



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Jafferjee et al v. The Owners, Strata Plan NW1684*, 2019 BCCRT 984

B E T W E E N :

NAUSHAD JAFFERJEE and HUSSEIN JAFFERJEE

APPLICANTS

A N D :

The Owners, Strata Plan NW1684

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. The applicant NAUSHAD JAFFERJEE is a joint owner of a strata lot in the respondent strata corporation (strata). The applicant HUSSEIN JAFFERJEE resides in the strata lot. In October of 2018, water escaped from the applicants' strata lot while they were doing plumbing work. The strata charged \$583 in repair and

remediation costs to the applicants' strata lot account. The applicants say the water issue was the strata's fault and ask for an order that the charge back be reversed. The strata disagrees with the applicants' position.

2. The applicants are represented by Naushad Jafferjee. The respondent is represented by a member of the strata council.

JURISDICTION AND PROCEDURE

3. 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 (CRTA)*. 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.
4. 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.
5. 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.
6. Under section 123 of the CRTA 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.

ISSUE

7. The issue in this dispute is whether the \$583 in repair and remediation costs charged back to the applicants' strata lot account should be reversed.

BACKGROUND AND EVIDENCE

8. In December of 2001, the strata repealed its previous bylaws and approved a new set of bylaws. These were filed at the Land Title Office in January of 2002. Bylaw 3 provides that an owner must repair and maintain their strata lot, except for repair and maintenance that is the responsibility of the strata corporation. According to bylaw 11, the strata must repair and maintain common assets, common property (CP), and certain types of limited common property (LCP).
9. Bylaw 4.4 states that an owner must indemnify and save harmless the strata corporation from the expense of any maintenance, repair or replacement rendered necessary to CP, LCP, common assets or to any strata lot by the owner's act, omission, negligence or carelessness or by that of an owner's visitor's, occupants, guests, employees, agents, tenants or a member of the owner's family, but only to the extent that such expense is not covered by the proceeds of an insurance policy.
10. The applicants experienced a plumbing issue that resulted in there being no hot water in the kitchen of the strata lot. In an October 21, 2018 exchange of text messages, the applicants alerted the strata's building manager that a plumber would be coming later that week to address the hot water issue, and that "we may need to shut off the hot water".
11. On October 26, 2018, the day of the scheduled repair, the building manager's spouse was prepared to provide the plumber with access to the water shut-off valves. However, the plumber was unable to attend as anticipated. The applicants decided to proceed with the repair by themselves. The applicants say the spouse showed them which valve to use to shut off the water, and they did so.

12. Unfortunately, the water supply to the strata lot was not shut off. At some point during the repair process, water started to shoot out of the kitchen faucet and leaked into the strata lot below and into the CP lobby area. The applicants say they located the correct valve and shut the water off.
13. The strata arranged for a restoration company to dry the area, as well as for drywall repair and painting. The strata says that it absorbed a portion of the associated costs, but charged back \$583 in restoration and repair costs to the applicants' strata lot account. It does not appear that the strata made an insurance claim for this incident.
14. The applicants requested that the charge back be waived as, although the water damage came from inside the strata lot, they say it was caused by the building manager's spouse directing them to shut off the wrong tap. In a May 1, 2019 letter, the property manager advised the applicants that the charge back would not be reversed.

POSITION OF THE PARTIES

15. The applicants say that the strata failed to turn off the water as they had arranged and that the building manager's spouse showed them the wrong taps to turn off. The applicants state that they had no way to ensure that the water was shut off as they had not had water in their strata lot "for months". The applicants also say that the building manager's spouse did not "rush up" to inform them of the water issue when it occurred, and that they prevented further damage by shutting off the water themselves.
16. Although the applicants say there was water in another strata lot and in the lobby which they cleaned up, they were not aware of any damage. However, the applicants also note that there is "minor paint damage" in the lobby that has not been repaired. They say that, before the strata repaired the damage, they should have been advised that the damage was their responsibility and been given a chance to view it. According to the applicants, no one can confirm that the damage

resulted from the water leak from their strata lot and the repairs were done without their consent.

17. The applicant's position is that the building manager and the spouse should be reprimanded for breaching their duties and all costs should be borne by them. The applicants say they should not be responsible for the acts of the strata, and suggest that the strata has "bad intentions". The applicant asks for an order that the charged back amounts be reversed.
18. The strata says that the leak and the resulting damage are the applicants' responsibility under the bylaws. The strata states that the applicants stated that they would take full responsibility for the matter, and shut off the valves themselves instead of waiting for a plumber. The strata points out that the applicants did not check to see if the water was properly shut off before starting the repairs, and notes that, if the plumber had failed to turn off the right valves, he or she would be responsible for that error. They say the applicants should bear the responsibility in this case.
19. The strata says that, while there may not have been much visible damage, water could have been trapped between walls or floors or in insulation. For this reason, it hired a restoration company and informed the applicants that they would be responsible for the damage.

ANALYSIS

20. There is no dispute that water escaped the applicants' strata lot. Images in evidence show water marks on a ceiling, water being cleaned from a tile floor, and water dripping into a bowl. At issue is the applicants' responsibility for any water damage.
21. Liability for negligence occurs when someone owes, but fails to meet, a duty of care and damages result. The applicants had a duty under the bylaws to ensure that they did not cause damage to CP or another strata lot. An owner is liable in negligence for water that escapes from his or her property, unless he or she can provide an explanation to show otherwise (*Westsea Construction v. Billedeau*, 2010 BCPC 109

at paragraph 39, and *Fontaine v. ICBC* [1998] 1 SCR 424). Decisions of this tribunal have described this scenario as a reverse onus of proof (see, for example, *Crockart v. Turcotte*, 2018 BCCRT 276) that has application to strata properties (see, for example, *Mingxi Yu v. Maiwand Ahmadzai*, 2018 BCCRT 791 and *Averin et al v. Ball*, 2019 BCCRT 608).

22. The applicants' position is that the building manager should know which valves to turn off and the strata should bear responsibility for the employee's lack of knowledge and the spouse's actions. However, it was the applicants who decided to proceed with the repairs in the absence of a plumber without ensuring that the water supply to the strata lot had been shut off. Although the applicants say that they had not had water in their kitchen "for months", they do not explain why they could not have tested another water source in the strata lot to ensure that the water was turned off. The applicants did not provide evidence from a plumber or other expert to support their assertion that, in the circumstances, it would not have been possible for them to know that the water was still on.
23. Whatever the involvement of the building manager or the spouse, I do not find that this alters the applicants' responsibility under the bylaws or in negligence. I find that the applicants have not established that they were not liable for the water egress from the strata lot. It was their actions that caused the leak and the damage to CP and the other strata lot and, under bylaw 4.4, they must indemnify the strata for the repair costs.
24. Turning to the issue of damages, I do not find the applicants' view that there was no visible damage to be determinative. Water was dripping from the ceiling, and I am satisfied that this needed to be investigated and repaired. Although the applicants suggest that the damage in the lobby resulted from some other source, they provided no evidence to support this position. Further, there is nothing in the bylaws or the *Strata Property Act* (SPA) that would require the strata to obtain consent from a responsible strata lot owner before commencing repairs to CP or another strata lot.

25. I find that the applicants are responsible for the water leak and associated damages. I dismiss their claim for a reversal of the charged back amounts.

TRIBUNAL FEES AND EXPENSES

26. Under section 49 of the CRTA, 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. As the applicants were unsuccessful, I dismiss their claim for reimbursement of tribunal fees.

27. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owners.

DECISION AND ORDERS

28. I dismiss the applicants' claims and this dispute.

Lynn Scrivener, Tribunal Member