



# Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Rutkowski v. The Owners, Strata Plan BCS 3859*, 2019 BCCRT 357

**B E T W E E N :**

Tomasz Rutkowski

**APPLICANT**

**A N D :**

The Owners, Strata Plan BCS 3859

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## **INTRODUCTION**

1. The applicant, Tomasz Rutkowski (owner), owns a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS 3859 (strata). The owner is self-represented. The strata is represented by a member of its strata council.

2. The owner says the strata is not properly maintaining common heating and cooling equipment located in their strata lot. The owner seeks orders that the strata reimburse them for damage caused to their strata lot from condensation issues created by the common equipment.
3. The strata denies the owner's allegations and asks the tribunal to dismiss their claims.
4. For the reasons that follow, I dismiss the owner's claims.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
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 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, BCS 3859 Kayak, whereas, based on section 2 of the *Strata Property Act* (SPA), the correct legal name of the strata is The Owners, Strata Plan BCS 3859. 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.
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. During the tribunal decision plan process, where the parties make submissions and exchange evidence, the strata reversed a \$158 charge against the owner's strata lot and the owner withdrew their claim about unauthorized access to their strata lot. As a result, that issue is not before me.
12. The issues in this dispute are:
  - a. Has the strata failed to properly repair and maintain the common heating and cooling equipment located in the owner's strata lot?
  - b. If so, should the strata reimburse the owner for damages to their strata lot?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

13. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
14. In a civil proceeding such as this, the applicant owner must prove their claims on a balance of probabilities.

15. The strata was created in June 2010 and consists of 185 residential apartment-style strata lots in a single 11-storey air-space parcel building. The strata is located in Vancouver, B.C. and exists under the SPA.
16. The strata's relevant bylaws are those filed at the Land Title Office on July 11, 2016, when the strata completely amended its bylaws except for bylaws that are not relevant to this dispute.
17. At issue is the strata's heating and cooling system, part of which is in a ceiling space in the owner's strata lot. The system is best described in a November 3, 2018 written statement submitted by a strata council member familiar with the system since 2012, who is also a retired electrical engineer:

The heating and cooling system in the [strata] is not a traditional system. It consists of a heat source supplied by the Neighbourhood Energy Utility and a cooling source supplied by in building chillers. The heating and cooling water is circulated to each of the condo units using pumps through a separate system of risers. For ease of reference I will refer to this as the Primary System. The Primary System delivers the hot or cold water using a complicated system of valves to an energy transfer controller in each suite (ETC). The Primary System is a closed loop system and the hot or cold water in the risers circulate in their own loop. The Primary System was designed so that hot or cold water should never cross connect in order to keep operating efficiently.

Once the hot or cold water enters the ETC it is circulated via a heat exchanger into capillary mats (cap mats) located in the ceilings of the unit to provide radiant heat or cooling. I will refer to this as the Secondary System. The secondary side of the ETC is comprised of a circulating pump, an expansion tank and zone valves which are controlled by room thermostats.

The building mechanical equipment is controlled by a system of computers which monitor the outside dew point temperature and adjusts the temperature of the cold water supplied in an attempt to eliminate condensation.

18. The applicant does not dispute the system's operation as described, and I accept the strata council member's statement is accurate.
19. The parties agree that in 2016, the strata approved a \$700,000 special levy to replace the 6 port valves and expansion tanks in each strata lot to correct an ongoing problem affecting most strata lots since occupancy resulting in a lack of heat in the winter months and a lack of cooling in the summer months.

***Has the strata failed to properly repair and maintain the common heating and cooling equipment in the owner's strata lot?***

20. The strata says that since 2016, when the valves and expansion tanks were replaced in all strata lots, the heating and cooling system has been working as designed.
21. The strata admits that in periods of extremely warm weather, some condensation will accumulate on the circulation pipes. It says the amount of condensation is controlled by the dew point controls, insulation of the circulation pipes and 6 port valve, and using insulated ceiling tiles in each strata lot to separate the equipment in the ceiling space from the humid air in the strata lot. Based on the photographs provided by the owner, it is unclear if the circulation pipes and 6 port valve are insulated in the owner's strata lot, but I accept that is generally the case in other strata lots.
22. As a result of condensation complaints received from the owner in the summer of 2017, the strata says, in consultation with its contractors, it adjusted the dew point controls, but those efforts seemed to increase condensation problems, so the controls were reset to their original levels. Email evidence shows the strata attended the owner's strata lot in August 2017 as a result of condensation complaints. A signed statement from the strata's contractor states that in August 2017, the owner had connected a dryer vent hose to an exhaust fan in their strata lot and this would have contributed to higher humidity in the owner's strata lots given the strata lots were designed for ventless dryers.

