



Civil Resolution Tribunal

Date Issued: February 19, 2019

File: ST-2018-004347

Type: Strata

Civil Resolution Tribunal

Indexed as: *Fabbi v. The Owners, Strata Plan K 599*, 2019 BCCRT 199

B E T W E E N :

Gwenyth Fabbi

APPLICANT

A N D :

The Owners, Strata Plan K 599

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about the responsibility to repair a leak that caused damage to the applicant's bedroom.
2. The applicant says that a limited common property (LCP) deck above her strata lot leaked, causing damage to her bedroom, in April 2017.

3. The applicant seeks an order requiring the respondent, The Owners, Strata Plan K 599 (strata) to complete the investigation and repair work by a specified date. The applicant also asks that the strata pay for the investigation, repair and costs she incurs living away from her suite during the repair.
4. The strata says it refused to pay the cost of repairs to the applicant's strata lot, that were needed due to the deck leak. It says the investigation and repair has taken time, for a variety of reasons, including an inability to secure a contractor to do the work until June 28, 2018. The strata has "no opinion" regarding the relief claimed by the applicant.
5. The applicant is represented by Christopher Fabbi, the applicant's son. The respondent is represented by a member of strata council.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.

9. 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.
10. Tribunal documents incorrectly show the name of the respondent as The Owners, Strata Plan, KAS 599. Based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan K 599. 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 of the Act to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the style of cause above.

ISSUE

11. The issues in this dispute are:
 - a. Whether the strata is responsible for the repair and maintenance of the LCP deck above SL2?
 - b. If so, was the strata negligent in meeting that repair and maintenance obligation, such that it is responsible for the cost of repairs to SL2, to damage caused by the water leak?
 - c. What is an appropriate remedy?

BACKGROUND AND EVIDENCE

12. The applicant owns strata lot 2 (SL2) which is unit 102 in the respondent strata.
13. On April 17, 2017, the applicant observed water damage in the ceiling of SL2.
14. On May 10, 2017, the applicant emailed the strata reporting the water damage. She wrote that OK Restoration attributed the water ingress to a "common/strata exterior wall on the patio of unit 202."

15. She asked that the strata initiate repair work as soon as possible, to prevent the growth of mould in the ceiling of her unit. She provided contact information for the project manager at OK Restoration.
16. On May 11, 2017, the strata manager wrote back to the applicant, indicating that he had forwarded her email to the strata council and would be in touch once he had a response.
17. The strata manager indicated that the duty to repair the strata lot fell to the applicant and recommended she “mitigate any further damages” by taking “corrective action right away”, if she thought mould was a threat.
18. On September 28, 2017, the applicant’s representative wrote to the strata saying that OK Restorations needed the strata to sign a work authorization to investigate the deck above SL2 for the cause of the leak.
19. In January 2018, someone from OK Restoration examined SL2.
20. On February 26, 2018, the applicant’s representative requested a strata council hearing for March 7, 2018 on the issue of leak testing and repairs to the LCP deck/envelope and the water ingress into SL2.
21. A hearing was held on March 7, 2018. On March 13, 2018, the strata council wrote to the applicant’s representative with its determination that:
 - a. Water testing on the decks above SL2 would be completed.
 - b. Any repair issues identified with the common property and/or decks would be completed, following water testing.
 - c. The applicant would be responsible for the cost of water testing in SL2. As well, the costs of any repair inside SL2 would fall to the applicant, under the strata bylaws.
22. On April 25, 2018, the applicant’s representative wrote to strata council asking about when the work would be scheduled to begin.

23. The strata filed a May 22, 2018 quote from RC Alliance Ltd. for a “deck upgrade” of the deck above SL2, for a total of \$14,850 plus 5 % GST, and “water testing” at an additional \$1,550 plus 5 % GST. There was no evidence filed as to the actual costs incurred for deck repairs.
24. The applicant filed a series of photographs of the ceiling of SL2 from between April 2017 and June 2018. These photographs show that the water damage is taking up a larger surface area of the ceiling and causing more deterioration in the paint and ceiling drywall, as time goes on. I find that the ceiling damage was much worse by June 2018 than in May 2017 when the leak was reported to the strata.
25. On June 6, 2018, the applicant’s representative wrote to strata council again, asking for a timeline for the investigation and repair work.
26. On June 12, 2018, the strata manager wrote to the occupant of Unit 202, asking for access to her suite to complete the common property repairs, and indicating that she had not been coordinating access when strata council requested she do so.
27. The strata relies on this correspondence to excuse its delay in assessing and repairing the deck. I find that the strata could have arranged access in a more timely manner, even if the owner of Unit 202 was not cooperative in providing access. Specifically, the SPA provides the strata right of reasonable access to perform its duties, under section 77. The bylaws require an occupant to allow the strata to enter a strata lot, on 24 hours’ written notice, to repair or maintain common property.
28. On September 26, 2018, OK Restorations issued an invoice to the applicant for \$878.53 for “water damage restoration – emergency” at SL2. A further invoice of \$4,427.91 was issued to the applicant the same day for “Water Damage Restorations – Structural”.

BYLAWS

29. The applicable Bylaws are those in effect at the time that the leak occurred, which were filed with the Land Title Office (LTO) on September 24, 2007.

