



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 2845 v. Chung*, 2019 BCCRT 716

B E T W E E N :

The Owners, Strata Plan LMS 2845

APPLICANT

A N D :

Alan Wei Yen Chung

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about repair costs from water leaks. The applicant, The Owners, Strata Plan LMS 2845 (strata), says that it repaired damages resulting from water leaking from a strata lot owned by the respondent, Alan Wei Yen Chung, and that the respondent has failed to pay for the charged back amounts of those repairs. The strata seeks an order that the respondent pay it \$15,789.46. The respondent denies

that he is responsible for all of the charges, and says that substandard work and delays in the repair process resulted in him losing his tenant and rental income.

2. The strata is represented by a member of the strata council. The respondent is represented by a family member.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. 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

7. The issue in this dispute is whether the respondent must reimburse the strata for the claimed repair costs of \$15,789.46.

BACKGROUND AND EVIDENCE

8. The strata is comprised of 125 strata lots. Strata lot 125 is a non-residential strata lot, and the remaining strata lots are residential. The respondent purchased strata lot 11, which is also known as suite 404, in June of 2017.
9. The strata's bylaws address responsibilities for repair and maintenance, as well as insurance issues. Bylaw 2.3 states that an owner shall repair and maintain his strata lot, including windows and doors, and areas allocated to his exclusive use, and keep them in a good state of repair, reasonable wear and tear and damage by fire, storm, tempest or act of God excepted. According to bylaw 2.5, an owner must not use a strata lot in a manner that will cause a nuisance or hazard to any occupier of a strata lot.
10. Bylaw 3.4 sets out the strata's responsibilities for the repair and maintenance of common property (CP), including pipes, wires, cables, chutes and ducts capable of being used in connection with the enjoyment of CP or more than 1 strata lot.
11. According to bylaw 35.1, in the event that loss or damage occurs to CP or limited common property that gives rise to a valid claim under the strata's insurance policy, if the origin of the loss is within the interior confines of a strata lot, the deductible of the strata's insurance policy shall be paid by that strata lot's owner. Bylaw 35.2 provides that an owner shall indemnify the strata from the expense of any maintenance, repair, or replacement rendered necessary to the CP or to any strata lot by his act, neglect, or carelessness or by that of any member of his family or his or their guests, servants, agents or tenants, but only to the extent that such expense is not met by the proceeds of insurance carried by the strata corporation.
12. Bylaw 35.3 states that the strata is not responsible to a strata lot owner or occupant for any loss, damage or expense caused by an overflow or leakage of water from any adjoining strata lot. The bylaw specifically states that this situation is not covered by the strata's insurance policy.

13. On July 20, 2017, the strata arranged for a contactor, PWM, to investigate a leak in the bathroom ceiling of suite 301. The leak was found to originate from the respondent's strata lot and was caused by a faulty cartridge in the shower.
14. On July 24, 2017, water overflowed from a toilet bowl in the respondent's strata lot. The respondent's strata lot, as well as suites 403 and 301 (which are adjacent to and below the respondent's strata lot), sustained water damage as a result of this incident. The strata arranged for PWM to attend on an emergency basis to stop the water problem, dry out the strata lots, and remove damaged materials. The strata had a restoration company attend to repairs. PWM attended at the strata on several more occasions to deal with leaking from the ceiling of suite 301 and a lack of water in the respondent's bathroom sink.
15. The strata received a number of invoices from the restoration company and PWM. The strata paid these invoices and charged the repair amounts back to the respondent's strata lot. The strata's property manager forwarded the invoices to the respondent and requested reimbursement.
16. The respondent did not provide reimbursement to the strata within 30 days as the property manager had requested. A ledger provided by the strata shows total outstanding charges for the respondent's strata lot of \$15,789.46.

POSITION OF THE PARTIES

17. The strata says that it interprets its bylaws to mean that, when a problem occurs in a strata lot that affects other strata lots, the strata has the authority to resolve the problem and carry out repairs to restore the affected strata lots to their original condition. It then charges back the costs for the repairs to the strata lot owner who is responsible for the problem. In the past, affected owner have reimbursed the strata for the repair costs, either directly or through their insurance providers. The strata says the insurable portion of the claim is only \$996.74 over its deductible. The strata says that, in this case, it decided not to make an insurance claim due to the

adverse impact small claims would have on its claims history, and therefore its insurance premiums.

18. The strata says the applicant has failed to pay for the costs of repair associated with the water egress from his strata lot, and has also failed to pay a strata fee catch-up of \$19.18. The strata expects that the respondent will fully reimburse it for the costs related to the water issues in his strata lot. In its Dispute Notice, the strata claimed damages of \$15,789.46. In its submissions, the strata revised that amount, and requested an order that the respondent pay it \$14,994.03.
19. The respondent admits that he is responsible for some of the repair costs. However, he says that he did not have his own insurance at the time of the incident and that he wants to explore the possibility of having the strata's insurance cover the costs of the repairs while he pays the deductible. The respondent says he does not understand why he cannot use the strata's insurance, and states that other owners have been allowed to do this in the past.
20. The respondent disputes the strata's calculation of the outstanding amount and characterises some of the charges as questionable. According to the respondent, the total outstanding amount is \$14,974.85. The respondent does not dispute his responsibility for 2 invoices from the restoration company in the amounts of \$5,007.85 and \$5,998.89 (for a total of \$10,996.74). The respondent raises concerns about the invoices from PWM, saying that some of the work descriptions are vague, some work took too long, some work was on CP, and one item on an invoice (reconnecting the water supply to a sink) represents work that the restoration company failed to perform properly. His position is that this charge should be directed to the restoration company rather than himself, and that the strata should pay for repairs to CP.
21. The respondent also says the repairs took approximately 3 months to complete, which he describes as an unnecessarily long period of time. The respondent says that his tenant refused to pay rent for a month and a half at a rate of \$1,700 per month due to these delays, such that he lost out on rental income, and eventually

lost his tenant. The respondent states that he has chosen did not bring a counterclaim against the strata for any losses or damages associated with this incident.

ANALYSIS

22. As a preliminary matter, the strata made submissions about an outstanding strata catch-up fee. The Dispute Notice claimed amounts for “unpaid money regarding various strata chargebacks for water damage repair”, but did not identify a specific claim for a strata catch-up fee. As this item was not claimed in the Dispute Notice, I am unable to address it in the context of this decision.

23. Section 1 of the *Strata Property Act* (SPA) defines CP as:

- a. that part of the land and buildings shown on a strata plan that is not part of a strata lot, and
- b. pipes, wires, cables, chutes, ducts and other facilities for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, if they are located
 - i. within a floor, wall or ceiling that forms a boundary (A) between a strata lot and another strata lot, (B) between a strata lot and the common property, or (C) between a strata lot or common property and another parcel of land, or
 - ii. wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property.

24. Section 133 of the SPA sets out that a strata corporation may do what is reasonably necessary to remedy a contravention of its bylaws, including doing work on or to a strata lot, to the CP or to common assets. The strata corporation may require that the reasonable costs of remedying the contravention be paid by the person responsible for it.

25. Sections 149 and 150 of the SPA say that the strata must obtain and maintain property and liability insurance. Section 161 of the SPA states that an owner may obtain and maintain insurance for, among other things, loss of rental value of the owner's strata lot and liability for property damage and bodily injury, whether occurring on the owner's strata lot or on the CP.
26. The respondent admits responsibility for the 2 charges from the restoration company of 2 invoices from the restoration company in the amounts of \$5,007.85 and \$5,998.89, for a total of \$10,996.74. I therefore order payment of that amount.
27. The remaining invoices are from PWM, as follows: invoice 17-228 dated August 8, 2017 for \$1,602.99; invoice 17-2572 dated August 11, 2017 for \$750.77; invoice 17-3049 dated September 8, 2017 for \$1,417.50; and invoice 17-3699 dated October 23, 2017 for \$206.85. The respondent does not dispute the entirety of these invoices, but has raised concerns that some of them contain sums that were billed to him incorrectly.
28. Invoice 17-228 contains work on 3 different days. The work on July 24 dealt with the emergency toilet issue. Work on August 8 focused on applying sealant to deal with a leak from the respondent's bathtub. I find that the work on both of these days was attributable to water egress from the respondent's suite. The work on August 4 dealt with a separate leak into suite 301 from a cold water line. Based on the plumber's description, I am satisfied that this line is CP as contemplated by the SPA, and is therefore the strata's responsibility to repair and maintain. According to the invoice, this repair took 2 hours of work at \$108 per hour plus the cost of insulation at \$29.98. After taking taxes into account, I find that the sum of \$275.50 is attributable to the strata and the remainder of \$1,327.49 should be borne by the respondent.
29. Invoices 17-2572 and 17-3049 both involved work to a shower cartridge in the respondent's strata lot, which had been causing a leak in the ceiling of suite 301. According to invoice 17-3049, PWM worked on this issue on July 20, August 24 and September 8, 2017. It would appear that a new cartridge was ordered and installed, but subsequently failed and had to be replaced again. Invoice 17-2572 shows that

