Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *LeRuyet v. The Owners, Strata Plan NW 3240,* 2019 BCCRT 612

B E T W E E N :

Robert LeRuyet

APPLICANT

A N D :

The Owners, Strata Plan NW 3240

RESPONDENT

REASONS FOR DECISION

Tribunal Member: J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicant, Robert LeRuyet (owner), owns strata lot 61 (SL61) in the respondent strata corporation, The Owners, Strata Plan NW 3240 (strata).

2. The owner alleges the strata did not complete water damage repairs to SL61 that were covered under the strata's insurance policy and was negligent in not doing so. They seek orders that the strata complete the insurance repairs, stop making false reports to authorities, pay them $750 in dispute-related expenses, and pay a total of $80,000 in damages.

3. The strata denies the owner's allegations and asks the tribunal to dismiss the owner's claims. In the alternative, the strata suggests the owner should be ordered to allow the strata to complete insurance repairs. The strata also argues the owner is responsible for the strata's legal fees of $9,513.00.

4. The owner is self represented. The strata is represented by a member of its strata council.

5. For the reasons that follow, I order the strata to repair SL61.

JURISDICTION AND PROCEDURE

6. 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.

7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario as to available access to complete repairs to SL61. Credibility of interested parties, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

8. 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.

9. 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.

10. Under tribunal rule 27, the parties agreed that communications relating to facilitated settlement discussions held during the case management stage of this proceeding could be disclosed to me.

POSITIONS OF THE PARTIES

11. The owner alleges the strata failed to complete water damage repairs to SL61 that were covered under the strata's insurance policy for insurance claims commenced in 2015. They say the strata took advantage of them, acted fraudulently and in bad faith, and was negligent in not having the water damage repairs in SL61 completed. They seek orders that the strata:
    a. complete the insurance repairs to SL61,
    b. stop making false reports to the police and to the BC Society for the prevention and Cruelty to Animals (BCSPCA),
    c. stop threatening that SL16 is a "bio-hazard",

d. pay them $750 in dispute-related expenses for removing construction debris left by the strata's contractors in or about SL61,

e. pay $10,000 in damages for making false reports to authorities,

f. pay $20,000 in damages related to the strata's negligence, and

g. pay $50,000 in punitive damages.

12. The strata denies the owner's allegations of negligence and bad faith and argues it has acted in good faith and made best efforts to comply with its obligations under the *Strata Property Act* (SPA) and its bylaws. The strata makes specific alternative arguments about the owner's allegations of negligence, including that it reasonably relied on its contractors.

13. The strata also says the owner has prevented it from carrying out its obligations under the SPA and its bylaws which has resulted in health and safety issues arising in SL61 because of the strata lot's state of disrepair.

14. Finally, the strata says if an order should be made, it should be made against the owner to permit the strata, its insurers and agents access to inspect SL61 so the strata's insurers may assess and revise the scope of work to permit repairs to be completed in accordance with the strata's obligations and insurance policy exclusions.

15. The strata asks the tribunal to dismiss the owner's claims and argues the owner is responsible to reimburse the strata's legal fees of $9,513.00.

ISSUES

16. The issues in this dispute are:

a. Is the strata responsible to complete repairs to SL61 resulting from water damage that occurred on about September 24, and October 1, 2015? If so, what is the extent of the strata's responsibilities?

b. Did the strata act in bad faith?

c. Is the owner entitled to an order that the strata stop making threats and false reports to the police and BCSPCA?

d. Is the owner entitled to reimbursement of $750 for the cost of removing debris from their strata lot?

e. Is the owner entitled to $30,000 in compensatory damages and $50,000 in punitive damages?

BACKGROUND AND EVIDENCE

17. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.

18. In a civil proceeding such as this, the applicant owner must prove their claims on a balance of probabilities.

19. The strata was created in 1990 and is a residential strata corporation located in Abbotsford, B.C. consisting of 160 strata lots in 17 buildings. SL61 is a 2-storey strata lot with neighbouring strata lots on 3 sides.

