alterations made to common property landscaping.
17. The applicants ask the tribunal to order the respondents to pay their expenses relating to the water damage and mould repairs that were not covered by insurance, which they say totals \$100,000.
18. They also request the respondents pay aggravated and punitive damages of \$100,000 each, for total damages of \$200,000, although in their submissions, they indicate aggravated damages should be \$50,000 and punitive damages should be \$100,000.
19. The respondents say the primary source of water damage and mould in the applicants' strata lot occurred from plumbing leaks and that the applicants are therefore responsible for all damage not covered by insurance. They also deny responsibility for any additional living expenses incurred by the applicants.
20. Finally, the applicants say the owner used a parking stall on the roadway at the front of her strata lot for 25 years. They say the stall was next to a parking stall used by their neighbour, the respondent owner, and that both stalls were identified by signage as stalls for the use of these 2 owners. They say the strata recently passed a bylaw allowing it to tow the owner's vehicle.
21. As for the parking stall issue, the respondents say the owner has use of assigned 1 stall, but does not have use of the adjacent stall, which has been assigned to the owner's neighbour, the respondent owner.

22. The respondents ask the tribunal to dismiss the applicants' claims.
23. In the counterclaim, the strata says because the applicants are responsible for the damage to their strata lot, and they are responsible to pay the strata's related insurance deductible under the SPA.
24. The strata seeks to recover from the applicants the \$5,000 insurance deductible it paid and \$1,600 in dispute related expenses. It also seeks \$500,000 for defamation and harassment of strata owners and council.
25. The applicants say they should not be responsible for the strata's lack of maintenance of common property. They ask the tribunal to dismiss the strata's counterclaim.

BACKGROUND AND EVIDENCE

26. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
27. In a civil proceeding such as this, the applicants must prove their claims on a balance of probabilities. The strata must prove its counterclaim on the balance of probabilities.
28. The strata is a 26-unit phased residential townhouse strata corporation located in Nanaimo, B.C. It contains 10 separate buildings of 1 or 3 strata lots per building. Each strata lot is one level with a crawlspace below, which for the applicants' strata lot is approximately 2 feet high. The applicants' strata lot and the respondent owner's strata lot are adjacent in a 3-unit building constructed in approximately 1990.
29. The strata's relevant bylaws are the Schedule of Standard bylaws under the SPA plus amendments registered on January 22, 2002. Except for an April 20, 2018 bylaw amendment permitting the strata to tow vehicles contravening its parking bylaws, other registered bylaw amendments are not relevant to this dispute.

30. Both the applicants and the strata have property insurance coverage, although the extent of the coverage is not entirely clear. The events described below triggered 4 insurance claims, 1 against the strata's insurance policy and 3 against the applicants' insurance policy. The applicants' insurance claims were each subject to a \$2,000 deductible. The strata's insurance claim was subject to a \$5,000 deductible and is the subject of the strata's counterclaim.
31. In February 2016, the applicants were vacationing outside the country when friends inspected their strata lot and noticed a foul smell throughout the strata lot. They found a leaking water pipe in the crawlspace. The applicants had a plumber repair the leak(s) and reported the problem to the strata because the batt insulation between the floor joists was wet and required replacement.
32. At all material times, the strata maintained the crawlspace was part of the applicants' strata lot and that the strata was not responsible for strata lot repairs.
33. The strata reported the crawlspace findings to its insurer. It is agreed that the strata's insurer asked Belfor Property Restoration (Belfor) to investigate the damage in the applicants' strata lot. In various emails, Belfor agreed the leaking pipes were caused by rodents biting the pipes and, after removing the batt insulation, discovered areas of significant mould growth on the floor joists in the crawlspace and between the joists on the underside of the applicants' floor. Belfor's investigation of the crawlspace identified large amounts of water on the crawlspace floor and revealed water ingress was occurring at other locations in the crawlspace. In a February 21, 2016 email, Belfor attributes mould growth to water ingress occurring over the top of the perimeter foundation wall below the structural wood exterior wall and poorly functioning crawlspace vents. The email states that the proper course of action is to stop the water ingress, which they say is ground water on the exterior of the foundation wall, before attempting any repairs.
34. As a result of the mould growth, Belfor recommended the mould be inspected and it retained an engineering firm (Lewkowitch) to assess the mould.

