



Civil Resolution Tribunal

Date Issued: May 14, 2019

File: ST-2018-009061

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 2802 v. Frew*, 2019 BCCRT 578

B E T W E E N :

The Owners, Strata Plan LMS 2802

APPLICANT

A N D :

Leah Frew

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. The applicant, The Owners, Strata Plan LMS 2802 (strata) is a strata corporation. The respondent (owner) owns residential strata lot 25, also known as unit 216.
2. The strata says that water escaped from the owner's bathroom, causing and water damage to the apartment below (unit 114) on December 31, 2017, July 18 and July

31, 2018. The strata paid the costs of repairing the damage to unit 114 on those three occasions and now asks that the owner be ordered to reimburse the strata the amount of those repair costs. The owner denies responsibility for the water damage.

3. The strata is represented by a member of the strata council. The owner is 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 dispute is whether the owner is responsible for reimbursing the strata the costs of repairing water damage to unit 114 and, if so, how much should the owner pay the strata?

BACKGROUND AND EVIDENCE

10. I have reviewed all of the submissions and evidence put before me in this dispute. I will set out only the relevant information needed to give context to my decision.
11. On July 16, 2017 water leaked into the bathroom and hallway ceiling of unit 114. The owner of unit 114 paid those repair costs.
12. On December 31, 2017 there was another leak in the bathroom and hallway ceiling of unit 114.
13. On December 31, 2017, a restoration company went to unit 114, 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.
14. The author of the report observed standing water under a trash can and brush holder by the toilet, water on the toilet seat, and the toilet constantly running in unit 216. 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.
15. 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.

16. The same restoration company attended at unit 114 again on July 19, 2018, according to an emergency report of the same date. The author of the report is unclear. The emergency report identifies the cause of the water damage in unit 114 as a leak from the bathroom of unit 216, most likely the toilet. The report also indicates that no signs of a leak were found during the investigation of the bathroom in unit 216.
17. The emergency report notes that the only moisture found in the bathroom of unit 216 was underneath the linoleum flooring of the bathroom, primarily the edges closest to the vanity and the toilet. Further inspection of the inside of the vanity, the toilet reservoir tank, the toilet flush, and the surrounding rooms and hallway showed no signs of a leak.
18. The restoration company issued a final emergency report, also dated July 19, 2018. The final report repeats the contents of the emergency report, and also indicates that unit 216 denied access to the restoration company to complete additional emergency and repair work. The final report also includes photographs from July 23, 25, and 27, 2018 showing a handheld electronic device being held against various ceiling and wall locations. There is no explanation about what the device is or what the readings indicate.
19. The restoration company issued another final emergency report dated July 31, 2018. The report states that the wood sub strait in the ceiling above unit 114 showed signs of a leak, including higher moisture readings. Photographs show water on the floor of the hallway and bathroom of unit 114, as well as water damage to the wall and ceiling of those rooms.
20. The July 31, 2018 report contains a note dated August 7, 2018 that water marks were observed on the bottom of the wood sub strait inside the bathroom ceiling of

114. The report indicated that the water ingress was definitely coming from the unit above, as there were no leaking pipes between the two units.
21. The strata filed amended bylaws with the Land Title Registry on July 31, 2018 which are relevant to this dispute. Bylaw 39 sets out that that the strata will recover from an owner the costs of repairing the portions of a strata lot the strata is required to, or chooses to, repair where the owner is responsible for the damage or the source of the damage originated from the owner's strata lot.
 22. The strata says that it paid a total of \$9,609.86 to repair unit 114. \$3,584.65 in repair costs for the December 31, 2017 water damage to unit 114, \$2,041.08 in repair costs for the July 18, 2018 water damage, and \$3,984.14 in repair costs for the July 31, 2018 water damage.
 23. It appears that the strata wrote to the owner on November 14, 2018 to charge the owner with the costs of the repairs to unit 114. A copy of that letter was not produced in this dispute, but it is referred to in the December 12, 2018 letter to the strata from the owner's lawyer.
 24. In the December 12, 2018 letter the owner's lawyer wrote that the owner attempted to telephone the restoration company twice, leaving voicemail messages on both occasions, but received no response. The owner denied refusing the restoration company, or anyone else, access to her unit. The lawyer wrote that, in February 2018, a member of the strata council attended at unit 216 with the owner and observed the owner's bathroom and toilet to be in working order, with no evidence of leaks. The owner told her lawyer that there had never been a problem with the plumbing in her unit.
 25. The owner says that she was never contacted by a plumber or outside contractor, other than the restoration company, to investigate the source of the leak. She said that the restoration company cut a hole in her bathroom wall. The owner says that she hired a plumber to assess her bathroom.

