



Civil Resolution Tribunal

Date Issued: September 9, 2019

File: ST-2019-002919

Type: Strata

Civil Resolution Tribunal

Indexed as: *Theil v. The Owners, Strata Plan VIS 6763*, 2019 BCCRT 1065

BETWEEN:

MICHAEL THEIL

APPLICANT

AND:

The Owners, Strata Plan VIS 6763

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about who is responsible for paying for repairs to a fan coil unit (FCU). The applicant, Michael Theil (owner), owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VIS 6763 (strata). The owner says that the FCU is common property, and therefore the responsibility of the strata. The

owner seeks \$1,201.27 in repair costs. The strata denies the FCU is common property and says it is not responsible for the repairs.

2. The owner is self-represented. The strata is represented by a strata council member.

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. The tribunal must act fairly and follow the law. It must also recognize any relationships between parties that will likely continue after the tribunal's process has ended.
4. 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.
5. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The tribunal may also ask the parties and witnesses questions and inform itself in any other way it considers appropriate.
6. 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.

ISSUE

7. The issue in this dispute is whether the strata must pay \$1,201.27 to repair the FCU.

BACKGROUND AND EVIDENCE

8. The strata was created in 2009 and is a strata corporation comprising 171 residential strata lots in 2 buildings. The owner purchased strata lot 28 (unit 307) in 2017 as a joint tenant with another individual who is not a party to this dispute.
9. The relevant bylaws were filed at the Land Title Office in August 2018, and describe the responsibilities that the strata and strata lot owners have regarding repair and maintenance:
 - a. **Bylaw 1.2(1)** states that an owner must repair and maintain their strata lot, except for repair and maintenance that is the responsibility of the strata.
 - b. **Bylaw 2.1(1)** says the strata is responsible for the repair and maintenance of common assets, common property that has not been designated as limited common property, and certain items of limited common property.
10. The strata lots are heated by the use of an FCU located in a dropped ceiling in each individual strata lot. The strata likens the FCUs to “space heaters”. Hot water is supplied to the FCUs through a hot water recirculation system within the buildings.
11. In December 2018, the owner noticed his strata lot was not receiving heat. He notified the strata who provided him with contact information for potential service providers. A contractor, HE, attended and determined the fan within the FCU did not work. The motor was replaced and re-installed in the owner’s strata lot, for a cost of \$1,201.27, which the owner paid. The owner then requested reimbursement from the strata. The strata denied responsibility for repairing the FCU.

POSITIONS OF THE PARTIES

12. The owner argues that the strata is responsible for the full cost of the repairs. He says the FCU is above a dropped ceiling which forms part of a boundary wall and the FCU is part of the building-wide heating system and, for these reasons, is common property. The owner says the FCUs are connected to common property ducting and piping and are used in connection with the enjoyment of other strata lots and the common property.
13. The strata says that although the FCUs receive heated air from the common property pipes, the FCUs are independent of the common property or any other strata lot. It says the FCUs provide heat only to the individual strata lot in which the specific FCU is located. The strata says mere connection to common property piping does not make the FCU common property. Additionally, the strata argues that because the FCU is contained wholly within the owner's strata lot and benefits only his strata lot it is the sole responsibility of the owner to repair and maintain it.

ANALYSIS

14. In a civil dispute such as this, the owner bears the burden of proof. This means the owner has to provide evidence to prove his claim 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.
15. In addition to the bylaws noted above, the strata's responsibilities are found in the *Strata Property Act* (SPA). Section 3 of the SPA states that a strata is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners. Section 72(1) of the SPA provides that a strata corporation must repair and maintain common property and common assets.
16. Section 1 of the SPA defines common property as:

- a. That part of the land and buildings shown on a strata plan that is not part of a strata lot, and
 - b. Pipes, wires, cables, chutes, ducts and other facilities for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, if they are located
 - i. Within a floor, wall or ceiling that forms a boundary (A) between a strata lot and another strata lot, (B) between a strata lot and the common property, or (C) between a strata lot or common property and another parcel of land, or
 - ii. Wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property.
17. The hot water supply for the FCU originates from outside the strata lot, at an energy plant. The hot water produced from the plant is transported to the strata buildings through below ground pipes. A heat exchanger in the owner's building transfers the heat energy from the plant pipes to the strata's domestic hot water distribution system. The water then passes through the piping system within the building and is ultimately returned to the energy plant for re-heating.
18. The strata says the domestic hot water distribution system has 9 common property vertical "stacks" which supply multiple strata lots with hot water, and that these stacks rise through boundary walls. Individual units then receive hot water into their units from supply and return pipes that are contained within their individual strata lots.
19. Each strata lot is equipped with one or two FCUs. It is undisputed the owner has a one-FCU strata lot. The strata submits the FCUs are supplied with hot water from the supply and return pipes that are located entirely within an individual's strata lot.

20. Two contractors, HE and AJ, familiar with the strata's hot water and heating systems, reviewed the strata's explanation of the systems above, and confirmed they each agreed with the accuracy of the description.
21. The owner also provided several documents from the internet containing general information about FCUs. Neither party otherwise provided any expert evidence.
22. The owner's view is that the FCU's connection with the common property is determinative of the FCU's status as common property. However, I find that argument is not consistent with the functionality of the system. Although the owner says his FCU is capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property, the evidence is that each individual FCU is independent and does not impact other strata lots or the common property hot water system.
23. Additionally, the owner says that because the FCU is located above a dropped ceiling, it is within the boundary wall of his strata lot and the strata lot above, and is therefore common property further to SPA section 1(b)(i)(A). I disagree. Section 68 of the SPA says, unless the strata plan states otherwise, the boundary of a strata lot is midway between the surface of the structural portion of the wall, floor or ceiling between two strata lots. As there is nothing otherwise shown on the strata plan, the strata lot boundaries in this case are those as set out in section 68.
24. Based on my review of the evidence, the dropped ceiling where the FCU is located is not a structural ceiling. Rather, the dropped ceiling is below the bottom part of the structural portion of the ceiling, and drops about 15 inches from the structural portion. I also note the dropped ceiling is not present in all of the owner's strata lot, but only found in the entryway, master walk-in-closet and ensuite bathroom, kitchen, and second bedroom closet. The bedrooms, den, main bathroom, living and dining areas do not have a dropped ceiling, but rather the ceiling in those rooms appears to be the boundary wall ceiling with the strata lot above. This is consistent with the side-view of strata lot 28 shown on page 31 of the strata plan.

25. I acknowledge the owner's argument that because the strata passed a bylaw making it responsible for the repair and maintenance of each strata lot's individual thermostats, which are connected to the hot water system and the individual FCUs, it follows that the FCUs are also common property. I disagree. The strata says the thermostats were originally not considered common property, but a bylaw was passed to include them as limited common property. The strata says this was done because the thermostats do not just control a strata lot's temperature but also measure and record a strata lot's energy and water consumption for billing purposes. Some owners were disabling the thermostats or not having them repaired when they malfunctioned, making it impossible for the strata to be reimbursed for the energy and water usage by those strata lots. As such, the strata introduced the bylaw to enable the strata to ensure the thermostats remain in proper working order. The owner does not dispute the strata's submissions about the intention of the thermostat bylaw, but rather argues if the thermostat is common property, then so are the FCUs. I find the bylaw passed requiring the strata to repair and maintain the thermostats is independent of the FCU issue and is therefore not determinative of whether the FCU is common property.

26. Based on the evidence before me and the SPA, I find the FCU in question is within the boundary of the owner's strata lot and that the FCU does not form part of the common property hot water system as it operates independently of other strata lots and common property, for the sole benefit of the owner. As a result, I find the owner is responsible for the repair and maintenance of the FCU. I dismiss the owner's claim for reimbursement of his repair costs.

TRIBUNAL FEES, EXPENSES AND INTEREST

27. 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.

28. 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

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

Andrea Ritchie, Vice Chair