



Civil Resolution Tribunal

Date Issued: September 11, 2019

File: ST-2018-009205

Type: Strata

Civil Resolution Tribunal

Indexed as: *Huang v. The Owners, Strata Plan EPS1910*, 2019 BCCRT 1072

B E T W E E N :

Chien Chia Huang

APPLICANT

A N D :

The Owners, Strata Plan EPS1910

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Chien Chia Huang (owner) owns a strata lot, unit 1104, in the respondent strata corporation, The Owners, Strata Plan EPS1910 (strata).

2. This dispute is about a water leak. The owner says a severe leak occurred from an unknown source and came through the ceiling into his strata lot in June 2018. He reported the leak to the strata, and the strata hired a restoration company, IR, and plumber to investigate. The strata charged the owner's strata lot account \$3,963.45 for the costs of this work, and the owner seeks to have that charge reversed. The owner also seeks \$6,000 to repair water damage caused by the leak, and for the strata to fix the access hole created by IR.
3. The strata says the owner is liable for all these costs. The strata says it called the plumber and IR after the owner reported the leak, the owner admitted the workers into his strata lot, and the strata never promised to pay any portion of the costs. The strata says there is no evidence that the water damage was caused by "strata water". Rather, the strata says that after several visits, including accessing 2 units above the owner's suspected of causing the leak, IR was unable to find the source of the leak, replicate the leak, or find any water damage to these units.
4. The owner self-represented in this dispute. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims 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 dispute parties that will likely continue after the tribunal's process has ended.
6. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.

7. 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 way it considers appropriate.
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.

ISSUES

9. The issue in this dispute are:
 - a. Must the strata reverse the \$3,963.45 charged to the owner's strata lot account for leak investigation?
 - b. Must the strata pay the owner \$6,000 to repair water damage to his strata lot?
 - c. Must the strata fix the access hole created by IR?

EVIDENCE AND ANALYSIS

10. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding such as this, the applicant owner must prove his claims on a balance of probabilities.
11. The strata's bylaws are the Standard Bylaws under the *Strata Property Act* (SPA), along with various amendments registered at the Land Title Office in 2016, 2017, and 2018. These amendments are not relevant to this dispute.

Must the strata reverse the \$3,963.45 charged to the owner's strata lot account for leak investigation?

12. In the Dispute Notice, the owner referred to only 1 leak, which occurred on June 6, 2018. However, the owner's evidence indicates that there was a series of leaks,

occurring in May 2017, June 2017, December 2017, June 6, 2018, June 9, 2018, and June 11, 2018. The strata does not dispute this series of leaks.

13. The owner says that after he reported the leak on June 6, 2018, the strata hired IR and a plumber to investigate, and did not tell him he would be charged for this investigative work. The owner says that since the leak came through the ceiling, which is the boundary between his strata lot and the one above, under the strata bylaws he is not liable for the investigation or for the repairs to his strata lot.
14. The owner says that IR's technician told him the strata will cover their bill and pay for the water damage. I accept that the IR technician said this, and it is documented in the owner's email from the time of the events in question, and there is no contrary evidence before me. However, I find it is not determinative of the issues in this dispute. The IR technician had no authority to bind the strata to pay any costs.
15. The strata says it is not liable for the investigation costs since it has been unable to locate the leak's source, and there is no evidence that the source of the leak is from common property.
16. In *Tam v. The Owners, Strata Plan BCS 282*, 2017 BCCRT 93, a tribunal vice chair ordered the strata to reimburse the owner for a contractor's emergency repair invoice that was charged back to the owner. The damage was entirely within the owner's strata lot and neither the owner nor the strata were at fault. The vice chair found there was no evidence to suggest that the strata and owner had discussed the emergency repair costs or that the owner had agreed to pay the costs. The strata had no authority to charge these costs to the owner. The owner also sought an order that the strata pay for all the repairs (not just the emergency repair costs) and submitted an estimate because the work had not been done. The vice chair confirmed that the owner was responsible for the cost of the remaining repairs to the owner's strata lot because the strata had not been negligent.
17. In *Boothroyd et al v. The Owners, Strata Plan VR 2402*, 2019 BCCRT 1009, a tribunal member relied on *Tam*, and found that a strata had no authority to charge a strata lot owner owners for its contractor's repairs after a leak. The tribunal member

reasoned that a bylaw that makes owners responsible for repair of an owner's strata lot does not give the strata a right, after having repaired an owner's strata lot without addressing responsibility for costs, to recover those costs from the owner. The strata must find its authority to impose charges on owners in the SPA or the bylaws.

27. Although *Tam* and *Boothroyd* are not binding precedents, I find their reasoning persuasive and rely on it here. There is no applicable bylaw that allows the strata to charge the owners for work performed by the contractors it hired (IR and the plumber). I find the fact that the owner allowed the contractors to enter his strata lot does not mean he agreed to pay for their work.
18. For these reasons, I find the strata is not entitled to charge the owner for the water leak investigation. I order the strata to reverse the \$3,963.45 it charged to the owner's strata lot account, as well as any related interest.