35. On February 29, 2016, the strata's insurers wrote to the strata denying coverage for fungal growth stating it was an exclusion in its policy.
36. On March 1, 2016, Lewkowitch reported further damage would likely occur if the source of the mould is not fully remediated. The report suggested further exploratory work to determine the extent of the mould problem and that remediation may include removing contaminated sections of the floor deck and joists.
37. The strata obtained a second opinion on the crawlspace condition in a March 5, 2016 report from ProPacific DKI (ProPacific). The report confirmed rodent activity in the crawlspace and acknowledged the reported plumbing leak caused by rodents as well as other possible sources of water entry. ProPacific identified an exterior roof and gutter detail that it concluded was a minor source of water ingress into the crawlspace stating water was draining down through the exterior wall cavity of the master bedroom. The report also stated there were issues with the crawlspace exterior venting suggesting they were added after the building was constructed. The report suggested the vents allowed water into the wall cavity and were primarily allowing air into the exterior wall cavity rather than the crawlspace. Areas of significant mould growth were identified "mostly" at plumbing drain penetrations below the main bathroom toilet, laundry room and ensuite bathroom of the applicants' strata lot as well as wet flooring surfaces inside the strata lot at these locations. The report states all the identified factors were likely contributing to the excessive moisture levels and mould in the crawlspace, but the primary cause was numerous identified plumbing leaks. The report recommended the moisture sources be eliminated and that "rotting structural members and damaged subfloors should be removed."
38. On March 8, 2016, the strata wrote to Ms. Taylor, advising that it would attend to:
- a. correcting the exterior roof and gutter detail identified by ProPacific,
 - b. examine the perimeter drainage system outside the applicants' strata lot,
 - c. Repair flashing detail between the edge of the main roof and the applicants' patio roof structure suggesting it believed the continuous flow of water

between the main roof and patio roof which was seen on the patio deck, may have contributed to the water entering the crawlspace,

- d. examining and if required, repair, the electrical room adjacent to the applicants' strata lot for possible repairs following an earlier reported water leak,
 - e. filling any cavities in the walls or floors of the crawlspace in which rodents could enter the crawlspace, after the crawlspace was dry,
 - f. installing, at its cost, a dehumidifier in the crawlspace and blocking off all but one exterior vent that will be used for the dehumidifier, and
 - g. examining all "exterior airflow vents to ensure no further damage occurred in your outside walls" and repair "any damages detected to correct this situation as well."
39. The evidence shows that the strata followed through on its promise to attend to the repairs listed in its March 8, 2016 letter except for the installation of a dehumidifier and blocking off the exterior vents.
40. In March 2016, the strata, at its cost, repaired the gutter issue identified in the ProPacific report along with drainage issues it identified with the applicants' patio cover. Following a camera inspection of the interior of the building's perimeter drain, it also repaired a section of the drainpipe at the respondent owner's strata lot that was crushed by a large rock, and a downpipe at the applicants' strata lot.
41. In a March 31, 2016 report to the strata's insurance adjuster (Belfor report), Belfor provided a breakdown of its findings noting the original leak in the piping under the main bathroom was caused by a rat chewing the pipe and noted rat feces were found in the crawlspace. It reported a secondary leak in the crawlspace between the top of the foundation wall and the wood sill plate below the applicants' master bedroom as noted in its earlier February 21, 2016 email. It further reported the collapsed perimeter drainpipe, the downpipe repaired by the strata, and mould found in the crawlspace "mostly" in 5 joist cavities between the ensuite shower and

main bathroom. The report also notes “heavy [mould] growth near the foundation/perimeter water entry under the master bedroom.” It references the Lewkowitch email of March 1, 2016 and that additional “heavy” mould growth was found in some interior walls of the applicants’ strata lot.

42. The Belfor report also noted a leak in the cold water supply line to the ensuite walk in shower, most likely as a result of the pipe being chewed by a rat, and a leaking “P” trap beneath the ensuite sink that only leaked when it was being used.
43. Belfor recommended that a structural engineer provide pre-remediation recommendations to avoid overlap in mould remediation and structural repairs to save costs and time, and that a third party, independent environmental consultant generate the scope of remediation, controls and testing before any work started.
44. In early April 2016, Belfor removed its equipment from the applicants’ crawlspace. The applicants were still out of the country and, according to an April 4, 2016 email from the strata council president to the owner, the reason for Belfor removing its equipment was because the owner’s crawlspace was dry.
45. On April 12, 2016, the owner’s insurance adjuster wrote to the owner advising that the primary insurer for the water damage resulting from the pipe leak was the strata’s insurer. It also advised that should the strata seek reimbursement from the owner for its \$5,000 insurance deductible on its insurance claim, the applicants had coverage for any insurance deductible chargeback sought by the strata subject to the applicant’s own \$2,000 insurance deductible.
46. In April 2016, Belfor provided the strata’s adjuster with a quotation for repair work to the applicants’ strata lot totalling \$6,822.09 and a quotation to the strata’s president for mould remediation to the applicants’ strata lot totalling \$28,294.34. The strata’s insurance adjuster emailed the quotations to the applicants on May 5, 2016.
47. On May 3, 2016, the strata wrote to the owner stating all interior repairs were the owner’s sole responsibility based on its review of the bylaws and advice it had received.

