



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 2847 v. Charleston*, 2019 BCCRT 555

B E T W E E N :

The Owners, Strata Plan NW 2847

APPLICANT

A N D :

Alan Charleston

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicant, The Owners, Strata Plan NW 2847 (strata), is a strata corporation existing under the *Strata Property Act* (SPA). The respondent, Alan Charleston (owner), own a strata lot in the strata (303). The strata is represented by a member of its strata council. The owner is self-represented.

2. The strata alleges that the owner was negligent in causing water damage to 303, other strata lots in the strata, and common property when his bathroom sink overflowed. The strata seeks an order that the owner reimburse the strata \$5,000 for expenses paid by the strata.
3. The owner says they are not responsible for the expense because the blockage in the pipe was the strata's responsibility and had not been properly maintained. The owner asks the tribunal to dismiss the strata's claims.
4. For the reasons that follow, I dismiss the strata'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 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

9. The issues in this dispute are:
 - a. Was the owner negligent in causing the water damage?
 - b. Is the strata entitled to reimbursement of \$5,000?

BACKGROUND, EVIDENCE AND ANALYSIS

10. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
11. In a civil proceeding such as this, the applicant strata must prove its claims on a balance of probabilities.
12. The strata was created in 1988 and consists of 67 residential strata lots in two 3-storey buildings located in Surrey, B.C.
13. On December 13, 2001, the strata filed a complete new set of bylaws at the Land Title Office (LTO) replacing all previous bylaws and amendments. Several bylaw amendments have since been filed at the LTO. In particular, on January 7, 2004 the strata filed a new insurance deductible bylaw (bylaw 30) and on November 28, 2013, the strata filed amended bylaw 30.
14. The relevant bylaws to this dispute are:

Bylaw 2(1) - An owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the strata's responsibility.

Bylaw 8 – The strata must repair and maintain all of the following:

- b. common property that has not been designated as limited common property,
- d. a strata lot to the extent that the repair relates to the structure of the building.

Bylaw 30(2), (3) and (4), which I discuss in detail below.

15. The parties agree the bathroom sink in 303 overflowed on August 27, 2017 causing water damage to various parts of the building. The owner admits to turning on the faucet, getting distracted, and falling asleep.

Was the owner negligent in causing the water damage?

16. Under section 72 of the *Strata Property Act* (SPA) and bylaw 8, the strata is responsible for repairing and maintaining common property. Under bylaw 8, the strata's only responsibility for 303 repairs are matters relating the building's structure, which do not apply here.
17. Much of the parties' arguments were about the location of the pipe blockage. They disagree on whether a pipe blockage cleared by the strata's plumber occurred in a section of pipe that was common property or a section of pipe that was part of 303. They argue that the location of the blocked pipe determines the parties' responsibility and that if the blockage occurred in a common pipe, it is the strata's responsibility and if the blockage occurred in the pipe within 303, it is the owner's responsibility.
18. However, there is no evidence before me to suggest the owner was aware of a blocked pipe or ought to have been aware of it, and I find he was not. I also do not agree that the location of the pipe blockage, or that the a partially blocked pipe might be a secondary cause of the damage, is a determining factor in the strata's claim for negligence. As I discuss below, I have found the owner was negligent because they breached the standard of care in leaving the bathroom sink faucet running unattended and the that this was the cause of the damage.
19. As the Supreme Court of Canada found in *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, to succeed in a claim for negligence, the strata must prove each of the following on a balance of probabilities:
 - a. The owner owed the applicant a duty of care,

