



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Dominelli v. The Owners, Strata Plan LMS 3215*, 2019 BCCRT 203

B E T W E E N :

Leonard Dominelli

APPLICANT

A N D :

The Owners, Strata Plan LMS 3215

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This dispute involves the responsibility for repairs to a strata lot resulting from a water leak, and, alleged lost rental income.

2. The applicant, Leonard Dominelli (owner), owns a strata lot (SL21) in the respondent strata corporation, The Owners, Strata Plan LMS 3215 (strata). The owner is self-represented. The strata is represented by a strata council member.
3. The owner says the strata, prior to their purchase of SL21, acknowledged responsibility for, and completed repairs to, a leak from the deck above SL21. The owner also says the strata failed to repair the leak, which continued and caused damage, after the owner's purchase of SL21.
4. The owner seeks orders that the strata reimburse them \$9,397.50 for the cost of repairing the damage to SL21 and \$7,800.00 for lost rental income.
5. The strata asks the tribunal to dismiss the owner's claims.
6. For the reasons that follow, I dismiss the owner's claims.

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 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.
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 123 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.

ISSUES

11. The issues in this dispute are:
 - a. Did the leak in SL21 come from common property?
 - b. If so, was the strata negligent in its repair of common property?
 - c. Who is responsible for the \$9,397.50 repairs to SL21?
 - d. Is the strata responsible to reimburse the owner \$7,800.00 for lost rental income?

POSITION OF THE PARTIES

12. The owner says the strata is responsible for reimbursing them the cost to complete interior water damage repairs to SL21 because:
 - a. The damages to SL21 were caused by leaks originating from the strata lot's deck immediately above,
 - b. The strata had previous knowledge of the leak and did not disclose any information about the previous leak to the owner,
 - c. The strata hired an unqualified contractor who inaccurately assessed the leak as a condensation problem, and then failed to acknowledge the conclusions of 3 other remedial contractors contacted by the owner, and
 - d. The strata was negligent in completing repairs to SL21, taking over 3 months to address the leak issue.

13. As noted above, the owner seeks orders for reimbursement of \$9,397.50 for the cost of repairing damage to SL21 and \$7,800.00 for lost rental income.
14. The strata denies it was negligent in repairing the leaks. It also denies it is responsible for repairs to SL21 or lost rental income claimed by the owner.

BACKGROUND, EVIDENCE AND ANALYSIS

15. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
16. In a civil proceeding such as this, the applicant owner must prove their claim on a balance of probabilities.
17. The strata was created in April 1998 and consists of 154 strata lots in a 15-storey high rise building located in Vancouver, B.C. The strata contains residential and non-residential strata lots but does not contain separate sections.
18. SL21 is a residential strata lot located on the third floor of the high rise and has no deck. Strata lot 35 (SL35), located on the fourth floor immediately above SL21, has a large deck with a perimeter planter. The strata plan shows the deck is limited common property (LCP) for SL35 and the planter is common property (CP). Based on the strata plan, both the deck and the planter are directly above SL21.

Did the leak in SL21 come from common property?

19. It is undisputed that the strata is responsible for repair and maintenance of CP and LCP.
20. It is also undisputed that at least some of the damage caused in SL21 resulted from leaks from CP. The evidence and submissions described below also show the strata, relying on its contractors, thought some of the damage in SL21 was related to condensation.

21. For the purposes of this dispute, I find it is not necessary for me to determine what portion of SL21 damage may have been caused by leaks from CP and what portion may have been caused by condensation.

Was the strata negligent in its repair of common property?

22. In a June 2017 email, the previous owner of SL21 advised the strata that moisture had re-occurred in the northwest corner of SL21 and requested the leak be repaired. The email states the moisture was determined to be a condensation problem, which the previous owner denied as it was in the same location as a prior leak, which the strata had apparently repaired.

23. The August 15, 2017 strata council minutes state the previous owner of SL21 attended the meeting to “speak to an ongoing water ingress issue into their suite.” The minutes also state that the strata would coordinate a site visit and repairs, including repairing drywall damage as soon as possible.

24. The October 24, 2017 strata council minutes state that a contractor retained by the strata inspected SL21 for damage and then located and repaired planter drains adjacent to SL35 above, which were thought to be the cause of the leak. The minutes also stated that the previous owner was told to repair the interior walls because no further leaks had occurred after 2 days of heavy rains. Copies of the contractor’s invoices confirm the planter work was completed about October 5, 2017.

25. In November 2017, the owner purchased SL21 with possession in 2018.

26. In a January 30, 2018 email, the previous owner advised the strata that SL21 was empty and that the dampness “in the corner of the apartment had returned.” The email states the repair of the planter drain on the deck above did not solve the problem and that repair of the drywall completed by the strata again showed “black stains.” The email further states the strata was to have repaired the previous leak and the previous owner had disclosed the issue to the owner, who was to take possession of SL21 on February 1, 2018.

27. There is no evidence of any leaks or moisture problems reported between the October 24, 2017 strata council meeting and January 30, 2018.
28. The sale of SL21 completed on January 31, 2018 but owner did not move into SL21 claiming potential health conditions may affect their child and that the strata first needed to repair the leak. Based on the owner's submissions and evidence, the previous owner took responsibility for repairing any water damage that the strata would not repair, although the terms of that agreement with the owner are not in evidence.
29. After several email exchanges between the strata council treasurer, strata property manager and owner, the strata arranged for its contractor to inspect SL21 on February 9, 2018. A further inspection was completed on February 21, 2018.
30. On March 6, 2018, the strata wrote to the owner advising that it would investigate any water ingress in the enclosed solarium and living room ceiling and remediate any damage caused from the planter adjacent to SL35 but not any damage resulting from condensation problems of the former occupant. In its submissions, I find the strata offered to repair damage on the interior of SL21 caused from the planter leak, which I discuss below.
31. The owner was not satisfied with the strata's contractor's visual findings and had obtained their own contractors' opinions on interior damage, including moisture readings, and provided the strata with at least 2 contractor's opinions on March 12, 2018. The owner's contractors believed all the moisture issues in SL21 were related to the LCP deck or CP planter next to SL35.
32. In an email dated March 17 to the strata property manager, the owner advised that because they had not heard anything further, they would be starting internal repairs and holding the strata responsible for the cost of the repairs "should the water ingress happen again in the future."
33. Based on email evidence and submissions, I accept the strata had difficulty obtaining quotations for the planter repairs by April 11, 2018. However, by May 17,

2018 the strata had obtained 3 quotations and by June 1, 2018, the planter membrane was replaced by the strata.

