



# Civil Resolution Tribunal

Date Issued: July 2, 2019

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS3084 v. Goldin*, 2019 BCCRT 793

**B E T W E E N :**

The Owners, Strata Plan BCS3084

**APPLICANT**

**A N D :**

EDUARD GOLDIN

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. The respondent, Eduard Goldin, owns strata lot 33, also known as unit 215, in the applicant strata corporation The Owners, Strata Plan BCS3084 (strata).

2. On July 16, 2018, a braided water supply line in the bathroom of unit 215 burst, resulting in flooding in two strata lots on the floor below and in adjacent common property.
3. The strata made an insurance claim to cover the repair costs and paid a \$10,000 insurance deductible as a result. The strata says its bylaws require the respondent to reimburse the strata for the deductible. The strata also seeks an order for interest and tribunal fees.
4. The respondent says he is not responsible for the flooding because it was caused by high water pressure, which was the strata's responsibility to address.
5. The strata is represented by a member of the strata council. The respondent is self-represented.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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.
8. 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.

9. 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**

10. The issue in this dispute is whether the respondent owner is responsible for the flooding that originated in unit 215 and therefore must reimburse the strata for the insurance deductible it paid.

## **BACKGROUND AND EVIDENCE**

11. The strata was created in September 2008 and comprises 78 residential strata lots in a 4-floor building in Port Coquitlam.
12. The strata filed amended bylaws with the Land Title Office on March 31, 2016. The strata filed three subsequent amendments, none of which are relevant to this dispute.
13. The strata's relevant bylaws are as follows:
  - 2.1 An owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the responsibility of the strata corporation under these bylaws.
  - 42.1 A resident is responsible for obtaining insurance coverage to cover risks that are not covered by the strata insurance. Without limiting the foregoing, an owner is responsible for obtaining insurance coverage to pay any deductibles payable under the strata insurance for which the owner is responsible.
  - 42.2 If an owner is responsible for any loss or damage to a strata lot, common property, limited common property, or common assets, that owner must indemnify and save harmless the strata corporation from the expense of any maintenance, repair or replacement rendered necessary to the strata lot, common property, limited common property or common assets but only to the

extent that such expense is not reimbursed from the proceeds received by operation of any strata insurance policy. Without limiting generality of the word “responsible”, an owner is responsible for the owner's own acts or omissions, as well as those of any of the tenants, occupants, visitors, agents, contractors, employees or pets of the strata lot or the owner.

42.3 For the purposes of these bylaws, any insurance deductible paid or payable by the strata corporation will be considered an expense not covered by the strata corporation and will be charged to the owner.

14. There is no dispute that on July 16, 2018, a braided water supply line in the bathroom of unit 215 burst, resulting in flooding in two strata lots on the floor below and adjacent common property. The respondent's son, AG, was residing in unit 215 at the time. The respondent did not have home insurance at the time.

## **POSITION OF THE PARTIES**

15. The strata submits that the water supply line in unit 215 failed as a result of damage to the braided water supply line or the respondent's failure to repair and maintain the line.

16. The strata says under its bylaws owners must indemnify the strata if the owner is responsible for any loss or damage to a strata lot or common property

17. The strata argues that it does not need to show that the respondent was negligent to establish the respondent's liability because the bylaws do not import a standard of negligence and simply hold owners responsible for the strata's deductible if the damage originated from their strata lot. Notwithstanding that negligence is not required, the strata submits that the respondent was negligent as he has provided no reasonable alternate explanation for the leak.

18. The strata also argues that the respondent has negligently breached the bylaw requirement to obtain insurance and now seeks to require the other owners to cover this loss. It points out that the emergency mitigation and restoration costs resulting

from the leak from unit 215 totalled approximately \$55,000, with approximately \$9,400 going to restoration of unit 215.

19. The respondent says he is familiar with the broad interpretation of the word 'responsible' in the relevant case law. He says notwithstanding the breadth of the word 'responsible', the cause of the flood is relevant. He argues that this is therefore a case about cause.
20. The respondent argues that it was high water pressure that caused the supply line in unit 215 to fail. He says there is overwhelming evidence that the water pressure in the building was above the appropriate standards. Water pressure for the strata is controlled by equipment contained within a mechanical room located on common property.
21. The respondent also argues that the strata breached its duty of care to manage and maintain common property and common assets for the benefit of the owners. He says the strata was aware of a water pressure issue in the building, failed to maintain pressure-controlling equipment, failed to take immediate steps to notify residents about the water pressure issue, and on the day of the leak, failed to provide immediate access the main water shutoff valve in the mechanical room.
22. The respondent requests that I dismiss the strata's claim.

