



Civil Resolution Tribunal

Date Issued: July 8, 2019

File: ST-2018-008197

Type: Strata

Civil Resolution Tribunal

Indexed as: *Gershtein v. The Owners, Strata Plan VR 2547*, 2019 BCCRT 816

B E T W E E N :

Ylena Gershtein

APPLICANT

A N D :

The Owners, Strata Plan VR 2547

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. The applicant, Ylena Gershtein, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VR 2547 (strata). The applicant says their strata lot has been damaged by leaks and a sewage backup, and that the strata refuses to repair the damage. They also say the strata has failed to respond to their

request to discuss these damages or a report of a vehicle parking in the space assigned to their strata lot. The applicant seeks an order for \$1,900 in compensation. The respondent disagrees with the applicant's claims.

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 strata should pay the applicant \$950 for leak-related damage in the kitchen and living room;
- b. whether the strata should pay the applicant \$300 for leak-related damage to the bathroom;
- c. whether the strata should pay the applicant \$500 for carpet damage that resulted from a drain back-up;
- d. whether the strata should pay the applicant \$50 as compensation for failing to respond to the applicant's report of an improperly parked vehicle;
- e. whether the strata should pay the applicant \$50 for failing to provide any response to the applicant's request to discuss these issues; and
- f. whether the strata should pay the applicant \$50 and install a back-flow prevention device in the sewage system for toilet and bathtub unit drains.

BACKGROUND AND EVIDENCE

8. The applicant is the owner of strata lot 6, which is also known as suite 104. The applicant's strata lot is beneath a strata lot known as suite 205.
9. The strata repealed and replaced its previous bylaws by filing amended bylaws at the Land Title Office in June of 2007. The strata has also filed subsequent bylaw amendments which are not relevant to this dispute.
10. Bylaw 2 provides that an owner must repair and maintain their strata lot, except for repair and maintenance that is the strata's responsibility. According to bylaw 8, the strata must repair and maintain common assets, common property (CP) and certain portions of limited common property (LCP).
11. Bylaw 32(4) states that an owner, tenant or occupant shall not use any parking space except the parking space which has been assigned to their strata lot, a parking space leased by the owner or, when specifically agreed with another owner, the parking space assigned to the strata lot of that other owner.

12. In 2013, a sewage back-up occurred and flooded the bathroom in the applicant's strata lot. The strata arranged for a remediation company to address the effects of the back-up and conduct repairs.
13. In April of 2017, the applicant reported a leak in the ceiling of the strata lot's kitchen. The strata arranged for a plumber to attend the strata lot. The plumber cut holes in an interior wall to investigate the source of the problem, but no leak was found. The applicant paid to repair the drywall and repaint the interior wall.
14. In November of 2017, the applicant reported a leak in the bathroom ceiling. A plumber cut a hole in the strata lot's ceiling and located a problem with the bathtub spout in suite 205. It is not clear who arranged for the hole in the bathroom ceiling to be repaired.
15. Someone named Danny corresponded with the strata's property manager on the applicant's behalf about the damages associated with these incidents. Danny requested that the strata replace carpet that apparently was damaged in the sewage back-up incident, refund the \$500 they spent to repair the holes in the kitchen drywall, and that the strata complete the repairs in the bathroom ceiling. Danny also asked the strata, through the property manager, to install a "backflow protector" to prevent future sewage back-up issues.
16. The strata's property manager replied to Danny and communicated the strata's position that the damages were not the strata's responsibility. Danny advised the property manager that the applicant had consulted with a lawyer and was considering legal action.
17. At an unknown date, Danny sent an email message to the strata's property manager to advise that a vehicle was parked in the space assigned to the applicant's strata lot without permission, and that this vehicle was causing damage to overhead pipes. The applicant says no response was received to this message or a telephone call to the property manager.

