



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 2742 v. Chen*, 2019 BCCRT 276

B E T W E E N :

The Owners, Strata Plan NW 2742

APPLICANT

A N D :

Wen Chen

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This dispute involves responsibility for payment of a restoration invoice resulting from a water leak.

2. The applicant, The Owners, Strata Plan NW 2742 (strata), is a strata corporation existing under the *Strata Property Act* (SPA). The respondent, Wen Chen (owner) is an owner in the strata. The strata is represented by a member of its strata council. The owner is self-represented.
3. The strata alleges that a leak from the toilet in the owner's strata lot caused damage to the owner's strata lot and the strata lot below it. The strata seeks reimbursement of \$1,943.65 from the owner to pay for the restoration invoice plus reimbursement of its legal fees relating to this dispute.
4. The owner admits causing the damage but does not agree to the strata paying the invoice on their behalf and disagrees with the amount of the invoice.
5. For the reasons that follow, I find the owner must pay the strata \$781.20 for a portion of the cost of repairs.

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 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

10. The issues in this dispute are:
 - a. Is the strata entitled to charge the owner's strata lot the amount of the restoration invoice?
 - b. If not, should the owner pay a portion of the restoration invoice?

BACKGROUND, EVIDENCE AND ANALYSIS

11. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
12. In a civil proceeding such as this, the applicant strata must prove its claim on a balance of probabilities.
13. It is undisputed that a leak occurred in the owner's strata lot on April 18, 2016 at about 10 pm. The leak affected the owner's strata lot and the strata lot below. It is also undisputed that a float or valve associated with the owner's toilet malfunctioned causing the leak.
14. On May 13, 2016, the strata's property manager wrote to the owner enclosing a copy of the May 2, 2016 restoration company invoice totalling \$1,943.65. The letter stated that the owner was responsible to pay the invoice as it involved a "component" within the owner's strata lot and that the strata had paid the invoice on behalf of the owner. The strata requested the owner reimburse it the invoice amount. There was no reference to the strata's bylaws or the SPA in the letter.

15. The owner says he attended the property manager's office after receiving the May 13, 2016 letter to explain that they disagreed with paying the invoice. The owner says the property manager asked him to write a letter of explanation, which the owner did on June 28, 2016. The letter stated the restoration invoice was paid without the owner's consent and provided details on why the owner thought the charges were high. The owner's letter concluded by stating the owner was prepared to pay \$781.20 based on his detailed assessment of the services provided, the time restoration staff were on site, and the time the drying equipment was operating.
16. In an email to the property manager dated July 14, 2016, the restoration company responded to the owner's June 28, 2016 letter stating that the invoice charges were calculated correctly and were less than "industry standards".
17. In July 2016, further correspondence transpired between the owner and restoration company through the property manager about the invoice charges and amount.
18. On September 28, 2016, December 21, 2017, and April 9, 2018, the strata wrote to the owner demanding they pay the invoice amount that had been charged to the owner's strata lot account. The owner did not respond to the demands. The letters demanded payment within a specified deadline but otherwise did not reference the strata's bylaws or the SPA.

Is the strata entitled to charge the owner's strata lot the amount of the restoration invoice?

19. In the Dispute Notice issued May 11, 2018, the strata says it hired a restoration company to "conduct emergency repairs and remediation repairs" to the 2 affected strata lots.
20. The strata says the owner is liable for the invoice under the SPA and bylaws. It says that the owner breached bylaw 4.1 and that section 133 of the SPA permits the strata to recover the costs of remedying a bylaw contravention.

21. It is undisputed that bylaw 4.1 reads as follows:

A resident or visitor must not use a strata lot, the common property or common assets in a way that: (a) causes a nuisance or hazard to another person, (c) unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot...

22. Section 133 of the SPA permits the strata to do what is reasonably necessary to remedy a bylaw contravention and that the strata may require reasonable costs of remedying a contravention be paid by the person who may be fined under section 130, which in this case I infer is the owner.

23. The owner did not address the alleged bylaw violation in either their Dispute Response or their submissions.

24. However, I find I do not need to assess whether the owner breached bylaw 4.1 or any other bylaw, given section 135 of the SPA.

25. Section 135(1) of the SPA states that a strata corporation may not require a person to pay the costs of remedying a bylaw contravention unless it has received a complaint, given the owner or tenant written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if requested. The requirements of section 135 must be strictly followed before a fine can be imposed as set out in *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449. Based on a plain reading of section 135(1), I find the reasoning in *Terry* applies equally to the procedures a strata corporation must follow before requiring an owner to pay the costs of remedying a bylaw contravention as in the case before me.

26. Here, there is no evidence the strata received a complaint about the owner's alleged contravention of bylaw 4.1 or any other bylaw. What has happened is that the strata has simply charged back the restoration invoice to the owner's strata lot account on the basis it was the owner's responsibility stating no other reason. The correspondence between the strata and owner does not set out any bylaw contraventions or violations of the SPA on the part of the owner. I find the strata is

not entitled to charge the owner's strata lot the amount of the restoration invoice as I find it to be in contravention of section 135 of the SPA.

27. Accordingly, I find the strata was not entitled to charge the \$1,943.65 restoration invoice to the owner's strata lot account.

Should the owner pay a portion of the restoration invoice?

28. Given the owner accepted responsibility for the water damage and agreed to pay a portion of the restoration invoice totaling \$781.20, I order the owner pay the strata corporation that amount. I order the strata reduce the amount of the restoration invoice charge to \$781.20 and remove the charge when the owner make payment.

TRIBUNAL FEES, EXPENSES AND INTEREST

29. 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 respondent owner was partially successful but did not pay tribunal fees or claim dispute related-expenses. I also find the limited success of the owner outweighs any success of the strata and I make no order in this regard.
30. The strata also requested reimbursement of its legal fees. Tribunal rule 132 permits me to order payment of legal fees only in extraordinary cases, which I find do not exist here. Therefore, I decline to order the owner repay the strata's legal fees.
31. The *Court Order Interest Act* (COIA) applies to the tribunal. Given my order that the owner pay a portion of the restoration invoice, I find the strata is owed pre-judgement interest on \$781.20 from June 28, 2016, the date the owner agreed to pay, until the date of this decision. I calculate pre-judgement interest to be \$21.29.
32. 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, unless the tribunal orders otherwise.

DECISION AND ORDER

33. I order that, within 30 days of the date of this decision, the respondent pay to the applicant \$870.26, broken down as follows:
- a. \$781.20 for damages for a portion of the restoration invoice, and
 - b. \$21.29 for pre-judgement interest under the COIA.
34. The strata is entitled to post-judgement interest under the COIA, as applicable.
35. The remaining strata claims are dismissed.
36. 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.
37. 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