30. Bylaw 2 says that an owner must repair and maintain an owner's strata lot, except for repair and maintenance that is the strata's responsibility under the bylaws.
31. Bylaw 2 also says an owner with use of LCP must repair and maintain it, except for repair and maintenance that is a strata responsibility under the bylaws.
32. Bylaw 14 says the strata's must repair and maintain common property and LCP, where the duty to repair and maintain is restricted to repair and maintenance that ordinarily occurs less than once a year, except for building structural and exterior work, which is the strata's responsibility no matter how often the repair or maintenance ordinarily occurs.
33. The strata plan shows that the deck above SL2 is LCP. Based on the Bylaws and section 72 of the SPA, I find that the strata is responsible for the leak repair here, which I find is an LCP repair and maintenance obligation typically occurring less than once a year.

POSITION OF THE PARTIES

34. The applicant says the strata has been negligent in its duty to repair the leaking membrane in an LCP patio.
35. The strata says it was not negligent. The strata says the bylaws dictate that repair and maintenance inside a strata lot is the owner's responsibility.
36. The strata says it attended to the investigation and repair in a timely way, given the limitations on contractor availability and issues regarding seasonal weather that delayed water testing. The strata also relies upon the fact that council members are volunteers to excuse some of its delay.

ANALYSIS

37. A strata corporation is not obliged to reimburse an owner for expenses incurred in repairs to their strata lot when they are, as here, the applicant's responsibility under the bylaws, unless the strata has been negligent in repairing and maintaining the

common property (See *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231 and *Keith et al v. The Owners, Strata Plan K 284*, 2018 BCCRT 49).

38. To succeed in an action for negligence, the applicant must show that she was owed a duty of care, that the strata breached the standard of care, and that she sustained damage caused by the strata's breach.
39. I have found that the strata had a duty to repair and maintain LCP deck above SL2. It is uncontested, and I find, that there was damage to SL2 due to a leak from the deck above SL2.
40. The courts have established reasonableness as the standard of care applicable to the strata in these circumstances (see *Weir v. Owners, Strata Plan NW17*, 2010 BCSC 784).
41. There was no evidence before me showing what, if anything, the strata did, prior to May 2018, to repair and maintain the LCP deck above SL2.
42. However, I find the applicant has established that, once the leak in SL2 was reported, the strata,
 - a. took no definitive action for at least 8 months, when it appears to have authorized OK Restorations to do water testing on the deck above SL2,
 - b. failed to repair the deck until, at the earliest, June 2018, 13 months after the applicant reported the leak, and
 - c. failed to repair the deck leak on a timeline that would have limited damage to the unit below.
43. Given that the strata is obliged to repair the deck, I find that a delay of several months to investigate the leak, knowing the leak is causing ongoing damage, falls below a standard of reasonableness. A delay of over a year in effecting a definitive repair, where the damage to the strata lot below is growing worse over time, falls below a standard of reasonableness.

44. I find that the strata was negligent in its obligation to address the leak coming from unit 202's deck. The repairs within SL2 itself could not reasonably be completed without the repairs to the deck happening first. Even accounting for poor winter weather, a volunteer strata council, and the issue of contractor availability, I find the strata did not move quickly enough to address the deck leak.
45. The result was increased damage to the SL2 suite, for which the strata must repay the applicant.
46. Having said that, the fact of a leak from the LCP deck itself does not establish that the strata was negligent in repair and maintenance of the deck up to that point. There is no evidence upon which I can find that the strata was negligent in its repair and maintenance responsibility for the deck, prior to April 2017. In other words, the damage sustained to SL2 up to April 2017, when it was first noticed by the applicant, cannot be attributed to the strata's negligence. As a result, I find the owner is responsible for repairs to this point.
47. Based on the progression in the size of the visible water damage shown in photographs over time, I assess that the strata lot owner is responsible for 30% of the total repair cost within her strata lot, which I estimate to be the cost she would have had to pay if the leak had been addressed immediately. I find the strata responsible to pay the other 70% of the cost to repair damage in SL2 caused by the deck leak, based on the further damage caused by its negligent delay in addressing the repair of the LCP deck.
48. The only evidence of repair costs paid were the two OK Restorations invoices, which total \$5,306.44, which I find reasonable in the circumstances.
49. I find the strata is responsible to pay the applicant for 70% of this cost, being \$3,714.50, within 30 days of this decision.
50. Although it seems that the deck repairs have now been completed, there was no definitive evidence before me on that point. If the deck above SL2 has yet to be

repaired fully, I order that the repair proceed, at the strata's cost, on or before April 30, 2019. I set this timeline to allow for the current winter season.

51. I also order the strata to notify the applicant, in writing, once the deck repairs are complete and no later than May 15, 2019.
52. Since the applicant provided no evidence of out-of-pocket expenses associated with staying outside the strata while the repairs were completed, I dismiss this aspect of her claim.

TRIBUNAL FEES, EXPENSES AND INTEREST

53. 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 therefore order the strata to reimburse the applicant for tribunal fees of \$225.
54. The applicant is also entitled to pre-judgement interest under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, as amended (COIA), from the date of the repair invoices to the date of this decision. I calculate pre-judgement interest to be \$22.56.
55. 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

56. I order that, within 30 days of this decision, the strata pay the applicant \$3,962.06, broken down as
 - a. \$3,714.50,
 - b. \$22.56 in pre-judgement interest, and
 - c. \$225 in tribunal fees.

57. I also order that, if the deck above SL2 has yet to be fully repaired, those repairs be completed, at the strata's cost, no later than April 30, 2019.
58. I order that the strata notify the applicant, in writing, once the deck repairs are complete, no later than May 15, 2019.
59. The applicant is also entitled to post-judgement interest under the COIA, as applicable.
60. 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.
61. 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.

Julie K. Gibson, Tribunal Member