



Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

The Owners, Strata Plan LMS 3259

APPLICANT

A N D :

AAF Holdings Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Volk

INTRODUCTION

1. The applicant, The Owners, Strata Plan LMS 3259 (strata), is a strata corporation existing under the *Strata Property Act* (SPA). The respondent, AAF Holdings Ltd. (owner), owns at least 2 strata lots in the strata. The strata says the respondent is responsible for the cost of replacing a fire alarm panel and for its legal fees. The

strata seeks orders that the owner repay the strata \$27,743.84 for the panel and \$975.00 for legal fees.

2. The strata is represented by an authorized member of the strata council. The owner is represented by a principal.
3. For the reasons that follow, I order the owner pay the strata \$26,454.97 for the fire alarm panel, pre-judgement interest of \$467.89, and fees relating to this proceeding of \$225.00. I find the strata is not entitled to payment for legal fees and dismiss that claim.

JURISDICTION AND PROCEDURE

4. These are the written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 121 of the *Civil Resolution Tribunal Act (Act)*.
5. 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, or a combination of these. I decided to hear this dispute through written submissions. 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 123 of the Act and the tribunal rules, in resolving this dispute the tribunal may order a party to do or to stop doing something, order a party to pay money, or order any other 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 that 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).

ISSUES

10. The issues in this dispute are:
 - a. Whether the owner is responsible for the cost of replacing the fire alarm panel,
 - b. Whether the owner is responsible for legal fees to enforce the bylaws, and
 - c. Whether the strata is entitled to tribunal fees.

BACKGROUND AND EVIDENCE

11. I have reviewed all submissions and evidence provided. I refer only to the relevant evidence and submissions necessary to give context to my decision.
12. The strata is a commercial strata corporation comprising a 3-storey building known as Pacific Plaza located in Richmond, B.C.. The strata was created on May 29, 1998 under the *Condominium Act*, a predecessor to the SPA.
13. In response to a signal in the fire protection system, the strata requested a fire protection technician investigate. The investigation found a buzzer in the owner's unit damaged by an electrical short. In addition, a fire alarm cable had been cut. The owner's electrician confirmed that he cut the cable as a part of construction in 2 of the owner's strata lots.
14. The technician opined that when the cable was cut it probably shorted the buzzer and caused a short in the fire alarm panel. The owner's electrician opined that his work in cutting and later reconnecting the cable would never cause any damage on the fire alarm panel or any other equipment.

15. The manufacturer advised the technician that the fire alarm panel could not be repaired because the required parts are no longer made. The strata obtained an estimate for replacing the panel at a cost of \$27,743.84. The strata demanded payment for the replacement costs and \$975 of legal fees from the owner. The owner did not respond or pay.
16. The strata went ahead and replaced the entire fire alarm panel at its own cost. The cost to replace the panel was \$17,998.83, a remote panel was \$2,946.38, moving the panel was \$2,548.63, labour was \$4,250.00. With GST on each charge, the total was \$27,743.84.
17. The applicable strata bylaws were registered at the Land Title Office on May 1, 2004. Unrelated amendments were filed in 2007 and 2012.
18. The relevant bylaws are:

Bylaw 2.3.2: restricts an owner from damaging common property, other than reasonable wear and tear,

Bylaw 2.3.4: requires an owner to obtain the written consent of the strata council before altering wiring or other services in their strata lot,

Bylaw 2.5.1: requires an owner to obtain approval before altering common property located within the boundaries of a strata lot,

Bylaw 2.6.1: requires an owner to obtain approval before altering common property,

Bylaw 2.8.10: requires an owner to obtain approval of renovation plans before renovating and to alter their strata lot without damaging electrical and other mechanical systems,

Bylaw 2.8.14: requires owners to strictly comply with the bylaws, and

Bylaw 3: requires the strata to repair and maintain common property.

19. The definition of "common property" in section 1 of the SPA can be narrowed, in this case, to ... (b) wires, cables, ... for the passage or provision of electricity, telephone, radio, television, ... or other similar services, if they are located (i) within a ... wall ... 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.
20. Neither party provided insurance information.

POSITION OF THE PARTIES

21. The strata says that the owner is responsible for causing damage to the fire alarm cable and the fire alarm panel. The strata further argues that it was necessary and reasonable to replace the entire fire alarm panel. The strata requests that I order payment of \$27,743.84 for replacing the fire alarm panel, \$975 for legal fees to enforce the bylaws and \$225 in tribunal fees.
22. The owner says that they are not responsible for the damage. In particular, the owner says the strata has not proven that the damage to the fire alarm cable caused damage to the fire alarm panel. The owner requests that I dismiss the claims.

ANALYSIS

Whether the owner is responsible for the cost of fixing the fire alarm panel

23. In a civil claim such as this, the strata bears the burden of proof, on a balance of probabilities.
24. The parties agree that the owner's electrician cut the fire alarm cable. At issue is whether cutting that cable damaged the fire alarm panel. On the evidence, I find it is more likely than not that cutting the cable damaged the panel.