PWM also attended for a leak in suite 301's ceiling on August 11, 2017. The plumber checked the shower cartridge, which was still leaking. He or she also found condensation leaking from a 3" copper line that required the installation of insulation.

30. The respondent's position is that PWM had already investigated the cartridge on July 20 and had ordered the appropriate part, so there was no need to perform additional work on the area on August 11. I find that it was reasonable to investigate further due to the continuing leak. However, I find that the majority of the work performed on August 11 was related to the CP copper line. On a judgment basis, I find that 1 hour of labour is reasonably attributable to the respondent's shower issue. With taxes, \$120.96 of invoice 17-2572 must be paid by the respondent. The remainder of the labour and materials related to CP and is the responsibility of the strata.
31. The work detailed on invoice 17-3049 related entirely to the shower cartridge and the entire \$1,417.50 is the responsibility of the respondent.
32. The work billed on invoice 17-3699 related to a lack of water in a sink in the respondent's strata lot. The respondent's view is that the issue was within the scope of work that should have been addressed by the restoration company, and the cost should be charged to that company if it did not perform work for which it was paid. However, a review of the invoice indicates that the problem was not related to restoration work or to CP, but to a "completely clogged" aerator. As the respondent bears repair and maintenance responsibility for this item, I find that he is responsible for the full \$206.85 reflected on the invoice.
33. In accordance with bylaw 35.2, the respondent is responsible for expenses not met by insurance proceeds. As explained in bylaw 35.3, the strata's insurance does not cover damage or expense caused by the egress of water from one strata lot to another. The amounts of the PWM invoices I have found to be the responsibility of the respondent involve repairs to his own strata lot and adjoining strata lots as a result of water egress. I am satisfied that these repairs did not involve CP, are not

the responsibility of the strata, and therefore are not covered by the strata's insurance.

34. The portion of the charged back amounts to which the strata's insurance may apply is \$10,996.74, which is only \$996.74 over its \$10,000 deductible. The strata has chosen not to make a claim in this case due to the amount of the damages and the potential impact on future premiums.
35. The respondent's position is that he has a right to use the strata's insurance. There is nothing in the SPA or the bylaws that requires a strata to make a claim on its insurance in circumstances where an affected strata lot owner does not have insurance. The respondent did not provide evidence to support the assertion that other strata lot owners previously have been allowed to make claims on the strata's insurance despite the strata's initial determination not to make a claim due to the insurable amount and the impact on all strata lot owners from increased premiums. I find that it was reasonable for the strata to make its decision in this regard.
36. I acknowledge the respondent's view that he is a victim in this situation as he incurred damages and lost his tenant. However, this does not alter his responsibilities under the bylaws. I find that the respondent is responsible for \$14,069.54 of the amounts charged back to him by the strata.

TRIBUNAL FEES, EXPENSES AND INTEREST

37. 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 strata for tribunal fees of \$225.00. The strata did not make a claim for dispute-related expenses.
38. The strata is entitled to pre-judgment interest under the *Court Order Interest Act*. Calculated from December 12, 2017 (being the date the charge backs were applied to the respondent's strata lot account), this amounts to \$314.48.

DECISION AND ORDERS

39. I order that, within 60 days of the date of this order, the respondent pay to the strata the amount of \$14,609.02, broken down as follows:
- a. \$14,069.54 for charged back repairs;
 - b. \$314.48 in pre-judgment interest under the *Court Order Interest Act*; and
 - c. \$225.00 as reimbursement of tribunal fees.
40. The strata is also entitled to post-judgment interest under the *Court Order Interest Act*.
41. The remainder of the strata's claims are dismissed.
42. 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.

43. 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