



Civil Resolution Tribunal

Date Issued: February 15, 2019

File: ST-2018-001249

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 447 v. Best*, 2019 BCCRT 178

B E T W E E N :

The Owners, Strata Plan LMS 447

APPLICANT

A N D :

Barbara Best

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Darrell Le Houillier

INTRODUCTION

1. The applicant, The Owners, LMS 447 (strata), is a strata corporation. The respondent, Barbara Best (owner), is the owner of strata lot 83 within the strata. The applicant is represented by a member of the strata council. The owner is self-represented.

2. According to the strata, the owner's grandson damaged the front door of the strata's building while he was visiting on an unspecified day in May 2017. The strata says the owner should pay \$1,976.79 for the damage to repair the door, plus tribunal-related expenses and interest.
3. The owner says she should not have to pay for the door because she was not permitted to see any video recording of her grandson breaking the door and she was not provided an explanation before being charged for the cost of the repair. The owner also says the door operated in a faulty fashion.

JURISDICTION AND PROCEDURE

4. These are the formal 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). 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.
5. 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.
6. 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.
7. Under section 123 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.

8. 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).
9. Tribunal documents incorrectly show the name of the respondent as The Owners, Strata Plan, LMS #447. Based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan LMS 447. Given the parties operated on the basis that the correct name of the strata was 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.

ISSUE

10. The issue in this dispute is whether the strata is entitled to charge the owner \$1,976.79 to repair its front door.

BACKGROUND AND EVIDENCE

11. In May 2017, the owner's 8-year-old grandson pushed open the glass front door of the strata's building. Glass broke off of the door and the closer arm broke. The owner immediately reported the damage to the building's caretaker.
12. According to the strata, the building's caretaker reviewed security footage that showed the owner's grandson was holding open the door, which began to automatically closer. The owner's grandson reportedly pushed the door open farther and damaged the door.
13. According to the strata, the strata president reviewed the security footage and determined that the owner's grandson was at fault for breaking the door.

14. Still photographs taken from the security footage show the owner's grandson moving toward the door and in what looks to be a running gait while the door is open at or near the point when the door was damaged.
15. According to the owner, the front door mechanism exerted considerable force when closing and this was a problem. The owner says that her grandson told her the door broke when he was struggling to hold it open for his sister.
16. On May 29, 2017, the company that installed the front door completed repairs. The company provided an invoice to the strata the next day. The invoice was for \$1,976.79, including tax.
17. According to the strata, the strata council arranged to discuss the issue at its next meeting. The date of this meeting was not provided to the tribunal. One strata council member invited the owner to attend so that she could give her version of events but the owner never attended, never requested a hearing, and never sent any letter of explanation. According to the owner, she intended to attend that meeting but was in a motor vehicle accident that precluded her from attending. The owner said she had a letter from the Insurance Corporation of British Columbia to prove as much, but she did not provide it to the tribunal.
18. At the meeting, the strata council decided to require the owner to repay the costs associated with repairing the front door.
19. On June 13, 2017, the strata sent the May 30, 2017 invoice to the owner, saying this resulted from the damage the owner's grandson did to the front door. The strata indicated that this was paid on behalf of the owner and directed her to pay that amount to the strata.
20. At some point, the owner asked to see the security footage. According to the strata, the security footage was misplaced but the still photographs provided to the tribunal were available. Those photographs were provided to the owner. The owner says she was told she could not review the security footage for security reasons. She

also says that she heard from a strata council member that the strata council president refused to show her the video.

21. On December 11, 2017, the strata's property manager wrote to the owner, stating that the strata council had reviewed a request by the owner to reverse the chargeback applied to her account. The property manager stated that the chargeback would not be reversed and directed the owner to write to the strata council if she wished to discuss the matter further.
22. On February 7, 2018, a manager with the company that installed and repaired the front door of the strata's building wrote an email to the strata's property manager. The email indicated that the closer arm had been bonded to the tempered glass of the door, as required for that type of door. When the door was opened with excessive force, the glass failed and a portion of glass broke off the door. The whole door had to be replaced, as the damage to the glass could not be repaired.
23. The owner provided photographs of an uncertain date, which show the front door of the strata's building being opened to roughly the same angle as in the photographs of the owner's grandson. The door does not seem to be damaged in this process and the owner says this was because the replacement door did not automatically close with as much force as did the door broken in May 2017.

POSITION OF THE PARTIES

24. The strata says that the photographs show the owner's grandson applying excessive force to the front door and breaking it. The strata says the owner had a chance to provide her version of events but did not do so. The strata requests that I order the owner to reimburse it \$1,976.79, plus tribunal-related expenses and interest, for the expenses it incurred to repair the front door.
25. The owner argues that the video which showed the damage to the door was not viewed by anyone but the building caretaker and the strata council president. The owner says there is no proof that the door would have broken no matter who was trying to hold it open. She says there is sufficient doubt that she should not have to

pay for the repair to the front door and that the strata council acknowledged that it mishandled the matter. The owner requests that I dismiss the applicant's claim.