23. The owner says they never used the clothes dryer and immediately disconnected the hose from the exhaust vent in August 2017. In their submissions, the owner also suggests the photograph provided by the strata's contractor may not have been taken in their strata lot. On a balance of probabilities, I find the owner disconnected the dryer hose from the vent sometime after the August 2017 inspection. I accept the dryer was used because the strata's contractor found lint in the exhaust fan.
24. The owner again complained of condensation issues in their strata lot in August 2018, 1 year later, and the strata's contractor again investigated the complaints. The contractor took pressure readings of the water in the capillary mats and found the pressure was normal, stating that if the mats were leaking it would expect to find the pressure to be lower than normal.
25. Based on the overall evidence, I find that the owner's damage was caused from condensation on the circulation pipes of the part of strata's common heating and cooling system located in the owner's strata lot. I also accept the expert opinion of the strata's contractor given no contrary expert opinions were provided by the owner.
26. The strata's contractor commented that the dryer hose was no longer connected to the exhaust vent when it attended the owner's strata lot in August 2018. The contractor's opinion is that the damage was caused by condensation resulting from the owner's dryer being connected to the exhaust vent as it observed in 2017, 1 year earlier. It is unclear when the dryer vent was disconnected and how long it was used when connected, if at all. The contractor has not explained how condensation from around August 2017 could still be occurring about 1 year after the dryer hose was removed. Given this, I find I must place little weight on the contractor's opinion in this respect.
27. I accept the strata's argument that insulated ceiling tiles separate humid strata lot air from the cool circulating pipes and reduce the amount of condensation that may form on the pipes. The strata's contractor states that the insulated ceiling tiles were replaced with uninsulated material, which could have contributed to the

condensation leaking through the tiles. I infer from the contractor's statement that the use of insulated tiles is also intended to collect or absorb any condensation.

28. The parties agree the ceiling tiles were removed by the strata's contractor in 2016, when the expansion tanks and valves were replaced. They disagree that the owner requested the strata's contractor to replace the insulated ceiling tiles, however the strata says its contractor is willing to do so at no cost to the owner. The replacement of the ceiling tiles forms part of the owner's requested remedy and I would encourage the owner to accept the strata's contractor's offer to replace the ceiling tiles.
29. The contractor also observed a cat in the owner's strata lot but no litterbox. Just because the contractor did not observe a litterbox does not mean one was not present. It noted a strong smell of ammonia was present stating that ammonia is known to cause water vapour. The contractor did not explain how the presence of a cat and possible lack of a litterbox is linked to the smell of ammonia or the amount of increased humidity that would result from the presence of these things in the owner's strata lot. In any event, I find nothing turns on the presence of a cat or litterbox because, as discussed below, I find the strata acted reasonably in relying on their contractor's opinion.
30. 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).
31. 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 strata denies.

32. To succeed in a claim for negligence, the applicant must prove each of the following on a balance of probabilities:
- a. The strata owed the owner a duty of care;
  - b. The strata breached the standard of care;
  - c. The owner sustained damage; and
  - d. The damage was caused, in fact and in law, by the strata's breach of the standard of care.

(See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.)

33. The strata acknowledges that it owed the owner a duty of care which I find is set out in section 72 of the SPA and bylaw 12. The issue is whether the strata breached its standard of care, which is one of reasonableness as I have stated, when it repaired the Secondary System of the strata's heating and cooling system located in the owner's strata lot.
34. I find the steps taken by the strata in 2017 to promptly investigate the owner's strata lot for condensation issues and adjust the dew point controls in an attempt to stop condensation from occurring were reasonable. I find it was also reasonable for the strata to rely on its contractor's opinion that hooking a dryer directly to an exhaust vent might increase the condensation in the owner's strata lot in 2017.
35. Unfortunately, the condensation issue does not occur regularly and only occurs on warm summer days. Therefore, it was not until August 2018 when the owner was again faced with condensation issues causing wet ceilings in various rooms of their strata lot. I find the strata again took reasonable steps to promptly investigate the owner's concerns by dispatching its contractor who tested the pressure in the capillary mats to determine if there was a leak. It was April 30, 2018 when the Dispute Notice was issued for this dispute and October 17, 2018 when facilitation or case management ended, and the tribunal decision plan process started.



36. Based on the overall evidence, I find the strata did not breach its standard of care when it investigated the owner's condensation concerns in 2018. Even though I put little weight on strata's contractor's opinion that a clothes dryer vent connected to an exhaust vent in the owner's strata lot in 2017 was the cause of the 2018 condensation problem, I find it was reasonable for the strata to rely on its contractor's investigation and report that the cooling system was not leaking. Therefore, I do not find the strata was negligent in its repair of the heating and cooling system in the owner's strata lot.
37. For these reasons, I dismiss the owners' claims.
38. However, I find it important that I comment further as it is unclear what future steps the strata might take to address ongoing condensation issues. The strata has an ongoing duty to repair and maintain common property and common assets, which includes all parts of the heating and cooling system in the building. Nothing in this decision relieves the strata from that duty. I accept that the strata inherited a non-functional heating and cooling system and has spent significant time and money to correct its operation. However, for the strata to simply accept that a properly operating cooling system creates significant levels of condensation inside certain strata lots is not a solution to the issue.
39. The owner claims, and I accept, that they have purchased and use dehumidifiers in their strata lot for family health reasons. Unless the owner is solely responsible for creating the condensation problems in their strata lot, which I am unable to determine, the strata should pursue repairing the cooling system so that unacceptable levels of condensation is not a regular occurrence every year. Put another way, it may not be reasonable for the strata to expect the owner to be faced with condensation leaks that they are not responsible for or do not contribute to, without doing further investigation. For example, if the circulation pipes and 6 port valve located in the owner's strata lot are not insulated as the strata claims, that would be the strata's responsibility.

***Should the strata reimburse the owner for damages to their strata lot?***

40. As a result of my conclusion above, I do not find the strata is responsible for damages to the owner's strata lot. I dismiss the owner's claim for reimbursement damages.

**TRIBUNAL FEES AND EXPENSES**

41. 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. Here, the strata was the successful party but paid no tribunal fees and claimed no dispute-related expenses. Accordingly, I make no order in this regard.

42. 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.

**ORDER**

43. I order the owners' claims and this dispute dismissed

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J. Garth Cambrey, Vice Chair