



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Movahedi v. The Owners, Strata Plan VIS 6357*, 2019 BCCRT 842

B E T W E E N :

Mandana Movahedi

APPLICANT

A N D :

The Owners, Strata Plan VIS 6357

RESPONDENT

AND:

Mandana Movahedi

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. The applicant, Ms. Movahedi is the owner of a strata lot in the respondent strata corporation, The Owners, Strata Plan VIS 6357 (strata). In August of 2017, there was a water leak that, according to the strata, originated in Ms. Movahedi's strata lot. The strata invoiced Ms. Movahedi for \$5,000 in associated remediation and repair costs.
2. Ms. Movahedi does not believe that the leak originated in her strata lot, and seeks orders that the strata prove the source of the leak and justify the amount charged to her. She also seeks compensation of \$500 for expenses incurred in resolving this matter. The strata denies that it is responsible for Ms. Movahedi's expenses. By counterclaim, the strata seeks payment of \$5,000 from Ms. Movahedi.
3. Ms. Movahedi is self-represented. The strata is represented by a member of the strata council.

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 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

8. The issues in this dispute are:
 - a. whether the strata has established that the source of the leak was in Ms. Movahedi's strata lot and proved the amount of the repair costs;
 - b. for the strata's counterclaim, whether Ms. Movahedi must pay the strata \$5,000 pursuant to the bylaws; and
 - c. whether the strata should pay Ms. Movahedi \$500 for expenses she incurred in investigating this matter.

BACKGROUND AND EVIDENCE

9. The strata filed amended bylaws with the Land Title Office in 2012. Bylaw 2 states that an owner must repair and maintain their strata lot, except for repair and maintenance that is the responsibility of the strata. Bylaw 8 provides that the strata must repair and maintain common assets, common property (CP) that has not been designated as limited common property (LCP), and certain items of LCP.
10. Bylaw 34 addresses insurance and liability for water escape. Bylaw 34(5) says that, subject to the bylaws, the payment of an insurance deductible for a claim on the strata's insurance is a common expense to be contributed to by means of strata fees. According to bylaw 34(8), an owner must reimburse the strata's repair or replacement costs plus any losses or damages to a strata lot, CP, or LCP or if the owner or the owner's family members, tenants or tenants' pets are responsible for the loss or damage, but only to the extent that such expense is not met by the

proceeds received from an applicable insurance policy. The insurance deductible is the responsibility of the owner. Pursuant to section 34(9), an owner is responsible even if they are not negligent and there is a strict liability standard for the payment of the insurance deductible. Bylaw 34(10) imposes responsibility on an owner for any water escape damage from their strata lot.

11. Under bylaw 34(12), the lesser of the amount of the damages or the insurance deductible plus any uninsured repair costs and related legal costs are charged to the owner and become due and payable on the 1st of the month following the date on which the expense was incurred.
12. Ms. Movahedi is the sole owner of strata lot 10, which is also known as suite 210. Her strata lot was occupied by tenants in 2017.
13. On August 21, 2017, water leaked into the CP hallway and into suite 213. The strata arranged for a plumber to attend. The plumber determined that the leak was coming from Ms. Movahedi's strata lot and had been caused by the tenants' dog chewing on a water supply line. The plumber charged the strata \$91.35 for this work.
14. The strata arranged for a restoration company to perform emergency services in the hallway, suite 213 and suite 210. On the date of the leak, the restoration company removed damaged material and disinfected and dried the wet areas. It also noted that wet wood flooring remained in suite 213, and recommended that it be removed. The restoration company billed the strata \$2,026.71 for this work.
15. The same restoration company quoted repair costs of \$3,817.80. This scope of work involved drywall repair and painting in the hallway, removal and replacement of wet material in suite 2013, and the replacement of baseboards in the bathroom of suite 210. Based on the estimated repair costs of \$5,800, the strata decided not to make an insurance claim. Given the strata lot owner's responsibility for the \$5,000 insurance deductible for water damage, the strata decided to "count the \$800 against the budget".

16. On October 16, 2017, the property manager sent an invoice to Ms. Movahedi for “Strata corporation’s insurance deductible” in the amount of \$5,000. Ms. Movahedi asked for, and received, information from the property manager about the repair costs.
17. The restoration company performed repairs to the common hallway in the form of replacing drywall, painting, and cleaning and sanitizing the carpet. In suite 213, the contractor removed wet materials and re-installed flooring and baseboards. In December of 2018, the company invoiced the strata for \$3,534.30 in respect of this work.
18. The restoration company had difficulty contacting Ms. Movahedi’s tenants in order to gain access to the strata lot to repair the baseboards. On February 1, 2018, the property manager sent an email message to Ms. Movahedi to advise that the leak-related repairs were complete, with the exception of the baseboards in her strata lot. The property manager asked her to have the tenants call the contractor to arrange this work. It is not clear when or if this work was completed.

POSITION OF THE PARTIES

19. Ms. Movahedi questions whether her strata lot was the source of the leak as she says the bathroom in her strata lot was dry and the area where repairs were completed was 14 feet away. She notes that there was another leak in the strata in September of 2018 and that a shutdown of the water system was required for emergency repairs in July of 2018.
20. Ms. Movahedi says she has confirmed with the strata’s insurance company that no claim was made with respect to the August 21, 2017 leak. She questions why she was issued an invoice for a \$5,000 insurance deductible when there is no claim, and describes the invoice as “forged”. Ms. Movahedi also questions why the remainder of the repair costs do not appear in the strata’s financial statements.
21. Ms. Movahedi says that the strata has not provided her with proof of the costs associated with the leak. She says that the restoration company “billed generously”

and that she did not give approval for this. Ms. Movahedi submits there should be pictures of the damaged areas before, during and after the repair process, and says she has not received these images. She also denies that her tenants refused to provide access to the strata lot, where she says that no repairs were required.