Must the strata pay the owner \$6,000 to repair water damage to his strata lot?

19. Based on the photos and video footage provided in evidence, I accept that the owner's strata lot required repairs due to water damage. It is unclear whether any of this work has been performed.
20. As previously stated, the owner bears the burden of proving his claims. The owner did not provide any evidence or particulars to establish the cost of these repairs, such as a contractor's estimate or invoice, or receipts for building supplies. For that reason, I dismiss this claim.
21. I would not have allowed this claim in any event. The strata has a duty under the bylaws and section 72 of the SPA to maintain and repair common property. Owners are generally required to pay for repairs to the interior of their strata lots. This is set out in Standard Bylaw 8(d), which says the strata's duty to repair and maintain a strata lot is restricted to the following:

- (i) the structure of a building,

- (ii) the exterior of a building,
 - (iii) chimneys, stairs, balconies and other things attached to the exterior of a building,
 - (iv) doors, windows and skylights on the exterior of a building or that front on the common property, and
 - (v) fences, railings and similar structures that enclose patios, balconies and yards.
22. I find that none of these exceptions apply in this dispute, as the damage was to the interior drywall ceiling and laminate flooring in the owner's strata lot. The strata is not obligated to reimburse an owner for expenses that the owner incurs in carrying out repairs to their strata lot, which are the owner's responsibility under the bylaws, unless the strata has been negligent in repairing and maintaining common property: see *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231.
23. There is no evidence before me establishing negligence. The only evidence before me about the source of the leak is IR's final report, which says they were unable to locate the source.
24. Since the strata was not negligent, and there is no bylaw requiring payment, I conclude that the strata is not liable to pay for repairs to the owner's strata lot. I dismiss this claim.

Must the strata fix the access hole created by IR?

25. The evidence confirms that IR cut a large rectangular hole in the wall of his strata lot, as an access port to investigate the leak.
26. The owner says the strata must fix the hole as part of its duty to maintain and repair common property, as the hole is in the wall between his strata lot and the neighbouring strata lot. I do not agree, and find that the hole is within the owner's strata lot rather than on common property.

27. SPA section 68 explains how strata lot boundaries are determined. It says that unless otherwise shown on the strata plan, if a strata lot is separated from another strata lot by a wall, the boundary of the strata lot is midway between the surface of the structural portion of the wall that faces the strata lot and the surface of the structural portion of the wall that faces the other strata lot. In other words, the strata lot boundary is exactly in the middle of the wall between the 2 strata lots. The strata plan does not show otherwise.
28. The photos show that the drywall was removed from the wall. Based on SPA section 68, I find that the drywall is part of the owner's strata lot, and is not common property, as it is installed on the outside of the wall studs, rather than at the midpoint of the wall between the 2 strata lots. Since it is part of the strata lot, the strata does not have a duty to repair it under the SPA or bylaws, for the reasons set out above.
29. The owner also says the strata should pay to repair the hole because IR (the strata's contractor) suggested that it be cut. He says he initially refused, because he believed the strata had to authorize the hole, and the strata did not contact him about it for 2 days.
30. The strata says that since the hole was cut in the owner's strata lot, he must have consented to it. The owner does not specifically dispute that he allowed IR to cut the hole, and I therefore find that he agreed to it.
31. The owner bears the burden of proof in this dispute. I find he has not established that the strata is liable for repairing the hole. The evidence before me does not establish that the source of the leak was from common property or a common asset. It also does not establish that the strata was negligent. There is no SPA provision or bylaw that obligates the strata to pay to repair the hole. Finally, there is no conclusive evidence before me establishing that the hole was cut at the strata's direction. Rather, as set out above, IR suggested it to the owner, and the owner agreed to it.
32. For these reasons, I dismiss this claim.

TRIBUNAL FEES AND EXPENSES

33. As the owner was partially successful in this dispute, in accordance with the CRTA and the tribunal's rules I find he is entitled to reimbursement of half his tribunal fees, which equals \$112.50. Neither party claimed dispute-related expenses, so none are ordered.
34. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the owner.

ORDERS

35. I order the following:
- a. The strata must immediately reverse the \$3,963.45 it charged to the owner's strata lot account, as well as any related interest.
 - b. Within 30 days of this decision, the strata must reimburse the owner \$112.50 for tribunal fees.
36. The owner is entitled to post-judgement interest on the tribunal fees, under the *Court Order Interest Act*.
37. I dismiss the owner's remaining claims.
38. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing a validated copy of the attached order in the Supreme Court of British Columbia (BCSC). The order can only be filed if, among other things, the time for an appeal under section 123.1 of the CRTA has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as a BCSC order.
39. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia (BCPC). However, the principal amount or the value of the personal property must be within the BCPC's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under

section 58 of the CRTA, the owner can enforce this final decision by filing a validated copy of the attached order in the BCPC. The order can only be filed if, among other things, the time for an appeal under section 123.1 of the CRTA has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as a BCPC order.

Kate Campbell, Tribunal Member