



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Progressive Messenger Ltd. v. The Owners, Strata Plan NW3214*, 2019
BCCRT 931

B E T W E E N :

Progressive Messenger Ltd.

APPLICANT

A N D :

The Owners, Strata Plan NW3214

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This is a dispute about who is responsible to pay for electrical work completed in a strata lot and on a common property roof.

2. The applicant Progressive Messenger Ltd. (Progressive) is a tenant in strata lot 7 (SL7) in the respondent strata corporation The Owners, Strata Plan NW3214 (strata).
3. Progressive says the strata should pay for an emergency electrical repair needed when electrical service to SL7 was disrupted. Progressive says the problem with the electrical feed wire was caused by a nail being driven through it during the strata's roofing repairs. The strata denies the damage was caused by a roofing nail.
4. Progressive asks for an order that the strata pay the \$1,247.01 cost of the electrical problem diagnosis and repair.
5. The strata says that when electrical service to SL7 was interrupted, Progressive did not contact the strata. Progressive hired its own contractor, Sparky Electric Inc. (Sparky), to complete "unidentified work". The strata says only contractors hired by the strata may work on common property electrical equipment. The strata says that Sparky proposed to increase service to SL7 from 35 to 50 amps, which is a dangerous upgrade and contrary to the Bylaws.
6. The strata says Sparky agreed not to do any further work on the common property for SL7, and that the strata would not pay for any work completed to that point. The strata then hired Sparky to fix the problem, which the strata says was a flaw in the feed cable. The strata says it paid Sparky \$5,025.16 for this work.
7. Progressive then requested that the strata pay Sparky's earlier invoice for "generator rental, fuses and labour", but the strata refused to do so. The strata says the expense was incurred without strata approval and contrary to the *Strata Property Act* (SPA) and Bylaws.
8. The strata asks that the dispute be dismissed.
9. Progressive is represented by principal or employee JP. The strata is represented by strata council member AB.

JURISDICTION AND PROCEDURE

10. 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.
11. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
12. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
13. 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.
14. 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, or order any other terms or conditions the tribunal considers appropriate.

15. The owner of SL7, 0976351 B.C. Ltd, Inc. No. BC0976351 (owner) is not a named respondent in this dispute. This gives rise to a preliminary issue about whether Progressive has standing in this dispute or is entitled to be reimbursed for a payment made by the owner to Sparky.
16. The strata argued that Progressive is without standing because the section 147 assignment of powers was made partly to JP. However, I find that the assignment was valid as between the strata and Progressive, as discussed below. As well, considering the scope of the assignment of powers and duties between the owner and Progressive under section 147 of the SPA, I accept that Progressive has standing to bring this claim, in effect, as a litigation representative of the owner.
17. I say this because, on September 21, 2018, the owner wrote to the strata saying it had leased SL7 to Progressive and was assigning “all of the powers and duties of the landlord that arise under the *Strata Property Act*” to JP and Progressive under section 147(1) of the SPA, on a permanent basis until written notice was provided otherwise. While I understand the strata’s point that JP is not, personally, a tenant, the reference to him in the assignment document may be interpreted as referring to his role as a personal contact for Progressive.
18. In the same letter, the only other topic discussed was the issue of reimbursement of the April 23, 2018 invoice. That is, the owner expressly contemplated that it was making an assignment of powers to Progressive to resolve that issue with the strata on its behalf.
19. Under section 147(1) an owner may assign a tenant its powers and duties under the SPA, except responsibility for fines or the costs incurred by the strata in remedying a bylaw contravention under section 133. I do not interpret the claim here, for reimbursement of an expense paid by an owner that it says should have been paid by the strata as a common property maintenance expense, as falling within the section 133 exclusion to the assigned powers.
20. The courts have held that the powers assigned under section 147 extend to powers for a tenant to stand for council, vote and inspect or receive copies of documents

under the SPA (see *Jay v. The Owners, Strata Plan NW 3353*, 2019 BCCA 102 at paragraphs 9-17 (CanLII) and *Smiley v. The Residential Section of the Owners, Strata Plan VIS 1921*, 2017 BCCRT 75 at paragraphs 54 and 55). I interpret that to mean that a broad transfer of powers to a tenant is permitted by section 147.

