



Civil Resolution Tribunal

Date Issued: April 16, 2019

File: ST-2018-003308

Type: Strata

Civil Resolution Tribunal

Indexed as: *Jiang v. The Owners, Strata Plan LMS 2970*, 2019 BCCRT 468

B E T W E E N :

Yu Quan Jiang

APPLICANT

A N D :

The Owners, Strata Plan LMS 2970

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Yu Quan Jiang (owner) is a co-owner of strata lot 10 (SL10) in the respondent strata corporation, The Owners, Strata Plan LMS 2970 (strata).

2. The owner says the strata failed to repair or maintain common property, which caused water damage within SL10. The owner seeks reimbursement of \$4,284 for strata lot repairs, \$6,900 in lost rental income, and \$1,079 for expert reports.
3. The strata denies the owner's claims. The strata says it acted reasonably in the circumstances, and that the hole discovered in the flashing of the common property wall in Spring 2018 was fixed immediately. The strata says even if there was water ingress from this hole, it could not have caused the volume of moisture in SL10. The strata says the moisture problem was more likely caused by ineffective ventilation within SL10, due to the actions of the owner's tenants.
4. The owner is self-represented. The strata is represented by a strata council member.

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 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.

ISSUES

9. The issues in this dispute are:
 - a. Was the mold damage in SL10 caused by a failure of the strata to maintain and repair common property?
 - b. If so, what remedies are appropriate?

BACKGROUND FACTS

10. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding such as this, the applicant owner must prove their claims on a balance of probabilities.
11. The strata was created in 1997, under the former *Condominium Act*, a predecessor to the SPA. The strata consists of 85 residential strata lots. SL10 is a 2-storey, townhouse-style strata lot, on the ground floor and second floor of a building.
12. The evidence before me confirms that by August 2017, there was extensive mold in SL10. An August 8, 2017 report from Emtec Environmental, Health & Safety Consulting Inc. (Emtec) says mold contamination was observed throughout the premises, with mold visible on the ceilings, walls, and window frames. Emtec reported that there was mold on both floors of SL10, but it appeared more severe on the second floor. Emtec said the mold contamination had led to “extensive building damage”.
13. Building inspector James Koong, of the firm Vancouver Professional Home Inspection, inspected SL 10 on October 7, 2017. Mr. Koong reported the following:

- a. Mold-like substances on the ceilings in several areas, including the master bedroom and its closet, the upstairs hallway, and all upstairs bedrooms.
 - b. Water stains on the master bedroom ceiling.
 - c. Moisture damage and active moisture on the floor of the master bedroom closet.
 - d. Black mold-like substances present on walls of master bedroom closet and master bathroom.
 - e. The infrared camera showed cold areas at the ceilings and wall joints in the upstairs bedrooms, where the water stains and black mildew substances were present.
 - f. Black mildew-like substance on several windows, and moisture damage on several window sills.
 - g. Moss and black mildew-like substances on exterior stucco walls.
 - h. The exterior flashing joints were aging.
 - i. SL10 showed signs of water intrusion or a failure of a ventilation system above the ceiling.
 - j. Service records for bathroom vent ducts and dryer vent ducts should be reviewed to see if they had been serviced regularly, and these vent ducts should be further evaluated by professionals “for proper function and conditions.”
 - k. “Reviewing the Engineer report and depreciation report is recommended.”
14. The owner hired E Contracting to repair the mold damage in November 2017. This included cleaning and mold removal, replacing laminate flooring and baseboards, and painting. The bill for this work was \$4,284, including taxes.
15. Mr. Koong inspected SL10 again in January 21, 2018, after the repair work was performed. He reported that there was moisture detected in several places,

including in the front bedroom, the left bedroom, and “several places”. Mr. Koong did not provide a detailed analysis, but wrote, “Moisture infiltration (undetermined leakage) Contact the Strata for further investigation and repairs” (reproduced as written).

16. A lawyer representing the owner wrote to the strata on March 12, 2018. He wrote that the owner had advised the strata on numerous occasions that there was an active leak and water ingress issue in SL10, caused by the strata’s failure to repair and maintain the common property building exterior. The lawyer demanded payment of \$12,263 (the total amount claimed in this dispute) for resulting damages.

