



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Fleck et al v. The Owners, Strata Plan PGS 239*, 2019 BCCRT 646

B E T W E E N :

ISABEL FLECK and DAVID FLECK

APPLICANTS

A N D :

The Owners, Strata Plan PGS 239

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This claim arises from costs the applicants, Isabel and David Fleck (owners), incurred to repair water damage caused by a leaking pipe in strata lot 46 of the respondent strata corporation, The Owners, Strata Plan PGS 239 (strata). The

owners claim reimbursement from the strata in the amount of \$2,829.28 for their insurance deductible and surcharges.

2. The strata denies the owners' claims. It says it does not have an obligation to cover the costs of repairs in the owners' strata lot and is not responsible for expenses related to the owners' insurance coverage.
3. Ms. Fleck represents the owners and the strata is represented by a member of its strata council, who is not a lawyer.
4. For the reasons that follow, I dismiss the owners' claims.

JURISDICTION

5. The strata originally argued that the tribunal has no jurisdiction to hear the owners' claims because the owners sold strata lot 46 where the loss occurred prior to filing their Dispute Notice on January 3, 2019. However, the owners currently own another strata lot within the strata corporation that they purchased prior to commencing this action. The strata has subsequently conceded the tribunal's jurisdiction to hear this dispute.
6. Section 189.1(1) of the *Strata Property Act* (SPA) says that a strata lot owner may request that the tribunal resolve a dispute concerning any strata property matter over which the tribunal has jurisdiction. Section 1 of the SPA defines, with certain exceptions, an "owner" as a person who is a person shown in the register of a Land Title Office as the owner of a freehold estate in a strata lot.
7. Since neither the Act nor the SPA specify that the owner must be the owner of the particular strata lot where the loss occurred, I find it is sufficient that the owners owned a strata lot within the same strata corporation at the time they filed their Dispute Notice. For this reason, I find the tribunal does have jurisdiction to hear this dispute under 121 of the *Civil Resolution Tribunal Act* (Act).

8. Additionally, given the tribunal's small claims jurisdiction to deal with claims in debt or damages under \$5,000, the tribunal also has jurisdiction to decide this matter as a small claims dispute (see for example, *De Bayer v. Yang*, 2019 BCCRT 298).

PROCEDURE

9. These are the formal written reasons of the tribunal. 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.
10. 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.
11. 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.
12. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
13. 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, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

ISSUE

14. The issue before me is to what extent, if any, does the strata owe the owners \$2,829.28 to reimburse their insurance deductible and surcharges?

BACKGROUND AND EVIDENCE

15. In a civil claim such as this, the burden of proof is on the owners, as the applicants, to prove their claim on a balance of probabilities. I will not refer to all the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to my reasons.
16. The strata was created in 1997 under the SPA's predecessor, the *Condominium Act*.
17. The strata bylaws in effect at the time of this dispute are the consolidated bylaws that were registered on December 8, 2010 at the Land Title Office as BB1724794, which repealed all previously registered bylaws. The specific bylaws relevant to this dispute are as follows:

Division 1 – Duties of Owners, Tenants, Occupants and Visitors

3. Repair and Maintenance of Property by Owner

- (1) An Owner must repair and maintain the Owner's strata lot, except for repair and maintenance that is the responsibility of the Strata Corporation under these bylaws.

Division 2 – Powers and Duties of Strata Corporation

9. Repair and Maintenance of Property by Strata Corporation and Owner

- (1) The Strata Corporation must repair and maintain all of the following:
 - (a) common assets of the Strata Corporation;
 - (b) common property, that has not been designated as limited common property;

18. This claim is a result of two incidents in 2017 where water pipe valves in the owners' strata lot failed and caused damage to their flooring.

19. The damaged floors were entirely within the owners' strata lot and were not the original flooring installed when the developer constructed the building. The owners had replaced the original carpeted floors about 1 to 1 ½ years prior to these incidents. These facts are undisputed.
20. The owners carried their own insurance, which subject to a deductible of \$500, covered the cost of the repairs to their floors. Due to the claim, their insurance company added a surcharge to the owners' premiums. The owners claim reimbursement of these expenses from the strata.

Position of the Parties

21. The owners argue that the strata should cover their loss because their floors were damaged by the failure of a common asset, the water pipe. The owners say the problem was outside of their control.
22. The strata on the other hand, says it has no obligation under the SPA or the strata bylaws to insure the owners' floors or otherwise, pay to repair the damage.
23. I agree with the strata for the reasons explained below.

Analysis

24. The SPA sets out the obligations of the strata corporation. It requires the strata corporation to repair and maintain common property and common assets (section 72). I find that the strata met its obligations under the SPA and Bylaw 9(1) when it repaired the water pipe. The owners' flooring was not part of the common property or common assets. Therefore, I find that the strata had no obligation under the SPA or Bylaw 9(1) to repair the owners' floors.
25. Instead, Bylaw 3(1) makes the owners responsible to repair the floors within their strata lot. While the strata may, by bylaw, take responsibility to repair and maintain specified portions of a strata lot (section 72(3)), the strata's bylaws here create no such obligation on the strata.

26. The SPA and strata bylaws do not address claims by owners for damage caused by the strata or by others associated with it.
27. Unless it is found negligent, the strata is not responsible to reimburse an owner for expenses an owner incurs to repair the interior of a strata lot (see for example, *Vasilica v. The Owners, Strata Plan NW 17*, 2018 BCCRT 216). This is because the strata is not an insurer.
28. In order to succeed in an action for negligence, the owners must demonstrate that the strata owed them a duty of care, that the strata's behaviour breached the standard of care, that the owners sustained damage, and that the damage was caused, in law and in fact, by the strata's breach of care (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
29. It is generally accepted that a strata corporation owes a duty of care to its owners to maintain and repair common property and common assets to a standard of reasonableness. (See for example the tribunal's decision in *Di Lollo v. The Owners, Strata Plan BCS 1470*, 2018 BCCRT 2; though it is not binding I find its analysis useful.)
30. The owners did not allege, nor produce any evidence, that suggests the strata failed to maintain or repair the water pipes in the building to a standard of reasonableness. Instead, I find the evidence shows the strata acted reasonably by instructing a plumber to inspect and fix the leaks, and by replacing the failed valves. I also find the strata acted reasonably by maintaining the water pipes on a regular schedule, as shown in the evidence. There is nothing to otherwise suggest that the strata's actions fell below their standard of care or caused or contributed to the owners' loss. Therefore, I find the strata was not negligent.
31. In terms of insurance coverage, section 149 of the SPA requires the strata to carry insurance on common property and common assets and certain original fixtures in a strata lot. In this case, the strata carried insurance coverage on the water pipe but chose not to claim the repairs because the cost of the deductible exceeded the cost of repairs.

32. The SPA does not require the strata to carry insurance to cover improvements to fixtures made to a strata lot. It only requires it to insure the original fixtures installed as part of the original construction. The *Strata Property Regulation* defines floor coverings as fixtures. Therefore, once the owners replaced the original carpets, the new flooring was an improvement and the strata was not required to insure it.
33. Since I found the strata not liable in negligence and that it has no obligation under the SPA or its bylaws to repair the damaged floors, the strata is also not responsible to reimburse the owners' insurance deductible or any surcharges on their personal insurance policy. For these reasons, I dismiss the owners' claims.
34. As the owners' claims were unsuccessful in this dispute, pursuant to the Act and the tribunal's rules I find they are not entitled to reimbursement of tribunal fees or any dispute-related expenses.

ORDER

35. I dismiss the owners' claims and this dispute.

Trisha Apland, Tribunal Member