48. On May 6, 2016, Lewkowich wrote to the owner recommending their strata lot not be re-occupied until the repairs were completed because of the mould conditions.
49. On May 16, 2016, the strata's adjuster confirmed to the strata that, subject to a \$5,000 deductible, the strata's insurer would cover the emergency work completed by Belfor totalling \$12,343.83 plus the work for the repairs for which Belfor had submitted a quotation, which I infer is the \$6,822.09 quotation. The letter's author asked the strata to confirm the contractor it would use to complete repairs and that if it was not Belfor, it would need to approve the estimate.
50. On May 20, 2016, the strata advised the owner it would not move forward with repairs or pay any bills relating to the repairs until after it had met with its new property manager. By this time, the applicants had returned from abroad but were not able to occupy their home due to the mould. It is undisputed that the applicants took a short vacation in anticipation that the mould could be remediated while they were away.
51. The evidence confirms the respondents' submissions that around late May or early June 2016, the applicants took over the repairs to their strata lot. At some point, the applicants also retained Lewkowitch to assist with assessing the mould issue.
52. In an email dated July 29, 2016, the strata's insurance adjuster advised the strata's property manager that a meeting had occurred with the "unit owner" and that the owner had retained Lakeside Property Maintenance (Lakeside) to complete the applicants' strata lot repairs. The letter stated that the owner had been made aware that the strata's insurer was not involved with issues outside of the strata's insurance claim and that Lakeside's bid was higher than the bid submitted by Belfor. The letter also requested the strata's decision on which contractor it would like to use for the strata lot repairs and that coverage was only in place for the cost submitted by Belfor.
53. In a letter dated September 13, 2016 from the strata's adjuster to the strata's property manager, the adjuster confirmed that Belfor had been paid for its emergency work and that the strata had paid a \$5,000 deductible to Belfor. The

letter also confirmed the strata's insurer agreed to pay the owner so the owner could move forward with Lakeside, as Lakeside had agreed to match Belfor's bid for the remaining work on the insurance claim, which I understand was the work quoted at \$6,822.09. Cheques totaling \$4,608.37 payable to the applicants were enclosed with the letter. The applicants explain the difference between Belfor's quoted amount and the amount received from the strata's insurer to be the cost to repair exploratory openings and I agree. Finally, the letter stated the applicants' carpet damage was excluded from the claim.

54. In an October 12, 2016 letter to the applicants, the strata's property manager acknowledged receiving some strata lot repair receipts for the strata to consider. I infer the applicants had previously submitted a request for reimbursement of their expenses that form the subject of this dispute. The letter requested the applicants send all related receipts, which the strata council would consider at its next meeting.
55. On January 17, 2017, the strata's property manager wrote to the applicants stating the strata had reviewed the applicants' receipts for work completed and would not reimburse the applicants for any related costs over and above what had been paid through insurance. The reason given was because the applicants' strata lot "was assessed by an insurance adjuster and the funds [the applicants] received from the insurance company are deemed sufficient."
56. On April 12, 2017, Herold Engineering Limited (Herold) wrote to the applicant Gordon Link under seal, that following a site visit to "...evaluate repairs to existing timber framing including floor joists, rim boards, load bearing timber beams and studs that had been structurally compromised as a result of water damage... the repairs satisfy current structural building code requirements."
57. On September 7, 2017, Rocky Point Engineering Ltd. (Rocky Point) wrote to the applicant Gordon Link following an inspection of the crawlspace on September 6, 2017. The letter confirmed the installation of an exhaust fan and baseboard heater in the crawlspace, plus rigid insulation on the crawlspace floor and perimeter foundation walls. It also confirmed the installation of a floor grill in the strata lot to

allow warm air from the strata lot's living space to be transferred to the crawlspace. The letter confirmed the installations met 2012 BC building code ventilation requirements for heated crawlspaces. The letter recommended that the fan's timer be replaced with a humidistat to reduce fan run-time, and that the abandoned perimeter vents be waterproofed and sealed with stucco to "ensure integrity of [the] insulated crawlspace is maintained."

ANALYSIS

THE APPLICANTS' CLAIMS

Do the applicants have a valid claim against the respondent owner?

58. I find the applicants have not provided any evidence to support a claim against the respondent owner. In particular there is no evidence the respondent owner completed alterations to landscaping or otherwise caused water to enter the applicants' strata lot or crawlspace.
59. The applicants have failed to meet the burden of proof and I dismiss their claim against the respondent owner.

What are the strata's repair obligations under the SPA and bylaws?

60. At the heart of this dispute is the duty to repair under the SPA. That there was insurance coverage in place to cover some of the repair costs does not release the applicants or the respondents from their obligation to repair.
61. Under section 72 of the SPA, the strata has a duty to repair common property and common assets.
62. Common property is a defined term under the SPA that includes part of the land and buildings shown on a strata plan that is not part of a strata lot and water pipes located in a floor or wall that forms a boundary between a strata lot and common property.

63. Strata Plan 1801 shows the applicants' strata lot as a single level and does not identify the crawlspace as part of the strata lot. Therefore, I find the crawlspace to be common property consistent with the definition under the SPA. Further support that the crawlspace is common property is found by applying section 68 of the SPA, which states the boundary of the strata lot is the midpoint between the structural surface of the floor that faces the strata lot and the structural surface that faces the common property. I find the structure of the floor to be the floor joists and therefore the strata lot boundary must be the centre of the floor. Therefore, the crawlspace below the floor must be common property, including the foundation walls.
64. Under section 68, I also find the exterior walls, roof gutter system, and perimeter drainage to be common property.
65. Bylaw 2 states an owner must repair and maintain their strata lot except for repair and maintenance that is the strata's responsibility.
66. Bylaw 8 states the strata must repair and maintain common property including those parts of a strata lot relating to the structure of a building and the exterior of a building, among other things not relevant to this decision.

