



Civil Resolution Tribunal

Date Issued: August 30, 2019

File: ST-2019-002631

Type: Strata

Civil Resolution Tribunal

Indexed as: *Li v. The Owners, Strata Plan BCS 2429*, 2019 BCCRT 1034

BETWEEN:

KAN LI

APPLICANT

AND:

The Owners, Strata Plan BCS 2429

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a water leak originating from the owner's toilet that caused damage in unit 1703. The applicant, Kan Li, owns strata lot 130 (unit 1803) in the respondent strata corporation, The Owners, Strata Plan BCS 2429 (strata).

2. Once notified of the leak by unit 1703, the strata organized for and paid the costs of the emergency services to stop the leak and charged that amount back to the owner. The owner says that the strata should bear 80% of the emergency services invoice because he says “erosive and bad quality” concrete under his toilet contributed to the leak. He seeks an order for the strata to repair the erosive concrete under his bathroom tile as it is the building structure. The owner also says the emergency services invoice is too high and seeks that the strata reduce the charge back amount. The strata says the owner’s toilet was the sole cause of the leak and there is no evidence of any issues with the concrete slab between the strata lots.
3. The owner is self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

4. 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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.
6. 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.

7. Under section 123 of the CRTA, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. Order a party to do or stop doing something;
 - b. Order a party to pay money;
 - c. Order any other terms or conditions the tribunal considers appropriate.
8. Tribunal documents incorrectly show the name of the respondent as The Owners, Strata Plan BCS 2429, whereas, based on bylaw 1.2, the correct legal name of the strata is Section 2 of The Owners, Strata Plan BCS 2429. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, that the strata did not raise the name issue as a defence, and given my decision below to dismiss the owner's claims, I find nothing turns on the respondent strata's proper name.
9. During the tribunal decision process, the owner requested that his name be anonymized for privacy reasons. The tribunal's decisions are always made public and parties are identified because its proceedings are considered open proceedings. Decisions will be anonymized where a vulnerable party, such as a child, is involved, or where sensitive information, such as medical issues, are disclosed, but parties' names are not otherwise removed. I have considered the owner's request and I find it is not appropriate in the circumstances to use initials in place of full names in this case.

ISSUES

10. The issues in this dispute are:

- a. Whether the owner is responsible for the costs of repairing water damage to unit 1703 or whether the strata is partially responsible due to its failure to maintain the concrete slab under the owner's bathroom, and
- b. Whether the owner is entitled to any reimbursement for the amount he paid to the strata.

BACKGROUND AND EVIDENCE

11. The strata was created in 2007 and is a strata corporation comprising 143 residential strata lots and 8 commercial strata lots.
12. Further to the *Strata Property Act* (SPA), the strata filed bylaws with the Land Title Office on July 13, 2007. Additional bylaws were filed on November 27, 2008 that dealt specifically with damage to strata lots. The strata subsequently filed additional bylaw amendments which are not relevant to this dispute.
13. The relevant bylaws are as follows:
 - a. **Bylaw 1.5:** The strata is responsible to repair and maintain, among other things, the structure of the building.
 - b. **Bylaw 2.11:** An owner is deemed responsible for any loss or damage caused to a strata lot, common property, limited common property or common facilities where the cause originated in their strata lot and the cost of repairing the resultant damage is under the strata's deductible.
 - c. **Bylaw 2.12:** In the event an owner causes damage to a strata lot, common property, limited common property or common facilities and the damage is not covered by insurance, the owner shall be held responsible for such loss and promptly reimburse the strata for the full costs of repair or replacement of the damage.
14. On February 20, 2019, water leaked from the owner's strata lot into unit 1703 below. The strata arranged for a restoration company, OS, to investigate the issue,

which was found to be a failed wax seal in the toilet in the owner's strata lot. A plumber replaced the wax seal and the restoration company dealt with remediation of the moisture. The remaining repairs in unit 1703 are being coordinated privately between the owner and unit 1703's owner.

15. The initial invoice from OS was for \$3,411.81. This was subsequently lowered to \$2,800.35. The strata paid the \$2,800.35 and charged back that amount to the owner's strata lot, which the owner paid.

POSITION OF THE PARTIES

16. The owner argues that there is insufficient evidence that his toilet was the only cause of the leak. He says that the concrete between his strata lot and the one below is "erosive and bad quality" and, as a result, does not hold water. The owner says the poor quality concrete contributed to the leak, and therefore the strata should be held responsible for 80% of the repair costs and should be ordered to repair the concrete. The owner also says the amount charged by OS is excessive and should be reduced.
17. The strata disagrees with the owner's position. It says the evidence shows the owner's failing toilet wax seal caused the leak, not the concrete slab, and therefore the owner is responsible for the resulting costs.

ANALYSIS

18. In a civil dispute such as this, the applicant owner bears the burden of proof. This means the owner has to provide evidence to prove each of his claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

Who is responsible for the water leak?

