



Civil Resolution Tribunal

Date Issued: June 14, 2019

File: ST-2019-001313

Type: Strata

Civil Resolution Tribunal

Indexed as: *Tjorhom v. Grove*, 2019 BCCRT 731

BETWEEN:

ALAN TJORHOM

APPLICANT

AND:

JORDAN GROVE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about damage that arose from a water leak. The applicant, Alan Tjorhom, owns strata lot 138 (unit 507) in a strata corporation, The Owners, Strata Plan LMS 35 (strata). The respondent, Jordan Grove, owns strata lot 145 (unit 607)

in the strata, which is directly above unit 507. The strata is not a party to this dispute.

2. The applicant says water leaked from the respondent's strata lot and into his own, causing damage to his ceiling. The applicant seeks payment of \$2,718.45 in repair costs. The respondent says he is not liable for the damages claimed by the applicant.
3. The parties are self-represented.

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*. 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.
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*, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. Order a party to do or stop doing something;
 - b. Order a party to pay money;
 - c. 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 \$2,718.45 in repair costs claimed by the applicant.

BACKGROUND AND EVIDENCE

9. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. On October 26, 2018, the applicant discovered water damage on the ceiling in his strata lot. The applicant notified the respondent about the damage. The respondent identified a leak from his dishwasher and shut off the water supply to the dishwasher, stopping the leak. The respondent purchased a new dishwasher on November 4, 2018, and had it installed 3 days later.
11. The respondent's insurance company covered the remediation repair costs in the respondent's strata lot, but not the repairs to the applicant's strata lot. The respondent's insurance company stated in an email message that as the applicant was not insured by them, they were under no obligation to repair the damage to the

applicant's strata lot. Additionally, the insurance company advised that it did not believe the respondent was negligent.

12. The applicant requested that the respondent reimburse him for repair costs, but the respondent declined.

POSITIONS OF THE PARTIES

13. The applicant says that the respondent is responsible for the costs to repair his ceiling as a result of the water leak.
14. The respondent says that the damage to the applicant's strata lot was not caused by negligence, but rather was a "sudden and accidental" leak, so he is not responsible for the resulting damage. The respondent says the applicant should have submitted a claim for the repairs through his own insurance company. The respondent also states that he is following the advice of his insurance company in taking the position that he is not responsible for the ceiling repairs.

ANALYSIS

15. There is no dispute that water entered the applicant's strata lot from that of the respondent. The issue before me is whether the respondent is responsible for the repair costs claimed by the applicant.
16. 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. The relevant sections of the bylaws are summarized below:
 - a. **Bylaw 3.1** states that an owner must repair and maintain their strata lot, except for repair and maintenance that is the responsibility of the strata corporation.

- b. **Bylaw 4.1(a)** states that an owner must not use a strata lot in a way that causes a nuisance or hazard to another person.
 - c. **Bylaw 11.1(d)** limits the strata's duty to repair and maintain strata lots to: the structure and exterior of a building and doors, windows and skylights on the exterior of a building or that front on common property.
17. Case law suggests that an owner is liable in negligence for water that escapes from his property, unless he can provide an explanation to show otherwise (see: *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: *Crockart v. Turcotte*, 2018 BCCRT 276) that has application to strata properties (see: *Mingxi Yu v. Maiwand Admadzai*, 2018 BCCRT 791, *Averin et al v. Ball*, 2019 BCCRT 608, and *Na v. Virk*, 2019 BCCRT 694).
18. The respondent had the responsibility to ensure his dishwasher was in proper working order. He submits the leak was from the dishwasher inlet valve and not a result of his own actions. However, no information as to the actual cause of the leak was provided in evidence. I am not satisfied that the respondent's account of the cause of leak, or the insurer's email stating it didn't believe the respondent was negligent, is sufficient to meet the onus of establishing that the respondent is not liable for the dishwasher leak.
19. 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 of the damages in the applicant's strata lot. Therefore, based on the reverse onus explained above, the respondent is liable for the applicant's damages.
20. The respondent says the applicant should have filed a repair claim through his insurance company. The applicant explained that he did contact his insurer and was told he would have to pay a \$500 deductible and that he would lose his claim-free discount. He declined to pursue that route as he did not believe he should be out-of-pocket for damage repairs that were caused by a leak from the respondent's strata

lot. I accept the applicant's explanation and make no adverse finding against him for his decision to file a dispute with the tribunal rather than to file a claim with his insurance company. There is no bylaw or SPA provision that requires the applicant to file an insurance claim.

21. In summary, I find that the applicant has shown on a balance of probabilities that water from the respondent's strata lot caused damage to the applicant's ceiling, and the respondent is responsible for those repair costs.
22. The applicant submitted a repair quote from an independent contractor totaling \$2,718.45 for the cost of repairing the water damage. The amount is not disputed by the respondent. I order the respondent to pay \$2,718.45 for the repairs.

TRIBUNAL FEES, EXPENSES AND INTEREST

23. 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. No dispute-related expenses were claimed.
24. As there is no indication that the applicant has actually paid for the repairs, I decline to make an order for interest.

DECISION AND ORDERS

25. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of \$2,943.45, broken down as follows:
 - a. \$2,718.45 for repair costs, and
 - b. \$225.00 in tribunal fees.

26. The applicant is also entitled to post-judgment interest under the *Court Order Interest Act*.
27. 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.
28. 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 strata 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.

Andrea Ritchie, Vice Chair