## **ANALYSIS**

23. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the reasons that follow, I find that the respondent was responsible for the damage resulting from the leak that originated in unit 215 and must reimburse the strata for its \$10,000 deductible.
24. Section 158 of the SPA addresses insurance deductibles and reads in part:

(1) Subject to the regulations, the payment of an insurance deductible in respect of a claim on the strata corporation's insurance is a common expense to be

contributed to by means of strata fees calculated in accordance with section 99 (2) or 100 (1).

(2) Subsection (1) does not limit the capacity of the 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.

25. There are no regulations enacted pursuant to section 158(1), so the strata must first pay the insurance deductible as a common expense and then seek to recover the insurance deductible under section 158(2).
26. Section 158(2) of the SPA has been interpreted in BC Supreme Court decisions to hold an owner liable for the strata's insurance deductible if the owner is responsible for the loss giving rise to the insurance claim by the strata. See *Mari v. Strata Plan LMS 2835*, 2007 BCSC 740 and *Strata Plan KAS 1019 v. Kieran* 2006 BCPC 360 (affirmed in *Wawanesa Mutual Ins. Co. v. Kieran*, 2007 BCSC 727).
27. In *Mari*, water damage to the strata building was caused by a faulty water level switch of a washing machine situated in a strata lot, resulting in the strata filing an insurance claim. The court found the owner responsible for the washing machine overflow and ordered the owner to reimburse the strata for the \$5,000 insurance deductible.
28. In *Kieran*, the strata corporation claimed against the owners for damages that occurred when a pipe burst behind a bedroom wall of a strata lot. The failure was due to high acid levels in the local water and not to any negligent act or omission of the owners. The court noted that whether the repair costs were paid as part of the deductible under an insurance policy or otherwise, they related to damage for which, under the SPA and bylaws, the owner was responsible. The court also observed that unlike legislation in other provinces, the SPA does not use terms such as 'legally liable', 'liable', or 'negligent'. Rather, the term 'responsible' provides the strata with the option of allocating to individual owners the cost of repairing damage not covered by the strata's insurance policy.

29. In *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 0519, the court considered the findings of *Mari* and *Kieran* and also looked to the strata corporation's bylaws before determining if the strata corporation could recover its insurance deductible from an owner. In *Morrison*, the relevant bylaw contained an indemnity clause that referred to carelessness or negligence, which the court found imported a negligence standard that was narrower than simply finding the owner was 'responsible'.
30. Following the principles of *Morrison*, I must examine the strata's bylaws. The applicable bylaw here, 42.2, states that an owner must indemnify the strata if the owner is "responsible for" any loss or damage. Although the bylaw goes on to use the phrase "acts or omissions", it makes clear that it does so "without limiting the generality of the word 'responsible'." I agree with the strata that these words indicate a clear intention on the part of the strata to retain the broad meaning of the word responsible pursuant to s. 158(2) of the SPA and not to import a negligence standard.
31. This interpretation is supported by reference to bylaw 42.1, which says that owners are responsible for obtaining insurance coverage to pay any deductibles under the strata insurance for which the owner is responsible, and 42.3, which says that insurance deductibles will be charged to owners.
32. I find that the strata's position is correct, and the respondent must indemnify the strata for its insurance deductible if the respondent was responsible for the leak. So, was the respondent was responsible for the leak?
33. The respondent says the leak was caused by high water pressure that the strata negligently failed to address. He says a series of water supply line failures began in the building at the same time as documented water pressure issues arose. The evidence shows that a supply line in unit 408 burst on July 3, 2018. Two days later, MA, a resident in unit 204, emailed the property manager to note that he had experienced high water pressure since July 3. MA noted that he is a plumber by trade and suggested that the strata's plumbing company should look at the pressure

reducing valve (PRV) where the water enters the building, which regulates water pressure to the units. He noted that PRVs do not last forever.