34. A final water test on the planter repairs was conducted on June 13, 2018 and there is no further evidence of water ingress into SL21 before me.
35. The courts have held that a strata corporation is required to act reasonably in its maintenance and repair obligations. If a strata corporation's contractors and consultants fail to carry out work effectively, the strata corporation should not be found negligent if it acted reasonably in the circumstances. (See *Kayne v. LMS 2374*, 2013 BCSC 51, *John Campbell Law Corp v. Strata Plan 1350*, 2001 BCSC 1342, and *Wright v. Strata Plan #205*, 1996 CanLii 2460 (BC SC), affirmed 1998 BCCA 5823).
36. In other words, the strata is not an insurer and is not responsible to reimburse the owner for the claimed damages, unless the strata acted negligently, which the owner claims it has.
37. To be successful in an action for negligence, the owner must demonstrate that the strata owed them a duty of care, that the strata breached the standard of care, that the owner sustained damage, and that the damage was caused by the strata's breach. (See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.)
38. The strata acknowledges it has a duty to repair CP which I find is set out in section 72 of the SPA and the strata's bylaw 10. The real issue here is whether the strata has breached its standard of care, which is one of reasonableness, in its repair to the planter, which I find it did not.
39. The evidence shows that the strata arranged for an investigation of SL21 within days of being notified of moisture by the previous owner. The evidence also shows that the strata retained a contractor to repair the planter within 4 months of its initial inspection and that it had difficulty finding a contractor to do the work.
40. While the strata's communications with owner through its property manager could have been handled better, and while I appreciate the owner was anxious to move

into SL21 and did not feel that the strata was moving as fast as it could, based on the overall evidence, I find the strata's actions to repair the leaking planter were reasonable.

41. As a result, I find the strata did not breach its standard of care when it undertook planter repairs to address moisture problems in SL21.
42. I do not agree with the owner that previous moisture problems in SL21 are related to this dispute because there were no reported signs of moisture in SL21 between October 2017, when the planter drains were repaired, and January 30, 2018 when the previous owner re-discovered moisture issues. There is no evidence before me to suggest the planter drain repairs did not resolve the earlier moisture issues. It might be that the moisture problems continued after the planter drains were repaired and were not reported to the strata because SL21 was rented out. However, that does not mean the strata was negligent.
43. I also do not agree that the strata withheld information about the previous leak from the owner, because the recurring leak issue was disclosed in the previous owner's January 2018 email to the owner. It was not up to the strata to provide such information to the owner at the time of the sale, but in any event, I find the strata provided the requested information on the previous planter drain issue to the owner by email on April 11, 2018.
44. Finally, the owner asserts that the strata's contractor that assessed the moisture in SL21 in February 2018 was unqualified but did not provide any evidence to support their assertion. While moisture readings might be helpful in determining the presence of moisture, they do not necessarily assist with pinpointing the cause of the moisture. The applicant has not proved that a contractor is unqualified just because they did not take moisture readings when investigating a moisture problem.
45. For these reasons, I find the strata was not negligent in repairing the planter adjacent to SL35, which it believes was the source of water ingress into SL21.

Who is responsible for the \$9,397.50 repairs to SL21?

46. Bylaw 3.1 requires an owner to repair and maintain their strata lot except for repair and maintenance that is the responsibility of the strata under the bylaws.
47. Bylaw 10.1 requires the strata to maintain CP, LCP if the repair or maintenance usually occurs less often than once per year, and certain areas of a strata lot that do not apply here.
48. Therefore, I find the owner is responsible for repair and maintenance of their strata lot and decline to order the strata to reimburse the owner for their claimed expenses.
49. I would encourage the parties to discuss whether a partial reimbursement of the owner's expenses, as offered by the strata, can be arranged. However, as I have noted, given my conclusion the strata was not negligent and given the strata's bylaws, I find the strata is not responsible for repairs to the owner's strata lot.

Is the strata responsible to reimburse the owner \$7,800.00 for lost rental income?

50. The owner asserts they could rent out SL21 for \$2,600.00 per month and claims \$7,800.00 for 3 months lost rental income but has not provided any evidence to prove their claim.
51. The owner also claims SL21 was uninhabitable from February 1 to June 1, 2018 but has not provided any evidence to support their claim. I also note for at least part of this time the owner was undertaking their own repairs to SL21.
52. Most significantly, given my conclusion above that the strata was not negligent, I find there would be no basis to order payment of lost rental income, even if the losses were substantiated.
53. Therefore, I decline to order the strata reimburse the owner for lost rental income.

TRIBUNAL FEES AND EXPENSES

54. The owner claims \$225 in tribunal fees but no additional dispute-related expenses
55. 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. Given the owner was unsuccessful, I dismiss their claim for fees. As the strata did not claim tribunal fees or expenses, I make no order in this regard.
56. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner.

ORDER

57. I order that the owner's claims, and this dispute, are dismissed.

J. Garth Cambrey, Vice Chair