



Civil Resolution Tribunal

Date of Original Decision: August 16, 2019

Date of Amended Decision: August 30, 2019

File: ST-2018-008480

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan KAS977 v. Kabos*, 2019 BCCRT 982

B E T W E E N :

The Owners, Strata Plan KAS977

APPLICANT

A N D :

Erik Kabos

RESPONDENT

A N D :

The Owners, Strata Plan KAS977

RESPONDENT BY COUNTERCLAIM

AMENDED REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute arose after water leaked through the roof of the applicant strata corporation the Owners, Strata Plan KAS977 (strata) into strata lot 27 (SL27) which is co-owned by the respondent Erik Kabos.
2. According to the strata plan, SL27 has a limited common property patio and a common property roof that is shared among 6 strata lots.
3. The strata says it sent a contractor to survey the water damage and prepare a quote, but Mr. Kabos denied the contractor access to his unit.
4. The strata asks for an order requiring Mr. Kabos to grant access to its contractor and to otherwise cooperate with it in compliance with the *Strata Property Act* (SPA), Bylaws and Rules.
5. Mr. Kabos said the first time proposed by the strata to have a contractor, GM, access SL27 was on short notice. He says Bylaw 7 requires 48 hours' notice. When Mr. Kabos asked for 24 hours notice before arranging anything, the strata left it with him to arrange the inspection.
6. Mr. Kabos says he allowed access to SL27 for assessments by several roofing contractors and a restoration contractor in October, 2018. In December 2018, he allowed access to GM, who prepared a report to the strata.
7. At that point, Mr. Kabos says he and the original inspector GM agreed that a further inspection was not needed.
8. In his counterclaim, Mr. Kabos says that the strata failed to meet its obligations to repair and maintain the common property. Mr. Kabos says the roof was not properly installed in the first place, and that the strata did not have an appropriate building maintenance program in place, including periodic roof inspections, to identify and prevent potential water leaks. Mr. Kabos says poor workmanship around a skylight was clear on visual inspection.

9. Mr. Kabos says the risk of water damage is ongoing and that the strata has been overly slow to respond. Mr. Kabos seeks an order requiring the strata to repair the roof, attic and water damage to his strata lot, at the strata's expense.
10. In its Dispute Response, the strata agrees that the roof, attic and water damage to SL27 should be fixed at the strata's expense. However, the parties disagree on whether the flooring in SL27 was damaged by the water ingress such that the strata must pay to replace it.
11. Mr. Kabos is self-represented. The strata is represented by strata council member Sue Nielsen.

JURISDICTION AND PROCEDURE

12. 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.
13. 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.
14. 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.
15. The applicable tribunal rules are those that were in place at the time this dispute was commenced.

16. 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

17. The issues in this dispute are:

- a. Did Mr. Kabos improperly deny access to SL27 to the strata's appointed contractor?
- b. Is the strata responsible to repair the water damage to the flooring in SL27?
- c. If so, does the water damaged flooring require repair or full replacement?

BACKGROUND AND EVIDENCE

18. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.

Bylaws

19. I find that the relevant bylaws are those registered at the Land Title Office (LTO) on July 11, 2008.

20. Bylaw 2 says that an owner must repair and maintain their strata lot, "except for repair and maintenance that is the responsibility of the strata corporation under these bylaws."

21. Bylaw 7(1) says that an owner must allow a person authorized by the strata to enter the strata lot (a) "in an emergency, without notice, to ensure safety or prevent significant loss of damage" and (b) at a reasonable time, on 48 hours' written notice, "to inspect, repair or maintain common property."

22. Bylaw 7 (3) says that an owner who improperly fails or refuses to provide access contrary to bylaw 7(1) shall be responsible for any damages, costs or expenses

incurred by the strata as a result of the failure or refusal to provide access, including but not limited to “the strata’s legal costs on a solicitor and client basis for any Court Application required to compel access”.

23. Bylaw 8 says that the strata must repair and maintain all common property and limited common property, including the skylights and exterior of a building, which I find includes the roof. Bylaw 8(d) say the strata is responsible to repair and maintain a strata lot to the extent that the repair or maintenance is to the building’s structure or exterior, skylights and certain other locations that are not relevant to this dispute.

Background

24. In July 2009, the strata council met and agreed to go with the “original low bidder” for roofing work.
25. On November 22, 2009, strata council met and discussed a preliminary inspection of the new building roofs which identified “poor quality workmanship with minor deficiencies that should be corrected.”
26. On December 21, 2009 a roofing contractor, On Top, prepared an inspection of the new roof installed at the strata which identified some deficiencies in the roofing work.
27. In May 2010, a group of owners attended a Roof Contract Deficiencies Correction meeting to discuss addressing the roof deficiencies.
28. The evidence before me did not detail what discussions the strata had between 2010 and 2015 regarding the roof, nor whether work was done on the roof during this time.
29. On April 7, 2015, strata council met and discussed the roof inspection and repair project. The council decided to obtain an inspection to determine what work the roof required.