34. At the strata's request, on July 6, 2018, the strata's plumbing contractor, Creative Plumbing, checked the water pressure distribution at the PRV and found that it "fell into the range of 90 psi which should be fine." Creative Plumbing also found the recirculation pump and mechanical equipment in good shape.
35. The next day, residents in unit 203 and 211 separately emailed the property manager with concerns about high water pressure over the last few days, including a higher volume or speed of water flow from taps.
36. On July 9, 2018, the strata treasurer, TG, emailed the strata president and property manager, noting, "the [pressure] issue has not been fixed." TG described the water pressure as "extreme" and said he was experiencing "very high pressure in shower and all taps." TG expressed concern that there would be additional burst pipes.
37. The strata president, SM, was also concerned about another burst pipe and requested options from Creative Plumbing, via the property manager.
38. On July 13, three days before the leak in unit 215, a senior technician from Creative Plumbing attending the building to check the water pressure and check all equipment. The technician found that a 2-inch PRV was approximately 10 psi higher than its rating. As well, a 3-inch PRV had no gauge. The technician removed strainers and cleaned them and reduced the psi to 72, noting that a new pilot control was required for the 3-inch PRV. It is not clear whether there were any pressure complaints between July 13 and July 16, 2018. The new pilot control valve was installed on July 25, 2018.
39. When unit 215 suffered the leak on July 16, 2018, MA (the plumber from unit 204) shut off the main water valve to the strata building around the same time a locksmith arrived to gain access to unit 215. In a July 16, 2018 email to the property manager, MA said the two PRVs should be replaced as they looked like original



valves from 10 years ago when the building was built. MA did not speculate on whether high pressure caused the supply line in unit 215 to rupture.

40. When unit 215 flooded, a technician from High Mark Plumbing attended. There are two reports from High Mark Plumbing dated July 16, 2018. One report shows photos of the burst supply line. The other report shows a photo of a 2-inch PRV in the building's mechanical room. The notes and photos show that the water pressure is 90 psi, which is outside the PRV's factory-set maximum of 75 psi. The technician noted that the PRV is not operating correctly and needs to be changed out. The technician did not comment on whether the high pressure reading in the mechanical room may have contributed to the burst supply line in unit 215.
41. The respondent subsequently asked High Mark for an opinion on the cause of the burst supply line. MP from High Mark responded. MP wrote that high water pressure "may have contributed to the hose failing, or it could be a manufactures [sic] defect on the supply line." I find that this evidence does not greatly assist the respondent because the qualifications of MP were not supplied, and MP is not the technician who attended on July 16, 2018. Moreover, MP only suggests that high pressure *may have contributed* to the supply line failing, while also suggesting the cause may have been a manufacturer's defect.
42. The respondent submitted a link to a webpage that says most plumbing codes require water pressure reducing valves on domestic systems where the municipal water main's pressure exceeds 80 psi. It says higher pressures could rupture pipes and damage fixtures. The webpage belongs to Watts Canada, a company that designs, manufactures and sells flow control products. I do not find this evidence compelling as it is general information that is not specific to braided supply lines. I also note the applicable sections of the BC Plumbing Code are not in evidence.
43. The respondent submits that because the PRV was not functioning properly, the actual water pressure at any time material to the leak could have risen to significantly higher levels than what the reports by the plumbing company indicate.

There is no expert evidence on how PRVs function to allow me to assess this statement.

44. The respondent submits that even a new pipe would burst if it was subject to pressure that was too high for its rating. The problem with this argument is that a number of units reported increased water pressure at times in July, but none other than unit 215 suffered water escape incidents.
45. I accept High Mark's report that the water pressure in the mechanical room was 90 psi. I accept that 90 psi was higher than normal water pressure. What the respondent has not provided is reliable evidence linking higher water pressure with his failed supply line.
46. The strata provided evidence from Scott Gyles, a professional engineer since 1985, employed in the supply and installation of mechanical systems and components. Mr. Gyles inspected the failed braided supply line from unit 215. He said the failure of the line was not caused by pressure. He said that braided steel lines are designed to withstand 150 psi, and if pressure was to cause the line to fail, it would fail at the crimped connections at either end. Mr. Gyles said the failure was caused by corrosion or physical damage to the braided steel. When the braided steel failed, the rubber bladder inside the steel would have expanded through the steel and punctured, causing the leak.
47. Mr. Gyles is a qualified mechanical engineer and I accept his expert opinion that the cause of the braided supply line failure was corrosion or physical damage to the braided steel. As the owner of unit 215, it was the respondent's obligation to maintain the supply line in good condition.
48. The respondent says after the burst supply line in unit 408, the strata did not take immediate steps to notify the residents about a possible issue with water pressure. Given that I have found no evidence that any burst supply line was caused by high water pressure, I cannot fault the strata for failing to warn residents about the possible water pressure issue.