19. As noted above, the owner says that despite the failed wax seal on his toilet, the leak would not have occurred if the concrete under his bathroom was in better condition. In support of his position, the owner relies on comments about cracking in the parkade concrete suspended slab and on the building's exterior in a 2012 deficiency report and a 2017 depreciation report, and photos he took himself of cracks in the concrete in the parkade. The owner says this evidence shows that the concrete of the building is of poor quality, and says that if there had not been cracks in the concrete under his bathroom, the water would not have leaked from his toilet into the unit below, but rather would have been held in place on top of the concrete slab.
20. A February 28, 2019 site visit report from OS noted that, in their opinion, the source of the water leak appeared to be "coming from the toilet of unit 1803 as the leak only happens when the toilet is flushed". OS noted the cause was likely a failed wax seal or cracked flange.
21. A March 1, 2019 plumbing service report from RM, the attending plumbing contractor, also noted, after attending the owner's strata lot, that the water leak source was believed to be the toilet in unit 1803, but that access to unit 1703 was required to confirm.
22. In a March 8, 2019 email, OS advised the strata's property manager that when the plumber removed the owner's toilet, the wax seal was failing, which "exposed a small gap between the flange and the concrete surrounding it" and noted that a "properly fitting wax seal would have prevented [the] leak". Ultimately, the leak stopped after the toilet wax seal in the owner's strata lot was replaced.
23. Apart from his own opinion, the owner has not produced any evidence to suggest that either OS or RM were incorrect about their assessments of the leak source. The owner has also not produced any expert evidence about the condition of the concrete between his strata lot and unit 1703. In the circumstances, I find that the

owner has not shown, on a balance of probabilities, that the water leak originated from anything other than his toilet, which is within the boundaries of his strata lot. Additionally, I find the owner has not proven any issue with the concrete slab under his strata lot.

24. Even if I had found the concrete slab under the owner's unit was cracked, I do not accept that it was a cause of the leak. A crack in concrete does not produce a leak, but rather provides a pathway for water to travel. As such, even if the concrete were cracked, the water originated in the owner's unit and caused damaged to another strata lot. Further to bylaws 2.11 and 2.12, the strata was entitled to have the issue repaired and charge the amount back to the owner.
25. Given the above, I find the owner is solely responsible for the water leak. As such, I dismiss the owner's claim to hold the strata 80% responsible for the damages. As the owner has not proven any issue with the concrete slab, I also dismiss the owner's claim for an order requiring the strata to repair the concrete.

Is the owner entitled to any reimbursement of the amount paid due to the water leak?

26. As noted above, OS originally invoiced \$3,411.81 for the emergency services it provided as a result of the water leak. The owner was unhappy with the amount of the invoice and the owner and his wife communicated directly with OS about the invoice amount. The owner's concerns are that OS overcharged generally, and specifically that OS employees charged for overtime and charged for time when, the owner says, he did not see them on site.
27. In an April 30, 2019 email, OS project manager, JC, advised the owner's wife that due to the nature of the leak, it was necessary to coordinate appointments both with them and with the tenants of unit 1703. JC said that both the owner's wife and the tenant had, at times, only provided availability after 4:00 pm, which he had previously advised the strata may be billed as overtime. The evidence shows that the strata approved such overtime charges. JC also advised the owner's wife that

the tenant in unit 1703 had not been cooperative, often not answering the door or the phone when OS employees arrived for scheduled appointments, and that it unfortunately led to wasted time. Ultimately, OS's invoice was lowered from \$3,411.81 to \$2,800.35. The owner told the strata to proceed with paying the \$2,800.35 invoice, which was then charged back to the owner.

28. In this dispute, the owner says the \$2,800.35 is still too high. In support of his position, he cited other tribunal decisions which awarded lower amounts for water leaks. In the circumstances, I find the cases are not helpful as every situation is unique and will require different remediation services, often by different companies. Additionally, the strata is not required to find the cheapest available option, especially in an urgent remediation situation with an active water leak.
29. Although the owner points out what he believes would be more appropriate charges for the work completed, he has not provided any evidence in support of his assertions. For example, he has not provided an expert report that explains if any of OS's charges were unnecessary or extravagant. I also note that neither the restoration company nor the tenant from unit 1703 have been named in this dispute.
30. Given the evidence, I find the owner has not met his burden of proving the amount charged back to him by the strata was unreasonable. I make no findings as to whether the owner may be able to collect some of the amount he paid from the unit 1703 tenant due to the tenant's lack of cooperation in coordinating the investigation and repairs.
31. As I have found the owner is solely responsible for the water leak and that the charge back was reasonable, I find he is not entitled to any reimbursement of the \$2,800.35 he paid to the strata.

TRIBUNAL FEES, EXPENSES AND INTEREST

32. 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 owner has not been successful in his claim, I dismiss his claim for reimbursement of tribunal fees. He did not make a claim for dispute-related expenses.

33. 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

34. I order the owner's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair