



Civil Resolution Tribunal

Date Issued: June 5, 2019

File: ST-2018-006121

Type: Strata

Civil Resolution Tribunal

Indexed as: *Leung v. The Owners, Strata Plan LMS 1109*, 2019 BCCRT 685

BETWEEN:

Ken Leung

APPLICANT

AND:

The Owners, Strata Plan LMS 1109

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute concerns a leaky condo. The applicant, Ken Leung (owner), submits that the respondent strata corporation, The Owners, Strata Plan LMS 1109 (strata) breached an agreement to pay for water damage to his strata unit. He seeks payment of \$5,000 for water damage repairs. The strata disagrees and submits that

the owner is not entitled to compensation as his claim is barred by an October 2017 settlement agreement.

2. The owner is self-represented. The strata is represented by Eric Bond, whom I infer is a member of the strata's council.
3. The owner initially named the former strata council president, David Rubeli, as a respondent in this dispute. However, the owner later agreed during the tribunal facilitation phase to withdraw the claim against Mr. Rubeli. I have amended the style of cause accordingly.

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. 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

8. The issue in this dispute is whether the strata is liable for the cost of repairing water damage to the owner's strata lot.

EVIDENCE AND ANALYSIS

9. The owner occupies his strata lot. He submits that in 2011 or 2012 the strata lot directly above his lot began leaking water through its patio when it rained. Water entered his living room walls and guest bedroom ceiling through the subroof and caused damage.
10. The strata submits that, like many buildings in Vancouver, the two buildings under the strata plan had construction deficiencies that led to water leaking from the common areas into multiple owner strata lots. The owner's strata lot was one such affected unit. In 2015 the strata raised funds to replace the building envelope. Work began in spring 2016 and was completed in summer 2017.
11. The owner provided evidence of water damage, including a May 22, 2014 estimate for floor and drywall replacement, a September 10, 2016 estimate for drywall repair, and an October 4, 2015 email from a carpet store for carpet installation and replacement. Based on the evidence and submissions, I find that that owner sustained water damage as outlined in these estimates, due to leaking from the strata lot above the owner's strata lot.
12. For the owner to succeed he must show that the strata is obligated to repair or cover the cost of water damage to the interior of his strata lot. Section 72(1) of the *Strata Property Act* ("SPA") states that the strata must repair and maintain common property and assets.
13. I have reviewed the strata's registered bylaws. Bylaw 2(1) provides that a strata lot owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the responsibility of the strata corporation under the bylaws.

Bylaw 8(d) provides that the strata's duty to repair is restricted to the structure and exterior of the building, as well as certain exterior fixtures.

14. As noted in the owner's dispute notice and elsewhere in his submissions, this dispute relates to interior living room and guest bedroom water damage. I find that the strata's registered bylaws govern and under the bylaws the strata is not liable for the owner's claim.
15. The owner does not rely upon a bylaw or any specific provision of the SPA. Instead, he submits that the strata's property manager verbally agreed that the strata would pay for the cost of such repairs. In support of his position, he referred to correspondence between the parties from September to November 2017, that discussed settlement of the owner's claim for water damage. These discussions resulted in a written settlement agreement.
16. I have reviewed the correspondence and I conclude that there is no binding verbal or written agreement for the strata to cover the cost of the owner's claim for interior water damage. The terms of the written agreement are documented in a September 29, 2017 email, an October 23, 2017 letter, and a release signed November 7, 2017. These documents do not obligate the strata to conduct or pay for the repairs requested by the owner. The strata disagrees that the property manager verbally agreed to pay for such repairs. I find it unlikely that such an agreement was made, given the terms of the written agreement.
17. In his September 29, 2017 email, the owner wrote the strata's property manager and stated that, having consulted his lawyer, he was prepared "to resolve the major issue" regarding his ceiling repair, interior wall, and flooring in exchange for \$2,200. The owner would also stop legal proceedings.
18. In an October 23, 2017 letter, the strata's property manager wrote to the owner on behalf of strata council. The property manager stated that strata council had met on October 11, 2017, and had agreed to the terms of the September 29, 2017 offer, including payment of \$2,200. She also wrote that, even though the strata was

settling, “these types of repairs are not the responsibility of the strata corporation and in the future will not be paid to any owner”. She cited bylaw 2(1) in support of her position, which I have found applies.