21. Under section 147, an assignment is not effective until the landlord gives the strata written notice of the name of the tenant, the powers and duties assigned, and the time period during which the assignment is effective. I find that the assignment here meets these criteria.
22. In making this preliminary determination, I have also considered the tribunal's mandate to prove flexible dispute resolution.

ISSUE

23. The issue in this dispute is whether the strata must reimburse Progressive for the \$1,247.01 April 23, 2018 invoice for Sparky's electrical work?

BACKGROUND, EVIDENCE and ANALYSIS

24. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
25. In this claim, Progressive must prove its claims on a balance of probabilities.
26. The strata is made up of 40 light-industrial strata lots in two concrete buildings. The strata was created on April 4, 1990, under the *Condominium Act* and continues to exist under the SPA.
27. Under section 120 of the SPA, the strata's bylaw are the Standard Bylaws under the SPA unless different bylaws are filed at the Land Title Office (LTO). Under the *Strata Property Regulation* (regulation) 17.11(3)(b), any bylaws under the *Condominium Act* that were deemed to be bylaws of the strata ceased to have

effect on January 1, 2002. LTO records show bylaw amendments were filed on April 9, 1992, so I find that the strata's bylaws are the Standard Bylaws.

28. Section 68 of the SPA defines the boundaries of a strata lot and says that the common property includes the exterior of a building. Section 72 of the SPA says that the strata must repair and maintain common property unless it makes the owner responsible for its repair and maintenance by bylaw.
29. Under section 1 of the SPA, wires for electricity located within a floor, wall or ceiling forming a boundary between a strata lot and another strata lot, between a strata lot and the common property or between a strata lot or common property and another parcel of land, or are wholly or partially within a strata lot but are "capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property", are common property.
30. The relevant Bylaws are as follows:
 - a. Bylaw 2 – an owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the strata's responsibility under the bylaws
 - b. Bylaw 5 – an owner must obtain written approval before altering a strata lot in any way that involves common property within the boundaries of a strata lot
 - c. Bylaw 6 – an owner must obtain written approval from the strata before making alterations to common property
 - d. Bylaw 8 – the strata must repair and maintain common property
31. The electrical service to SL7 travels from the common property electrical room across the roof and down through the exterior wall into SL7.
32. In 2016, the strata identified a need for a new roof on both buildings.
33. In August and September 2017, the roofs were replaced using "single membrane EPDM, with glued seam and perimeters, retained by stone ballasts." While Progressive says that a roofing nail went through the electrical wiring on the roof

during the roof repairs, it provided no proof, such as a photograph of the nail or an electrician's report confirming it. For this reason, I accept the strata's evidence and find that no nails were used in the installation of the roof and no nail was driven through the electrical feed wire.

34. In June 2017, the owner purchased SL7.
35. On June 14, 2017 the strata provided the owner with a Form B Information Certificate that read, in part, "NOTE: electrical supply to strata lot is 35 amps @ 600 volts. No increase in electrical service is available."
36. On November 14, 2017, a representative the owner signed an Assumption of Liability agreement with the strata, applying to some renovation work. As part of that agreement, the owner agreed to refer to the strata "for execution by its contractor at our expense" "...all modifications and changes which might affect the integrity of the common property, including, without limitation, the roof ...or the integrity or operation of ...electrical and other services used by other strata lots."
37. Progressive runs a business in SL7. It says, and I accept, that having electrical power is important to business operations.
38. On April 23, 2018, the power to SL7 went out. Progressive later admitted that this was the most recent of three power interruptions. Progressive did not report these earlier power interruptions to the strata when they occurred.
39. On April 23, 2018 Progressive says it tried to report the problem to strata council member AB, who was living on-site. However, there was no answer. The strata disputes this and says Progressive did not attempt to contact AB before engaging Sparky.
40. Based on the April 23, 2018 invoice from Sparky, I find that Sparky attended at SL7 on April 23, 2018, before the strata was notified of any potential problem with the common property electrical service on the roof. Sparky did some work in SL7 trying to identify the problem with the electrical service.