20. The strata bylaws in effect at the time of this dispute were those registered at the Land Title Office (LTO) on February 26, 2015. LTO documents show the strata repealed all previous bylaw amendments and replaced them with the February 26, 2015 amendments. Subsequent bylaw amendments were filed that are not relevant to this dispute. I have set out below, reference to relevant bylaws when necessary.

21. On September 22, 2015, a water leak associated with a toilet supply line in a strata lot neigbouring SL61 (unit 712) occurred. The strata's property manager (manager) dispatched a restoration contractor (ServiceMaster) to attend to attend to the emergency repairs and reported a possible insurance claim to the strata's insurer. An insurance claim was opened and an adjuster was assigned (September 22, 2015 claim).

22. ServiceMaster suspected damage may also have occurred to SL61 and was able to inspect SL61 on about October 13, 2015. As a result of the October 13, 2015 inspection, the strata's insurer opened a second insurance claim for water damage to SL61 unrelated to the September 22, 2015 claim. The Loss Notice prepared by the insurance broker states, in part, "Further water damage found – [SL61] – appears to be leaking for a while and discovered recently, and a separate incident not related to DOL Sept 22, 2015…" (October 1, 2015 claim). Photographs of the interior of SL61 date-stamped October 13, 2016 were provided in evidence, which I infer were taken by a representative of ServiceMaster on the date of its initial inspection of SL61.

23. The strata submits that damage caused in SL61 was likely as a result of both the September 22, 2015 claim and the October 1, 2015 claim. The owner does not dispute this and I agree.

24. On October 26, 2015, the insurance adjuster advised that the strata's insurer was reserving all rights and defences it had under its policy to later disclaim its obligations and deny coverage resulting from loss of damage caused by mold, mildew, fungus and other similar microorganisms under the October 1, 2015 claim. There is no evidence that this letter was provided to the owner, nor is there any reference to the letter or its content in the council minutes before me.

25. In particular, the October 27 and November 24, 2015 strata council minutes state ServiceMaster was in the process of repairing 2 separate leaks in unit 712 and SL61 "due to pipe leaks in the wall" and that two $5,000 insurance deductibles would apply because the cause of the incidents were separate. The minutes also stated both insurance deductibles would be paid from the strata's contingency reserve fund (CRF) "as both leaks are deemed an emergency Strata Corporation expense."

26. A scope of work for the SL61 repairs was completed by ServiceMaster on November 24, 2015 detailing repairs required to the kitchen, living room and,

bathroom. On January 20, 2017 ServiceMaster updated the scope of work and estimated the repairs to SL61 were over $16,000.

27. Based on the statements contained in the council minutes, and the overall evidence, I find that emergency work was started in SL61 although the exact start date and details of any completed work is unclear. However, based on the evidence and photographs provided, I find the strata's contractors removed some drywall in SL61 for the following reasons.

28. First, the strata did not dispute the owner's submissions about work being done in SL61, including asbestos testing.

29. Second, the photographs dated October 13, 2015, the date of the initial inspection by ServiceMaster, do not show drywall completely removed down to the wall studs in some rooms, as the photographs do that were taken in April 2017 by the resident of unit 715 and in July 2017 by the solicitor or ServiceMaster. Absent evidence to the contrary, I accept the owner's position that they would not attempt removal of drywall when they expected SL61 to be repaired through the strata's insurance claims.

30. The owner says that, in addition to dealing with the death of 2 family members in January and February 2016, they were "ill and bed-ridden" during February and March 2016. The owner submits they called the strata's contractor "sometime in February" 2016 and requested that repairs to SL61 be put to "the bottom of the list". They further submit that they left a message for the same contractor again in "March or April" 2016 but never had a return call. The owner also says that for April 2016 they "got busy with work" due to the time they were ill and away from work and were also attending to their father's estate. I accept the owner's submissions about contacting the contractor given it would be reasonable in the circumstances for the owner to do so because it was the contractor that was trying to schedule the work.

