



Civil Resolution Tribunal

Date Issued: September 17, 2019

File: ST-2018-008977

Type: Strata

Civil Resolution Tribunal

Indexed as: *Hufton v. The Owners, Strata Plan NW 644*, 2019 BCCRT 1096

B E T W E E N :

Amanda Hufton

APPLICANT

A N D :

The Owners, Strata Plan NW 644

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant, Amanda Hufton (owner), owns strata lot 73 in the respondent strata corporation The Owners, Strata Plan NW 644 (strata).
2. The owner is a strata council member who disagrees with the strata about who is responsible for repairing the pressure reducing valves (PRVs) on the strata

property. The owner says the strata is responsible for repairing the PRVs, while the strata says owners are responsible for repairing the PRVs for their respective strata lots. Both parties want the tribunal to determine who is responsible for repairing the PRVs as well as all plumbing and electrical systems throughout the strata property. The owner also claims \$300 for plumbing and electrical system replacement plans, though she does not explain what this means.

3. The owner is self-represented and the strata is represented by H.R., who I presume is a 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 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.
5. 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.
6. 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. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
7. 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

8. The issues in this dispute are:
 - a. Who is responsible for repairing and maintaining the PRVs?
 - b. Who is responsible for repairing and maintaining the plumbing and electrical systems throughout the strata property?
 - c. Is the strata required to pay \$300 for a replacement plumbing and electrical plan?

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the owner must prove their claim on a balance of probabilities. This means the tribunal must find it is more likely than not that the owner's position is correct.
10. The strata provided a Dispute Response and made brief submissions but did not submit evidence despite having the opportunity to do so. The parties submitted a joint statement of facts to which they both agree. I have only addressed the applicant's evidence and the parties' submissions to the extent necessary to explain and give context to my decision.
11. The strata was created in 1976 and is comprised of 80 strata lots in 20 buildings that each contain 4 strata lots. In each building there are 2 upper strata lots and 2 lower strata lots.
12. The Standard Bylaws under the SPA apply. In December 2007 the strata filed consolidated bylaws with the Land Title Office incorporating all amendments made to that date. The strata has made many subsequent amendments to the bylaws, none of which are relevant to this dispute. The bylaws relevant to this dispute are as follows:
 - a. Bylaws 2 (1) and (2): An owner must repair and maintain their strata lot and any limited common property (LCP) to which they have access, except for

those parts of a strata lot or LCP that the strata is responsible to repair and maintain under the bylaws.

- b. Bylaws 8 (a) and (b): The strata must repair and maintain common assets and common property (CP) that is not LCP.
- c. Bylaw 8 (d): The strata must repair and maintain strata lots but only as the repair and maintenance relates to the structure of a building; the exterior of a building; chimneys, balconies and other things attached to the exterior of a building; doors and windows (including casings, frames and sills) on the exterior of a building or that front onto CP; or to fences, railings, and similar structures that enclose balconies and yards.

Who is responsible for repairing and maintaining the PRVs?

- 13. The owner says she received advice from the Condominium Home Owners Association of British Columbia (CHOA) that repair of the PRVs is the strata's responsibility. The strata says it is the owners' responsibility.
- 14. The facts are not in dispute. For each strata lot there is a PRV on the water pipe that serves it. The PRVs are located on the water pipes that carry water from the water shut-off valve to the balance of the water distribution pipes within each strata lot. The PRVs reduce the water pressure from the municipal water main to the residential water pipes within each strata lot.
- 15. The strata plan shows that on the first floor of each building there is a rectangular meter room area next to a rectangular plumbing area of similar size, both of which are designated as common property (CP). The evidence indicates that these 2 CP areas form one CP electrical room in each building, which is adjacent to both first-floor strata lots in each building.
- 16. It is undisputed that the PRVs for the first-floor strata lots are located within the walls forming the barrier between those strata lots and the CP electrical rooms. It is undisputed that the PRVs for the second-floor strata lots are located within exterior walls of the buildings which border onto CP.

