



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Bereziak v. The Owners, Strata Plan BCS 4301*, 2019 BCCRT 819

B E T W E E N :

Sherry Bereziak

APPLICANT

A N D :

The Owners, Strata Plan BCS 4301

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about whether the respondent, The Owners, Strata Plan BCS 4301, was entitled to charge back \$1,340.85 to the applicant, Sherry Bereziak, for the cost of a plumbing invoice.

2. The applicant owns a strata lot in the respondent strata corporation and says that the respondent should not have paid the invoice and then charged it back to her. Although on March 12, 2018 the applicant was charged back the full amount of the invoice, she only requests \$700.00 be deducted from her outstanding strata lot account. The applicant is self-represented.
3. The respondent says that the plumbing issue was contained in the applicant's strata lot and therefore she is responsible for paying the invoice. The respondent is represented by the strata council president.

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 (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. 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.
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 something;

- b. order a party to refrain from doing something;
- c. order a party to pay money.

ISSUE

- 8. The issue in this dispute is whether the respondent properly charged back the cost of the plumbing invoice.

EVIDENCE AND ANALYSIS

- 9. In a civil dispute such as this, the applicant must prove her claim. She bears the burden of proof on a balance of probabilities.
- 10. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
- 11. The applicant says that she began to have problems with her pipes clogging immediately after she first moved into her strata lot in 2017. On that day her brother, who is a plumber, unclogged it. The evidence provided by both parties indicates that there were between 15 and 20 previous issues involving the pipe being clogged before the one at the center of this dispute.
- 12. The applicant says that her sink was clogged on Saturday December 23, 2018 so she called the respondent's emergency line at 11:00 a.m. She then decided not to have a plumber come out because it was Christmas weekend. She emptied the water out of the sink but then in the afternoon she noticed that there was water on the floor of her kitchen and the dishwasher was full of dirty water. She called the emergency line again as she was worried that damage might be done to the strata lot beneath her.

13. The respondent points out that the applicant first called the emergency line on December 22, 2018 but they were unable to reach a council member. They told the applicant that she could contact her own plumber but she declined.
14. The email communications show that applicant said she did not contact her brother or another plumber because her brother told her that the issue was not just with the pipe in her strata lot and that there would be legal repercussions if damage was done to another strata lot's pipes.
15. The respondent says that when the applicant called the next morning the emergency line representative explained that if it was determined that the blockage was in the vertical pipes that the respondent would be responsible for the plumbing cost, but if the issue was in the horizontal pipes the applicant would be responsible.
16. I infer from this that the respondent's reference to horizontal pipes are pipes within the applicant's strata lot that only service her strata lot. I also infer that the respondent is referring to the fact that vertical pipes servicing more than 1 strata lot are common property as defined in section 1(1) of the *Strata Property Act* (SPA). Section 72 of the SPA requires the strata to repair and maintain its common property. This is also reflected in the strata's bylaws.
17. The respondent says that the applicant then decided to wait until after the holidays. However, later that day the applicant knocked on the strata's vice president's door and told him about the water leaking on to the floor. When she called the emergency line again they contacted the president who told them to again advise the applicant that she would authorize calling the plumber, but the applicant would be held responsible for the cost if the issue was in the horizontal pipe. The strata says the president also attended at the strata lot with the plumber and told her this in person. The respondent says that the applicant agreed saying that the work had to be done.
18. The applicant takes issue with this and says that once the plumber determined that it was not an emergency situation he should not have continued to perform the

plumbing work. She also says she never authorized or signed for the number of hours or what she says is an exorbitant cost. The applicant says the plumber arrived at 8 p.m. and had another younger man with him who basically watched and talked to her. She says the younger male left after 1.5 hours and the older man left after 2 hours. The applicant takes issue with the number of hours and the cost claimed on the invoice.

19. She argues that if the plumber had provided her with the invoice personally she could have immediately taken issue with it. Instead, the plumbing company billed the strata which paid the invoice without consulting the applicant and now is unreasonably saying that she must pay it.
20. The respondent suggests that the applicant was negligent in not dealing with the issue before the holiday weekend. Although I need not decide this issue because, as I explain later, I find the respondent did not have the authority to charge back the applicant. I note that the applicant's evidence is that she dealt with the issue on several occasions including having her brother who is a plumber unclog the pipes. An emergency situation then developed when the water started leaking out of the dishwasher. This had not happened before and is not something the applicant could have anticipated.
21. The applicant has several other reasons why she submits she should not have been charged back the amount of the invoice. She says she has not lived in the strata lot for very long and she began experiencing problems soon after she moved in. She suggests that the previous owner might have created the clogging problem.
22. The respondent points out that even if the issue was caused by the prior owner, when one buys any strata lot defects become the responsibility of the new owner. I accept the respondent's position on this point.
23. The applicant also says that the plumber did not just clear the clog in her drain but that he augered down two stories, or 30 feet, into the vertical lines, which suggests

that the investigation into where the clog was and the work performed did not only involve her suite but involved common property.