41. Sparky then needed access to the strata's electrical room, though the parties disagree about why. Progressive says Sparky needed access to investigate the cause of the power interruption. The strata says Sparky told Mrs. B (AB's spouse) he had instructions from Progressive to upgrade SL7's power supply from 35 amps to 50 amps.
42. Mrs. B gave affidavit evidence that, at around 9:15 on April 23, a man she did not know came to her strata lot and asked for the key to the electrical room "so that he could increase the fuse capacity" for SL7 "...from 35 amps to 40 amps as the unit's owner had asked him to do."
43. Based on this direct evidence, I find that Sparky asked for access to the electrical room to upgrade the electrical service.
44. I also accept Mrs. B's evidence that no one from SL7 came to her strata lot earlier that morning or the previous day, contrary to Progressive's assertion that it tried to report the problem earlier. The SPA provides that a report could have been made to any of the strata council members, not only AB.
45. Progressive says Mrs. B refused to provide the key and said AB had the only key to the electrical room. I do not accept this evidence since the strata points out that another council member also keeps an electrical room key. I accept Mrs. B's evidence that she explained that she did not have a key to the electrical room but would contact AB.
46. About an hour later, AB attended the site. The strata says AB told Sparky that an increase in service to 50 amps was contrary to the Bylaws, and that only contractors hired by the strata could work on common property electrical service. He then provided the Sparky electrician access to the electrical room.
47. On my review of the standard Bylaws, I do not agree that an upgrade to 50-amp service was precluded, though under standard bylaw 6 it would have required the strata's advance written approval. However, I find that the Form B communicated to

the owner at the time of purchasing SL7 that no upgrade from 35-amp service would be available.

48. I accept AB's evidence that he only provided Sparky with access to the electrical room after Sparky agreed to work for the strata in investigating and repairing the problem with the electrical service located on the roof. AB also says, and I accept, that Sparky agreed not to charge the strata for work done for SL7 to that point.
49. After Sparky's technician investigated the electrical feed routing to SL7, he tentatively concluded that the fault was in the cable between the electrical room and SL7.
50. AB then confirmed that the strata would retain Sparky to repair the issue, on the agreement that the strata would not be billed for, and would not pay for, whatever work Sparky had done for Progressive, inside SL7.
51. Sparky identified a flaw in an aluminum conductor feed cable. On Thursday April 26, 2018, on the strata's instruction, Sparky replaced the entire 600 volt feed with copper-conductor Teck cable.
52. On April 23, 2018, Sparky issued the owner invoice number 16738 for 8 hours of electrical work, 6-35 amp fuses, 2-50 amp fuses, and a generator rental, for a total of \$1,247.01. Invoice 16738 (the April 23, 2018 invoice) is the subject of this dispute.
53. An April 23, 2018 work order (Work Order) was filed in evidence by Progressive. It lists details of the electrical work required, which I quote as written below:

Check power in the unit, 35 amps/ 600 volts fuse is blown. Replaced fuses and test, fuse keeps on blowing.

Two of the phase is missing and there is a short circuit. Check meter base and unit 103 disconnect switch and transformer connection, terminal connections are good.

Check supply cable from the electrical room to unit 103 located in the roof top if there is a junction box, no junction box in the roof top. Inspect supply cable in the roof top, there is a damage in the cable located midway from

the electrical room to unit 103. Strata needs a quote to replace the supply cable in the roof.

Supply generator rental from Monday to Thursday.

54. The strata argued that it did not see the Work Order until these proceedings. While I accept that, I nonetheless find that the details in the Work Order accurately reflect the work Sparky completed on April 23, 2018.
55. The strata say the 8 hours of labour charged on invoice 16738 relates to work done before 9:15 a.m., when the discussion with AB occurred. I cannot agree, because the 8 hours of labour would then have started at 1:15 a.m. There is no evidence of a start at that unusual hour.
56. Based on the details in the Work Order, I find that the April 23, 2018 invoice includes several items that are repair costs inside SL7. These are checking the power inside the unit, testing and replacing the blown fuses, and identifying the short circuit.
57. However, the invoice also charges for diagnostics of the common property electrical, described as “Check supply cable from the electrical room to unit 103 located in the roof top if there is a junction box, no junction box in the roof top. Inspect supply cable in the roof top, there is a damage in the cable located midway from the electrical room to unit 103. Strata needs a quote to replace the supply cable in the roof.”
58. I find that the work Sparky describes occurring in the electrical room and on the roof was at the strata’s instruction, because AB says he did not provide Sparky access to the electrical room until he agreed to be retained by the strata. Although Sparky had agreed to invoice these charges to the strata, I find that it included the diagnostic aspect of the work in its April 23, 2018 invoice to the owner in error, where these charges should have been invoiced to the strata.
59. On Thursday April 26, 2018, Sparky issued invoice number 16744 to the strata for \$5,025.16. The invoice sets out charges for labour, materials and a scissor lift delivery, pickup and rental to replace existing damaged power supply cable from the

