



Civil Resolution Tribunal

Date Issued: July 8, 2019

File: ST-2019-000690

Type: Strata

Civil Resolution Tribunal

Indexed as: *Puhalski v. The Owners, Strata Plan VIS 3995*, 2019 BCCRT 817

B E T W E E N :

RAY PUHALSKI

APPLICANT

A N D :

The Owners, Strata Plan VIS 3995

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about who should pay for a dehumidifier. The applicant, Ray Puhalski (owner), owns strata lot 77 in the respondent strata corporation, the Owners, Strata Plan VIS 3995 (strata). The owner says that the strata should pay for his dehumidifier as part of repairs it must cover. The strata disagrees and questions the need for this purchase.

2. The owner is self-represented. The strata's representative is a member of 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.

ISSUE

7. The issue in this dispute is whether the strata must reimburse the owner for the purchase of a dehumidifier.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the owner bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. The facts are largely undisputed. The owner's strata lot was vacant from October 2015 until February 2018, when he bought it. In June 2018 the owner observed water seeping into his strata lot through a crack in the basement's concrete wall. The parties also referred to the basement as a crawl space and I infer that they are largely or entirely the same area. I will refer to the area as a crawl space as that is how it is identified on the strata plan. The crawl space started to have a musty smell. The owner emailed the strata's property manager about these issues on June 7, 2018.
10. In August 2018, a contractor determined that the source of these issues was two cracks in the exterior foundation wall. The contractor repaired these cracks and used a fogging agent on the mold and mildew in the basement. The strata paid for the repairs. The contractor returned in mid-September 2018 to inspect the job and saw no problems. The owner does not say that there are any further leaks.
11. The owner submits, and I accept, that after repairs were done the musty smell remained. On October 5, 2018, the owner purchased a dehumidifier. After three and a half weeks the dehumidifier solved the smell issue.
12. I must now consider the applicable law. Under section 72 of the *Strata Property Act* (SPA) the strata has a duty to repair and maintain its common property and common assets. A strata corporation is not obliged to reimburse an owner for expenses incurred for repairs to a strata lot when they are an owner's responsibility under the bylaws, unless the strata has been negligent in repairing and maintaining common property: *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231 and *Keith et al v. The Owners, Strata Plan K 284*, 2018 BCCRT 49.

13. According to the registered strata plan, the crawl space is part of the owner's strata lot. The strata's bylaw 2 states that 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 the bylaws.
14. I find the crawl space is not common or limited common property. The owner's main complaint relates to the humidity of the crawl space. There is no indication that the humidity is related to any disrepair of the common property or common assets that the strata would have to repair. Although the leaks originated in the structure or exterior of the building, these appear to be fixed. I therefore find that the strata does not have any duty to remediate the humidity in the crawl space.
15. The strata could still be liable for the cost of the humidifier if it was negligent in repairing and maintaining common property and common assets. I find it is not. To be successful in an action for negligence, the applicant must demonstrate that the strata did not act reasonably in carrying out its duty to repair common property. The starting point for such an analysis should be deference to the decision made by strata council as approved by the owners: *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784.
16. The owner submits that from October 2015 to February 2018 the strata did not enter the strata lot to check on the condition of the crawl space foundation. Further, the landscape sprinkler system was not operating correctly during this time and it was pointed directly at the crack in the foundation, resulting in a large leak. The owner also submits that the strata should have started repairs quicker after being told of the cracks on June 7, 2018.
17. While I acknowledge the owner's submissions, I find that the evidence before me falls short of establishing that the strata acted unreasonably. I was not provided any evidence that the strata would have prevented the foundation cracks or resulting damage by entering the strata lot when it was vacant. It is unclear if the cracks developed early into the strata lot's vacancy or closer in time to when it was purchased. I was also not provided any evidence of the cost of such continuous

monitoring or whether such monitoring would detect the crack. These considerations would be relevant to whether the strata acted unreasonably. The owner submits he saw a large stain on the crawl space concrete skim coat at the time of purchase. However, he did not conclude at the time that these were necessarily signs that the foundation was cracked and leaking. It is unclear if another observer would have concluded differently.

18. There is also no indication that the malfunctioning sprinkler caused the crack or that the strata knew or should have known that the sprinkler was malfunctioning.
19. Finally, the owner advised the strata of the leaks in early June 2018 and a contractor reviewed the situation in late August 2018. I cannot conclude from this timeline that the strata acted unreasonably. There is no indication that further damage was caused by this delay that took place during the late spring and summer months.
20. As noted in *Weir* at paragraph 31, it may be the case that the approach of the owner would have been the wiser and preferable course of action. However, that that does not mean the approach of the strata was unreasonable. I find the strata was not negligent in addressing the foundation cracks.
21. For these reasons, I dismiss the owner's claims.

TRIBUNAL FEES AND EXPENSES

22. 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 expenses related to the dispute resolution process. I see no reason in this case to deviate from the general rule.
23. Here the strata has been the successful party. However, I find that it has not paid tribunal fees. The strata claimed reimbursement of \$65.00 for a work report from the contractor. However, the invoice is dated January 10, 2019, and predates the Dispute Notice filing date of January 23, 2019. This expense would have been

incurred even if the tribunal proceeding was not started. I therefore decline the strata's request for this expense. I also decline the owner's request for reimbursement of tribunal fees. He did not claim for dispute-related expenses.

24. 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

ORDER

25. I order that this dispute and the owner's claims be dismissed.

David Jiang, Tribunal Member