



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Wilding v. The Owners, Strata Plan LMS3900*, 2019 BCCRT 970

B E T W E E N :

Gavin Wilding

APPLICANT

A N D :

The Owners, Strata Plan LMS3900

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about whether the strata or the owner is responsible to repair the ceiling inside a strata lot.
2. The applicant Gavin Wilding (owner) owns a strata lot 22 (SL22), which is unit 210, in the respondent strata corporation The Owners, Strata Plan LMS3900 (strata).

The owner says that the strata has failed in its duty to repair and maintain the common property roof, with the result that his strata lot ceiling is cracked and damaged. The owner says he paid into a special levy to address these repairs, but the damage to SL22 was not fixed.

3. The owner asks for an order that the strata:
 - a. repair the damage to SL22 immediately, in the approximate value of \$5,500.50,
 - b. compensate him \$2,500 for the reduction in his property value owing to the damage,
 - c. pay \$300 for a property assessment once the damage is repaired, and
 - d. pay him \$1,500 to stay at a hotel while the repairs are being completed.
4. The strata says the owner has not provided evidence of a failure by the strata to repair and maintain common property causing his alleged ceiling damage. The strata says repairs inside a strata lot are an owner's responsibility, under the bylaws. The strata asks that the dispute be dismissed.
5. The owner represents himself. The strata is represented by strata council member Gerry Sair.

JURISDICTION AND PROCEDURE

6. 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.

7. 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.
8. 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.
9. 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

10. The issues in this dispute are:
 - a. Is the owner's claim barred under the *Limitation Act*?
 - b. Whether the owner or the strata is responsible for repairs needed to the interior ceiling of SL22?
 - c. Whether the strata was negligent in its obligation to repair and maintain common property, causing the damage to the ceiling of SL22?
 - d. What is the appropriate remedy?

BACKGROUND AND EVIDENCE

11. I have reviewed the evidence and submissions, but refer to them only as I find necessary to explain my decision.
12. On June 16, 2014, the strata filed Bylaws at the Land Title Office (LTO) which repealed and replaced all previous bylaws. There were some amendments made

afterward on unrelated issues. I find the June 16, 2014 Bylaws are the applicable bylaws in this dispute.

13. Bylaw 5 provides that the strata must repair and maintain the common property, the structure and exterior of a building, windows, balconies, decks and other things attached to the exterior of a building, and some other things that are not applicable to this dispute.
14. Bylaw 5 describes the strata's duty to repair and maintain a strata lot as restricted to the building's structure and exterior, balconies, windows and similar items.
15. In May 2012, the owner reported a leak in SL22. The same day, the strata property manager responded saying he had arranged to have the ceiling in SL22 investigated.
16. The strata's restoration contractor, TNC Restoration Ltd. (TNC) conducted a water test by flooding the upper deck above SL22. No leak occurred in SL22. TNC concluded, and I find, that the previous leak observed in SL22 was not due to a deficiency in the deck above. TNC wrote an email offering a "best guess" that the problem was either a leaking pipe or the common property dryer vent.
17. The strata retained another contractor, RDH, to review ceiling stains reported in SL22. RDH determined that the stains lined up with dryer duct runs located within the concrete slab and/or ceiling of SL22. The dryer vent exhaust grill was found to have lint build-up. RDH offered its opinion that warm, moist air was building up within the exhaust duct and leaking through to the underside of the textured concrete slab ceiling. I accept this evidence regarding the cause of the ceiling stains, given that there is no contrary evidence from a contractor or tradesperson.
18. On September 19, 2012, the applicant emailed the strata's property manager asking why it was taking so long to repair the ceiling in SL22.
19. On November 26, 2013, the applicant again emailed the strata's property manager asking why the wait had been so long to repair the ceiling in SL22. The evidence

shows that the property manager was had several phone calls with the applicant in early 2014 to discuss a variety of issues.