31. The February 23, March 29, and April 28, 2016 council minutes state that ServiceMaster was in the process of completing repairs to SL61 resulting from a "pipe leak in the wall causing water damage". The February 23, 2016 minutes state

ServiceMaster "has repaired unit #712 due to water damage". The April 28, 2016 minutes also state the manager notified the strata that the owner was not responding to ServiceMaster, that a "letter of compliance" would be written to the owner, and if the owner still did not respond, the insurer would be notified to stop the claim. The owner submits they did not receive a "letter of compliance" and were not otherwise made aware of the strata's access concerns. There is no evidence that the strata wrote to the owner advising them of the non-compliance and that continued failure would result in the October 1, 2017 insurance claim being "stopped" as stated in the April 28, 2016 minutes.

32. The owner submits that in May or June 2016, they contacted the contractor and were told to contact ServiceMaster, which they did, but never had a return call.

33. The May 31, 2016 council meeting minutes contain a statement about ServiceMaster continuing to repair SL61 and that the manager advised the strata that the owner was not responding to ServiceMaster but included "TABLED" at the end of the statement.

34. On September 14, 2016, the insurance adjuster wrote to the manager confirming a recent conversation that the strata wished to withdraw the October 1, 2015 claim and that the insurers would be notified. The letter also stated the adjuster would be closing its file.

35. The owner denies they received any requests for access. There is no evidence before me that that the strata communicated directly with the owner about the need to comply with contractor requests for access to SL61 or at all, before closing the October 1, 2015 claim. I agree with the owner that it would be reasonable for the strata to show that its contractors had requested access and been denied by the owner. For example, copies of emails from the contractors involved stating their inability to gain access to SL61. However, the fact that no such evidence was provided does not mean there was no communication between the strata and its contractors. It is possible that communication may have occurred by telephone. Further, the owner submits it was not until May or June of 2016 that they attempted

to contact the contractors involved in the repair. As reflected in the council meeting minutes of May 31, 2016, the strata reported on the access difficulties which it reasonably could have characterized as refusals, given the owner had requested the SL61 work be delayed.

36. There was no written communication between the parties provided for the 7-month period between September 2016, when the October 1, 2015 claim was withdrawn, and April 17, 2017, when the strata wrote to the owner about an alleged bylaw contravention about storing items on their patio. Although the parties appear to agree a telephone discussion took place in February or March 2017, that included the owner raising their concern over the lack of progress on the SL61 repairs.

37. The strata's April 2017 letter about patio storage brought the question of SL61 repairs back to the forefront. On May 12, 2017, the owner emailed the manager advising the items were put on the balcony by the strata's contractor when they "gutted" part of SL61 for the ongoing insurance claim "from last year and which has not been completed." In the email, the owner noted their attempts to contact the contractor and had not had a reply. The owner also stated that work had apparently started on the "unit behind" SL61 which I infer is unit 712, and that the work involved the removal of the wall behind the kitchen "so there is no barrier between the 2 units." The owner asked that the strata complete the interior repairs to SL61 and complained about the work in #712 starting before 8 am which the owner said was contrary to the bylaws.

38. The owner wrote to the manager again on May 15, 2017 stating they had not had a reply to their May 12 email and that work "next door" had again began early on May 14 and 15, 2017. Aside from the telephone discussion that took place between the owner and a council member in February or March 2017, the owner does not explain why it took about 1 year, from June 2016, when they last attempted to contact the contractor responsible for the repairs, to May 2017, to enquire on the status of the repairs to SL61. The strata also did not comment on its actions although I note the 2 insurance claims were closed.

39. Between May 23 and June 1, 2017, the owner of unit 712 emailed the strata manager 3 times about the condition of SL61's kitchen as witnessed through the deconstructed common wall and did not receive a reply. The email states they had started renovations in unit 712 and when they removed the drywall and insulation between the 2 strata lots to install soundproofing, they discovered they could see directly into the kitchen of SL61 because there was no insulation or drywall on the inside of SL61. They expressed concern over the condition of SL61 and provided 2 photographs.

40. On June 9, 2017, the manager wrote to the owner acknowledging the owner's May 12, 2017 email about patio storage. The manager advised the owner that the October 1, 2015 claim was closed due to the owner's "refusal" to allow contractors access to SL61 to complete repairs. The letter also informs the owner that the strata will contact the insurance adjuster to determine if the insurance claim can be "re-opened."

