



# Civil Resolution Tribunal

Date Issued: September 5, 2019

File: ST-2019-002520

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 3269 v. Awadia*, 2019 BCCRT 1054

**B E T W E E N :**

The Owners, Strata Plan NW 3269

**APPLICANT**

**A N D :**

KASHAMALIA AWADIA

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sarah Orr

## **INTRODUCTION**

1. The respondent KASHAMALI AWADIA (owner) owns strata lot 21 (SL21 or unit 300) in the applicant strata corporation, The Owners, Strata Plan NW 3269 (strata).

2. The strata wants the owner to pay it \$2,972.31 for the cost of repairing water damage to another strata lot it says was caused by water originating in SL21. The owner says he does not owe the strata anything.
3. The owner is represented by a family member and the strata is represented by S.W., who I presume is 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, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

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. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
8. Under section 123 of the CRTA and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUE**

9. The issue in this dispute is whether the owner is required to pay the strata \$2,972.31 for the cost of repairing water damage to another strata lot.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim like this one, the strata must prove its claim on a balance of probabilities. This means the tribunal must find it is more likely than not that the strata's position is correct.
11. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the strata's claim.
12. The strata was created in 1990. In March 2016 the strata filed bylaw amendments with the Land Title Office (LTO) which replaced the existing bylaws. In 2017 and 2018 it filed additional bylaw amendments with the LTO that are not relevant to this dispute.
13. Bylaw 7.2.E. says that an owner shall indemnify and save harmless the strata from the expense of any repair rendered necessary to any strata lot by their act, neglect,

or carelessness, or by that of any guests or agents, but only to the extent that such expense is not met by the proceeds of the insurance carried by the strata.

14. Bylaw 8.4.B. says the strata shall not be responsible to any owner for any damage arising from within any owner's suite, such as water damage caused by rupture, bursting, escape or overflow of water from a plumbing system or domestic appliance. The bylaw says the suite owner shall bear the full cost of all repairs to the owner's suite and adjacent suites, including the strata's insurance policy deductibles, if applicable.
15. It is undisputed that on April 24, 2017, the owner hired a contractor to replace the hot water tank in SL21.
16. The strata says that while the technicians were replacing the hot water tank in SL21 water overflowed and leaked into the strata lot 2 floors below (unit 100) causing damage. It says the water overflowed because the technicians drained the hot water tank too quickly and failed to check the drainage to ensure there was adequate outflow.
17. The strata submitted a statement from S.H., the owner of unit 100, who said that on April 24, 2017, she noticed water near her hot water tank. She said she turned off her water tank, but the water continued to leak out onto her tiles and carpet at her front entrance. She checked with unit 200, but they did not have a water leak. She then checked with SL21 (unit 300) and the owner told her he had plumbers conducting work in his strata lot. S.H. said one of the plumbers went to her strata lot and told her the water was not from her tank but could not give her any other details. S.H. then notified the strata council of the water damage.
18. On April 24, 2017 the strata hired First On Site Restoration (FOSR) who attended SL21 and units 100 and 200. Its report says there was no water damage in SL21 or unit 200, and that the source of the water damage in unit 100 was the hot water tank replacement in SL21. The report says, "water came through the pipes and overflowed the retainer dish and wet the carpet."

19. On May 31, 2019 the strata hired Artisan Plumbing & Heating Ltd. (Artisan) to investigate a possible blockage in the hot water tank pan piping in SL21. Artisan's report says it located piping in the parkade and believed that water was "stacked up in piping as it had nowhere to drain out of." Artisan said it cut approximately 1 foot of piping to allow water to escape and discovered a minor blockage. The report does not indicate the location of the blockage or comment on the cause of the April 24, 2017 water leak. I also note that Artisan's investigation and report occurred almost 2 years after the leak in unit 100. For these reasons I find Artisan's report is unhelpful in determining the issues in this dispute.
20. Both parties submitted evidence explaining the cause of the water leak, however I find most of this evidence to be speculative. I find the best evidence of the cause of the water leak is FOSR's April 24, 2017 report which says the source of the water damage was the hot water tank replacement in SL21.
21. Both parties made submissions about whether the owner's technicians were negligent in their replacement of the hot water tank. However, I note that bylaw 7.2.E does not require the owner or its agents to be negligent for the owner to be liable, rather it simply requires an action of the owner or agent to have caused the damage. Therefore, on the evidence before me, I find SL21 was the source of the water leak in unit 100 and the owner is responsible for the cost of repairing the damage to unit 100. However, I find the strata has failed to prove its damages.
22. It is undisputed that in July 2017 the strata hired a restoration company to replace the damaged floor in unit 100. The strata did not submit invoices or receipts showing the cost of these repairs, even though I expect that evidence would be readily available. The only evidence the strata submitted to prove its damages is the owner's strata lot account statement which shows the strata charged the owner \$1,453.39 on August 4, 2017 for "HW Tank Repic (FirstOnSite#JW17068B)" and \$1,518.92 on September 8, 2017 for "HW Tank Emergency (FirstOnSite#JW17068A)". This indicates that the strata has invoices in its possession but failed to submit them as evidence in this dispute. The strata is responsible for proving its claim. I find it has not done so because there is no

confirmation of how much the strata actually paid for the repairs. Parties are instructed during the tribunal facilitation process to provide all relevant evidence. I therefore dismiss the claim.

## **TRIBUNAL FEES AND EXPENSES**

23. 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. I see no reason in this case to deviate from the general rule. Since the strata was unsuccessful, I find it is not entitled reimbursement of its tribunal fees, and it has not claimed and dispute-related expenses.
24. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner, unless the tribunal orders otherwise.

## **DECISION AND ORDERS**

25. I dismiss the strata's claims and this dispute.

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Sarah Orr, Tribunal Member