20. On May 14, 2014, RDH made three recommendations about moisture build up within the dryer ducts, as follows:
 - a. Install dryer duct booster fans,
 - b. Install new dryer vent screens,
 - c. Perform regular cleaning and maintenance of dryer ducts and vent screens, typically every 6 months.
21. Based on these recommendations, I accept the strata's uncontested evidence and find that the strata installed a dryer vent booster fan, a new dryer vent screen and started performing regular dryer vent cleaning at SL22. The dryer vent cleaning is reported in strata council minutes that were filed in evidence.
22. On December 5, 2016, strata council met and discussed a report of reoccurring water ingress in a second-floor strata lot. Some minor defects in the membrane striping piles above the strata lot were discovered. Strata council noted that temporary repairs had been conducted and that, if no further water ingress was observed, a roofing contractor would be asked to provide a budget for "...permanent repairs to the affected areas and [sic] secure all flashings in a more permanent manner.
23. On January 16, 2017, strata council met and reported that no further water ingress had been reported in the 2nd floor suite. The strata council asked a roofing contractor to prepare a budget for permanent repairs and to secure flashings.
24. On February 28, 2017, the strata held an annual general meeting (AGM). A $\frac{3}{4}$ resolution was passed to conduct re-roofing of the building for a sum funded by the contingency reserve fund (\$150,000) and a special levy of \$250,000.
25. At the end of August 2017, the re-roofing project was completed.

26. On August 29, 2018, the strata council met and noted that correspondence had been received about a ceiling stain, which I presume was in SL22. The minutes state that extensive testing of the deck above was conducted with no leak in the suite. A letter was to be issued to the owner “advising painting of the ceiling will be arranged, but suite access needs to be ensured for Strata trades to attend.”
27. On December 11, 2018, RDH wrote to the strata saying that water was leaking into SL22 and the unit below it, owing to a clogged window drain. RDH said that the window had no overflow scupper (OFS) as a secondary drain in case the main roof drain backed up. No evidence was provided linking this leak to the ceiling stains in SL22 and I find that it was an unrelated leak. RDH recommended:
 - a. Further review of the “membrane terminations” of the roof above suite 210,
 - b. Further review of the absence of the OFS to see if a new OFS application was possible, and
 - c. Installation of a better drain guard to reduce the potential for debris to clog the roof drain.
28. On March 20, 2019, an engineer and a building science technologist from RDH provided a report, at the strata’s request, commenting on whether the reported ceiling stains in SL22 required repair. RDH inspected SL22 on March 8, 2019. RDH reported, and I accept, that a non-penetrating moisture meter did not detect elevated moisture within the ceiling stains in SL22 compared to non-stain ceiling locations.
29. RDH then wrote that the stains reviewed in March 2019 are the same stains identified in 2012. I accept this evidence, because the photographs taken in 2012 match up with RDH’s reported observations in 2019. This finding is also consistent with the owner’s written evidence in a strata survey, reporting ceiling stains in the north west corner of his ceiling at the “same location as before repairs”.
30. In the March 2019 report, RDH recommends:

- a. Confirming the dryer duct booster fan is operating properly during the dryer cycle,
 - b. Inspecting the duct's interior with a specialty camera to rule out any unusual conditions in the duct runs,
 - c. Performing regulation maintenance and cleaning of the dryer vents and duct runs, typically every 6 months.
31. RDH also made an optional recommendation to replace the existing dryer with a different type of dryer, to avoid recurrence of the ceiling stains. I find that this was a decision for the applicant to make, as it was to address an appliance inside SL22.
32. RDH invoiced the strata \$3,807.28 for the March 2019 report, which also includes charges for work and comments on issues unrelated to this dispute.
33. On April 30, 2019, RDH invoiced the strata for work on SL22 in the total amount of \$1,569.75.
34. The strata obtained a quote from Met Home Building Maintenance Co. Ltd. for \$1,200 plus GST to remove the water stain and paint the whole ceiling in SL22.
35. On May 13, 2019, the applicant obtained a quote for between \$2,500 and \$2,800, plus tax, for Kelly Arthur Interior Designer to paint SL22's concrete ceiling surfaces.

POSITION OF THE PARTIES

36. The applicant argues that:
- a. The strata failed to meet its obligation to adequately repair and maintain the roof, and that the damage leaked into SL22, damaging the ceiling.
37. The applicant requests that I order the strata to repair the damage, compensate him for a lower property valuation, pay for a property assessment and fund a hotel for him while the repairs are being completed.

38. The strata argues that:

- a. The owner is out of time to bring his claim, because the leak that allegedly caused the ceiling damage occurred in 2012.
- b. In the alternative, the strata was not negligent in its repair and maintenance obligations, and so the repairs inside SL22 are the responsibility of the applicant owner, under the bylaws.

39. The strata asks that I dismiss the applicant's dispute.

ANALYSIS

Is the owner's claim brought within the time allowed by the Limitation Act?