22. Although not stated explicitly, Ms. Movahedi asks for a determination that she is not responsible for the leak or the repair costs. She also asks for an award of \$500 from the strata as compensation for expenses she says she incurred in investigating this matter.
23. The strata's position is that, under the strata's bylaws, Ms. Movahedi is responsible for the water leak and associated costs. The strata says that, because of a recent insurance claim and the anticipated amount of damages, it decided not to make an insurance claim in this case. The strata says that it has provided Ms. Movahedi with all documents and photos relating to the cause and repair of damages.
24. The strata submits that, as the water leak caused damage that required emergency repairs, it could not wait for Ms. Movahedi to initiate repairs. It says that it is responsible to oversee the repair of damage to common areas.
25. The strata requests that I order Ms. Movahedi to pay it the \$5,000 sum provided for in its bylaws.

ANALYSIS

26. As a preliminary matter, Ms. Movahedi made submissions about her belief that the strata's property manager somehow formulated a plan to hold her and her 2 tenants responsible for the leak. As neither the individual property manager nor the property management company are parties to this dispute, I decline to make any orders respecting them.

Water Leak & Repairs

27. The key consideration is whether the evidence establishes that the source of the leak and the cost of the repairs. I find that the issues of strata lot access, other leaks in the strata, and the accuracy of the strata's financial statements are not relevant to these issues.
28. Photographs in evidence show a large wet patch on the carpet in the common hallway and damage to drywall on the bottom portion of the walls. Damage to the floors in suite 213 is also shown. Images of Ms. Movahedi's strata lot show that the bathroom baseboards had been removed. There are dark areas on a portion of the baseboard and wall that appear to be wetness. It is not clear whether there is any pooling water on the bathroom floor.
29. The August 23, 2017 plumber's invoice shows the job description as "2nd floor hallway wet" and states that the plumber "Traced the leak to Unit 201's ensuite washroom". I infer that the plumber's opinion was that the problem with the water line in Ms. Movahedi's toilet resulted in the water egress into the hallway and suite 213. There is no evidence that offers a contrary view of the cause of the leak. Further, although there have been other water issues in the building, there is no indication that there was another leak in the strata at that time. I find that the evidence establishes that the source of the leak was inside Ms. Movahedi's strata lot.
30. According to the bylaws, Ms. Movahedi is responsible for the water that escaped from her strata lot. As discussed above, an owner is responsible for any water escape damage under bylaw 34(10). In addition, bylaw 34(8) provides that an owner must reimburse the strata's repair or replacement costs plus any losses or damages to a strata lot or CP if the owner's tenants or tenants' pets are responsible for the loss or damage, but only to the extent that such expense is not met by the proceeds received from an applicable insurance policy.
31. In this case, the strata did not make an insurance claim due to the small difference between the anticipated repair costs and the \$5,000 deductible for water claims in

its insurance policy. Instead, it decided to assess Ms. Movahedi the amount she would have paid had a claim been made. Although the strata's invoice to Ms. Movahedi described the \$5,000 as an insurance deductible, it was actually a portion of the leak-related repair costs. I am satisfied that this amounted to costs or expenses for repairs to suite 213 and CP that were not met by the proceeds of an insurance policy. Pursuant to the bylaws, I find Ms. Movahedi is responsible for this amount.

32. I acknowledge Ms. Movahedi's belief that she has not been provided with all of the information about the leak-related damages and repairs. However, there is no indication that there is any documentation about the leak and/or repairs that has yet to be disclosed to Ms. Movahedi. Although she may have preferred to have more photographic evidence of the repair process, this does not alter her responsibility under the bylaws.
33. Ms. Movahedi also questions the amount charged by the restoration company for repair work in the common hallway and suite 213 and the fact that she did not approve the scope of work or cost in advance. There is nothing in the bylaws or the SPA which requires a strata to obtain an owner's approval for repairs to CP or another strata lot necessitated by water egress from the owner's strata lot. Further, she has not provided any evidence to support her suggestion that the repair costs were excessive or that the invoices were "forged".
34. I dismiss Ms. Movahedi's claims in this regard. I grant the strata's counterclaim, and order Ms. Movahedi to pay the strata \$5,000 in claimed repair costs.

Claim for \$500 in Compensation

35. Ms. Movahedi seeks an order that the strata compensate her for \$500 in expenses she says she incurred in investigating and solving this issue. Ms. Movahedi has not provided a description of these expenses or any supporting documentation to substantiate her claim.

36. As Ms. Movahedi has not proven any expenditures, I find that it is not necessary for me to consider whether the strata may be responsible for them. I dismiss this aspect of Ms. Movahedi's claim.

TRIBUNAL FEES, EXPENSES AND INTEREST

37. 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. I see no reason in this case to deviate from the general rule. I therefore order Ms. Movahedi to reimburse the strata for \$125.00 in tribunal fees. I dismiss Ms. Movahedi's claim for reimbursement of tribunal fees and dispute-related expenses.

38. I also find that the strata is entitled to pre-judgment interest under the *Court Order Interest Act* of \$123.71.

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

DECISION AND ORDERS

40. I order that, within 30 days of the date of this order, Ms. Movahedi pay to the strata \$5,248.71, which is broken down as follows:

- a. \$5,000 in repair costs;
- b. \$123.71 in pre-judgment interest under the *Court Order Interest Act*; and
- c. \$125.00 for reimbursement of tribunal fees.

41. The strata is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

42. Ms. Movahedi's claims are dismissed.

43. 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.
44. 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.

Lynn Scrivener, Tribunal Member