ANALYSIS

Is the strata is entitled to charge the owner \$1,976.79 to repair its front door?

26. Section 119(2) of the *Strata Property Act* (SPA) allows a strata corporation to create its own bylaws.
27. Section 130 of the SPA permits a strata corporation to fine an owner for actions taken by a person visiting that owner. Section 133 of the SPA permits a strata corporation to require that an owner who can be fined under section 130 of SPA pay "reasonable costs" of remedying a contravention of its bylaws.
28. The strata's bylaw #3(2), as it read in May 2017, stated, among other things, that a visitor to the property must not cause damage, other than reasonable wear and tear, to the strata's common property.
29. Bylaw #3(10), as it read in May 2017, required, among other things, an owner to indemnify the strata from any repair of common property damaged by an owner's guests or family members.
30. The front door is common property. It is not contained in any strata lot and, as such, meets the definition of common property found in the SPA.
31. The applicable version of bylaw #3(2) forbids a visitor from causing damage to the strata's common property, other than reasonable wear and tear. It does not matter if the damage occurs innocently or recklessly. The requirement is absolute.
32. The owner's grandson damaged common property of the strata beyond reasonable wear and tear. The still photographs taken from the security footage show him leaning into the door while seeming to adopt a running-like posture and I find it more likely than not that he used excessive force in pushing the door. The resulting damage is therefore not reasonable wear and tear.

33. I do not find the owner's arguments about the faulty function of the front door in May 2017 to be persuasive. Her grandson could have allowed the door to automatically close, rather than forcing it to open wider. He could have forced it wider with less force. Finally, it does not matter that another door can be opened wider without damage. I find the amount of force exerted by the grandson in pushing the door open in May 2017, as shown in the photographs, was excessive.
34. Section 130 of the SPA allows the strata to fine the owner for her grandson's violation of bylaw #3(2). Section 133(2) of the SPA allows the strata to require the owner to repay "reasonable costs" of remedying that contravention, subject to the requirements of section 135 of the SPA.
35. Section 135 of the SPA states that, before a strata corporation requires an owner to repay reasonable costs of remedying a bylaw contravention, 2 conditions must be met. First, the strata must have received a complaint about the contravention. Second, the strata must have given particulars of the complaint to that owner and given them an opportunity to respond, including by a hearing if requested.
36. The version of events provided by the strata indicates that, most likely, the strata council president first reviewed the security footage of the door closing and then brought it forward to the strata council. This satisfies the requirement that the strata receive a complaint about the contravention.
37. The letter of June 13, 2017 satisfied the requirements for the strata to give the particulars of the complaint to the owner. It also invited the owner to respond to the strata.
38. As explained in *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148 (CanLII), a strata corporation may deal with bylaw infractions as it sees fit, but in doing so it must be procedurally fair to an owner. The owner raises 2 points of procedural fairness: that she was in a motor vehicle accident and could not attend the strata council meeting where the damage to the front door was discussed and that she was denied the chance to review the surveillance video. I will deal with the second argument first because it decides this appeal.

39. I find that the strata council violated the rules of procedural fairness by not giving the strata owner the opportunity to review the surveillance video. The owner said that she asked to review the footage and the strata council replied that she could not do so for security reasons. The strata did not respond to that assertion, saying only that, at some point, the security footage was lost and the best the strata could do was to provide the still photographs taken from the surveillance footage.
40. In interpreting the information provided by both parties and their silence as to the information provided by the opposing parties, I consider the most reasonable explanation to be that the owner asked to review the surveillance video and the strata denied that request on the basis of a security concern. Later, the strata would have let the owner review the surveillance footage but, by then, it had been lost.
41. The strata said the strata council president satisfied himself that the owner's grandson was at fault for breaking the front door by reviewing the surveillance footage. This formed the basis of the complaint the strata received, that permitted it to ask the owner to repay the repair costs for the front door. The surveillance footage was relevant and for, at least for the strata council president, determinative of a significant issue in this case. The strata has not given any explanation why letting the owner review the relevant portion of the surveillance footage violated security concerns. The photographic evidence the strata provided was likely not of the same quality as the surveillance footage from which it was taken, given that the surveillance footage would likely show the quality of the grandson's movement that must be inferred from the still photographs. As a result, it was unfair for the strata to deny the owner the chance to see it, particularly given that the strata council president, who is involved in deciding whether to fine the owner had seen it. While the photographs have lead me to one conclusion based on the evidence before me, it is possible that the surveillance video denied to the owner painted a different picture.
42. Because the strata violated the rules of procedural fairness in attempting to have the owner repay reasonable costs for the repair of the front door, I find that the strata cannot have the owner repay those costs. I dismiss the strata's dispute.

TRIBUNAL FEES AND EXPENSES

43. 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 owner was the successful party but had no reported fees or expenses. I therefore make no order for the reimbursement of tribunal fees or dispute-related expenses.
44. 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.

DECISION AND ORDERS

45. I dismiss the strata's dispute.

Darrell Le Houillier, Tribunal Member