Was the strata negligent in its duty to repair common property?

67. The strata is not an insurer and has no liability to reimburse an owner for expenses that the owner incurs in carrying out repairs to their strata lot that are the owner's responsibility under the bylaws, unless the strata has been negligent in repairing and maintaining common property: *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231.
68. In order to be successful in an action for negligence, the applicants must demonstrate that the strata owed them a duty of care, that the strata's behaviour breached the standard of care, that the applicants sustained damage, and that the damage was caused, in fact and in law, by the strata's breach. (See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.)

69. Here, the strata owed the applicants a duty of care to properly repair and maintain common property. The courts have established that the standard of care is one of reasonableness.
70. The applicants must establish that that they suffered damage and that the strata's breach of the standard of care caused their damage.
71. It is undisputed that the applicants suffered damage to their strata lot. However, most of the damage was because of the mould in the crawlspace which I have found is not part of the owner's strata lot.
72. I find the strata was unreasonable in its denial to repair the mould damage, including the floor joists, as it ought to have known the crawlspace was common property and not part of the applicants' strata lot. Therefore, I find the strata breached the standard of care to reasonably maintain common property (here, the crawlspace).
73. The remaining question is whether the strata's refusal to repair the mould in the crawlspace caused the damage to the applicants' strata lot.
74. The test for showing causation is the "but for" test. The applicants must prove that it is more likely than not that the damage would not have occurred "but for" the strata's negligent act or inaction (see *Clements v. Clements*, 2012 SCC 32 at paragraph 8).
75. There is no evidence that there was mould in the crawlspace prior to its discovery by Belfor when the insulation was removed. Belfor attended to drying out the crawlspace to eliminate the ponding water. The time between the discovery of the mould and the strata's repair of the potential causes of water ingress was reasonable. I find the strata's repair of potential water ingress into the crawlspace and exterior master bedroom wall would have more likely than not stopped water ingress issues and arrested the mould growth. I do not find that the applicant's strata lot would have suffered more damage but for the strata's refusal to address the crawlspace repairs, including the mould issues. In other words, the damage

sustained by the applicants had already occurred, and I find the damage did not result from the strata's breach.

76. Further, the applicants' choice to proceed as they did has left it difficult for them to meet their burden of proof that the strata was negligent, because the applicants chose to take over the repair process long before it could be said the strata was ever negligent, from delay or otherwise.
77. Therefore, I do not find the strata caused the damage to the applicants' strata lot.
78. Applying the principles in *Mustapha*, I do not find that the strata was negligent in its duty to repair common property and is not responsible for damage that occurred to the applicant's strata lot.

Were the applicants authorized to complete repairs?

79. While the strata did not provide the applicants with express authorization to complete repairs, I find implicit authorization was given because the applicants had no choice but to move forward with the repairs given the strata's position all repairs were related to their strata lot and therefore the applicants' responsibility.
80. I find the applicants had the strata's implied authority to complete required repairs including those paid out by the strata's insurer.
81. I also find the applicants are entitled to recover from the strata any reasonable common property repair costs they prove they paid. The remaining question is therefore how much.

What repairs did the applicants complete, or are outstanding, and what amount, if any, should I order the strata to pay to the applicants?

82. The applicants provided a list of expenses in a spreadsheet format for all their claimed expenses, which I have reviewed in detail. The applicants' list of expenses totals \$148,534.38. The applicants do not explain the \$48,534.38 difference between their list and their \$100,000 claim.

83. Although the list is detailed, the supporting invoice copies are not well organized and, in some cases, missing or difficult to determine what they relate to. For example, expense items for labour cost of Gordon Link and others have no supporting information such as dates and hours worked. Also, there is no supporting evidence for the applicants' accommodation expenses which were at least partially covered by the applicants' insurers.
84. Further, some expenses are for labour where no receipts exist, such as for the applicant Gordon Link. I will only identify the invoices I find relevant to this decision.
85. The applicants' claims can be categorized as personal, completed repairs, and additional repairs alleged to be required by the strata.
86. Under personal, I include expenses for accommodation, travel, gas, personal labour costs of Gordon Link, and miscellaneous items, insurance deductibles paid relating to the applicants' own insurance policy, such as for personal belongings, living accommodations, and improvements made to their strata lot.
87. I find that the applicants' damaged personal belongings, such as rifles, were covered under their homeowner insurance policy, as were the damaged upgrades to the ensuite bathroom and some living accommodation expenses. I dismiss the applicants' repairs that were covered by their insurers on the principle that they cannot reasonably receive double recovery.
88. I dismiss the applicants' remaining claims for personal expenses listed in their spreadsheet as such expenses are not supported by evidence or are too difficult to attribute to any particular expense category.
89. I will now address the applicants' claims relating to their completed repairs and alleged additional repairs. My approach will be to identify the completed repairs, determine the cause of the damage, determine who has a duty to repair it, and decide what, if any, reimbursement of repair costs and further repairs are appropriate.

What repairs did the applicants complete?

