



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Smethurst v. Frew*, 2019 BCCRT 577

BETWEEN:

Teresa Smethurst

APPLICANT

AND:

Leah Frew

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. The applicant, Theresa Smethurst, owns an apartment (unit 114) located directly below the apartment (unit 216) owned by the respondent, Leah Frew. Both unit 114 and unit 216 are strata lots in the strata corporation, The Owners, Strata Plan LMS 2802 (strata). The strata is not a party to this dispute.

2. The applicant's apartment sustained water damage. The applicant says the water came from the respondent's bathroom and that the respondent should pay the applicant's costs arising from repairing the water damage.
3. Both parties to the dispute are self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.
7. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
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.

ISSUE

9. The issue in this dispute is whether the respondent is responsible for the water damage to the applicant's unit and, if so, what is the appropriate remedy.

BACKGROUND, EVIDENCE AND SUBMISSIONS

10. The applicant says that, on July 16, 2017, water leaked into the ceiling of her hallway and bathroom, which is located directly below the respondent's bathroom. The applicant says that she paid \$860 in repair costs.
11. On December 31, 2017, there was another leak in the ceiling of the applicant's bathroom and hallway.
12. On December 31, 2017, a restoration company went to the applicant's apartment, as noted in the company's January 3, 2018 report. Although the project manager from the company is identified in the report, it is unclear whether he authored the report and, if so, what his qualifications are. The report identifies a suspected toilet overflow in the main bathroom of unit 216 as the cause of the water damage in unit 114, based on observations.
13. The author of the report conducted a visit, presumably to unit 216 although it is not clear from the report. The author observed standing water under a trash can and brush holder by the toilet, water on the toilet seat, and the toilet constantly running. The author also noted that constant water flow into the toilet could not be documented as the owner's boyfriend had flushed the toilet. The author observed high moisture readings around the edges of the bathroom floor and the vanity. The author concluded that the rest of the bathroom floor in unit 216 had been wiped dry prior to their attendance in the unit.
14. The report recommended that a plumber inspect the P-trap, line, and flapper valve for the toilet of unit 216 and "water test all lines after ceilings have been exposed in 114". The report indicated that moisture was found in the ceiling of the entry hallway of unit 114. Photographs in the report indicated a taped off area of the hallway

ceiling, bowls with water in them, readings on a digital measuring tool, and images on a handheld scanning type device with a screen. There is no explanation in the report what either of these devices are or what the images or numbers on their screens meant.

15. The strata corporation paid for the cost of repairing the December 2017 water damage to the applicant's unit. The strata corporation has also paid the cost of repairing further water damage to the respondent's unit on subsequent occasions. Those costs are not before me in this dispute.
16. Relying on the January 3, 2018 report of the restoration company, the applicant argues that the water damage to her apartment on July 16, 2017, was caused by water coming from the respondent's toilet. As such, the respondent should have to pay the applicant her costs of repairing the damage. More specifically, the applicant asks the respondent to reimburse her the \$860 she paid for the repairs.
17. The applicant also asks that the respondent be ordered to carry out the investigation steps recommended by the restoration company in their January 3, 2018 report, and to carry out any necessary repairs to her toilet.
18. The respondent says that she has had no leaks in her bathroom. She says that she hired a plumber to inspect the bathroom and was told there were no issues with her bathroom plumbing.
19. The respondent submitted a February 23, 2019 report from "Rod T", the owner of a plumbing and heating company. Rod T. wrote that he had assessed the bathroom in unit 216 for a possible leak from the bathroom to the ceiling of the bathroom in the unit below (114). Rod T. explained that he inspected the shower, basin, and toilet in unit 2016 and found no leaks coming from any of them. He described the various steps he took to inspect the bathroom, including removing the toilet, inspecting the flange and replacing the wax seal. Rod T. found no evidence of any water damage to the raw edge of the bathroom floor. He understood that the bathroom was a main bathroom that was used daily. As such, Rod T. anticipated that, if there had been water coming from the bathroom plumbing, it would be happening on a daily basis.