25. In particular, it is undisputed that the damaged cable and buzzer were found while investigating 2 trouble signals from the fire alarm panel (open circuit and ground fault). There is no evidence that the signals were an earlier or ongoing problem. Further, it is undisputed that an electrical short damaged the buzzer. I find that the short occurred when the electrician cut the fire alarm cable. If an earlier incident damaged the buzzer, I would have expected the owner to say so. Given that the fire alarm cable fed into the buzzer, I find it more likely than not that cutting the cable also damaged the fire alarm panel.
26. Further, it is undisputed that once the technician located the cut cable, the electrician bypassed the damaged buzzer and was able to create an 'open circuit' clearing that trouble signal. If the cut cable were unrelated to the fire alarm panel trouble signal, I would not have expected reconnecting the cable to change anything. However, despite clearing the open circuit signal the fire alarm panel continued to signal the ground fault error. Given that the open circuit signal cleared when the cable was reconnected, I find it more likely than not that cutting the cable caused both signals. On balance, I find that the ground fault signal did not clear because cutting the fire alarm cable damaged the fire alarm panel.
27. In reaching the above conclusions I did not rely on the web printout that the strata provided listing damage that may allegedly occur by cutting a live wire in a fire alarm system.
28. On balance, I prefer the opinion of the fire protection system technician which is most consistent with the evidence. The owner's electrician opined that cutting the fire alarm cable would never cause damage to the fire alarm panel. That opinion was provided without supporting analysis or evidence. I find it unlikely, given the facts. Despite the damage to the buzzer, the electrician does not explain why cutting the cable would affect the buzzer differently than the fire alarm panel. If the 2 devices would respond differently to the same incident, I would have expected the electrician to say that and to give reasons why.

29. Given the definition of common property above, I find that the fire alarm system is common property. Although, I note that neither party questioned the strata's obligation to repair and maintain the fire alarm system, including the fire alarm panel and the fire alarm system cables. The strata's responsibility is assigned by section 72 of the SPA and bylaw 3.
30. In this case, it is the action of the owner's electrician in cutting the fire alarm cable that caused the damage to common property. The damage was beyond normal wear and tear and breached bylaw 2.3.2. And, consistent with section 133 of the SPA, which permits the strata to do what is reasonably necessary to remedy a contravention of its bylaws, it is the owner and not the strata that should bear the cost of repairing the damage.
31. Given my finding above, I need not consider whether the owner also breached bylaws 2.1.3, 2.3.4, 2.5.1, 2.5.2, 2.6.1 and 2.8.10.
32. The remaining question is whether, in the circumstances, replacing the entire fire alarm panel was reasonable as required in section 133 of the SPA. In the circumstances, where the manufacturer no longer manufactures the required parts, I find it was reasonable for the strata to replace the entire fire alarm panel. However, there is no indication that the damage necessitated moving the fire alarm panel as invoiced. As such, I do not award the cost for moving the panel.
33. For the above reasons, I find the owner must pay the strata \$26,454.97 for replacing the fire alarm panel.

Whether the owner is responsible for legal fees to enforce the bylaws

34. The strata has no bylaws allowing for reimbursement of legal fees. However, section 133 of the SPA, allows the strata reasonable costs from the responsible owner for remedying a bylaw contravention.
35. The British Columbia Court of Appeal has interpreted that section as permitting strata corporations to recover actual legal costs spent in enforcing bylaws by way of court actions (see *The Owners, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA 377).

There, the appeal centred on reasonable legal costs under section 118 of the SPA, for registering a lien. In reviewing the legislative context, the court noted that the same legislative intent underlies section 188 and 133, that a “strata corporation should not have to shoulder the financial burden of remedying infractions committed by non-compliant owners.”

36. Despite section 133, the procedural requirements of section 135 of the SPA must still be met to pay legal costs. I find that the requirements of section 135 were not met in this case. As in *The Owners, Strata Plan VR19 v. Collins et al.*, 2004 BCSC 1743, I find the owner is not required to pay legal costs.
37. In that decision the strata brought a petition for a declaration that the owner’s installation of laminate flooring breached the bylaws, and an order compelling removal. As in this dispute, the strata corporation in that action requested payment of legal fees. The court found that the owner in that case ignored the bylaw and should bear the financial burden of replacing the floor. However, the court denied the request for legal fees. The court found that section 135 prevents the strata corporation from requiring the owner to pay legal costs for bringing a petition unless the procedural requirements of the section are met.
38. Given my findings, I need not consider whether section 133 would also allow recovery of legal costs spent in enforcing bylaws by way of non-court actions.

TRIBUNAL FEES, EXPENSES AND INTEREST

39. Under section 49 of the Act, and the tribunal’s rules, the tribunal will order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason not to follow that general rule in this case and I award a reimbursement of \$225.00 in tribunal fees as claimed. The strata did not claim dispute-related expenses and so I make no order with respect to expenses.
40. The strata is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA). Pre-judgment interest is calculated on the debt owing as of the date the

cause of action arose up to the date of this order. I find the cause of action arose on August 3, 2017, the date the technician discovered the cut cable. There was no evidence regarding the date the cable was cut. I calculate prejudgment interest payable by the owner on \$26,454.97 to be \$467.89.

DECISION AND ORDERS

41. I order that within 30 days of the date of this order the owner pay the strata a total of \$27,147.86 broken down as:
 - a. \$26,454.97 for the cost of replacing the fire alarm panel,
 - b. \$467.89 in pre-judgment interest under the COIA, and
 - c. \$225.00 for tribunal fees.
42. The strata is entitled to post-judgment interest under the COIA, as applicable.
43. I dismiss the strata's other claims.
44. 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.

45. 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