30. On May 19, 2015, On Top delivered the strata a report on the roof condition. The report commented that most of the shingles were in good water-shedding condition. The report identified some deficiencies to repair including:
 - a. unsealed shingles, particularly around skylights, attic cents, plumbing jacks, b-vents and gooseneck vents, and
 - b. poor nailing.
31. The price of the recommended repairs was between \$3,500 and \$4,500 plus taxes, according to the minutes of the July 11, 2015 AGM.
32. Roof repairs were discussed again at the August 7, 2016 AGM.
33. On August 22, 2016, strata council met and recorded that On Top would recommend a roofer to repair wind damage to the section of the roof over SL5.
34. Mr. Kabos says that, in 2010, the skylight above SL27 was installed by a strata council member who was not qualified to do the work.
35. Minutes from a January 24, 2011 strata council meeting say that council member DA “replaced the cracked skylight, with the cost only being the actual purchase price of the sealed unit.”
36. At a strata council meeting in February 2019, strata council reported that the strata council member had assisted a contractor in replacing broken skylight glass, not replacement of the skylight.
37. On October 9, 2018, Mr. Kabos noticed water leaking into his unit. He reported the leak to strata council that morning via email. Mr. Kabos identified the location of the leak and set up a walkway in the attic for interior access.
38. Later that day, Mr. Kabos emailed the strata council and said that if he did not get an acceptable response in 24 hours, he would contact tradesman himself, contract the work out and send the strata the bill.

39. The strata council then asked a property inspector, GM, to attend at SL27 to assess the roof issue and damage inside SL27. The strata agrees that 48 hours notice was not given for the first attempt at this appointment.
40. On October 10, 2018, Ms. O, co-owner of SL27, wrote a detailed email to strata council explaining that the ceiling was soft at the bottom edge of the skylight, and two cups of water had entered onto the floor. Ms. O requested that the strata council contact a restoration company for attic inspection and arrange for a qualified roofer.
41. On October 19, 2018, Mr. Kabos wrote to strata council saying that the building envelope was compromised at the roof beside the bathroom vent.
42. On October 22, 2018, Mr. Kabos attended at a strata council meeting to address his concerns. At that time, Mr. Kabos explained that he had filed a claim with Aviva as “co-insured policy holders” and had arrange for professional accredited inspections. Mr. Kabos says that, up to that date, “council had hired no pro tradespeople.”
43. On October 25 and 26, 2018 a restoration contractor (Stutters) examined the roof leak at SL27 at Aviva’s request, after Aviva was contacted by Mr. Kabos. Aviva was the strata’s commercial insurance policy provider.
44. On October 26, 2018 Stutters reported that there was water damage in SL27. Stutters recorded that the flooring had been wet, but “the home owner was able to dry in place.”
45. On November 6, 2018, Aviva wrote to the strata noting that a roof inspection had shown that joints of the shingles on the roof were “incorrectly installed” too close together at one location, allowing water to migrate down the joints and to enter the attic space behind the skylight. The suggested repair was to remove the shingles above the skylight, ice and water shield to the ridge and then shingle it in properly.
46. The source of the water ingress problem was identified as “improper installation of shingles.”

47. Aviva noted that loss or damage due to faulty materials and workmanship was excluded from the strata's insurance policy. Aviva denied coverage.
48. Mr. Kabos arranged an appointment with GM to access SL27 for November 9, 2018 at 8:00 a.m. However, Mr. Kabos cancelled this appointment. Mr. Kabos says that, by then, several inspections of the strata lot and roof above had been conducted, and there was no longer an emergency.
49. On December 11, 2018, GM inspected SL27. He prepared a property inspection report. In it, GM commented on the following deficiencies and repair recommendations:
 - a. Raise skylights for higher flashing up stands and ensure correct seal of skylight to building envelope,
 - b. Reinstall flashings around skylight,
 - c. Water damage noted on the floor under the skylight and near the front door,
 - d. Water damage to the ceiling around the skylight.
50. On January 19, 2019, strata council emailed Mr. Kabos asking to be able him to allow it to "move forward and repair the internal damage" to SL27.
51. On January 27, 2019, Mr. Kabos emailed strata council to report new leakage around the skylight, attaching a photograph taken that day showing water ingress into the attack.
52. On January 28, 2019, strata council president reported to council that the roofing repairs had been done, and that the strata council had agreed to pay for the internal water damage repair to SL27 as outlined by Stutters.
53. At that time, strata council was still undecided about the flooring in SL27. The president's report mentioned that in Stutter's October 26, 2018 report, they wrote that the flooring had been wet as well, but the homeowner was able to dry it. United Flooring had been asked to "report and quote on the laminate floor if necessary."

