



Civil Resolution Tribunal

Date Issued: June 7, 2019

File: ST-2018-008648

Type: Strata

Civil Resolution Tribunal

Indexed as: *Na v. Virk*, 2019 BCCRT 694

BETWEEN:

Peng Na

APPLICANT

AND:

Arminder Virk

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about damage that arose from a water leak. The applicant, Peng Na, is an owner of a strata lot that is located below a strata lot owned by Arminder Virk. The applicant says that water leaked from the respondent's strata lot into his own, and caused damage to his ceiling and wall. The applicant seeks an order that the

respondent pay him \$900 in repair costs. The respondent says he is not liable for the damages claimed by the applicant.

2. The parties are self-represented.
3. The Dispute Notice identified the respondent's surname as "Vrik", but the respondent's correspondence identifies the spelling of his name as "Virk". Accordingly, I have amended the style of cause to reflect the correct spelling.

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 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 respondent is responsible for the \$900 in repair costs claimed by the applicant.

BACKGROUND AND EVIDENCE

9. The parties own strata lots in a strata corporation (strata). The applicant is an owner of strata lot 28 (which is also known as suite 308), and the respondent is an owner of strata lot 37 (which is also known as suite 407).
10. On July 18, 2018, the applicant noticed water in his strata lot. The applicant notified the strata's property manager, who arranged for a plumber and restoration company to attend. The plumber cut a hole in the applicant's ceiling and determined that the bathtub drain for the respondent's suite was above where the water had been coming through. The plumber was unable to access the respondent's suite until the next day. The plumber sealed the bathtub drain, but the leak persisted. The plumber then moved the bathtub drain and noticed 2 cracks on the drain shoe, which connects the tub drain to a drainage pipe. The plumber installed a new drain shoe and the leak stopped.
11. The respondent's insurance covered the emergency remediation costs, but not the repairs to the applicant's strata lot. The respondent's insurance company stated in an email message that the cracks in the drain shoe were caused by faulty workmanship by the manufacturer or improper installation, and that it did not consider the cracks or resulting damage to be the result of the respondent's actions. The applicant requested that the respondent reimburse him for repair costs, but the respondent declined.

POSITION OF THE PARTIES

12. The applicant says the respondent is responsible for the costs to repair his ceiling and wall as a result of the water leak. His position is that the tub shoe is not a pipe such that it would be considered a strata responsibility as common property (CP),

but rather that it is part of the respondent's bathtub. The applicant suggested possible reasons for the cracks in the tub shoe, including tightening the strainer in the bathtub, thermal expansion of the tub strainer, or using a stick to clear a clogged drain.

13. The applicant provided copies of a blog entry and an internet article from the website of another strata corporation that suggest an owner will be responsible to repair damage that may result to a neighbour's suite as a result of a water leak from their own strata lot. He also provided copies of chat logs between himself and the respondent's insurance company which he says establish that the damage to his strata lot would be covered by the respondent's insurance claim.
14. The applicant says he incurred expenses to repair damage to his ceiling and wall. He provided an email message in another language (with an English translation) to support his claim. This email states that the repairs cost \$900, inclusive of labour and materials. The applicant requests an order for reimbursement of this amount, plus costs and interest.
15. The respondent says that, as the damage to the applicant's strata lot was not caused by his actions, he is not responsible for it. The respondent states that all homeowners are responsible for any damage in their own units, and that he is not responsible for CP pipes. The respondent states that he is following the advice of his insurance company in taking the position that the applicant's claim should be dismissed.

ANALYSIS

16. There is no dispute that water entered the applicant's strata lot from that of the respondent. Although the applicant suggested that the leak was caused by a bucket of water being knocked over, this is not consistent with the evidence. The notes on a plumber's invoice state that the leak was the result of cracks in a drain shoe in the respondent's bathtub. I accept that this was the source of the leak.