41. On June 22, 2017, the strata's lawyer wrote to the owner about "work that needs to be completed" in SL61, stating the owner had been unwilling to allow completion of the repairs from the water leak and expressing concern about health and safety issues that may have arisen, both of which needed to be addressed. In a follow up email to the owner dated July 12, 2017, the strata's lawyer stated he had made arrangements to visit SL61 with a ServiceMaster representative on July 24, 2017 "to make an assessment of the scope of work" stating work could begin "shortly thereafter". The email also stated the owner's belongings would be moved into a container on site and that the owner would be "provided with alternative lodgings at a hotel for the duration of the work."

42. The strata does not explain why it suddenly changed its position from withdrawing its insurance claim, implying it would not complete repairs, to repairing SL61 under a 'revised scope of work" that included moving the owner and their belongings out of SL61 while the repairs were underway.

43. The meeting on July 24, 2017 at SL61 proceeded with the owner, the strata's lawyer, and a ServiceMaster representative attending. Photographs of the interior of SL61 were taken on that date by the lawyer or ServiceMaster and provided in evidence.

44. The owner refused to continue dealing with the lawyer after the meeting because they felt threatened by comments allegedly made by the lawyer about the condition of SL61 and that they believed the lawyer had attended SL61 under false pretenses and was going to "drive LeRuyet from his home". Based on the evidence before me, I find the owner's allegations unfounded, but I accept that the owner may have believed them to be true. The next day, on July 25, 2017, the owner requested a hearing with the strata and applied for dispute resolution with the tribunal.

45. The tribunal issued the Dispute Notice on July 26, 2017.

46. At some point in August 2017, the owner says they documented the damage to the kitchen, dining room and bathroom of SL61 in photographs. Although many of the photographs provided were of close up images and undated, I agree that they show wooden stud walls without drywall, some without insulation, and damage to cabinets.

47. A hearing was held on August 17, 2017 which the owner recorded with permission of the council members present. An audio recording of the hearing along with a transcript of the recording was provided in evidence. That evidence clearly shows the owner believed the strata was obligated to repair SL61 and that they would be relying on the tribunal process unless the strata was willing to settle. The recoding and transcription ended when the owner was excused from the meeting and did not include any detailed settlement discussions.

48. The August 17, 2017 council minutes state the owner requested SL61 repaired through the September 22, 2015 claim and that they requested the strata replace their hot water tank and repair resultant mold damage caused from a leak in the hot water tank causing additional damage to SL61. The owner disagrees with the content of the minutes relating to the repairs and I agree. The audio recording and

transcript do not contain the same detail as the minutes. In the audio recording, the owner states several times that they want the damage to SL61 repaired. The owner does not distinguish damage resulting from the September 22, 2017 water leak in unit 712 from the October 1, 2015 claim for damage in SL61. Further, there is no recorded discussion about the hot water tank or mold remediation.

49. The August 17, 2017 council meeting minutes also reflect a decision of the strata made after the owner had left the meeting. I find the decision is essentially an offer by the strata to resolve the issue, which I summarize as follows:

    a. The strata will request the insurance adjuster "re-open" the September 22, 2015 claim (and that the insurer had already agreed to do so, which appears unusual but is not relevant to this decision),

    b. The strata will request the owner withdraw their tribunal dispute,

    c. The strata will replace the hot water tank in SL61, conduct mold remediation at an estimated cost of $5,000 to paid from the CRF as a deemed emergency expense, and

    d. The strata will not be responsible for improvements and betterments to SL61.

50. On August 21, 2017, the strata wrote the owner with its decision, as described in the August 17, 2017 council minutes, summarized above. The strata confirmed that its insurer had agreed to re-open the September 22, 2015 claim relating to the toilet supply line in unit 712 and that the strata relied on bylaws 2 and 31 for not taking responsibility for improvements and betterments made to SL61. The letter also advised that the owner would be responsible for coordinating the repairs with the trades retained and the adjuster would have discretion to choose the trades.