90. Based on my review of the applicants' spreadsheet and supporting invoices, I find the significant areas of repair completed by the applicants include the following:
- a. Repair and replacement of crawlspace water line,
 - b. Replacement of floor joists and some subfloor in the applicants' strata lot, including retaining a structural engineer to assess the completed work,
 - c. Upgrading of the crawlspace insulation to rigid insulation,
 - d. Installation of an exhaust fan and heater in the crawlspace, including retaining an engineer to assess the completed work, and
 - e. Repairs to the interior of the applicants' strata lot, including some mould remediation, flooring and carpet replacement.

Crawlspace water lines

91. It is agreed that rodents caused the crawlspace water line leaks. It is also agreed that a potential source of rodent entry into the crawlspace was through voids in the concrete foundation wall that were believed to be caused from rotten wooden framing used to pour the concrete retaining walls at the time of original construction.
92. Based on the photographs provided, I find the water pipes located between the floor joists, or below the floor joists, to be common property, for which the strata has a duty to repair. It is undisputed that the applicants paid Norm's Mobile Plumbing the following 3 invoices:
- a. #39156 dated February 16, 2016 in the amount of \$374.11 to repair leaking pipes,
 - b. An unknown invoice number dated April 18, 2016 in the amount of \$235.09 to repair a leaking shutoff valve near the hot water tank, and
 - c. #40464 dated June 2, 2016 in the amount of \$135.00 (the number of cents is cut off on the copy of the invoice).

93. Although the strata's insurance covered the cost of the resultant damage caused by the leaking water pipes, it did not pay to repair the leaking pipes themselves
94. There is insufficient evidence to establish the strata is responsible for the April 2016 invoice for the leaking water shut off as its location is unclear. I decline to find the strata responsible for that invoice.
95. I find the strata is responsible for the cost to repair the leaking water pipes paid by the applicants in February and June 2016 totalling \$509.11. I order the strata to pay this amount to the applicants.
96. I decline to find the strata responsible for the \$3,250.00 alleged by the applicants to be the cost of replacing all the water lines in the crawlspace. While it may have been prudent to replace the water lines, there is no evidence that they continued to leak after they had been repaired or that there were 23 other "rat bites" on the pipes as alleged by the applicants.

Insulation, interior mould, floor joists, and subfloor

97. The evidence shows the strata's insurers covered the cost of the insulation replacement through its insurance claim. I find the insulation cost was included in the payment the applicants received from the strata's insurers. As confirmed by Rocky Point, the applicant chose to upgrade the batt insulation to rigid insulation and I find the strata should not be required to pay for any costs associated with the crawlspace insulation, including the upgrade to rigid insulation.
98. The Belfor and ProPacific reports obtained by the strata or its insurer, and the March 1, 2016 Lewkowitch letter obtained by Belfor, all identify mould on the floor joists and underside of the subfloor. Lewkowitch identifies that the joist and subfloor may need replacement. Belfor and ProPacific recommend the replacement of the damaged floor joists and subfloors but are not consistent with respect to what caused the mould. I agree that the source of the mould came from various areas of water ingress.

99. I find the primary sources to be the leaking water lines in the crawlspace, water entering the crawlspace over the top of the foundation wall and through exterior wall vents.
100. As for the leaking crawlspace waterlines, the initial leaks were discovered when the applicants' strata lot was vacant. The exact vacant period is not provided in evidence, but I understand that the applicants were usually away for several months each fall and winter, and that this was the case in 2016. Given a foul odour lead to the discovery of the leaks, it is reasonable to conclude the rodent bites in the plumbing lines caused water to spray into the crawlspace and the insulation between the floor joists causing mould growth that resulted in the foul odor. I accept the applicants' argument in this regard.
101. As for the water entering the crawlspace over the top of the perimeter foundation wall (below the structural wood exterior wall), both Belfor and ProPacific identified active water at this location. Belfor and ProPacific also agree that the vents also provided a source of water into the crawlspace even though active leaks were not identified. It was Belfor's opinion that the cause of the water ingress was ground water on the exterior of the foundation wall rising to a level above the top of the foundation wall. ProPacific acknowledged these sources of water existed and did not object to their contribution the mould issue. I accept these opinions.
102. ProPacific identified an exterior roof and gutter detail outside the applicants' master bedroom as a minor source of water ingress into the crawlspace that travelled down through the exterior wall cavity of the master bedroom. I agree. I also find that given ProPacific's opinion that the water travelled through the wall cavity, it is more likely than not that the mould identified in the master bedroom wall was caused by the roof and gutter detail.
103. Both Belfor and ProPacific identify that a "P" trap under the ensuite bathroom sink actively leaked when the sink was used. The "P" trap is located within the applicants' strata lot and is not common property. Belfor also identified mould inside the applicants' strata lot's interior walls at the master bedroom, ensuite bathroom,

and laundry room, which it says migrated up through the floor around the plumbing penetrations. I do not agree with ProPacific's conclusion that all plumbing drains were leaking and that these factors were the major source of the water into the crawlspace and therefore the mould. I prefer Belfor's opinion over that of ProPacific and conclude the leaking "P" trap was a minor mould contributor.

104. For these reasons, I find it more likely than not that the main cause of mould came from the strata's common property, for which the strata has a duty to repair.