24. The plumbing company's January 10, 2018 email to the property manager stated that there was heavy grease and sludge build up in the kitchen arm trap with the heaviest buildup within the first 10 feet of the drain line, which is the horizontal trap arm. However, the plumbing company confirmed that they then continued augering to a total of 30 feet down the drain line. The plumbing company recommended further investigation including hydro flushing and a video inspection of the drain line.
25. The applicant submits that the clogs occurred numerous times before this incident and has occurred again since then. The applicant says she rarely uses the sink and did not cause the clog. She is still of the opinion that there is an issue that is coming from another unit. She says the plumber told her that if the clog is lower down, the only place the water can go is up. An email from the plumbing company to the property manager on March 27, 2018 indicates that the applicant did say that her sink was still not draining properly.
26. The strata council minutes from March 7, 2018 shows that the invoice was discussed and because all the work undertaken was "suite side" and the strata lot was a fourth floor unit, the blockage was considered entirely localized within the unit and could not have been caused by another unit. It did not address the plumbing company's suggestion that further investigation was advisable. It was decided that the invoice would be charged back to the applicant.
27. The March 12, 2018 letter from the respondent stated that the plumbing company was called to the applicant's unit to **investigate** and repair a sanitary backup exclusive to the applicant's unit (my emphasis). The respondent noted that it had paid the invoice on the applicant's behalf and charged it to the applicant's strata account. The letter did not cite any bylaw or indicate under what authority it was charging the cost back to the applicant.

28. The charge back of a plumbing invoice is not captured by section 116 of the SPA and is commonly referred to as a non-lienable amount as it cannot be included in the amount of a Certificate of Lien filed under section 116 of SPA. In order to collect a non-lienable amount the strata must have the authority to do so under a valid and enforceable bylaw or rule that creates the debt. (see *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512)
29. Arguments on the validity of the charge back of the invoice were not presented by either party. Based on my review of the bylaws, I find there is no bylaw that permits the respondent to charge the invoice back to the applicant.
30. Further, in my view, the bylaws do not require the applicant to pay for investigation expenses which the respondent may incur, including the 30 feet augering work contained in the plumbing invoice. I note that a decision of this tribunal, *Robertson v. The Owners, Strata Plan NW 87*, 2017 BCCRT 37, decided that an indemnity relating to maintenance, repair, and replacement expenses does not extend to investigation expenses. Although I am not bound by decision, I find it persuasive and place reliance on it.
31. It is noteworthy that the respondent used the minutes of the March 7, 2018 council meeting as an opportunity to inform all owners that if the respondent's trades were engaged for "in suite" work, or any repair and maintenance item which was the responsibility of the owner, the resultant invoices would be charged back to the owner concerned.
32. I take this as an admission that the respondent knew that this had not been set out in the bylaws and needed some basis to charge back the applicant.
33. In summary, I find the respondent agreed to investigate why the water was overflowing into the applicant's dishwasher and onto the floor under its duty to keep the strata in a state of repair under the SPA. I accept the applicant's evidence that the issue is still occurring which I find is supported by the plumbing company's

opinion that further investigation is still warranted. The respondent also did not have the authority to charge back the applicant because the bylaws do not allow for this.

34. For these reasons, I find that the charge back of the plumbing invoice is invalid. As a result, I need not address whether the owner's act, omission, negligence or carelessness caused the clog or the necessity of a plumber attending on a holiday weekend.
35. The applicant's claim is for an amount less than the total plumbing invoice because she said she expected to pay a certain amount to have the plumber come to her strata lot. As a result, I order the strata to deduct \$700.00 from the amount it charged back to the applicant's strata lot.

TRIBUNAL FEES AND DISPUTE RELATED EXPENSES

36. Under section 49 of the Act, and 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 successful in her claim she is entitled to have her tribunal fees reimbursed and I so order. The applicant did not claim dispute-related fees.
37. 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

38. Within 30 days of this decision, I order the respondent to:
 - a. Deduct \$700.00 from the applicant's outstanding strata lot account for the amount charged back to her.
 - b. Pay the applicant \$225.00 as reimbursement of tribunal fees.
39. The applicant is entitled to post-judgement interest under the COIA, as applicable.

40. 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.
41. 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. 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.

Kathleen Mell, Tribunal Member