51. The owner argues the August 21, 2017 letter was not received by them but that a different contradictory letter from the strata dated August 24, 2017 was. The August 24, 2017 letter provided in evidence, which the strata does not dispute, states only that the strata will request the September 22, 2015 claim be re-opened and that it would investigate the hot water tank to determine if the strata was responsible to

replace the tank and repair the resulting damage in SL61. The letter also cites bylaws 2 and 31 as reasons why the strata would not take responsibility for betterments and improvements made to SL61. The strata does not explain why the 2 contradicting letters were written to the owner 3 days apart. One in which the strata agreed to pay for replacing the owner's hot water tank and conducting mold investigation at its cost and another where the strata agreed only to investigate in order to determine its responsibility.

52. Based on the overall evidence provided, I prefer the position of the owner and accept they did not receive the strata's August 21, 2017 letter for the following reasons.

53. First, the audio recording supports the owner's position that there was no discussion between the parties at the August 17, 2107 hearing about the hot water tank or the different insurance claims.

54. Second, there is no correspondence or other evidence that the hot water tank in SL61 was leaking. The photographs do not show the tank is leaking. The October 1, 2017 "Loss Notice" only describes a second separate incident of water damage in SL61 had been identified that "appears to have been leaking for a while".

55. Finally, there is no correspondence or other communication in evidence that addresses the hot water tank. As earlier noted, the minutes state both insurance claims relate to a "pipe leak in the wall".

56. Given my finding that the owner did not receive the August 21, 2017 letter and my earlier finding that the owner may not have read the council minutes, I find the owner reasonably believed the strata was not prepared to repair SL61.

ANALYSIS

Is the strata responsible to complete repairs to SL61 resulting from water damage that occurred on about September 24, 2015 or October 1, 2015?

57. Under section 149 of the SPA, the strata must insure original fixtures built or installed on a strata lot. *Strata Property Regulation* (regulation) 9.1(1) defines fixtures to include “items attached to a building, including floor and wall coverings and electrical and plumbing fixtures”, and excludes items that can be removed “without damage to the building”. I find that regulation 9.1(1) includes drywall and built in cabinets as items the strata must insure.

58. I acknowledge the distinction between the strata’s obligation to insure and its obligation to repair, as I have noted, there are no bylaws that require the strata to repair SL61.

59. For the reasons that follow, I find the strata was negligent in its failure to address water damage to SL61.

60. In order to establish the strata’s negligence, the applicant must show that the strata owed them a duty of care, that the strata breached the standard of care, and that the owner sustained damage as a result of that breach (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).

61. Based on the facts, I agree with the strata that SL61 was more than likely affected by water damage relating to the September 22, 2015 claim and the October 1, 2015 claim.

62. I find the strata owed the owner a duty of care to ensure all repairs covered under the strata’s insurance policy resulting from the 2 insurance claims were completed to SL61. In other words, the strata does not have authority to deny the owner coverage under the strata’s insurance policy.

63. The British Columbia Supreme Court has determined that the standard of care required by a strata corporation is one of reasonableness, such that "perfection is

not required... only reasonable action and fair regard for the interests of all concerned". See *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74 at para 61.

64. There may have been miscommunication between the owner and the strata, based on apparent communications from ServiceMaster about the owner's willingness and availability to provide access to SL61 in the February to May 2016 period. The owner also admits they were busy and unavailable during that period, but says they never refused access.

65. However, I find the crux of this dispute is that the strata knew the SL61 repairs were at least partially covered by the strata's insurance policy and were not complete and did not complete or pursue repairs to SL61 under the 2 insurance claims despite its admission that damage was sustained to SL61 as the result of the 2 incidents. I find it unreasonable that the strata knowingly allowed both insurance claims to be closed, and outstanding repairs in SL61 to be abandoned, without directly notifying the owner of its actions. In particular, the strata did not pursue SL61 repairs under the September 2015 claim and withdrew the October 1, 2015 claim when it knew or ought to have known repairs to SL61 were still outstanding.

66. I find the strata's statements in the council meeting minutes were inadequate notification in the circumstances, considering the extent of the damage set out in the November 2015 scope of work exceeded $16,000. There is no requirement in the SPA or bylaws for an owner to read council meeting minutes. Bylaw 18 requires the strata to "inform owners of the minutes of all council meetings" but does not include how it must inform owners nor did the strata elaborate on how it informs owners. For example, if could be the strata emails owners to advise the minutes are available for reading on its website. Given the significant damage remaining in SL61 as set out in the scope of work, I find it was reasonable for the strata to communicate its actions directly with the owner, but there is no evidence of any such direct communication having occurred.

