



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS 2183 v. Ku*, 2019 BCCRT 591

B E T W E E N :

The Owners, Strata Plan BCS 2183

APPLICANT

A N D :

Kun-Hui Ku

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about payment of an insurance deductible. The applicant, The Owners, Strata Plan BCS 2183 (strata), says that the respondent, Kun-Hui Ku, owes it \$22,393.42 for an insurance deductible that it paid after a sewage backup in her strata lot. The respondent denies responsibility for this amount.

2. The strata is represented by a member of the strata council. The respondent is self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. 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

7. The issue in this dispute is whether the respondent is responsible for the \$22,393.42 claimed by the strata.

BACKGROUND AND EVIDENCE

8. The strata is located in Burnaby, British Columbia and is comprised of 212 strata lots. The respondent owned strata lot 9, which is also known as suite 206, between 2008 and 2018. In 2017, tenants were residing in the strata lot.
9. The relevant bylaws were filed at the Land Title Office in 2009, with several amendments filed in subsequent years. Bylaw 2 states that an owner must repair and maintain the strata lot, except for repair and maintenance that is the responsibility of the strata. According to bylaw 8, the strata must repair and maintain common assets, common property (CP) that has not been designated as limited common property (LCP), and certain items of LCP.
10. Bylaw 7 requires that an owner, tenant, occupant or visitor must allow a person authorized by the strata to enter the strata lot without notice in an emergency to ensure safety or prevent significant loss or damage. This bylaw also permits entry at a reasonable time, on 48 hours' written notice, to inspect, repair or maintain common property (CP), common assets, and any portions of a strata lot that are the strata's responsibility.
11. Bylaw 36(10) addresses hazards and insurance, and provides that an owner shall indemnify and save harmless the strata corporation from the expense of any maintenance, repair or replacement rendered necessary to the CP, LCP, common assets or to any strata lot by the owner's act, omission, negligence or carelessness or by that of an owner's visitors, occupants, guests, employees, agents, tenants or members of the owner's family, but only to the extent that such expense is not reimbursed from the proceeds received by operation of any insurance policy. According to the bylaw, any insurance deductible paid or payable is considered an expense not covered by the proceeds received by the strata corporation as insurance coverage and will be charged to the owner.
12. The strata arranged for maintenance to the CP plumbing to be performed in July of 2017. Access to individual strata lots was required to perform this work. On June 23, 2017, the property manager emailed the strata's resident manager, PS, a notice

regarding the requirement for unit access between July 11 and 13, 2017. The notices were posted in the lobby and elevators, and PS delivered copies of the notice to each strata lot on or about June 30, 2017. The notice stated that access to the 2nd floor (where the respondent's strata lot is located) would be required on July 13, 2017. It also stated that access could be granted on July 14 for "units unable to accommodate scheduled date".

13. All strata lots provided access for this maintenance work, with the exception of the respondent's strata lot and one other on the 2nd floor. The invoice from the plumbing contractor indicates that it "augered kitchen lines" in the units that provided access.
14. Late on July 14, 2017, a relative of the respondent telephoned PS to advise that the tenants were having problems with the plumbing in the strata lot. According to an email message PS sent to the property manager, he asked the relative why access was not provided to the strata lot for the maintenance work, and the relative responded that the tenants had promised to be there.
15. PS and the plumbing contractor attended the strata lot and discovered that the kitchen sink had backed up. The contractor performed emergency work to address the issue and noted further restoration work was required.
16. A July 18, 2017 email from the plumbing contractor stated that there were "clear signs of serious, long-term abuse to many of the kitchen lines that will require more than maintenance". The contractor's view was that the sewer lines were in "fine shape" but many of the kitchen lines were greasy and a plastic bag was found to be stuck in the line, as well as "brown/whitish colored grease that is adhering to the inside of these lines".
17. According to a member of the strata council, HF, the plumbing contractor told him that the plastic material in the drain line of suite 206 was a possible cause of the drain back-up. The contractor also advised HF and PS that the back-up would not have occurred if it had been given access to the strata lot to perform the required maintenance.

18. The strata had not been aware that the strata lot was occupied by tenants. On September 5, 2017, the strata's property manager wrote to the respondent to advise that the strata had determined that she was in breach of the bylaw regarding rental restrictions.
19. On September 26, 2017, the property manager wrote to the respondent to advise that her tenants were believed to have "caused the sewer backup with the plastic bags thrown in the drain and further failed to provide access for this maintenance work on the dates scheduled for your floor". The strata requested reimbursement of the \$2,606.59 it spent in emergency clean-up costs. The respondent paid this amount.
20. The back-up also caused damage to other strata lots and CP. The strata made an insurance claim and paid the \$25,000 deductible. Taking into account the \$2,606.59 already paid, the strata requested that the respondent reimburse the remaining deductible amount of \$22,393.42. The respondent did not provide this reimbursement.

POSITION OF THE PARTIES

21. The strata seeks an order that the respondent pay it \$22,393.42, which is the unpaid balance of the insurance deductible. The strata submits that the respondent's tenants caused or contributed to the back-up by putting grease and plastic bags into the kitchen sink, which accumulated in the drainage lines. The strata also says that the respondent and her tenants failed to provide access to the strata lot for the plumbing maintenance. The strata's position is that the evidence establishes that the back-up would not have occurred if the plumbing contractor had access to the strata lot.
22. According to the strata, the acts and omissions of the respondent and her tenants caused the flood. It says that it is not necessary to establish negligence, but rather that the respondent is responsible for the insurance deductible based on a plain reading of the bylaws.

