



Civil Resolution Tribunal

Date Issued: May 21, 2019

File: ST-2018-007372

Type: Strata

Civil Resolution Tribunal

Indexed as: *Smyth v. The Owners, Strata Plan EPS 1954*, 2019 BCCRT 609

BETWEEN:

Shannon Smyth

APPLICANT

AND:

The Owners, Strata Plan EPS 1954

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. The applicant, Shannon Smyth (owner), owns strata lot 81 in the respondent strata corporation, The Owners, Strata Plan EPS 1954 (strata). The owner alleges the strata is responsible for paying for her air conditioning unit which had to be replaced

due to damage by rodents, and that the strata has breached the *Strata Property Act* (SPA) by not repairing common property in a timely fashion.

2. The strata disputes the allegations.
3. The owner is self-represented, and the strata is represented by its strata council president.

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*. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.
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. Under section 10 of the *Act*, the tribunal must refuse to resolve a claim that it considers is not within the tribunal's jurisdiction. A dispute that involves one or more

issues that are within the tribunal's jurisdiction and one or more that are outside its jurisdiction may be amended to remove those issues that are outside its jurisdiction.

8. Under section 123 of the *Act*, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. Order a party to do or stop doing something;
 - b. Order a party to pay money;
 - c. Order any other terms or conditions the tribunal considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Is the strata responsible for the cost of replacing the owner's malfunctioning air conditioning unit?
 - b. Did the strata act in accordance with the SPA and its bylaws with respect to the repair and maintenance of a common property hallway? If not, what is the appropriate remedy?

BACKGROUND AND EVIDENCE

10. The strata was created in March 2014 and consists of 165 residential strata lots in 2 buildings in Langley, British Columbia. The owner has owned strata lot 81 since May 2014.
11. The relevant sections of the strata's bylaws are summarized below, which were filed with the Land Title Office on October 26, 2016. Amendments were made October 17, 2018, but are not relevant to this dispute.
 - a. **Bylaw 2:** An owner must repair and maintain the owner's strata lot, except where the strata has the responsibility to do so under the bylaws.

- b. **Bylaw 16:** The strata must repair and maintain common property, but external air conditioning units located on each unit's patio or deck are the responsibility of each owner to maintain.
12. The owner seeks reimbursement of \$5,700 that she paid to have her air conditioning unit replaced due to rodent damage and an order that the strata have damage in the common property hallway outside of her unit repaired immediately.

Damage to Air Conditioning Unit

13. In July 2015, the owner complained of a rodent infestation in her strata lot. She first notified, Reddale, who the parties refer to as the "builder," and then the respondent strata.
14. The strata informed the owner that it was aware of a deficiency in the installation of the air conditioning units which allowed for rodents to enter the building. It advised that Reddale was working on a solution of removing the rodents and sealing the access points.
15. In an email dated August 27, 2015 from the owner to the property manager, the owner advised that by August 17, 2015 rodents had "chewed the heating unit" and that the unit was no longer blowing cold air, and requested an update on the pest control measures.
16. On September 11, 2015, the strata's property manager emailed the owner outlining the pest control measures the strata had underway and advised that it had informed Reddale of the situation and that Reddale was planning on sealing all air conditioning units in the strata.
17. The owner submits that Reddale attended her strata lot, blocked the rodents' access points and refilled the coolant in her air conditioning unit, but that the unit continued to only blow warm air. She submits that because of the damage by the rodents, she had the unit replaced in July 2018.

Common Property Hallway Repair Delays

18. The owner stated that on February 19, 2018 there was a leak in the common property hallway outside of her strata lot. In her Dispute Notice, she stated that the wall was down to particle board and that the ceiling had been removed, and fire detection equipment was hanging by its wires from the ceiling.
19. In a July 10, 2018 email, the owner asked the strata's property manager about the hallway repairs. In a letter dated August 2, 2018, the property manager responded and advised the repairs would be completed the next year as it would be included in the next year's budget.
20. In the letter, the strata also advised the owner that part of the reason for delay was that there were ongoing water issues, so leaving the ceiling open made it easier to continue repairs as needed. On August 2, 2018, the owner requested a hearing under section 34.1 of the SPA, requesting details about the repair timeline and extent of the leak, and why it hadn't been fixed yet.
21. The evidence before me is that the strata offered to have the owner attend the next strata meeting on August 27, 2018, but that due to scheduling conflicts between the owner and strata, that did not happen. When the owner later requested the hearing be rescheduled, the strata took the position there was no point in holding the hearing as the strata had no further information to convey, but that the owner was invited to attend the next strata council meeting in October 2018. No further hearing was scheduled.
22. The owner did not claim for a remedy related to the strata's failure to hold a hearing pursuant to SPA section 34.1.
23. No evidence was provided by either party as to the current state of the common property hallway.