67. I could not locate a court decision that is directly on point. However, I find the principles of procedural fairness dictate that an owner whose strata lot is to be significantly affected by a decision of a strata corporation, such as not being repaired under the mandatory coverage of a strata corporation's insurance policy, should be properly informed and given the opportunity to address the strata on the issue. I find the evidence shows the strata did not follow these principles when it failed to formally communicate its intent to close the 2 insurance claims. In essence, I find the strata's actions resulted in the insurance claims being closed without the repairs to SL61 being complete and without any input from the owner.

68. While the SPA does not expressly require the strata to consult directly with an owner about repairs to their strata lot under an insurance claim, I find the inclusion of an owner as a named insured under the strata's policy, as set out in section 155 of the SPA, supports a conclusion that a strata corporation reasonably ought to do so.

69. Additionally, the strata's lawyer, in July 2017, clearly informed the owner that repairs would commence, at no cost to the owner, after a revised scope of work was completed. Given the strata had not provided the owner with the particulars of the strata's insurer's policy exclusions relating to mold, I find it reasonable for the owner to expect most if not all of the water damage repairs to SL61 would be completed.

70. Further, I find the strata's actions with respect to the August 17, 2017 council hearing were also unreasonable by providing conflicting letters of August 21 and 24, 2017 as noted above, which detail opposing steps the strata would take, both of which appear to be contrary to the stated objectives of the strata's lawyer one month earlier.

71. In summary, I find the strata did not keep the owner adequately informed of its actions or intentions, including failing to advise the owner of possible insurance exclusions, about the 2 insurance claims affecting SL61, and did not follow through on its subsequent promise to have the SL61 repairs completed. For these reasons, I find the strata's actions relating to SL61 repairs were not reasonable and the strata

breached its standard of care when it did not advise the owner of its actions or intentions, including notifying the owner directly that the insurance claims would be closed.

72. The strata claims it relied on its contractors and the owner prevented it from carrying out its obligations under the SPA and its bylaws which has resulted in health and safety issues arising in SL61 because of the strata lot's state of disrepair. The strata's arguments both relate to the owner refusing access to SL61. Even if that were true, and the strata reasonably believed access was refused, the strata does not address its lack of notification to the owner of its actions or intentions, including that the insurance claims would be closed, which I have found breached the strata's standard of care.

73. I find the strata's failure to directly notify the owner the insurance claims would be closed caused the owner's loss given the strata's inaction has resulted in SL61 to remain damaged by the 2 water losses. The damage the owner sustained is the incomplete repairs to SL61.

74. Only after the owner had been directly notified the insurance claims would be closed, and then failed to allow the repairs to be completed, could I find the strata was not negligent.

75. For these reasons, I find the owner has proven their claim of negligence against the strata.

Did the strata act in bad faith?

76. "Good faith" has been interpreted to mean "honesty of purpose, freedom from intention to defraud, and being faithful to one's duty or obligation". See *Blue-Red Holdings Ltd v. Strata Plan VR 857*, [1994] BCJ No 2293 at para 30 citing *Nystad v. Harcrest Apartments (1986)*, 3 BCLR (2d) 39 (SC).

77. I have found the strata breached its duty to pursue repairs to SL61 through its insurance policy, but I do not have sufficient evidence to find the strata acted dishonestly or with the intention to defraud.

78. The owner did not explain why they may not have conveyed any concerns to the strata that the water damage repairs were not completed to SL61 for the period between June 2016 and May 2017. While it is unclear what impact, if any, the owner's delay had on the outstanding repairs, I find the owner's delay weighs in favour of the strata with respect to allegations it acted in bad faith.

79. On weighing the overall evidence, I find the strata did not act in bad faith.

What is the extent of the strata's responsibility to repair?