105. The applicants purchased mould related items and masks from Home Depot on May 9, 2016 totalling \$65.63. I find the strata must reimburse the applicants this amount and so order.

106. Lewkowitch invoiced the applicants for mould samples under invoice #46977 dated September 28, 2016 for \$965.00. An August 24, 2018 email from Lewkowitch to Gordon Link confirms the invoice was paid. I find the strata must reimburse the applicants this amount and so order.

107. The applicants claim a second invoice from Lewkowitch dated July 25, 2016 for \$326.97 that relates to a site inspection and memo about potential foundation settlement. I decline to order the strata reimburse the applicants this amount as there were no suspicions by other contractors that building settlement had caused water ingress into the crawlspace or that building settlement was the cause of any other issue.

108. Various invoices were provided from Lakeside relating to mould remediation, interior repairs and structural repairs to the floor joists as follows:

- a. #33 dated May 19, 2016 in the amount of \$14,333.61,
- b. #36 dated June 29, 2016 in the amount of \$6,623.05,
- c. #46 dated August 7, 2016 in the amount of \$7,080.44,
- d. #66 dated September 17, 2016 in the amount of \$2,980.06,
- e. #77 dated September 29, 2016 in the amount of \$5,170.04, and

f. #75 dated November 23, 2016 in the amount of \$1,856.55.

109. The applicants say Lakeside invoice #33 relates to mould remediation in the crawlspace and was agreed to be 50% of the Belfor quotation of 28,294.34. While the math is not precise, absent any objection of the strata that mould remediation was not completed, I accept invoice #33 relates to mould remediation. I find the strata must pay the applicants \$14,333.61, being the amount of the invoice and I so order.
110. The applicants say Lakeside invoice #36 relates to mould remediation on the main floor of the strata lot which is also identified on the invoice as such. However, the Belfor quotation of \$28,294.34 referenced earlier includes mould remediation in the living space as well as the crawlspace. Given the applicants' admission that Lakeside agreed to complete mould remediation at 50% of the Belfor quotation, I decline to order the strata to pay the amount of this invoice.
111. The applicants say Lakeside invoice #46 relates to joist replacement, laundry room drywall replacement, and carpet removal. I accept the part of the invoice that relates to joist repair labour of \$3,210.00, which I find reasonable based on the hourly rate of \$30 per hour and the applicants submission that it took 4 workers approximately 3.5 days to complete the joist repairs. I reject the part of the invoice that relates to laundry room drywall, paint labour. I am not persuaded that laundry room drywall replacement was not part of the mould remediation and decline the applicants' request for that amount.
112. I reject the part of the invoice that relates to carpet removal. The strata's insurers ultimately paid the applicants for the cost of the original carpet. Absent any arguments to the contrary, I find the settlement the applicants reached with the strata's insurers for the carpet, included an allowance for carpet removal as well as replacement. I find a fair allocation of the supplies and materials listed in the invoice is 50% for the joist repairs and 50% for the other work, or \$821.64. Therefore, I find the strata must pay the applicants a total of \$4,233.22 for the joist repairs relating to Lakeside invoice #46, including taxes, and I so order.

113. The applicants say Lakeside invoice #66 relates to joist replacement, dumping fees of \$180.00, and 1 hour for labour to pick up rigid insulation. The invoice shows expenses for supplies and materials of \$408.15, joist replacement labour of \$420, labour to replace plywood floors of \$420.00, "Labour/Drywall/Tape/Primed" of \$1,110.00, labour to remove baseboard and trim of \$150.00, and extras for picking up rigid insulation and "dump runs" of \$210.00.
114. For the same reasons that relate to invoice #46 described above, I reject the expenses relating to drywall labour and removing baseboard as I find these expenses more than likely relate to mould remediation. I reject the costs related to picking up the rigid insulation for reasons outlined above and accept the applicants' argument that the dumping fees were \$180.00. Allowing 50% for supplies and materials relating to joist and plywood floor repairs, I find the strata must pay the applicants \$1,285.28 for Lakeside invoice #66 and I so order.
115. The applicants say Lakeside invoice #77 relates to installing wood flooring to replace the removed carpet, replacing the drywall in the master bedroom, tiling of the entryway, painting, and moving contents to allow for the flooring work. The invoices shows plumbing work was also completed. I have found the floor installation is the applicants' responsibility due to the carpet settlement with the strata's insurers. I find the master bedroom drywall repairs were more than likely included in the mould remediation costs, and there is no evidence to suggest the retiling of the entry way relates to this dispute. I find the reason the contents required moving was because of the flooring upgrade which is not a strata responsibility. Finally, I infer the plumbing repair does not relate to common property plumbing. For these reasons, I decline to order the strata to pay the applicants the amount of lakeside invoice #77.
116. I find Lakeside invoice #75 does not relate to repairs for which the strata is responsible, except for the labour cost to install the crawlspace exhaust fan, which I address below.

