



Civil Resolution Tribunal

Date Issued: August 2, 2019

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Sinclair v. The Owners, Strata Plan K755*, 2019 BCCRT 936

BETWEEN:

TIMOTHY SINCLAIR

APPLICANT

AND:

The Owners, Strata Plan K755

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about who is responsible to pay remediation expenses after a washing machine overflow.

2. The applicant Timothy Sinclair co-owns strata lot 91, which is unit 311 (SL91), in the respondent strata corporation The Owners, Strata Plan K755 (strata).
3. The parties agree that a washing machine in SL91 overflowed, causing water damage in SL91, and in two other strata lots.
4. The strata conducted remediation work, through a contractor, to address the water ingress, for all three strata lots. The strata then charged those expenses back to SL91 when Mr. Sinclair says they should have been the responsibility of the individual strata lot owners.
5. Mr. Sinclair seeks an order reversing a charge of \$6,020.38 against his strata lot account.
6. The strata says that the Bylaws provide that Mr. Sinclair is responsible for the repair expenses to the three strata lots. The strata asks that the dispute be dismissed.
7. Mr. Sinclair represents himself. The strata is represented by strata council member Paul Tonita.

JURISDICTION AND PROCEDURE

8. 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.
9. 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.

10. 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.
11. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
12. 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

13. The issues in this dispute are:
 - a. Is Mr. Sinclair responsible to pay \$6,020.38 in water ingress expenses incurred by the strata?
 - b. Is either party entitled to reimbursement of tribunal fees or dispute-related expenses?

BACKGROUND AND EVIDENCE

14. I have reviewed all of the evidence but only refer to the evidence and submissions as I find necessary to provide context for my decision.
15. On December 29, 2004, the strata repealed all prior bylaws and filed a new set of bylaws at the Land Title Office (LTO). An amendment to add Bylaw 34 was filed at the LTO on December 11, 2013. Some other amendments were filed which are not relevant to this dispute. Taken together, I find these are the applicable bylaws in this dispute.

16. The relevant bylaws are as follows:

- a. **Bylaw 2** – an owner must repair and maintain their strata lot, except for repair and maintenance that is the strata’s responsibility under the bylaws.
- b. **Bylaw 3** – an owner must not cause damage, other than reasonable wear and tear, to common property or those parts of a strata lot which the strata must repair and maintain under these bylaws or insure under section 149 of the SPA.
- c. **Bylaw 7(1)** - an owner must allow a person authorized by the strata corporation to enter the strata lot (a) in an emergency, without notice, to ensure safety or prevent significant loss or damage.
- d. **Bylaw 8** – the strata must repair and maintain common property, limited common property subject to some restrictions, and a strata lot only to the extent those repairs include the structure or exterior of a building and some other specific items that do not apply here.
- e. **Bylaw 34(1)** – an owner is deemed to be responsible for any loss or damage caused to common property or any strata lot, where the cause of the damage originated within the owner’s strata lot and the damage is not covered by any insurance policy.
- f. **Bylaw 34(2)** – an owner is also deemed responsible for any loss or damage to common property where the cause of such loss or damage is the result of an act, omission, negligence or carelessness of the owner, and/or owner’s tenants, occupants, employees, agent or visitors and the loss or damage is not covered by any insurance policy.
- g. **Bylaw 34(4)** – if the loss or damage under 34(1) or 34(2) does not exceed the strata’s insurance policy deductible, the owner is strictly liable and shall fully indemnify the strata for any resulting expense for maintenance, repair or replacement rendered necessary, which it is the strata’s responsibility to perform, including legal costs in relating to defending any claim against the

strata and/or prosecuting any claim made against the owner, such indemnity to be a solicitor and own client basis including disbursements, expenses, taxes, filing and/or Court fees, all on a full indemnity basis.

17. On September 2, 2018, a washing machine in SL91 overflowed, causing water damage. The parties agree that water ingress occurred in SL91, and in the two suites immediately below it.
18. The strata engaged Alliance Response Building Solutions (Alliance) to attend to the water ingress in all three strata lots. At the time, Mr. Sinclair agrees that Alliance contacted him to arrange access to SL91.
19. On December 5, 2018, the strata wrote to Mr. Sinclair saying that because the washing machine overflowed in SL91, the cost of repairs within SL91 would be his responsibility under Bylaw 2(1). The strata enclosed an invoice from Alliance for \$6,020.38 “being charged back” for work needed to address to water damage caused on September 3, 2018.
20. The invoice shows charges for water ingress investigation and drying equipment and service for units 111, 211 and 311.
21. On January 7, 2019, Mr. Sinclair wrote to the strata saying that the repair expense would not be covered by his insurance because he had a \$5,000 deductible for this type of claim. Mr. Sinclair also contested the charges in the invoice as too high and mainly made up of an “arbitrary pricing on blower rental”.
22. On January 10, 2019, Mr. Sinclair wrote back to the strata suggesting that Bylaw 34 might be more applicable. Mr. Sinclair asked the strata to inform him of the specific bylaw being relied upon to charge the repair expense to his strata lot, and whether these repairs were covered by the strata’s insurance policy.
23. On January 18, 2019, Mr. Sinclair wrote to the strata arguing that the strata had not acted in accordance with its bylaws in authorizing the repair expense. Mr. Sinclair also requested a hearing before strata council.