49. The respondent argues that the strata negligently failed to maintain pressure-controlling equipment in the building. Based on the evidence, I disagree.
50. Section 72(1) of the SPA provides that the strata corporation must repair and maintain common property and common assets. In determining what is the standard of care required of a strata, the courts have held that the overarching test is reasonableness in the circumstances. The standard of care expected of a strata is not perfection.
51. The evidence shows that within three days of the first complaint of high water pressure, Creative Plumbing was on site. When Creative Plumbing checked the water pressure and said that it “should be fine”, the strata was not satisfied and asked for more options. This resulted in a more thorough inspection, steps taken to reduce the psi to 72, and the following week, a new pilot control valve.
52. I find that the strata took appropriate steps to investigate and address the water pressure issue within a reasonable period of time, and therefore I find that the strata met the standard of care required of it.
53. The respondent argues the strata was negligent because it failed to have the keys readily accessible to access the main water shutoff valve for the building. He says it is foreseeable that residents will be out of their units during the day, so the main water shutoff should be readily accessible. I infer that the respondent argues if the strata had keys to the mechanical room the leak could have been stopped sooner and some of the damage could have been mitigated.
54. The strata submits that the resident of unit 215 did not return to the unit once the flood was discovered, and the emergency contact had no key to access the unit. I note that the respondent acknowledges that although he received a call on the morning of the leak, he did not have keys to unit 215. He says his son was at work and could not return to the unit in a reasonable time. A locksmith was called opened unit 215’s door at 11:50 a.m. In the meantime, the key to the mechanical room arrived at 11:45 a.m.

55. It is not clear from the evidence before me exactly when the leak was discovered, when MA offered to find the shutoff valve in the mechanical room, or how much time elapsed while the parties waited for the keys to return or the locksmith to arrive. There is insufficient evidence to determine whether the flood damage would have been any less significant had the keys been on site.
56. I conclude that the strata was not negligent in responding to the water pressure issues.
57. I conclude that the respondent was responsible, per section 158(2) of the SPA and the strata's bylaws, for the leak in unit 215 and resulting damage. I order the respondent to reimburse the strata the amount of \$10,000 it paid for its insurance deductible.

## **TRIBUNAL FEES, EXPENSES AND INTEREST**

58. 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.
59. The strata has been successful in this dispute. I therefore order the respondent to reimburse the strata for tribunal fees of \$225.00. The strata has not claimed any dispute-related expenses.
60. The strata has claimed interest from October 22, 2018 at an annual rate of 10%. I have inferred that it relies on bylaw 1.2, which holds that if an owner is late paying strata fees, the owner must pay annual interest of 10% from the date the payment is due until the date of payment. The recovery of an insurance deductible is not a strata fee, so I dismiss the strata's claim for bylaw-based interest.
61. The *Court Order Interest Act* (COIA) applies to the tribunal and prejudgment interest must be awarded. Prejudgment interest is calculated on the debt owing from the date the cause of action arose up to the date of this order. It is not clear from the evidence when the strata paid the insurance deductible, but the strata indicated in

its Dispute Notice that interest started applying on October 22, 2018, and in the absence of evidence of a more appropriate date, I find that the cause of action arose on October 22, 2018.

62. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner.

## **DECISION AND ORDERS**

63. I order that, within 30 days of the date of this order, the respondent pay to the strata a total of \$10,350.04, broken down as follows:

- a. \$10,000.00 for the strata's insurance deductible,
- b. \$125.04 in COIA interest, and
- c. \$225.00 for tribunal fees paid.

64. The strata is entitled to post-judgment interest, as applicable.

65. 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. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

66. 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. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Micah Carmody, Tribunal Member