electrical room to SL7. That is, Sparky completed the work needed to repair the damage to the cable that was identified on Monday April 23. It is uncontested, and I find, that this repair work was a common property maintenance issue for which the strata was responsible.

60. The strata paid invoice 16744 in full, by cheque, on May 2, 2018.
61. On May 18, 2018, Progressive sent the strata Sparky's April 23, 2018 invoice to strata requesting payment and described it as an invoice "to troubleshoot our power outage".
62. On May 24, 2018, the strata replied to the owner, writing that because the owner had engaged Sparky without notifying or obtaining strata approval, the strata would not pay the April 23, 2018 invoice. The letter notes that the scope of work charged appeared to include replacing 35-amp fuses with 50-amp fuses, which was not permitted.
63. On August 3, 2018, the owner responded saying that the problems with the electrical feed wire were due to a nail having been inserted in it. I have found that this is not proven.
64. On August 10, 2018, the strata wrote back to the owner saying that it understood that the owner was requesting a decision by the strata as to whether it would indemnify the owner for April 23, 2018 invoice. The strata requested confirmation that the invoice had been paid. The letter also said: "I understand further that, if the Corporation is unwilling or unable to refund you this money, you intend to request a hearing before strata council pursuant to S.34.1 of the *Strata Property Act*."
65. On August 20, 2018, the strata wrote to the owner again, saying it had no reply to its August 10, 2018 letter and that it was unable to find a provision in the SPA or Bylaws to support the owner's request for reimbursement.
66. On August 29, 2019, the owner wrote to the strata saying it had yet to pay Sparky's April 23, 2018 invoice, and that it would rely upon standard Bylaw 8 and section 72(1) of the SPA to advance its claim.

67. On September 13, 2018, the strata wrote to the owner saying that the standard bylaws did not apply to the strata, and that there was no evidence that the strata had failed to reasonably repair and maintain electrical service in the building. The strata suggested that the owner's demand for payment was unfounded, and suggested it abandon its demand.
68. On September 21, 2018, the owner wrote to the strata formally requesting a hearing under section 34.1 of the *Strata Property Act*. I find the request was made to address the question of whether the April 23, 2018 invoice should be paid by the strata as a common property repair. The strata understood the request, as it noted in its August 10, 2018 letter. I find that the strata should have provided the owner with a hearing before strata council but failed to do so.
69. On September 26, 2018, the owner paid \$1,247.01 to Sparky for the April 23, 2018 invoice.
70. On October 5, 2018, Progressive wrote to the strata confirming that the Sparky April 23, 2018 invoice had been paid by the owner and attaching a receipt for \$1,247.01.
71. On October 17, 2018, the strata wrote back to the owner saying that it had not heard from it as to what question it wanted to have considered at a s.34.1 hearing. The strata also wrote that if there was no provision authorizing the payment, then there "...can be no decision as to whether the provision applies to your case."
72. On October 19, 2018, Progressive wrote back to the strata asserting that the strata was "in a default position" for failing to hold a hearing within 4 weeks of the owner's request. JP wrote that the owner would apply to the tribunal for an "order for immediate payment for noncompliance of Section 34.1 of the *Strata Property Act*".
73. On October 25, 2018, the strata wrote back acknowledging that the issue would now go before the tribunal.
74. Progressive says Sparky identified a short in the electrical cable providing power to SL7 from the electrical room at a point in the cable where it runs across the building's roof before entering SL7.

