



# Civil Resolution Tribunal

Date Issued: June 13, 2019

File: ST-2018-006765

Type: Strata

Civil Resolution Tribunal

Indexed as: *O'Brian v. The Owners, Strata Plan BCS 2550*, 2019 BCCRT 721

B E T W E E N :

Christopher O'Brian

**APPLICANT**

A N D :

The Owners, Strata Plan BCS 2550

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Trisha Apland

## INTRODUCTION

1. This claim is about a dispute over an invoice in the amount of \$1,495.20 that the respondent strata corporation, The Owners, Strata Plan BCS 2550 (strata) charged the applicant for alleged damage to the strata's elevator. The applicant is a tenant in the strata corporation.

2. The strata says the applicant damaged the elevator and should be required to pay the invoice. The applicant admits to breaking a glass pane in the strata's elevator but says the glass did not cause the damage and he is not responsible for the invoice. The applicant asks for an order requiring the strata to reverse the \$1,495.20 charge.
3. The applicant is self-represented, and the strata is represented by a strata council member, Aila Fleming.

## **JURISDICTION AND PROCEDURE**

4. 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.
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. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
8. As a preliminary matter, the applicant asked the tribunal to add his landlord, who is the owner of the strata lot in the respondent strata corporation, as a co-applicant. However, the owner did not then file a Dispute Notice associated with this dispute. I find I have jurisdiction to hear this dispute without the owner being added as an

applicant. Under section 121 of the *Civil Resolution Tribunal Act* (Act) and section 189.1 of the *Strata Property Act* (SPA) the tribunal has jurisdiction over strata property claims in respect to a decision of a strata corporation in relation to a tenant, and a tenant has standing to file such a dispute.

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, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

## **ISSUE**

10. Must the applicant reimburse the strata's elevator repair fees?

## **BACKGROUND AND EVIDENCE**

11. In a civil claim such as this, the burden of proof is on the applicant, to prove his claim on a balance of probabilities.
12. 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.
13. The strata was created in October 2017 under the SPA. The strata plan shows that it is comprised of two four-story buildings with underground parking and elevators. The plan identifies the elevators as common property.
14. The parties agree to the following facts. The applicant is a tenant of an owner, and lives in the strata. On June 5, 2018, the applicant dropped a pane of glass in the elevator and it shattered into small pieces. On June 12, 2018, Richmond Elevator Maintenance Ltd. inspected the elevator and determined that broken glass caused a seal to start leaking. It invoiced the strata \$1,495.20 for the cost of repairs. The strata initially charged back the cost of the elevator repair to the strata lot owner.
15. On August 1, 2018, the strata wrote to the applicant demanding that he reimburse the strata for the Richmond Elevator invoice in five installments totalling \$1,495.20.

On August 29, 2018, the strata lot owner forwarded the applicant the statement showing the charge back on his strata fee account.

16. The applicant refused to pay. He claimed he was not responsible to pay for the damage to the elevator.
17. The strata bylaws in effect at the time of this dispute are the amended bylaws that were registered on April 5, 2017 at the New Westminster Land Title Office as CA5915120.
18. Bylaw 8 requires the strata to repair and maintain its common property. This bylaw is consistent with the obligations on a strata corporation set out in sections 72 and 149 of the SPA.
19. Bylaw 3(2) establishes obligations to repair common property where an owner, tenant, occupant or visitor causes damage to common property beyond the wear and tear that is repaired by the strata. I have reproduced the relevant sections of Bylaw 3(2). I find its wording important in setting out the relative obligations on a strata lot owner versus a tenant in this dispute.

### ***Use of property***

3. (2) An owner, tenant, occupant or visitor must not cause damage, other than reasonable wear and tear, to the common property, common assets or those parts of a strata lot, which the Strata Corporation must repair and maintain under these bylaws or insure under section 149 of the [SPA].

- (a) If any resident, tenant or guest marks or defaces the interior walls or floors, exterior walls of the building, elevator, etc., such damage must be repaired at the expense of such resident and if such an act is deemed to be intentional by the strata council then a \$500.00 fine shall be assessed therein.

- (b) An owner is responsible for any damage caused by occupants, tenants or visitors to the owner's strata lot or common property.

- (c) An owner shall indemnify and save harmless the Strata Corporation, from the expense of any maintenance, repair of (sic) replacement rendered necessary to the common property, limited common property, and common assets or to any strata lot that may be proven to be the owner's responsibility.
- (d) Owners responsible for damage to their strata lot, any other strata lot, common property, limited common property or other assets of the Strata Corporation shall pay the cost of repairs or replacement, which must be made in a professional manner with regard to proper restoration methods and/or building practices, which may be ordered by the Strata Corporation or any competent public or local authority. Owners will be responsible for any and all costs not covered by the Strata Corporation's insurance.
- (e) In such circumstances and for the purpose of these bylaws, any expense or insurance deductible paid or payable by the Strata Corporation shall be considered an expense payable by the strata lot Owner responsible or in whose strata lot the cause of the damage originated. This expense will be charged to the Owner and shall be added to, and become part of, the maintenance fee of that Owner for the month next following the date on which the expense was incurred.

