



Civil Resolution Tribunal

Date Issued: June 25, 2019

File: ST-2018-008359

Type: Strata

Civil Resolution Tribunal

Indexed as: *Robertson v. The Owners, Strata Plan LMS 1952*, 2019 BCCRT 771

B E T W E E N :

Marlene Robertson

APPLICANT

A N D :

The Owners, Strata Plan LMS 1952

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. The applicant, Marlene Robertson, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 1952 (strata). The applicant says that the strata has inappropriately charged back the costs of a leak to her strata lot. She seeks an order that those charges in the amount of \$1,838.34 be reversed, as well

as \$500 for her insurance deductible. The strata disagrees with the applicant's position, and says that it complied with its obligations under its bylaws and the *Strata Property Act* (SPA).

2. The applicant is self-represented. The strata is represented by a member of the strata council.

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.

ISSUES

7. The issues in this dispute are:

- a. whether the \$1,838.34 charge back for repair costs should be reversed; and
- b. whether the strata should pay the applicant \$500 for her insurance deductible.

BACKGROUND AND EVIDENCE

8. The strata is comprised of 40 strata lots. The applicant is the owner of strata lot 35, which is also known as suite 312.
9. The strata repealed and replaced its previous bylaws by filing amended bylaws at the Land Title Office in 2006. The strata subsequently filed additional bylaw amendments, which are not relevant to this dispute. Bylaw 2 provides that an owner must repair and maintain their strata lot, except for repair and maintenance that is the responsibility of the strata. Bylaw 13 sets out the strata's responsibilities for repair and maintenance as including common property (CP), certain items of limited common property, and other specified items. Toilets are not included in the scope of the strata's identified responsibility.
10. Bylaw 7(a) states that an owner shall indemnify and save harmless 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", but only to the extent that such expense is not met by the proceeds received from any applicable insurance policy.
11. Bylaw 7(c) requires an owner to indemnify each owner from any expense which may incur with respect to any damage done to his strata lot as a result of the wilful act or negligence of the agents, servants, or independent contractors of the strata corporation or any damage to the strata lot resulting from the repair or maintenance of CP by the strata corporation. According to bylaw 7(d), an owner will be held responsible for the actions of any person or persons of his, her or their household or any guests "who wrongfully or negligently causes any damage" to the building.
12. Section 158(1) of the SPA provides that the payment of an insurance deductible in respect of a claim on a strata corporation's insurance is a common expense.

Section 158(2) states that this does not limit the capacity of a strata corporation to sue an owner in order to recover the deductible portion of an insurance claim if the owner is responsible for the loss or damage that gave rise to the claim.

13. On June 15, 2018, water leaked from the applicant's strata lot into a strata lot on a lower floor. The strata arranged for a plumber to investigate the problem, which was found to be a failed wax seal in a toilet in the applicant's strata lot. The plumber repaired the problem. The strata also engaged a restoration company to deal with the moisture and mould, and to repair the damage to the other strata lot.
14. The strata received and paid invoices of \$233.54 from the plumber, as well as invoices of \$945.84 and \$892.50 from the restoration company. As the total costs were less than the insurance deductible of \$2,500, the strata did not make an insurance claim. Instead, the strata charged back these repair costs to the applicant's strata lot. The applicant reimbursed the strata for the \$233.54 plumber's invoice. She did not pay the \$945.84 and \$892.50 charges from the restoration company, for a total outstanding amount of \$1,838.34.

POSITION OF THE PARTIES

15. The applicant submits that, according to the bylaws, strata lot owners are only responsible if loss or damage is due to neglect or a careless act. The loss here was caused by a failed wax seal under the toilet, which the applicant says was unforeseen as there were no signs of leakage in her bathroom and no water on her floor. She cited a number of cases from the courts and the tribunal in which strata lot owners were not held responsible for damage where there was no indication of negligence. The applicant states that her insurance company has told her that she is not responsible for the outstanding \$1,838.34 and she wants her insurance company to be right. The applicant says she took responsibility for the repair and maintenance of her toilet by reimbursing the strata for the plumber's invoice.
16. The applicant cited a number of court and tribunal decisions in support of her position that she is not responsible for the charged back amounts unless the bylaw

says that a strata lot owner is responsible for losses originating from their strata lot regardless of negligence. She seeks an order that the charged back repair amounts be removed from her strata lot account, and that the strata provide her with \$500 for her insurance deductible.