80. That the strata's insurers were willing to re-open one or both of the closed insurance claims at an earlier date does not mean they will re-open them now. For that reason, and given my finding of negligence, I find the strata must, at its cost, repair SL61 to its condition prior to the water damage that occurred in September and October 2015. The strata is not responsible for repairs to any improvement and betterments made to SL61 that would not otherwise have been covered by the strata's policy.

81. However, based on the evidence before me, I find the nature and extent of the water damage caused to SL61 by the 2 incidents described above is unclear, so I make the following orders to assist the parties in resolution of this dispute.

82. If the parties are unable to agree on the scope of work required to restore SL61 to its condition prior to October 1, 2015 within 30 days of the date of this decision, the strata may retain, at its cost, an independent insurance adjuster or other independent professional of its choosing, other than ServiceMaster, to determine the scope of work required to repair SL61. For clarity, I note the scope of work must include repairs necessary to correct any water damage, including mold but excluding improvements and betterments made to SL61, that resulted from the 2 reported incidents of September and October 2015.

83. The owner must co-operate with the strata and provide access to SL61 for inspection to prepare the scope of work and for any repairs within 48 hours of written notice by the strata. Notice shall include notice provided to the owner's email address, which the owner shall confirm to the strata within 3 days if the date of this decision.

84. The strata must provide a copy of the scope of work prepared by the independent professional to the owner within 5 days of its receipt or within 60 days of this decision, whichever occurs first. The strata must obtain a minimum of 3 repair quotations, based on the scope of work obtained, from contractors chosen in consultation with the owner and provide the cost estimates it obtains to the owner upon receipt of same but no later than 90 days from this decision.

85. Except as agreed in writing between the parties, restoration work on SL61 in accordance with the independent professional's scope of work, must commence within 120 days of the date of this decision.

86. The strata is not restricted from contacting its insurers to request the cost of the repairs, or a portion of them, be included under either or both the September 22, 2015 claim or the October 1, 2015 claim. To be clear, the involvement of the strata's insurers does not relieve the strata from completing repairs to SL61 in accordance with this decision. Put another way, the strata is obligated to repair SL61 to the condition it was in prior to the water damage that occurred in 2015 as set out above, including mold remediation but excluding improvements and betterments made to SL61.

87. Nothing in this decision restricts the parties from agreeing to a cash settlement in lieu of SL61 repairs being completed.

Is the owner entitled to an order that the strata stop making threats and false reports to the police and BCSPCA?

88. The owner claims the strata has made threats that SL61 is a bio-hazard. Although I find the strata expressed concern about the safety and health of SL61 largely as a

result of such concern being raised by the owner's neighbour in a May 2017 email, I do not agree that the strata's comments amount to threats. I dismiss this aspect of the owner's claim.

89. The owner claims the strata made false reports to the RCMP and BCSPCA but provided no evidence to support their claims. I do not find the letters issued by the strata to be of a threatening nature as claimed by the owner. Also, the owner of unit 712 admitted to contacting the BCSPCA in their May 2017 email.

90. For these reasons, I decline to give the orders requested by the owner and dismiss these claims.

91. Even if I agreed with the owner, I would not make the orders requested as they do not appear to within the tribunal's jurisdiction for strata property claims.

Is the owner entitled to reimbursement of $750 for the cost of removing debris from his strata lot?

92. The owner says they paid $750.00 to remove items from their strata lot to allow for the insurance repairs to proceed in July 2017 after being contacted by the strata's lawyer. They provided a photograph of a "receipt" showing a date of July 29 (with no year) that states "Removal Rubbish" and "$800.00" with signature. The top of the receipt is cut off in the photograph but appears to show the dates of July 23 and 24.

93. In their submissions, the owner says they suggested to the strata's lawyer they could "bring in people to make sure my possessions were moved into safe areas" in order to expedite the repairs. They say this offer was made in response to the suggestion in the lawyer's July 12, 2017 email that the owner's furnishings would be moved "into a container which will be onsite at [the strata.]".

94. I do not find that the receipt is proof the owner paid $750 for items to be removed from SL61 to allow for the insurance repairs because there are insufficient details on the receipt to show the date, the address of the place where the work was done and the amount claimed is different that the amount shown on the receipt.

95. Therefore, I dismiss this owner's claim.

Is the owner entitled to $30,000 in compensatory damages and $50,000 in punitive damages?