20. Relying on the February 23, 2019 report the respondent denies that the water originated from her toilet or elsewhere in her bathroom. The respondent says that she is not responsible for the water damage to the applicant's apartment unit.

ANALYSIS AND DECISION

21. In civil proceedings such as these the applicant bears the burden of proof, on a balance of probabilities. In other words, the applicant must prove that it is more likely than not that the water damage to her unit was caused by the negligence of the respondent.

22. To prove negligence the applicant must show that the respondent owed the applicant a duty of care, the respondent breached the standard of care, the applicant sustained damage, and the damage was caused by the respondent's breach (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at par 33).

23. I accept the applicant's statement that there was water damage to the ceiling of her apartment on July 16, 2017. The respondent has not disputed that any such damage occurred.

24. I accept that, as a neighbour, the respondent owed the applicant a duty of care to ensure that the use of her apartment unit did not unreasonably interfere with the applicant's use of her unit. Specifically, the respondent owed the applicant a duty of care not to allow water to escape from her bathroom, such that it entered into the applicant's apartment unit below.

25. The standard of care expected of the respondent is not perfection. Rather, the standard is what would be expected of an ordinary, reasonable, and prudent person in the same circumstances. One must look at the particular facts of the case to determine whether the respondent acted reasonably.

26. I am not persuaded that the respondent acted unreasonably on, or about July 16, 2017. However, I find that I do not need to decide that matter as the applicant has

failed to prove that the water damage to her unit on July 16, 2017 was caused by any potential negligence of the respondent.

27. I acknowledge the restoration company's January 3, 2018 statement that the suspected cause of the December 31, 2017 water damage is an overflow of the respondent's toilet. I find a suspected cause is not sufficient to prove that it is more likely than not that the respondent's toilet overflowed and caused water damage to the applicant's unit.
28. The restoration company's report is in regard to a similar water damage event on December 31, 2017, and not the water damage that occurred on July 16, 2017. It is unclear who authored the report and what their qualifications were on providing an opinion on the cause of the water damage to unit 114. The conclusion on the suspected cause is based, in part, on unverified assumptions that the respondent's toilet was running continuously and that someone in the unit wiped up water from the floor before the restoration company arrived to investigate the concern. The report did not explain how high moisture readings in certain places may, or may not, indicate a prior flood or leak. For all these reasons I give little weight to the opinion found in the January 3, 2018 report.
29. The respondent has denied any leak in her bathroom. The February 23, 2019 report of Rod T. contains his opinion that there has not been any leak from the respondent's toilet, shower, or basin, and that the floor of the bathroom shows no signs of prior water damage.
30. In his report Rod T. sets out the various steps he took to examine the respondent's toilet, basin and shower drainage and plumbing. He explained that there was no indication of a prior leak as all parts inspected were in good working order. He took into consideration the daily use of the respondent's bathroom, which was inconsistent with occasional flooding into the unit below. As Rod T. explained how he reached his conclusion in reference to his findings, and his qualifications as a plumber, I provide his opinion greater weight than that of the restoration company.

31. I find that the respondent has had no leaks in her bathroom. As such, I find that the water which entered the ceiling of unit 114 in July 2017 did not originate from the respondent's bathroom. The applicant has failed to prove that the water damage to her unit was caused by any negligence of the respondent. As such, I do not need to consider the applicant's requested remedies. I dismiss the applicant's dispute.

TRIBUNAL FEES AND EXPENSES

32. The applicant requested reimbursement of \$225 she paid in tribunal fees and claimed no dispute-related expenses. As the applicant was unsuccessful in this dispute, I dismiss her claim for reimbursement of tribunal fees, in accordance with the tribunal rules.

33. 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

34. I order that the applicant's claims and this dispute is dismissed.

Sherelle Goodwin, Tribunal Member