75. I have found that the electrical cable on the outside of the building is common property and that therefore the strata is responsible for its repair and maintenance.
76. The question then becomes to what extent, if any, the April 23, 2018 invoice includes work on the common property completed at the strata's instruction. I find that, to the extent that it describes work in the common property electrical room and on the building's exterior and roof, it includes repair and maintenance that is a strata responsibility.
77. Based on my review of AB's evidence, the April 23, 2018 invoice and the Work Order, I estimate the cost of the April 23 work that was completed at the strata's instruction involved a significant amount of the labour and some parts, for about \$600.
78. I have found that this portion of the diagnostic work was completed by Sparky after it was instructed to do so by AB. Therefore, I find that the strata must reimburse the owner \$600. I find that this \$600 cost was incurred for necessary repair and maintenance of the common property electrical service, and not to remedy a contravention of strata bylaws under the SPA section 133, I find that the refund may be paid to Progressive for the reasons given in my preliminary determination above.
79. Progressive has a further claim to the balance of the April 23, 2018 invoice, being \$647.01. I find that this work was completed without first notifying the strata, and without strata's council's written approval. I find that, under the Bylaws, strata approval was required for work on the electrical system that might have impacted the common property. An upgrade to 50-amp service, which must have been part of the proposed work because Sparky included 50-amp fuses on the April 23, 2018 invoice, was contrary to the Form B provided to the owner and to the Bylaws requiring advance written notice to the strata before altering common property.
80. There was no evidence proving that the rental of generators, which made up \$400 of the invoice amount, was approved by the strata, prior to Sparky charging for them. For this reason, I find that the strata is not responsible for the cost of generator rental inside SL7 from April 23, 2018 to April 26, 2018.

81. Given that the owner proceeded to hire Sparky without notifying the strata first and without advance approval, I find that this portion of the invoice is not payable by the strata.
82. In addition, to the extent that the work completed inside SL7 was on the strata lot, it was is the owner's responsibility to repair and maintain under the bylaws, unless the strata was negligent (see *Kantypowicz v. The Owners, Strata Plan NWS 3423*, 2017 BCCRT 15, at paragraph 29 and *Wright v. Strata Plan No. 205*, 1996 CanLII 2460, affirmed 1998 CanIII 5823 (BCCA)). Progressive did not prove negligence on the part of the strata in respect of repair and maintenance obligations for the building's electrical service.
83. I allow Progressive's claim to a limited extent and order that the strata pay Progressive \$600, as a partial reimbursement for the owner's payment of the April 23, 2018 invoice, within 30 days of this decision.
84. During this dispute, Progressive argued that there had been no annual general meeting (AGM) of the strata in two years. While I was not asked to order an AGM or to determine if one had been occurring annually, I remind the parties of the SPA requirement that an AGM be held not later than 2 months after the fiscal year end.
85. Progressive argued that because the strata failed to prove a section 34.1 SPA hearing, the strata was in a "default position" and was therefore liable. I do not agree. The CRT rules do not define a default in this way. However, had a hearing been provided, the issue could potentially have been resolved sooner.

TRIBUNAL FEES, EXPENSES AND INTEREST

86. 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. While Progressive succeeded only in part, I have noted the strata's refusal to provide a section 34.1 hearing. I therefore find it appropriate to order the strata to reimburse Progressive for its full tribunal fees of

\$225. Progressive did not prove a claim for dispute-related expenses and so I make no order for them.

87. The *Court Order Interest Act* (COIA) applies to the tribunal. The applicant is entitled to pre-judgement interest on the \$600 from the date of payment of the invoice, September 26, 2018, to the date of this decision. I calculate the pre-judgement interest to be \$4.20.

DECISION AND ORDERS

88. I order that, within 30 days of this decision, the strata pay Progressive a total of \$829.20, broken down as:

- a. \$600, for the portion of the April 23, 2018 invoice that was completed at the strata's instruction, for common property repair diagnostics.
- b. \$225 in tribunal fees, and
- c. \$4.20 in pre-judgement interest under the COIA.

89. The applicant Progressive is also entitled to post judgement interest under the COIA, as applicable.

90. 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.

91. 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.

Julie K. Gibson, Tribunal Member