POSITION OF THE PARTIES

18. The applicant submits that the strata has not addressed the damage in the strata lot that resulted from the back-up and leaks, and that the strata has not responded to requests to discuss these or other issues.
19. The applicant says that the carpet in the strata lot was whole prior to the sewage back-up incident, but that there were pieces missing after the remediation occurred. The applicant provided receipts that suggest that the carpet in the entire strata lot was replaced. The applicant seeks an order for \$500 for the portion of this work that is related to the sewage back-up.
20. The applicant also submits that the leak-related damage has not been addressed adequately. The applicant notes that the holes cut in the drywall were never repaired by the strata. The applicant says they spent \$950 to repair the drywall and re-paint the kitchen/living room area, and asks for an order that the strata reimburse this amount. The applicant also says that the repairs to the bathroom ceiling were not completed properly and the ceiling needs to be repainted at a cost of \$300.
21. The applicant states that sewage back-ups are an ongoing problem and that the strata has not resolved it. The applicant says drain-flushing arranged by the strata is not a proper repair. In order to prevent future problems, the applicant seeks an order that the strata review the drain system and install back-flow prevention devices in the sewage system for toilet and bathtub unit drains. The applicant also seeks an award of \$50 for this item.
22. The applicant says that the strata failed to reply to an email and telephone call to the property manager about the improperly parked vehicle. They seek \$50 for the strata's failure to respond to this issue, and a further \$50 for the strata's failure to address the issues of leak and back-up related damage.
23. The strata denies the applicant's allegations and that it has failed to respond to the applicant's concerns. The strata says that the fact that the applicant disagrees with the strata's position does not mean that the strata failed to respond. The strata's

position is that the applicant's claim for damages for failure to respond should be dismissed. The strata also says that the applicant's claims regarding the drainage system should be dismissed, as it has acted reasonably in maintaining this system.

24. The strata disagrees with the applicant's claims for damages relating to the sewage back-ups and leaks. The strata says the applicant's claim for damages resulting from the 2013 sewage back-up was made outside the applicable limitation period. Further, the strata says that the applicant has not proven that subsequent sewage back-ups occurred or that the carpet was damaged by a sewage back-up. The strata's position is that the applicant is responsible for the carpet replacement.
25. With respect to the kitchen leak, the strata says the applicant has not demonstrated any failure of the CP piping system that would make the repairs the responsibility of the strata. The strata says it does not have any record of a complaint about the leak in the bathroom ceiling. However, the strata says the photos show the ceiling repair is complete and, in any event, the repairs are not the strata's responsibility.
26. With respect to the parking issue, the strata says that this issue is not properly before the tribunal, as the applicant has not requested a council hearing prior to initiating the claim with the tribunal, contrary to section 189.1(2) of the *Strata Property Act* (SPA).

ANALYSIS

Leak-Related Damage in the Kitchen/Living Room

27. There is no dispute that there was water in the strata lot in April of 2017 or that holes were cut into drywall in the kitchen/living room area while investigating the problem. At issue is who should take responsibility for repairing the drywall. The fact that the plumber who cut the holes in the drywall was engaged by the strata is not determinative of the matter.
28. As discussed above, the bylaws set out that a strata lot owner is responsible for the repair and maintenance of a strata lot, while the strata is responsible for CP. Section 1 of the 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 CP, or (C) between a strata lot or CP 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 CP.
29. Photographs of the strata lot show that the wall in question is in the interior of the strata lot between the kitchen and living area. Pipes are visible inside the holes cut into the drywall. The strata says these pipes are not CP as they serve only the applicant's strata lot, and supply water to the sink and dishwasher. The applicant says the pipes serve all the strata lots.
30. Whether or not they are CP, the plumber's report does not establish that the water involved in the leak came from the pipes inside the interior wall. According to the plumber's April 12, 2017 invoice, the areas in the dishwasher, sink, drainage and water lines inside the wall, the hallway and the parkade were all completely dry. The plumber commented that the leak "could be from drainage and appears to be intermittent". The evidence before me does not contain any other report from a plumber or other technician that comments on the source of the leak.
31. While I do not doubt the applicant's report of water inside the strata lot, I find that the evidence does not establish that this water emanated from an area that is the strata's responsibility to repair and maintain. Further, there is no indication that the strata had agreed to repair the drywall. Accordingly, I dismiss the applicant's claim for reimbursement of leak-related repair costs.

Leak-related Damage in the Bathroom

32. The applicant's claim for \$300 in repair costs relates to the November 2017 leak, which has been attributed to a faulty bathtub spout in suite 205. Photographs in evidence show a hole in the ceiling and the repaired area. It is not clear who arranged for or paid for this repair.
33. There does not appear to be a dispute that this leak resulted from the bathtub spout in suite 205. I find that this item is not CP, and that the owner of the strata lot bears responsibility for its repair and maintenance under bylaw 2. Accordingly, I dismiss the applicant's claim for damages from the strata for the ceiling repair. It would be open to the applicant to seek compensation from the owner of the other strata lot.

Carpet Damage

34. The applicant claims that a portion of the carpet in the strata lot was damaged by a sewage back-up. The only incident of sewage back-up that is established in the evidence occurred in December of 2013. The strata submits that the applicant's claim for resulting damage was made after the expiry of the applicable limitation period.
35. The *Limitation Act* applies to disputes before the tribunal and places a limit on the time period in which a claim may be brought. If that time period expires, the claim may not be brought, even if it might have been successful. The current *Limitation Act* became law in British Columbia on June 1, 2013. This version of the legislation requires, with some exceptions, that a claim be started within 2 years of when it was discovered.
36. The applicant's submissions confirm that the issue with the carpet arose during the remediation process in 2013. The 2-year limitation period began to run in December of 2013 and expired in December of 2015. Therefore, the limitation period expired before the applicant filed the Dispute Notice in November of 2018.
37. I find that the applicant's claim for carpet damage is statute-barred and I dismiss it.

Improperly Parked Vehicle

38. Photographs in evidence show a vehicle bearing out-of-province licence plates parked in the parking stall that is assigned to the applicant's strata lot. The applicant says the strata did not respond to a complaint about this activity or about possible damage to the overhead pipes. The strata's position is that this aspect of the dispute cannot be considered by the tribunal as the applicant has not requested a hearing on the matter.
39. Section 189.1(2) of the SPA provides that an owner may not request that the tribunal resolve a dispute unless that owner requested a council hearing under section 34.1 of the SPA, or requests that the tribunal direct that the requirement for a hearing does not apply. In this case, neither party requested that the tribunal make such a direction.
40. Although the applicant says that the strata did not respond to an email and phone call made to the property manager, there is no indication that the applicant requested a hearing about this particular matter. Accordingly, the requirements of section 189.1(2) have not been met and I find that this aspect of the applicant's claim is not properly before me.

Strata Response to Applicant's Concerns

41. The parties have differing views as to whether the strata responded to the various issues raised by the applicant.
42. The evidence before me contains copies of email exchanges between Danny and the property manager. While the exchanges appear to be only portions of the correspondence between those parties, the information in them confirms that the property manager did respond to the emails. It is apparent that the applicant (through Danny) was pushing for resolution of the issues, but it does not appear that any requests were ignored. Further, the minutes of the strata council confirm that the issue of the drywall repairs was discussed at the June 7, 2017 meeting.

43. I acknowledge the applicant's belief that the strata should have addressed the issues raised in a different manner. However, the evidence does not support the conclusion that the strata failed to respond to the applicant's concerns or that the applicant sustained any damages as a result. I dismiss this portion of the applicant's claim.

Back-flow Prevention Devices

44. The applicant seeks an order that the strata review its drain lines and install back-flow prevention devices in the sewage system for toilet and bathtub drains. Although the applicant describes sewage back-ups as an ongoing problem, I have found that only 1 incident of sewage back-up has been established by the evidence.

45. The evidence before me confirms that the strata has taken steps to maintain the drainage system in the form of drain flushing and "vertical/horizontal drainage and vent cleaning". The associated invoices from contractors do not indicate that other maintenance has been recommended by the contractors but not pursued by the strata. Further, there is no evidence from a plumber or other professional that comments on the necessity of additional maintenance or assessment of the drain system, or the installation of any equipment.

46. Based on the evidence before me, I am unable to conclude that maintenance undertaken by the strata is inadequate. I dismiss the applicant's claims in this regard, but note that nothing in my decision would prevent the strata from reviewing its maintenance plan, including the necessity for back-flow prevention devices, in the future.

TRIBUNAL FEES AND EXPENSES

47. 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 their claim for reimbursement of tribunal fees and dispute-related expenses.

48. The strata did not pay tribunal fees, but requested reimbursement for \$94.83 for retrieval of images from the Land Title Office. An undated Statement of Activity does show charges for that amount, but it is not clear what images were retrieved, as these were not provided in evidence. I do not find that the strata has proven that the expenses were incurred as a result of this dispute, and dismiss the strata's claim for reimbursement.
49. 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

50. I dismiss the applicant's claims and this dispute.
51. I dismiss the respondent's claim for reimbursement of dispute-related expenses.

Lynn Scrivener, Tribunal Member