## **POSITION OF THE PARTIES**

- 20. The applicant asks for an order that he is not responsible for the \$1,495.20 charge. His primary position is that the broken glass did not cause the damage to the elevator. He also argues that the incident was an accident and the strata's demand for payment is significantly unfair and should not be allowed. Further, he argues that the strata is obligated under the SPA to pay for the cost of the elevator repairs because it is common property.
- 21. The strata says the damage to the elevator was the result of the applicant's negligence. The strata argues that Bylaw 3 subsections 2(b) through 2(e) applies

and therefore, the tribunal should dismiss the claim and order the claimant to pay the strata corporation \$1,495.20. However, I note the strata did not file a counterclaim.

22. The applicant also claims that the strata failed to fully respond to his request for information related to the incident. The strata says it had disclosed all the information it had from Richmond Elevator and the applicant was requesting information that was not in its possession. I note the applicant requested no tribunal order relating to document disclosure.

## **ANALYSIS**

23. The parties each provide submissions on whether the shattered glass caused the damage to the elevator. I have not addressed these submissions because I find that I do not need to determine whether the cause of the elevator damage was in fact the applicant's fault. This is because I find for the reasons that follow, that the strata had no authority to require the applicant to pay to repair damage to common property, even if the damage was caused by him.
24. There is no question that the elevator is common property. Subject to any bylaws limiting its obligation, the strata is obligated to repair and maintain the elevator under section 72 of the SPA.
25. I agree with the strata that Bylaw 3(2) is the relevant provision to this dispute in limiting the strata's obligations. However, I cannot find that Bylaw 3(2) authorizes the strata to charge the cost of repairing the elevator back to the applicant as it has done here.
26. I find the subsections in Bylaw 3(2) clearly differentiate where a tenant is liable to the strata for damage to common property and where an owner is liable. Again, the applicant is a tenant and not a strata lot owner.
27. I find only Bylaw 3(2)(a) requires that damage be repaired at the cost of a tenant. The damage in this subsection is limited to the marking or defacing of interior or

exterior walls or floors of the elevator. The strata has not argued that the repairs were for damage to the walls or floors of the elevator. The evidence also does not support a finding that this was the nature of the damage to the elevator. The Richmond Elevator work order in evidence shows the damage that it repaired was to the elevator piston and vacuum seal.

28. Unlike subsection 3(2)(a), subsections 3(2)(b) through 3(2)(e) put no obligation on the tenant to indemnify the strata corporation or otherwise, pay for repairs to common property. Instead, subsection 3(2)(b) says the owner is responsible for damage to common property caused by a tenant. Subsection 3(2)(c) requires the owner, and not the tenant, to indemnify and save harmless the strata corporation from the expense of any repair to common property that is proven to be the owner's responsibility. Further, subsection 3(2)(d) requires the owner, and again not the tenant, to pay for repairs and cover the costs of any repairs not covered by the strata's insurance. Subsection 3(2)(e) requires the strata to charge back the expense it incurred in repairing the damage to the responsible owner rather than to the responsible tenant.
29. I find there is no provision in the strata bylaws or the SPA that authorize the strata to charge the tenant for the cost of the elevator repairs even if he caused the damage. I find the strata corporation's power to charge back repairs for damage to common property, which they are otherwise required cover, is derived entirely from the SPA and its bylaws. Accordingly, without an express provision in either the bylaws or the SPA, I find the strata does not have authority to demand the applicant tenant pay the costs associated with repairing the elevator.
30. Under section 123(1) of the Act, the tribunal has the jurisdiction to make an order requiring a party to do something and to refrain from doing something. Since I have found that the bylaws do not provide the strata with authority to require the applicant to pay, I order the strata to cancel the charge it issued the applicant in the amount of \$1,495.20 for the cost of the elevator repairs. Because I find this fully resolves the applicant's claim, I find I do not need to consider the applicant's argument that the strata's actions were significantly unfair.

31. I have not considered or made an order related to the applicant's claim that the strata failed to disclose documents because the applicant did not ask for any order related to document disclosure.
32. The applicant was the successful party in this dispute. Under section 49 of the Act, and the tribunal's rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. I find the strata must reimburse the applicant the \$225.00 he paid in tribunal fees. The applicant did not claim any dispute-related expenses.

## **ORDER**

33. I order the strata to:
- a. Immediately cancel the charge to the applicant of \$1,495.20 for the elevator repair.
  - b. Within 14 days of this decision reimburse the applicant a total of \$225 in tribunal fees.
34. The applicant is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
35. 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.



36. 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.

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Trisha Apland, Tribunal Member