17. The strata disagrees with the applicant's position. It says that it has made best efforts to comply with the SPA and the bylaws, while acting honestly, in good faith, and in the best interests of the strata. According to the strata, the component that failed and caused the leak was located within the strata lot, and therefore any costs associated with its failure are the applicant's responsibility. The strata says that the cases cited by the applicant concern insurance deductibles and the importation of a negligence standard, but they do not address whether an owner is responsible for damages in situations where an insurance deductible is not in play. The strata's position is that the applicant's repair responsibilities under bylaw 2 do not involve a negligence standard, and that she must pay the charged back amounts.

ANALYSIS

Charged Back Repair Costs

18. As discussed above, section 158(2) of the SPA allows a strata to recover the deductible portion of an insurance claim if the owner is responsible for the loss or damage. As no insurance claim was filed in this case, there is no deductible and there is no need for me to consider this section. The dispute turns on bylaw 7(a), which provides that an owner is responsible for the expense of any maintenance, repair or replacement rendered necessary to CP or a strata lot by his "act, neglect or carelessness".
19. The applicant and her insurance company rely on the reasoning in *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 519, in which the court held that an owner was not responsible for expenses flowing from a water leak from a toilet in his strata lot as there was no negligence involved. The trial judge determined that the strata's bylaw, which required a strata lot owner to indemnify the strata for expense, maintenance, repair or replacement rendered necessary "by the owner's act, omission, negligence

or carelessness” should be “read collectively and import a standard of negligence” (see paragraph 11).

20. I find that *Morrison* may be distinguished from the instant case due to a difference in the wording of the bylaws. The bylaw language in *Morrison* (and in the other cases cited by the applicant) includes the word “negligence”. This word does not appear in the strata’s bylaws, but rather they use the word “neglect”. These words represent distinct concepts.
21. Negligence is defined in *Black’s Law Dictionary*, 7th ed., at page 1056 as “the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregarding of others’ rights”. By contrast, at page 1055, neglect is defined as the “omission of proper attention to a person or thing, whether inadvertent, negligent or willful”. Therefore, the bar for responsibility is lower with the concept of neglect than it is for negligence.
22. The strata drafted its bylaws to specify the kind of action that attracts liability. Unlike other sections of the strata’s bylaws, bylaw 7(a) does not use the word “negligence”. Therefore, I find that this bylaw does not import a standard of negligence, and it is not necessary to determine whether the applicant met an applicable standard of care with respect to the maintenance and repair of her toilet. Instead, the key consideration is whether the applicant neglected to maintain the wax seal in her toilet as required by bylaw 2.
23. The applicant admits that she did not maintain her wax seal, but takes the position that she had no reason to know that it was likely to fail. Under the standard of neglect, whether or not she knew the seal required maintenance, the applicant is responsible for the leak that occurred as a result of the seal’s failure.
24. I acknowledge the views of the applicant and her insurer, but find that these views are not consistent with the wording of bylaw 7(a). I find that the applicant is responsible for the charged back repair costs. She is not entitled to have these

charges reversed from her strata lot account. Accordingly, I dismiss this portion of the applicant's claim.

Applicant's Insurance Deductible

25. The applicant seeks an order that the strata cover her \$500 insurance deductible.
26. There is nothing in the SPA or the bylaws that would require the strata to take responsibility for a strata lot owner's deductible for their personal insurance policy. I find that the applicant is not entitled to payment for this amount, and dismiss this portion of her claim.

TRIBUNAL FEES AND EXPENSES

27. 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. As the applicant was not successful, I dismiss her claim for reimbursement of tribunal fees. She did not make a claim for dispute-related expenses.
28. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the applicant.

DECISION AND ORDERS

29. I dismiss the applicant's claims and this dispute.

Lynn Scrivener, Tribunal Member