24. On January 31, 2019, Alliance issued a revised invoice for \$5,839.25 for the water ingress expense.
25. On February 7, 2019, Mr. Sinclair had a hearing before strata council.
26. On February 12, 2019, the strata wrote to Mr. Sinclair saying that, after hearing him at strata council, the charge of \$6,020.38 would remain his responsibility, under Bylaw 34. The strata noted that the strata's insurance policy had a \$15,000 deductible, and so would not cover this water escape claim.
27. Based on the strata's documents filed in evidence, I find that Mr. Sinclair then paid the \$6,020.38 claimed to the strata in trust, pending the outcome of this dispute.

POSITION OF THE PARTIES

28. Mr. Sinclair argues that:

- a. Bylaw 2(1) and 8(1) do not permit the strata to conduct the water mitigation work that it did in the strata lots,
- b. The cost of the water mitigation work was unreasonably high, and
- c. Under Bylaw 34(4), the strata cannot be indemnified by him because these repairs were not "...the strata's responsibility to perform" under the Bylaws.

29. The strata argues that:

- a. Bylaw 8(1) does not apply to a circumstance where the damage originated inside a strata lot,
- b. Bylaw 34(1) means that, because the loss originated in SL91, SL91 is responsible for the damage to SL91 and the other strata lots, and
- c. under Bylaw 34, negligence is not required to hold an owner responsible for repairs to damage in other strata lots, as long as the loss originated in that owner's unit.

ANALYSIS

30. The strata and Mr. Sinclair disagreed about whether the water ingress remediation work conducted by Alliance was “repair and maintenance”. Mr. Sinclair relied on the definition of repair as “...to restore to sound condition that which has previously been made sound..” from *Taychuk v. The Owners, Strata Plan LMS744*, 2002 BCSC 1638, and maintenance as an action done to keep something “...in good order” (see *Rettie v. The Owners, Strata Plan LMS2429*, 2011 BCSC 1611). I find that the work completed by Alliance was repair and maintenance because it involved drying areas of the strata lot that had previously been dry, to keep them in good order.
31. Bylaw 2(1) makes the owner responsible for repairs to the strata lot, except for repair and maintenance that is the strata’s responsibility under the bylaws.
32. Mr. Sinclair argues that Bylaw 8(1)(d) restricts the strata’s responsibilities for repairs inside a strata lot to the exterior, building structure, and some other specifics that do not apply here. He says that because the Bylaws do not otherwise make the strata responsible for repair inside the strata lot, the strata was not permitted to proceed with the water ingress repair and maintenance. On this basis, Mr. Sinclair says the charges against his strata lot cannot stand.
33. Bylaw 7(1) provides that an owner must allow a person authorized by the strata corporation to enter the strata lot (a) in an emergency, without notice, to ensure safety or prevent significant loss or damage, and (b) at a reasonable time, on 48 hours written notice, to inspect, repair or maintain common property, common assets and any portions of a strata lot that are the responsibility of the strata corporation to repair and maintain under these bylaws or insure under section 149 of this Act.
34. While I agree with Mr. Sinclair’s interpretation of Bylaw 8(1)(d), I find that Bylaw 7(1)(a) implies a limited duty on the part of the strata to conduct repairs and maintenance where necessary, even if inside a strata lot, to “prevent significant loss or damage.” I find that the strata was responsible to attend to this water ingress

repair and maintenance, even though it was inside the owners' strata lots. I say this because a failure to do so urgently while awaiting individual owners to attend to it would probably have resulted in significant loss or damage.

35. I find that Bylaw 34(1) makes Mr. Sinclair responsible for the loss caused by the washing machine overflow, in terms of the damage to all three strata lots. I say this because the cause of the damage originated within the owner's strata lot and the damage is not covered by an insurance policy.
36. I interpret Bylaw 34(2) as applicable only if the cause of the damage originated somewhere other than the strata lot, but the cause of the damage was an act, omission, negligence or carelessness of an owner, tenant, occupant, employee, agent or visitors and was not covered by any insurance policy.
37. I find that Bylaw 34(4) applies to deem Mr. Sinclair responsible to indemnify the strata for this water ingress repair and maintenance, which I have found is the strata's responsibility to perform under Bylaw 7(1)(a).
38. Here, because the cause of the damage originated in SL91, I find that the owners of SL91 are responsible for it.
39. There was no evidence proving that Alliance's work was charged at an unreasonable rate to address the immediate threats posed by the water ingress, aside from Mr. Sinclair's assertion and one reduced invoice.
40. I find that the strata should not charge the original invoice amount, where a reduced invoice was issued. I order that the strata reverse the charge of \$6,020.38 against SL91's account and replace it with the reduced invoice amount of \$5,839.25. Any payment Mr. Sinclair has made to the strata in trust pending this decision may then be applied against the SL91 account in this amount.

TRIBUNAL FEES and EXPENSES

41. 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. Because the strata was largely successful, but paid no tribunal fees and claimed no dispute-related expenses, I make no order for reimbursement.

42. I dismiss Mr. Sinclair's claim for tribunal fees.

DECISION AND ORDERS

43. I order that, within 30 days of this decision, the strata reverse the charge of \$6,020.38 against Mr. Sinclair's strata lot account and replace it with the reduced invoice amount of \$5,839.25.

44. Any payment Mr. Sinclair has made to the strata in trust pending this decision may then be applied against the \$5,839.25, with any remaining balance to be refunded to him.

45. 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. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

46. 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. 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