19. The property manager added that the strata council also requested written confirmation that the owner would accept this amount and not make any further claims in relation to past interior leak damage to any portion of his strata lot. The property manager attached a release for the owner’s signature as well as a copy of his September 29, 2018 email. The release provides that the owner would accept \$2,200 as “final reimbursement for all costs related to interior leak damage” to his unit, and “specifically the flooring”.
20. The owner signed the release on November 7, 2017. The property manager subsequently sent the owner a cheque for \$2,200. In the accompanying November 17, 2017 cover letter, the property manager wrote that the enclosed amount was a final payment for all past water damage within the owner’s strata lot, and that no additional monies would be paid. In a November 28, 2017 email, an accountant advised the property manager that the \$2,200 cheque had been deposited by the owner.
21. Several emails exchanged in October 2017 appear to contradict the terms of the written agreement. In an October 23, 2017 email, the owner wrote the property manager to see if the parties were “on the same page”. He asked if the \$2,200 was for only replacing his living room carpet (which he estimated at \$1,500 in value) and the remaining \$700 for “loss of use damages”. He wrote that the strata was still responsible for repairing the water damage to his ceiling and interior walls in his second bedroom, and the interior of two to three of his living room walls. He wrote that “if this is correct” he would “sign off and agree and accept the strata offer”. He also noted that the interior repairs excluding repair to his hardwood floor would cost close to \$10,000.
22. The property manager replied by email on October 29, 2017, and stated that all interior repairs from prior exterior or roof leaks were being done as part of the work

of the contractors. She added that if the owner had filled out a deficiency form these matters would already be on their list of tasks. A few minutes later the property manager emailed again stating that interior repairs would be done by the strata. However, there would be no additional money issued for any previous repairs that the owner did or paid for.

23. The October 29, 2017 emails appear to show that it was at least contemplated that the strata might cover the cost of the owner's interior repairs, which could feasibly arise to the level of representations. However, I am not persuaded that they created an obligation for the strata to cover the cost of interior repairs as part of the settlement agreement. The agreement was an attempt by the strata to limit its liability, rather than expand it. The plain wording of the September 29, 2017 email, October 23, 2017 letter, and release signed November 7, 2017, support this interpretation.
24. Further, after the October 29, 2017 emails were exchanged, the owner signed the release without revising its wording to reflect any obligation by the strata to make interior repairs. Rather, the release specifically says that the strata would pay no additional money related to interior leak damage to the owner's strata lot. The property manager's emails must be considered in the context of the signed release and the strata bylaws. I therefore find the property manager's emails to be insufficient to create an obligation for the strata to assume responsibility for the water damage at issue.
25. The owner submits that his unit would not have suffered water damage if the strata had acted sooner to repair the common property, as his second bedroom and southeast interior living room began leaking in either 2011 or 2012. He submits that the strata property manager stalled and delayed investigating the source of the leak from 2011 to 2014.
26. As noted in *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784, under section 72(1) of the SPA the strata has a fundamental duty to repair and maintain common property. The starting point for the analysis is deference to the decisions made by

strata council, as approved by the owners. The standard is reasonableness and not strict liability.

27. The owner provided a copy of an April 17, 2015 letter from the property manager rejecting the owner's request to attend an upcoming April 29, 2015 strata council meeting. I am unable to conclude from this letter that the strata stalled or delayed acting. The property manager wrote that council lacked time to meet the owner because it would be discussing preliminary designs for exterior repairs with the contractor. The property manager also wrote that the owner did not comply with bylaw 15 by submitting his request in writing. However, she added that council would review a request that met the requirements of bylaw 15. I am unable to conclude from this letter or any other evidence before me that the strata acted unreasonably in making repairs to the building envelope in the manner and at the time it did.
28. For these reasons, I find the owner has not proved that the strata is obligated to pay for repairs to his strata lot.
29. As the owner is unsuccessful, in accordance with the Act and the tribunal's rules, I dismiss his claim for reimbursement of tribunal fees.

ORDER

30. I order that the owner's claim, and therefore this dispute, is dismissed.

David Jiang, Tribunal Member