17. The issue before me is whether the respondent is responsible for the repair costs claimed by the applicant. The documentation provided by the parties is not determinative of the matter. The position of the respondent's insurer is indicative of only its determination under the insurance policy and is not binding upon me. The blog entry referenced by the applicant discusses *Wawanesa Mutual Insurance Company v. Keiran et al*, 2007 BCSC 727. This case concerns damage to an owner's own strata lot, and states that an owner may be responsible for damage in the absence of negligence. However, this case is distinguishable as the issue was whether an insurer was required to provide coverage for damage inside an owner's own strata lot and turned on the interpretation of an insurance policy. I do not find it to be of great assistance to my analysis.
18. The *Strata Property Act* (SPA) and the strata's bylaws do not contain provisions that specifically address water damage and associated repairs as between strata lot owners. The bylaws do set out responsibilities for repair and maintenance for both the strata and strata lot owners. Bylaw 2(1) states that an owner must repair and maintain their strata lot, except for repair and maintenance that is the responsibility to the strata corporation. Bylaw 8(2)(b) limits the strata's duty to repair and maintain strata lots to: the structure and exterior of the building; chimneys, stairs and other things attached to the exterior of a building; railings and other similar structures that enclose patios and yards; and doors and windows on the exterior of a building or that front on the CP.
19. I acknowledge the respondent's submission that the drain shoe is a CP pipe and the associated suggestion that it was not his responsibility to repair or maintain. Section 1 of the SPA does identify pipes as CP if they are located in certain locations, including within a floor, wall or ceiling that forms a boundary between strata lots, between a strata lot and CP, and between a strata lot or CP and another parcel of land. In addition, a pipe that is wholly or partially within a strata lot is CP if it is capable of being and intended to be used in connection with the enjoyment of another strata lot or the CP. I find that the drain shoe, although connected to a pipe, was located under the bathtub within the boundary of the strata lot and not within a wall, floor or ceiling. It services the respondent's bathtub, and is not used in

connection with the enjoyment of another strata lot or CP. Therefore, the drain shoe is not CP and the respondent bore responsibility for its repair and maintenance.

20. In addition to the respondent's duty to repair and maintain the drain shoe, the bylaws also address nuisance. Bylaw 3(1)(a) states that an owner, tenant, occupant or visitor must not use a strata lot in a way that causes a nuisance or hazard to another person. It also states that, in all circumstances, an owner is considered to be liable for the acts and omissions of his tenants, visitors or any other occupant of the owner's strata lot
21. Liability for negligence occurs when someone owes, but fails to meet, a duty of care and damages result. In addition to his general duty of care, the respondent also had a duty under the bylaws to ensure that water egress from his strata lot did not cause damage to the applicant's strata lot.
22. Case law suggests that an owner is liable in negligence for water that escapes from his or her property, unless he or she can provide an explanation to show otherwise (*Westsea Construction v. Billedeau*, 2010 BCPC 109 at paragraph 39, and *Fontaine v. ICBC* [1998] 1 SCR 424). Decisions of this tribunal have described this scenario as a reverse onus of proof (see, for example, *Crockart v. Turcotte*, 2018 BCCRT 276) that has application to strata properties (see, for example, *Mingxi Yu v. Maiwand Ahmadzai*, 2018 BCCRT 791 and *Averin et al v. Ball*, 2019 BCCRT 608).
23. As discussed above, the respondent had the responsibility to repair and maintain the drain shoe. He submits that the cracks in the drain shoe were caused by manufacturing or installation rather than his own actions. However, this information came from the insurer, and it is not clear that the insurer inspected the damaged equipment. The plumber who performed the repair did not identify the cause of the cracks, and there is no other evidence from a plumber or parts manufacturer to comment on this matter. I am not satisfied that the insurer's email alone is sufficient to meet the onus of establishing that the respondent is not liable for the problem with the drain shoe.

24. The respondent has not provided a sufficient or reasonable explanation to show that he is not liable for the water egress from his strata lot or the damages in the applicant's strata lot. Therefore, the respondent is liable for the repair costs incurred by the applicant.
25. I find that the respondent must pay the applicant the \$900 in claimed repair costs.

TRIBUNAL FEES, EXPENSES AND INTEREST

26. 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 see no reason in this case to deviate from the general rule. I therefore order the respondent to reimburse the applicant for tribunal fees of \$225.00 and dispute-related expenses of \$10.50.
27. I also find that the applicant is entitled to pre-judgment interest under the *Court Order Interest Act* in the amount of \$10.10.

DECISION AND ORDERS

28. I order that within 30 days of the date of this decision, the respondent pay to the applicant the amount of \$1,145.60, broken down as follows:
- a. \$900 for repair costs;
 - b. \$235.50 for reimbursement of tribunal fees and dispute-related expenses; and
 - c. \$10.10 for pre-judgment interest.
29. The applicant is also entitled to post-judgment interest, as applicable.
30. 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.

31. 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.

Lynn Scrivener, Tribunal Member