FINDINGS & ANALYSIS

17. I find the owner has not proved that the strata failed to maintain and repair common property, or that the mold damage in SL10 was caused by such a failure, such as an unrepaired exterior leak.
18. Section 72(1) of the SPA says that the strata must repair and maintain all common property and common assets. In general, a strata lot owner is responsible for all repairs within the strata lot. Courts have said that the strata is not an insurer, and the strata is not responsible for repairs to the interior of a strata lot unless it has been negligent: *Vasilica v. The Owners, Strata Plan NW 17*, 2018 BCCRT 216; *Di Lollo v. The Owners, Strata Plan BCS 1470*, 2018 BCCRT 24.
19. I find the owner has not proven that the strata was negligent. There is no report before me from a contractor, building inspector, or other expert that indicates there was a major, unrepaired flaw in the building, including the exterior.
20. The strata’s contractor, JL, identified a small hole in the flashing above the second floor bedroom ceiling around February 2018. JL fixed the hole as soon as he found it. JL did not indicate that the extensive moisture and mold problem in SL10 was due to this hole, and no other contractor or building inspector mentioned it. The photos show that this hole was less than 1 centimeter in diameter. I agree with the

strata that this small hole could not account for the large amount of moisture in SL10, including moisture on the walls one floor below. Also, other photos show that there was a very large amount of condensation on one of the SL10 windows, unrelated to the small flashing hole.

21. I place particular significance on the fact that there is no expert report before me confirming that the strata had any maintenance or repair problem, or that the moisture in SL10 was due to exterior leaking. The Emtec report described moisture and mold, but did not contain any opinion on the source. Mr. Koong's 2 reports also described moisture and what appeared to be mold, but identified no specific source. Mr. Koong said there were "signs of a leak", but did not confirm an actual leak, or indicate where it came from. Mr. Koong also suggested that moisture could have been coming from dryer or bathroom vents. He recommended checking those vents, but provided no conclusive opinion confirming the moisture source. He also noted that the exterior flashing joints were aging, but he did not identify any leak, or recommend maintenance or repair.
22. Mr. Koong's second report also identified no specific source for the moisture. While he suggested that the owner contact the strata for further investigation and repairs, he did not say what should be investigated, or what repairs were needed.
23. Thus, there is no conclusive evidence before me that the moisture problems in SL10 are due to infiltration from outside, as opposed to condensation and lack of ventilation, as proposed by the strata. I note that the owner bears the burden of proving his claims, and I find he has not proven that the moisture damage in SL10 are due to a problem with the common property, such as the building envelope.
24. I also find the owner has not established that the strata failed to meet its repair and maintenance obligations. The strata is not an insurer. As noted in *Rawle v. The Owners, Strata Plan NWS 3423*, 2017 BCCRT 15, courts have held that a strata is not held to a standard of perfection. Rather, it is required to act reasonably in its maintenance and repair obligations. I find the strata has acted reasonably in this case. After learning of the owner's moisture problems, the strata sent 2 different

contractors to assess the situation. The first, Mr. Gong, said the moisture was due to condensation. The second, Mr. Wu, said he could not find a leak source, and suggested removing the mold spots and painting with mold-resistant paint. The strata wrote to the owner on October 2, 2017, reporting these findings, and stating as follows:

The strata council is willing to and will perform their fiduciary duty to repair and maintain the common property and or common asset, however, as of now there is no evidence before the strata council to show that they must undertake the repair...

...If during your remediation works, you find any issue involving the common areas which is the strata's responsibility, please contact us immediately to arrange for inspection and to arrange for repair solution.

25. I find that this response by the strata was reasonably in the circumstances, as its contractors had not found a leak, and the owner had not provided contrary evidence, such as an inspection report identifying a leak. I note again that the owner never provided any expert report linking the extensive mold and moisture throughout SL10 to the small flashing hole repaired in February 2018.
26. For these reasons, I conclude that the owner has not met the burden of proving that the strata's failure to repair and maintain common property caused damage within SL10. I therefore dismiss his claims, and this dispute.
27. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The owner was unsuccessful and so I dismiss his claim for reimbursement of tribunal fees. The strata did not pay any fees and there were no dispute-related expenses claimed by either party.
28. 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

29. I dismiss the owner's claims, and this dispute.

Kate Campbell, Tribunal Member