54. On January 30, 2019, the strata obtained a \$1,365.00 quote from Roof Pro Ltd. for the roofing work around the skylight.
55. On February 13, 2019, JC of Nufloors wrote to Mr. Kabos that the laminate in SL27 was damaged due to water in the front foyer. JC would recommend a full replacement because the same flooring material runs through to other areas and is not separated by transition strips.
56. On February 13, 2019, Mr. Kabos inspected the attic and reported to strata council that moisture was still entering the attic around the bathroom vent. He attached photographs showing icicles that formed inside the attic.

POSITION OF THE PARTIES

57. In the main claim, the strata says that Mr. Kabos improperly denied access to SL27 to its chosen contractors, contrary to the Bylaws.
58. The strata asks for an order that the owner,
 - a. comply with the SPA and the Bylaws,
 - b. cooperate with the strata in providing access to its chosen contractors, and
 - c. pay its tribunal fees of \$225.
59. Mr. Kabos says the strata failed to provide the notice required by the Bylaws before arranging one appointment for access to SL27, and that strata council then left it to him to arrange an inspection with their preferred contractor. He denies being uncooperative in allowing access to SL27 by the strata's contractors. Mr. Kabos asks that this aspect of the dispute be dismissed.
60. In the counterclaim, Mr. Kabos argues that the strata was negligent in its repair and maintenance of the common property roof and skylight above SL27. He says there were repair issues noted but not addressed for several years.

61. Mr. Kabos asks for an order that the strata repair the roof, attic, and water damage in SL27, at the strata's cost.
62. The strata agrees to fix the roof, attic and water damage in SL27 at its own cost.
63. The strata says, in submissions, that the roof has now been repaired with a guarantee of 3 years. The strata agrees to proceed with the further repairs as outlined in the estimate by Stutters.
64. The parties do not agree on how to deal with the alleged damage to the SL27 entranceway flooring. The strata argues that the flooring was in a high traffic area, and installed in 2008, meaning it had some pre-existing wear. The strata says the contractor's assessment was that water fell on the flooring, but was dried in place.

ANALYSIS

Did Mr. Kabos improperly deny access to SL27 to the strata's appointed contractor?

65. Bylaw 7 permits the strata to enter a strata lot in an emergency, without notice, to ensure safety or prevent significant loss of damage and at a reasonable time, on 48 hours' written notice, "to inspect, repair or maintain common property."
66. I find that, on October 9, 2018, the water leak situation was an emergency, since there was a risk of further damage or loss if it was not addressed urgently. I also say this because Mr. Kabos described the leak as an "emergency – leaking roof" in his reply submissions on the counterclaim. As such, I find that the strata was not required to give 48 hours written notice before obtaining access to SL27 for an initial assessment. Having said that, the strata capitulated and allowed Mr. Kabos to attend to rescheduling. In the circumstances, I do not find that Mr. Kabos improperly denied the strata access to SL27.
67. While I accept Mr. Kabos' evidence that there was no longer an emergency by November 9, 2018, he was still obliged to provide access to the strata's appointed

contractor on 48 hours written notice by the strata. The situation is complicated because the strata council allowed Mr. Kabos to arrange the appointment with GM directly. Given that, I do not find that Mr. Kabos wrongly denied access to SL27 to the strata after October 2018.

68. In his submissions, Mr. Kabos agrees that he may have taken actions understood to be within strata council's powers. He says he did so only because he felt the strata had been negligent regarding common property repair and maintenance.
69. I remind Mr. Kabos that the Bylaws require him to grant a person authorized by the strata access to a strata lot, on 48 hours written notice, to inspect, repair or maintain common property. The authorization rests with the strata. The person authorized to access a strata lot may be a contractor or a member of strata council. An owner is not permitted to attach conditions to the qualifications or identity of the authorized person.

Is the strata responsible to repair the water damage to the flooring in SL27?

70. Under section 72 of the SPA, the strata must repair and maintain its common property. The strata may also, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot.
71. It is uncontested, and I find, that the roof and skylight are strata responsibilities to maintain and repair, under the Bylaws.
72. A strata corporation is not obliged to reimburse an owner for expenses incurred in repairs to their strata lot when they are the owner'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).
73. 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).