117. As noted, Herold was retained by the applicants to investigate the completed structural repairs to the floor joists, A letter report dated April 2017 confirmed the structural repairs satisfied the current code requirements. This letter was in response to the strata's request and I find the strata is responsible for the associated fees. The cost of Herold's fees were \$525.00 as shown on its July 11, 2017 invoice #41462. The applicants paid an installment of \$262.50 to Herold on May 5, 2017 and the balance of \$262.50 on September 27, 2017. I find the strata must pay the applicants \$525.00 for Herold invoice #41462 and I so order.
118. In summary, I order the strata to pay the applicants \$21,407.74 for mould remediation, broken down as follows:
- a. \$65.63 for mould related items and masks from Home Depot,
 - b. \$965.00 for Lewkowitch invoice #46977,
 - c. \$14,333.61 Lakeside invoice #33,
 - d. \$4,233.22 Lakeside invoice #46,
 - e. \$1,285.28 for Lakeside invoice #66, and
 - f. \$525.00 for Herold invoice #41462.

Crawlspace exhaust fan

119. In its March 8, 2016 letter to the applicants, the strata agreed to install a dehumidifier in the crawlspace at its cost. The applicants installed an exhaust fan and timer that Rocky Point inspected and approved in September 2017. Given the relationship between the parties during all material times of this dispute, I find it was reasonable for the applicants to install the exhaust fan. I find the difference between the promised dehumidifier and the installed exhaust fan and timer to be inconsequential, given Rocky Point has confirmed the installation meets code requirements. Since the crawlspace is common property, I find the strata must reimburse the applicants for the cost to install the exhaust fan and the inspection fees of Rocky Point, which I find to be \$683.35 broken down as follows:

- a. Lowe's receipt of November 13, 2016 in the amount of \$226.60 for the fan,
- b. Part of Lakeside invoice #75 dated November 23, 2016 that relates to the fan installation which I find to be \$63.00 (2 hours at \$30 per hour plus taxes), and
- c. Rocky Point invoice #N1708-152 dated September 15, 2107 in the amount of \$393.75.

120. To the extent the applicants wish to install a de-humidistat to replace the timer on the fan as recommended by Rocky Point, it will be at their cost.

Interior strata lot repairs

121. I have already found the applicants have failed to prove the mould remediation costs did not include drywall and painting costs. I have also addressed the carpet replacement settlement agreed to between the applicants and the strata's insurer.

122. I have agreed with the applicants that the strata's insurers appear to have deducted the cost of repairing exploratory openings from the payment it made to the applicants in September 2016. The applicants say they are still trying to recover the shortfall amount from the strata's insurers. As a result, I find the additional funds the applicants say they are owed by the strata's insurers is an issue between the applicants and the insurers and is not before me. I decline to make any finding or order in this regard.

123. I do not find there are any other interior repairs for which the strata should reimburse the applicants.

Outstanding repairs

124. The exterior wall vents to the crawlspace have not been sealed and waterproofed as was recommended by both Belfor and ProPacific. I find this work should be completed taking into consideration the existing venting required for the crawlspace exhaust fan discussed. Given this work relates to the common property building

exterior I find the strata is responsible to properly block off, waterproof, and stucco the exterior wall vents other than any vent used for the crawlspace exhaust fan.

125. The strata investigated and repaired, at its cost, the perimeter drainage system and downpipe connection, the roof and gutter issue, and the voids in the concrete foundation wall. Since this work was completed, there has been no further reports water leakage into the crawlspace, so I accept that the strata's repairs were successful. I decline to order the strata to upgrade the drainage system to meet current building code requirements as argued by the applicants, as I find there is insufficient evidence to support such an upgrade is required.

126. Both the applicants and the strata claimed an invoice from Seaview Contracting for \$598.21 to repair the drainage system. I find on the evidence that the strata arranged for the work and attempted to charge the invoice amount to the applicants. The applicants have not paid the invoice. Given my finding that the perimeter drainage system is common property, and therefore the strata's responsibility, I find the strata must pay the invoice.

127. For these reasons, I find the strata must properly block off, waterproof, and stucco the exterior wall vents other than any vent used for the crawlspace exhaust fan.

Has the strata re-designated a parking stall previously assigned to the applicants' strata lot contrary to the SPA or bylaws?

128. Based on the evidence, I find the strata has not re-designated the extra parking stall assigned to applicants' strata lot. Rather, the evidence indicates that the strata has installed signage clearly identifying the parking stall designated to the applicants' strata lot. It has also installed signage to the respondent owner's parking stall so that the owner and respondent owner each have 1 designated parking stall. There is no filed bylaw that restricts the applicants from parking in the stall assigned to their strata lot.

129. There is no evidence to suggest the towing bylaw was not properly passed.

130. For these reasons, I dismiss the applicants' claim about the parking stall re-designation.

Is the strata responsible for aggravated and punitive damages?

131. Generally speaking, aggravated damages are compensatory in nature while punitive damages are reserved for malicious and high-handed conduct. The applicants say the aggravated damages should be awarded because the strata went out of its way to make problems worse and to introduce other problems. I find the applicants have failed to establish this to be the case on the balance of probabilities.

132. Further, I find the evidence does support a conclusion that the strata acted in a malicious or high-handed manner.

133. I dismiss the applicants' claims for aggravated and punitive damages.

THE STRATA'S COUNTERCLAIM

Are the applicants responsible for the strata's \$5,000 water damage deductible?