23. The respondent says that the bylaws require that she or her tenant be negligent in order to be required to indemnify the strata for the insurance deductible. Her position is that the strata has not established that she or her tenants were negligent. The respondent says that her tenants denied putting plastic bags or grease in the sink, and that the tenants were not present in the strata lot for a week prior to the back-up. She questions how the source of the back-up could be in her strata lot given that the water was not being used. The respondent submits that it appears that the water in the main stack faced a blockage at some point and pushed its way through her lines, causing the back-up.
24. The respondent says she was not aware of the requirement to provide access to the strata lot. She says that she had notified the strata of her tenants, and the strata did not contact her to arrange access to the strata lot. The respondent also says that PS did not respond to the initial call about the plumbing issues and suggests that the back-up could have been prevented if he had. Further, the respondent states that previous issues with a toilet had been ignored by the strata. She disagrees with the strata's assertion that the lack of access to the strata lot for plumbing maintenance led to the back-up. The respondent's position is that the strata's claim should be dismissed.

ANALYSIS

25. The strata's insurance policy confirms that the deductible for sewer backup or water damage is \$25,000. There is no dispute that the respondent already paid \$2,606.59 to the strata. I must determine whether she is responsible to reimburse the strata for the remaining \$22,393.42 of the deductible.
26. Section 158(1) of the *Strata Property Act* (SPA) provides that the payment of an insurance deductible in respect of a claim on the strata corporation's insurance is a common expense to be contributed to by means of strata fees. However, according to section 158(2), this does not limit the capacity of the strata corporation to sue an owner to recover the deductible portion of an insurance claim if the owner is responsible for the loss or damage that gave rise to the claim.

27. The strata has adopted bylaw 36(10), which provides that and owner must indemnify the strata for the expense (including the insurance deductible) of any maintenance, repair or replacement rendered necessary to the CP, LCP, common assets or to any strata lot by an owner's act, omission, negligence or carelessness or by that of an owner's visitors, occupants, guests, employees, agents, tenants or members of the owner's family.
28. The respondent's position is that a finding of negligence is required in order for an owner to be required to indemnify a strata. Bylaw 36(10) permits indemnification in the circumstances of an "act, omission, negligence or carelessness". Similar wording was considered by the British Columbia Provincial Court in *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 519. The trial judge stated at paragraph 17 that these words "are to be read collectively and import a standard of negligence". This decision is binding upon me, and I will consider the circumstances of this case based on this standard.
29. The video footage obtained by the plumbing contractor establishes the presence of grease buildup and plastic bags in the kitchen lines of the respondent's strata lot. As these lines run between the kitchen in the strata lot and the main drain, I find that someone in the respondent's strata lot is responsible for these items. The fact that the kitchen lines in other strata lots also have grease buildup does not alter my conclusion.
30. In order for the respondent to be responsible for the remainder of the insurance deductible claimed by the strata, the presence of grease and plastic bags in the kitchen lines and/or the failure to provide access for the plumbing maintenance must be shown, on a balance of probabilities, to have had a causative connection with the back-up.
31. The maintenance work on the strata lot was scheduled to occur on July 13, 2017. As access was not provided on that date, the plumbing contractors also attempted to perform this work on July 14, 2017, without success. The tenants of the strata lot

had been staying elsewhere for approximately one week. They returned on July 14, 2017 to discover the plumbing problems.

32. The July 18, 2017 email message from the plumbing contractor described the findings of grease and plastic bags in the kitchen lines. The email stated that the contractor “flushed many of these lines yesterday evening out of sheer necessity, it was definitely an emergency requirement to prevent further problems”. However, the plumbing contractor did not identify a specific cause for the back-up in this email message or in the invoices for the emergency work it performed.
33. As discussed above, both HF and PS provided statements that the plumbing contractor told them that the back-up would not have happened if access to the strata lot had been provided for the maintenance work. While this may have been the case, I do not find it to be consistent with the remainder of the evidence.
34. In its evidence and submissions, the strata consistently has described the event as a sewer back-up. The September 26, 2017 from the strata’s property manager to the respondent advised that the strata determined that the “tenants caused the sewer backup with the plastic bags thrown in the drain and further failed to provide access for this maintenance work”.
35. Although the kitchen lines were narrowed by grease and plastic debris, they were not blocked. Further, the plumbing contractor stated in the July 18, 2017 email message that the “sanitary (sewer) lines are in fine shape”. There is no indication that the grease or plastic bags were in the sewer lines. It is not clear to me from the evidence how a narrowing of the kitchen lines could impact a back-up from the separate sewer line. It also does not follow that a failure to permit access for the plumbing maintenance could impact a sewage back-up when the intended work was augering of the kitchen lines.
36. The strata cited *Strata Plan LMS 2446 v. Morrison* in support of the proposition that a strata lot owner may be held liable for an insurance deductible. In that case, an owner was found to be negligent in not ensuring that a toilet was draining properly. There was no finding as to whether the blockage that caused the problem was in

the strata lot or CP pipe as the water that caused the overflow was found to originate from a toilet inside the strata lot, and was therefore the owner's responsibility. The circumstances of this case are distinguishable as the sewage back-up that caused the damage does not appear to have originated inside the strata lot.

37. Based on the evidence before me, I find that the strata has not established that an "act, omission, negligence or carelessness" on the part of the respondent or her tenants caused the sewer back-up. While it would have been preferable for the respondent to ensure that the plumbing contractor had access to the strata lot for maintenance purposes, I am not satisfied that the respondent must indemnify the strata for the balance of the insurance deductible under bylaw 36(10). Accordingly, I dismiss the strata's claim.

TRIBUNAL FEES AND EXPENSES

38. 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. As the strata was not successful, I dismiss its claim for reimbursement of tribunal fees. The strata did not claim any dispute related expenses, and the respondent did not make any claims in this regard.
39. 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.

DECISION AND ORDERS

40. I dismiss the strata's claims and this dispute.

Lynn Scrivener, Tribunal Member