96. The owner's claim for $30,000 in compensatory damages relates to $10,000 for threats and making false reports to the RCMP and BCSPA, plus $20,000 for negligence.

97. Given I have dismissed the owner's claims for orders relating to filing false reports for lack of evidence, for the same reason, I dismiss the owner's claim for $10,000 in damages in this regard.

98. As for the owner's $20,000 damage claim relating to the strata's negligence, I note my earlier finding that the strata did not act in bad faith. I also agree with the strata that the doctor's notes provided by the owner do not diagnose a mental or physical injury and are not sufficient to prove that damages are reasonable. I further note that it was not until after the owner started this dispute, that they began seeing their doctor.

99. I dismiss the owner's claim for $20,000 in damages resulting from the strata's negligence.

100. I turn now to the owner's claim for punitive damages.

101. Punitive damages would require malicious, oppressive and high-handed conduct of the strata of which there is no evidence here. The strata's failure to communicate with the owner does not mean that its misconduct was malicious, oppressive or high-handed as there is no evidence before me to suggest the strata's lack of communication was intentional. Thus, I do not agree with the owner that the strata acted in a fraudulent manner.

102. The strata cited *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.,* 2002 SCC 19, where, the Supreme Court of Canada set aside an award of punitive damages for fraud, explaining that fraud will only attract punitive damages

in exceptional cases, where compensatory damages do not provide sufficient punishment. Given I have not ordered compensatory damages, I find an award of punitive damages is also unwarranted. I dismiss the owner's claim for $50,000 in punitive damages.

TRIBUNAL FEES AND EXPENSES

103. 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 find the owner was partially successful in that they were successful in their claim for strata lot repairs but unsuccessful in their claim for damages. Therefore, I order the strata to reimburse the owner one half of the $225.00 tribunal fees paid, or $112.50. The owner did not claim dispute-related expenses other than those described above.

104. As for the strata's claim for legal fees of $9,513.00, tribunal rule 9.4 requires extraordinary circumstances to exist in order for one party's legal fees to be paid by another party. I do not find that extraordinary circumstances exist here to make such an order. I dismiss the strata's claim for legal fees.

105. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner, unless otherwise ordered by the tribunal. In the circumstances before me, I find it reasonable for the owner to contribute to the repairs to their strata lot, or any agreed cash settlement, in proportion to unit entitlement and I so order.

DECISION AND ORDERS

106. I order that

a. The strata, within 15 days of the date of this decision, pay the owner $112.50 for tribunal fees.

b. The strata, at its cost, repair SL61 to its condition prior to the water damage that occurred in September and October 2015, excluding improvements and betterments made to SL61.

c. If the parties are unable to agree on the scope of work required to restore SL61 to its condition prior to October 1, 2015 within 30 days of the date of this decision, the strata must retain, at its cost, an independent insurance adjuster or other independent professional of its choosing, other than ServiceMaster, to determine the scope of work required. The scope of work must include mold remediation.

d. The owner must co-operate with the strata and provide access to SL61 within 48 hours of written notice by the strata for an inspection to prepare the scope of work and for any subsequent repairs. Notice shall include notice provided to the owner's email address, which the owner shall confirm to the strata within 3 days of the date of this decision.

e. The strata provide a copy of the scope of work prepared by the independent professional to the owner within 5 days of its receipt or within 60 days of this decision, whichever occurs first.

f. The strata must obtain a minimum of 3 repair quotations, based on the scope of work obtained, from contractors chosen in consultation with the owner and provide costs of the quotations to the owner upon receipt of same but no later than 90 days from this decision.

g. Except as agreed between the parties, restoration work on SL61 in accordance with the independent professional's scope of work, must commence within 120 days of the date of this decision.

h. The owner must pay their proportionate share of any SL61 repairs completed by the strata under the terms of this order.

107. The owner is entitled to post-judgement interest under the *Court Order Interest Act,* as applicable.

108. The owner's remaining claims are dismissed.

109. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 123.1 of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

110. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the Small Claims Act (currently $35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 123.1 of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

J. Garth Cambrey, Vice Chair