26. The respondent submitted a February 23, 2019 report of 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.

POSITION OF THE PARTIES

27. Relying on the reports of the restoration company, the strata argues that the water leaking into unit 114 originated in the bathroom of 216. The strata says that the owner refused access to her unit to further investigate and repair the leak. The strata says the owner is responsible for the costs of the emergency repairs to unit 114 under bylaw 39.

28. The strata asks for an order that the owner pay the strata \$9,609.86 for the total cost of emergency repairs to unit 114 on December 31, 2017, July 18, 2018, and July 31, 2018. It also asks for an order that the owner carry out repairs to her bathroom, specifically having a plumber inspect the pipes for blockage, as set out in the December 31, 2017 restoration company report.

29. The owner says that the plumber's report of February 2019 shows that there has been no leak in her bathroom. As such she is not responsible for the water damage to unit 114. She asks that the strata's claims be dismissed.

ANALYSIS

30. In civil proceedings such as these the applicant bears the burden of proof, on a balance of probabilities. In other words, the strata must show that it is more likely

than not that the water damage to unit 114 on December 31, 2017, July 18, 2018 and July 31, 2018, was caused by the negligence of the owner or that the water originated in the owner's unit.

31. I find that the applicant has failed to prove, on a balance of probabilities, that the water originated from unit 216.
32. 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.
33. 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.
34. I also acknowledge that the same restoration company, in their July 19, 2018 report, again identified a leak from the bathroom of unit 216 as the cause of the water damage in unit 114. I also note that there was no observed signs of any leak in the bathroom of unit 216 upon inspection by the restoration company. It is unclear why the restoration company reached the conclusion that there had been a leak in the bathroom of unit 216 if there were no signs of a leak. I note that the restoration company found moisture under the linoleum flooring in the bathroom of unit 216, but it is unclear to me if, or how, that finding relates to whether or not there was a leak in the bathroom. Furthermore, it is unclear who the author of the July 19, 2018 report is or what qualifications they had to opine on the source of the water leaking into unit 114. For these reasons I give little weight to this report.

35. The restoration company provided a definitive opinion that the source of the water was unit 216, in their August 7, 2018 note. The reasoning appears to be that, as the pipes between unit 114 and 216 are not leaking, the water must be coming from the bathroom of unit 216. Again, no author is identified in the report. The report does not address the owner's assertion that there had been no leaks, or issues with the plumbing, in her bathroom. Nor does it address how there had been no previous signs of leaks in the bathroom of unit 216.
36. I prefer and accept the opinion of Rod T., as set out in his February 23, 2019 report. Although Rod T. does not specifically state that he is a plumber, he indicates that he owns a plumbing company. The respondent says she hired a plumber to assess her bathroom and provided the report of Rod T. I infer that Rod T. is that plumber and that he has some knowledge about, and expertise in, plumbing and water issues.
37. 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.
38. I find that that the strata has failed to prove, on a balance of probabilities, that the water leaking into unit 114 originated from the owner's bathroom.
39. I also find that the strata has failed to prove that the water damage in unit 114 was caused by the owner's negligence.
40. To prove negligence the strata must show that the owner owed a duty of care, the owner breached the standard of care, the strata sustained damage, and the damage was caused by the owner's breach (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at par 33).

41. I accept that the owner owed a duty of care to the strata, and to her fellow strata lot owners, to ensure that the use of her apartment did not damage common property or other strata lots in the building, or unreasonably interfere with other strata lot owner's use of their own strata lots.
42. 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.
43. I find that the owner acted reasonably in the circumstances. She did not observe a leak in her bathroom or any indication of plumbing problems. Despite the notations of the restoration company to the contrary, I find that the owner provided reasonable access to her bathroom, both to the restoration company, and to the strata council. It was also reasonable for the owner to hire her own plumber to come in and assess her bathroom for any apparent leak or plumbing problem. The owner has not breached the standard of care in these circumstances.
44. Neither the restoration company, nor the plumber, were able to identify any obvious, or hidden, water leaks or plumbing issues in the owner's bathroom. As noted above, I have found that the water leak in unit 114 was not proven to originate from the bathroom of unit 216. I find that the water damage in unit 114 was not caused by any potential breach of the owner's standard of care. The strata has failed to prove its claim in negligence.
45. I pause here to note that bylaw 39 was added to the strata's bylaw amendments after at least two of the water leak events. As such, I query whether those bylaws would apply to these particular repair costs. However, given that I have found that the owner is not responsible for the damage that was repaired, I do not need to decide whether the amended bylaws would apply.
46. Overall, I find that the strata has failed to prove that the water leaking into unit 114 originated in the owner's bathroom and/or that any potential negligence of the owner caused the water damage to unit 114. For this reason, I find that the owner is

not responsible for paying the cost of repairing the water damage. I dismiss the strata's claim.

TRIBUNAL FEES AND EXPENSES

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

48. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner.

DECISION AND ORDER

49. I order that the strata's claim and this dispute is dismissed.

Sherelle Goodwin, Tribunal Member