40. As stated in section 13 of Act, the *Limitation Act* applies to tribunal disputes. A limitation period is a specific time period within which a person may pursue a claim. If the time period expires, the right to bring the claim disappears.

41. British Columbia's *Limitation Act* was replaced on June 1, 2013. The current version says that for a claim discovered before June 1, 2013, the limitation period in the former legislation applies. Under the former *Limitation Act*, a person generally had 6 years to file a claim regarding strata property issues, except for damages in respect of injury to person or property, which had a 2-year limitation period. The limitation period begins to run the day after the claim is "discovered".

42. Under the former *Limitation Act*, the applicant had two years from the discovery of his claim, to bring it, because his claim is for property damage

43. Both versions of the *Limitation Act* say a claim is "discovered" on the first day that the person knew or reasonably ought to have known that the loss had occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate means to seek to remedy the loss.

44. I find that the applicant knew of his claim regarding the ceiling repairs from at least September 2012, when he first asked the strata to fix the SL22 ceiling. I make this finding in part based on RDH's March 20, 2019 report, which reported that the ceiling stains were the same stains reported in 2012. As well, I note that the applicant's submission which includes the comment: "And while I believe the leak has been solved, that's not my issue. My argument is that it was solved at some point between 2012-2014 and strata should have repaired my unit at that time."
45. Since the Dispute Notice was issued on November 9, 2018, the claim is barred because it was brought more than 2 years after the discovery of the claim, given the application of the current *Limitation Act*.

Has the owner established that the strata was negligent in its obligation to repair and maintain common property?

46. If I am wrong in my finding that the limitation period has expired, I would have dismissed the dispute on the merits, for the reasons given below.
47. A strata corporation is not obliged to reimburse an owner for expenses incurred in repairs to their strata lot when they are, as here, the applicant's responsibility under the bylaws, unless the strata has been negligent in repairing and maintaining the common property (See *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231 and *Keith et al v. The Owners, Strata Plan K 284*, 2018 BCCRT 49).
48. To succeed in an action for negligence, the applicant must show that he was owed a duty of care, that the strata breached the standard of care, and that he sustained damage caused by the strata's breach.
49. The courts have established reasonableness as the standard of care applicable to the strata in these circumstances (see *Weir v. Owners, Strata Plan NW17*, 2010 BCSC 784).
50. It is uncontested that the strata has a duty to repair and maintain the common property roof, as set out in section 71 of the *Strata Property Act* (SPA). However, I cannot find that the ceiling stains complained of were due to damage from a leak in

the roof. The evidence shows that they were created by moisture issues arising from the dryer and dryer vent.

51. While, given the common property definition in section 1 of the SPA, dryer vent maintenance is a strata responsibility, there is no evidence that the strata fell below a standard of reasonableness in addressing the vents. The evidence is that the strata responded and implemented the recommendations of qualified contractors and conducted dryer vent maintenance as reported in the strata council minutes.
52. Therefore, I find the applicant has not proven that negligence caused the damage to the ceiling. I also find that the applicant has not proven that the ceiling is cracked. There are some localized stains on the ceiling. However, because the Bylaws do not make the strata responsible for the interior of the strata lot, and because the strata acted reasonably in dryer vent maintenance and repair issues, I dismiss the applicant's claims.
53. The applicant argued that he paid a special levy but that the damage to his ceiling was never repaired. I dismiss this argument because the special levy was for repair to the common property roof, and not for repairs to the inside ceiling of SL22.
54. Given my conclusions, I find it is not necessary for me to address the applicant's damages claims in detail. Having said that, the applicant did not provide evidence that the ceiling repair would cost the claimed \$5,500.50, that his property value had fallen \$2,500 because of the ceiling issue, or that he needed a hotel stay while the work was completed.
55. I dismiss the applicant's claims and this dispute.

TRIBUNAL FEES, EXPENSES

56. 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. The strata paid no tribunal fees and so I do not order any.

57. As for dispute-related expenses, the strata claims the \$3,807.28 for the March 2019 RDH engineering report. However, it did not prove what portion of the RDH report pertained to the ceiling issue only, as opposed to the common property dryer vent. As a result, I make no order for dispute-related expenses.

58. 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.

DECISION AND ORDERS

59. I dismiss the applicant's claims and this dispute.

Julie K. Gibson, Tribunal Member