134. I have previously found that the tribunal has authority to order an owner to pay the amount of an insurance deductible to a strata corporation. (See *Zhang v. The Owners, Strata Plan BCS 1039*, 2017 BCCRT 56 at paragraphs 52-54.)

135. Section 158 (1) of the SPA says the payment of an insurance deductible in respect of a claim on the strata's insurance is a common expense to be contributed to by means of strata fees. Section 158 (2) of SPA says that section 158(1) does not limit the strata's ability to sue an owner in order to recover the deductible portion of the insurance claim if the owner is responsible for the loss or damage that gave rise to the claim.

136. Section 158(2) of the SPA has been interpreted in B.C. Supreme Court decisions to hold an owner liable for the strata's insurance deductible if the owner is responsible for the loss giving rise to the insurance claim by the strata. (see *The Owners of Strata Plan LMS 2835 v. Mari*, 2007 BCSC 740, and *Strata Plan KAS 1019 v. Kieran*, 2006 BCPC 360 (affirmed in *Wawanessa Mutual Insurance Co. v. Kieran*, 2007 BCSC 727))
137. Here the strata's insurance covered the loss associated with the leaking water lines in the crawlspace, caused by rodents chewing holes in the waterlines. The strata has accepted that a possible source of rodents entering the crawlspace was through the voids in the concrete from rotten framing material. There is no evidence before me of any other source of entry into the crawlspace for rodents. As a result, I cannot find that the applicants were responsible for the leaking water lines.
138. Given my finding that the applicants are not responsible for the loss giving rise to the strata's insurance claim, I find the owners are not liable to pay the strata's \$5,000.00 insurance deductible.
139. For these reasons, I dismiss the strata's counterclaim.
140. The applicants have admitted that they received \$5,000 from their insurers as part of one of their insurance claims with their insurers (subject to their own \$2,000 deductible) to cover the possibility that strata might charge its deductible back to the applicants. I find that the issue of whether the owners must repay their insurers is not before me in this dispute and I make no finding or order in that regard.
141. In its additional submissions, the strata seeks to recover additional expenses totaling \$905.27 for work it says it paid in relation to the applicants' strata lot repair that should be the responsibility of the applicants. I decline to address these additional strata claims as they are not relevant to the information I requested by way of additional submissions.

Are the applicants responsible for loss of property value due to defamation and harassment? If so, is it appropriate to award the strata \$500,000?

142. Though not binding on me, I accept the tribunal does not have jurisdiction over defamation or libel as discussed in *NCAH BC Holdings Ltd. v. The Owners, Strata Plan EPS 1231*, 2018 BCCRT 137 and *Pritchard v. The Owners, Strata Plan VIS3743*, 2017 BCCRT 69. I agree that the tribunal's jurisdiction for strata property claims does not include defamation. For that reason, I refuse to resolve the applicants' claim for defamation under section 10 of the Act.

143. Based on my review of the email exchanged between the strata, the strata's property manager and the applicants, I do not agree that the applicants were harassing the strata or its property manager. While the applicants could have chosen alternative language in some of their emails to convey a different tone, I do not find the emails to be harassing in nature. I dismiss the strata's claim for harassment and decline to order the relief it seeks.

TRIBUNAL FEES, EXPENSES AND INTEREST

144. 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 find the applicants were mostly successful and accordingly order the strata to reimburse them \$225.00 for tribunal fees.

145. The applicants did not claim dispute related expenses other than what I have considered above. I make no further order in this regard.

146. I dismiss the strata's claim for \$1,600.00 in dispute-related expenses as it has not been successful in its claim.

147. The *Court Order Interest Act* (COIA) applies to the tribunal. I find the applicants are entitled to pre-judgement interest on the amounts paid to repair the common property and their strata lot that were the strata's responsibility from the date of the invoice or payment made to the date of this decision. I calculate the amount of pre-judgement interest to be \$645.26 and order the strata to pay this amount to the applicants.

148. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner. With respect to my payment orders, I find the applicants are not exempt from paying their proportionate share of the amounts ordered, based on unit entitlement.

ORDERS

149. I order that the strata:

- a. Within 30 days of the date of this order, pay to the applicants \$23,483.89 broken down as follows:
 - i. \$509.11 for crawlspace water line repairs,
 - ii. \$21,407.74 for mould remediation,
 - iii. \$683.35 for the crawlspace exhaust fan,
 - iv. \$225.00 for tribunal fees, and
 - v. \$645.29 for pre-judgement interest under the COIA.
- b. Within 90 days of the date of this order, arrange for the blocking, waterproofing and stucco of the exterior wall vents adjacent to the applicants' strata lot at its cost.

150. The applicants are not exempt from paying their proportionate share of the amounts set out in paragraph 149 based on the unit entitlement of their strata lot.

151. The applicants are entitled to post-judgement interest under the COIA, as applicable.
152. I refuse to resolve the applicants' claim for defamation under section 10 of the Act.
153. The remaining applicants' claims against the strata are dismissed.
154. The applicants' claims against the respondent owner are dismissed.
155. The strata's counterclaims are dismissed.
156. 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.
157. 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