- b. The owner breached the standard of care,
 - c. The strata sustained damage, and
 - d. the damage was caused by the respondent's breach of the standard of care.
20. I find that the owner owed a duty of care to the strata to repair and maintain their strata lot under bylaw 2(1) and that duty includes reasonable repair and maintenance of their strata lot so as not to allow water damage. I find that the standard of care is one of reasonableness. It is undisputed that the strata sustained damage to portions of its common property as shown on the repair invoices provided in evidence. Damage sustained to other strata lots is not the strata's responsibility.
21. The issue here is whether the owner breached their standard of care when leaving the bathroom faucet running for an extended period of time unattended, which I find they did.
22. The owner says the damage was not caused by his negligence. I disagree.
23. I find it is reasonable to conclude that the owner knew or ought to have known that leaving the faucet running unattended for an extended period of time with the sink plug in the drain could cause the sink to overflow. Therefore, I find the owner breached the standard of reasonableness.
24. The test for determining if the owner caused the damage is the "but for" test. The strata must prove that it is more likely than not that the damage would not have occurred "but for" the owner's negligent act or inaction (*Clements v. Clements*, 2012 SCC 32 at paragraph 8).
25. It stands to reason that if the respondent had immediately addressed the issue, the damage to 303, the common property and other strata lots would have been reduced or avoided. I find it is more likely than not that the strata would not have suffered damage but for the owner's delay in addressing the overflowing sink, by falling asleep.

26. For these reasons, I find the owner was negligent in causing the water damage.

Is the strata entitled to reimbursement of \$5,000?

27. The remaining questions are:

- a. whether the strata's bylaws give the strata sufficient authority to charge the owner for the repairs. (See *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512 at paragraphs 40 and 41), and
- b. if so, whether the strata followed the SPA procedures before requiring the owner to pay the cost of the repairs.

28. The strata's September 29, 2017 letter to the owner requests reimbursement for 2 invoices totaling \$5,114.20. The letter did not state the owner was negligent and did not identify any bylaw breach. Even so, the owner disputed the strata's finding and said they were not responsible.

29. Following a review of the owner's challenge, the strata wrote to the owner on December 15, 2017 stating they found the owner to be negligent and requested the owner reimburse the strata "as per Insurance Bylaw 30" and to forward "the deductible portion" of \$5,000.00 to the strata. In writing the December 15, 2017 letter, I find the strata withdrew its request for the full reimbursement of the repair costs and substituted a request for the insurance deductible.

30. For the following reasons, I find the strata is not entitled to reimbursement of the \$5,000.00 claimed.

31. The water damage incident was not reported to the strata's insurer. In supplemental submissions, the strata says it decided not to make an insurance claim because the total cost of the repairs, \$5,114.20, was only slightly more than the \$5,000.00 insurance deductible and it did not want to negatively impact the strata's insurance by filing a claim. It says it limited its claim to \$5,000.00 because that would have been the maximum it could claim against the owner under bylaw 30(2).

32. The relevant parts of bylaw 30 referenced in the strata's December 15, 2017 letter include subsections 2 and 3 as follows (my bold emphasis added):

(2) An owner shall [indemnify] and save harmless the Strata Corporation from any expenses of any maintenance or repair of a strata lot or contents thereof or of common property or contents thereof caused by or resulting from acts, omissions of acts, negligence or carelessness, by the owner or resident or their guests, employees, contractors, agents or volunteers, **but only to the extent that such expense is not met by the proceeds received from any applicable insurance policy.**

(3) For the purposes of this Bylaw, **any insurance deductibles paid or payable** by the application of the Strata Corporation's policy for damage done... shall be considered as an expense chargeable to the owner and shall be added to and become part of the assessment of that owner....

33. The portions of bylaw 30 that deal with recovery of an insurance deductible are subsection 2 and 3 set out above. Both require the owner to be negligent, which I have found the owner to be. However, based on a plain reading of the bylaw, in order to recover an insurance deductible, I find the strata must have first made an insurance claim under bylaw 30(2) to establish the amount of expenses that were "not met by the proceeds received" from the policy.

34. I find the use of the phrase "...any insurance deductibles paid or payable..." under bylaw 30(3) simply means that the strata may charge the owner the amount of an insurance deductible once that amount has been established by the claim but not necessarily paid. In other words, I do not find that bylaw 30 permits the strata to charge the owner for an amount equal to the insurance deductible, if an insurance claim has not been made. Given that is precisely what the strata admits to doing, the strata's claim for reimbursement must fail. Accordingly, I dismiss the strata's request for reimbursement of a \$5,000.00 insurance deductible.

TRIBUNAL FEES AND EXPENSES

35. 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 owner was the successful party but they did not claim tribunal fees or dispute-related expenses. Accordingly, I decline to order the owner pay the strata \$225.00 for tribunal fees.

36. 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

37. I order the strata's claims and dispute dismissed.

J. Garth Cambrey, Vice Chair