74. The strata admits that it is responsible to repair water damage inside SL27. Given this admission, I will not analyse the issue of whether the repair and maintenance approach to the roof and skylight above SL27 was reasonable.
75. In *Wright v. The Owners, Strata Plan #205*, 1998 CanLII 5823 (BCCA), the British Columbia Court of Appeal considered repair estimates from 2 contractors, where the strata had made the less expensive repair. The owner insisted the more expensive repair would have been better. The repair stopped the immediate leak, even though the leak recurred. The Court of Appeal said the strata had acted reasonably.
76. The standard is not perfection. Determining what is reasonable may involve assessing whether a solution is good, better or the best: *Weir v. The Owners, Strata Plan NW 17*, 2010 BCSC 784.
77. An owner cannot direct the strata how to conduct its repairs, according to *Swan v. The Owners, Strata Plan LMS 410*, 2018 BCCRT 241. Although that decision of the tribunal is not binding on me, I find it helpful and relevant.
78. The strata agrees that it will repair the roof, attic and interior of SL27 to remediate the water damage. The roof has already been repaired. With regard to the attic and interior of SL27, I find that the strata is responsible to select the contractor and to pay for the work. I find that this work should include the skylight, if it has not already been repaired. I order the work must be completed within 90 days of this decision.
79. The remaining issue between the parties is to what extent the strata is responsible to repair the laminate flooring in SL27.
80. Mr. Kabos says there was damage to the laminate floors of SL27 due to water ingress.
81. The strata relies on the October 26, 2018 report by Stutters, which reported “flooring had been wet as well, but the home owner was able to dry in place.” The Stutters report does not make further comment on the flooring.

82. AP, of United Floors, examined the flooring. AP identified water damage to the floor in the entry area to the hall and office area. AP wrote: “Unfortunately the existing flooring material you have is still not available as far as I know so that limits the repair aspect of the flooring to nil.”
83. NuFloors also examined the flooring at Mr. Kabos’ request. JC of NuFloors confirmed that the laminate had been damaged by water that came into the front foyer of SL27. JC also noted that, given that SL27 has the same type of flooring running between all areas, without transition strips, typically a full replacement would be required to address the area of damage in the front foyer.
84. Based on the evidence from AP and JC, I find that there was water damage to the front hallway flooring of SL27. This finding is also consistent with Stutters’ observation that the flooring was wet.
85. I take the strata’s argument to be that the flooring was already old and had damage from being in a high traffic area, before the water damage occurred. The strata is also implying that perhaps only a portion of the flooring needs replacement, in the area immediately contacted by the water.
86. Here, the strata’s obligation to repair the strata lot is to put it back into pre-loss condition. The strata did not provide an estimate from another flooring contractor saying that the front foyer area could be addressed by some lesser replacement matching the existing flooring. Mr. Kabos provided evidence from a flooring contractor that the matching laminate is no longer available, and that full replacement will make the flooring consistent in all areas, as it was before the water damage.
87. The flooring before the water damage was installed more than 10 years earlier, and the main damage occurred in a high traffic area. The damages award should put Mr. Kabos back into the position he would have been in had the water damage not occurred. That is, he would have had somewhat worn laminate flooring. Here, the replacement will give him brand new laminate floors throughout SL27.

88. I find that I must take account of the benefit of replacing the floors, known as “betterment”, in making the damages award (see *Guistino v. Doyle*, 2018 BCCRT 458 and *Fudge v. Owners, Strata Plan NW 2636*, 2012 BCPC 409). While I acknowledge that estimating betterment discounts is necessarily imprecise, I find that the strata must pay 80% of the replacement cost of flooring replacement, with Mr. Kabos paying 20% of the replacement cost.
89. I find that the strata must pay to replace the laminate in SL27. The two estimates obtained by Mr. Kabos are a \$4,706.53 quote from United Floors for installation of new laminate and sound proofing underlay, but with removal and disposal to be performed by Stutters at additional cost, and a \$7,133.46 Nufloors estimate for the same work, inclusive of removal and disposal. The strata may choose between these two estimates, though for the United Floors quote removal and disposal would need to be addedⁱ or may obtain and select a third estimate for the same scope of work.
90. I order that the strata repair the SL27 flooring by conducting a full replacement using a contractor of its choice, within 90 days this decision or such longer period of time the parties agree to. Mr. Kabos must provide reasonable access to SL27 for these repairs to be completed.

TRIBUNAL FEES, EXPENSES

91. 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. Mr. Kabos did not pay tribunal fees or claim dispute-related expenses in the main claim. In the counterclaim, Mr. Kabos was successful, and I therefore order the strata to reimburse him for tribunal fees of \$125. Neither party claimed dispute-related expenses.
92. 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

93. I order that, within 90 days of this decision or such longer time period that the parties agree:

- a. the strata repair the attic, skylight and interior of SL27, at its own cost, using a contractor of its choice,
- b. the strata repair the SL27 flooring by conducting a full replacement, using a contractor of its choice, paying for 80% of the cost and with Mr. Kabos paying the remaining 20%, and
- c. the strata pay Mr. Kabos \$125 in tribunal fees.

94. I dismiss all other claims.

95. 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.

96. 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

ⁱ Amendment Note: Paragraph 89 has been amended to clarify my decision with regard to the scope of work included in the two flooring quotes, pursuant to section 51 of the Act.