POSITION OF THE PARTIES

24. The owner argues that the damage to her air conditioning unit was due to the strata's negligence in not taking her complaint seriously in 2015. The applicant seeks reimbursement of the \$5,700 she paid to replace the air conditioning unit in July 2018.
25. The owner also seeks an order that the strata repair the damage to the wall and ceiling of the common property hallway outside of her unit and stated the strata failed to meet its obligations under the SPA.
26. The strata says Reddale was responsible for any repairs related to rodents gaining entry to the owner's strata lot. It says the owner was instructed to deal directly with Reddale to remedy any issues and that she failed to do so. The strata's position is that it is not responsible to replace the air conditioning unit.

ANALYSIS

27. In a civil dispute such as this, the owner bears the burden of proof. This means the owner has to provide evidence to prove each of her claims on a balance of probabilities.
28. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

Damage to Air Conditioning Unit

29. The *Limitation Act* applies to tribunal disputes. A limitation period is a specific time period within which a person may pursue a claim. If the time period expires, the right to bring the claim disappears.
30. Section 8 of the *Limitation Act* says that a claim is "discovered" on the first day that the person knew or ought reasonably to have known that the loss occurred, that it

was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate means to seek to remedy the loss.

31. The limitation period for the owner's claim about the damage to her air conditioning unit is 2 years.
32. The evidence before me indicates that the owner was aware of the potential damage to her air conditioning unit in July 2015. Even more specifically, by August 17, 2015, the owner notified the strata and advised them that her air conditioning unit was only blowing hot air and that she believed the rodents had chewed through the wiring to the unit. Although the owner did not pay to have the unit fixed until 2018, I find that the damage to the air conditioning unit was discovered by August 17, 2015.
33. The tribunal issued the Dispute Notice on October 30, 2018. Therefore, I find any claims discovered before October 30, 2016 are out of time under the *Limitation Act*. For this reason, I find the owner's claim for reimbursement for the cost of replacing her air conditioning unit is statute-barred. I refuse to resolve this aspect of the owner's claim under section 10 of the Act.

Common Property Hallway Repair Delays

34. The owner seeks an order that the strata repair the common property hallway. The owner says the strata has unreasonably delayed the repairs. The strata did not dispute its responsibility to repair the hallway. As stated above, it is unknown to me whether the repairs have yet taken place. No evidence or submissions as to the state of the repairs was provided.
35. Given the evidence, I find the owner has failed to prove her claim that the strata has unreasonably delayed repairing the common property hallway. I note the strata acknowledged its obligation to repair the common property and stated it intended to

complete the repairs. I find an order is not necessary in the circumstances. Therefore, I dismiss the owner's claim in this regard.

Hearing Request

36. I make no decision on whether the owner is entitled to a remedy for the strata's refusal to hold a hearing pursuant to section 34.1 of the SPA given no remedy was sought. I note nothing in this decision restricts the owner from pursuing that claim, should she choose to.

37. Given the tribunal's mandate of recognizing the ongoing relationship between parties, I encourage the parties to work together in a productive and constructive manner in future, and to follow the statutory requirements of the SPA. Specifically, I note that section 34.1 is mandatory and requires the strata to hold a hearing and provide its decision within the period permitted under the SPA, provided the owner makes a written request stating why they want a meeting. I encourage the strata to be mindful of its obligations under section 34.1 in the future.

TRIBUNAL FEES, EXPENSES AND INTEREST

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. Here, the strata was the successful party but paid no tribunal fees and claimed no dispute-related expenses. Accordingly, I make no order in this regard. I dismiss the owner's claim for tribunal fees.

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 respondent.

DECISION AND ORDERS

40. I refuse to resolve the owner's claim for reimbursement for replacing her air conditioning unit because it is out of time under the *Limitation Act*.
41. I order the applicant's remaining claims dismissed.

Andrea Ritchie, Vice Chair