17. Section 72 of the *Strata Property Act* (SPA) requires the strata to repair and maintain CP. According to section 72 of the SPA and the bylaws, if the PRVs are considered part of the strata lots, responsibility for their repair and maintenance falls to the owners. If the PRVs are considered part of the CP, the strata is responsible for their repair and maintenance. Therefore, I must determine whether the PRVs are part of the strata lots or part of the CP.
18. CP is defined in section 1 (1) of the SPA as any part of the land and buildings on a strata plan that is not part of a strata lot. This definition of CP also includes pipes, wires, cables, chutes, ducts and other facilities for the passage or provision of water, drainage, or other similar services, if they are located within a wall that forms a boundary between a strata lot and CP.
19. The courts have not specifically considered whether a PRV falls within the definition of CP under the SPA. However, it is undisputed that the PRVs are attached to the water pipes within the walls, and I find that on a plain reading of the definition of CP the PRVs fall within the meaning of “other facilities for the passage or provisions of water, drainage, or other similar services.”
20. In *Robinson v. The Owners, Strata Plan NW 3308*, 2019 BCCRT 238, this tribunal found that shower mixing valves located within the strata building’s walls dividing 2 strata lots and dividing a strata lot and CP fell within the definition of CP under the SPA. That decision is not binding upon me, but I find its reasoning persuasive and I adopt it.
21. I find the PRVs fall within the definition of CP in the SPA, and therefore under the SPA and the bylaws, I find the strata is required to repair and maintain the PRVs.

Who is responsible for repairing and maintaining the plumbing and electrical systems throughout the strata property?

22. The applicant seeks a determination of responsibility for repairing and maintaining the plumbing and electrical systems throughout the strata property. However, not

only is this claim vague, but the applicant has not submitted evidence of the precise equipment and location of these systems throughout the strata property.

23. The only evidence before me relevant to this claim relates to the water pipes. The parties agree that the 2 lower strata lots in each building each have 2 water pipes coming out of the concrete floor slab into the wall cavity separating the strata lots from the CP electrical rooms; 1 serving each lower strata lot and 1 serving the upper strata lots directly above them. The 2 upper strata lots in each building have 1 water pipe coming up through the concrete floor slab into the wall cavity from the strata lot directly below. The walls containing the water pipes in the upper strata lots form the boundary between the upper strata lots and the exterior property, which is CP.
24. The lower strata lots have shut-off valves within their walls which control water flow through the pipes to both the lower and upper strata lots. The upper strata lots do not have shut-off valves within their walls. The parties are concerned that if a water pipe serving an upper strata lot fails within the walls of the lower strata lot, the lower strata lot would be responsible for repairing it even though that water pipe does not serve that strata lot. However, I find that all of these water pipes fall squarely within the definition of CP in the SPA, and therefore the strata is responsible for repairing and maintaining them. For clarity, I order that the strata is responsible for repairing and maintaining the water pipes within the walls separating the lower strata lots from the CP electrical rooms and within the walls separating the upper strata lots from the exterior CP.
25. With respect to the remainder of the applicant's claim, I find it is too vague to make any further findings as to who is responsible for repair and maintenance. However, I find the bylaws and the SPA, particularly section 72 and the definition of CP in section 1 (1), determine responsibility for repair and maintenance, depending on the location of the equipment requiring repair or maintenance.

Is the strata required to pay \$300 for a replacement plumbing and electrical plan?

26. The applicant wants the strata to pay \$300 for a replacement plumbing and electrical plan but fails to explain this claim or provide any evidence to support it. It is unclear what plan the applicant refers to, and why such a plan must be replaced. The applicant is responsible for proving her claim. I find she has not done so, and I dismiss it.

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.

28. The owner claims \$225 in tribunal fees. The strata says it has already reimbursed the owner for her tribunal fees, but it provided no evidence to support this claim, even though I expect such evidence would be readily available in the form of a receipt, bank statement or other financial record. Therefore, I find that on the evidence before me the strata has not reimbursed the owner for tribunal fees. However, since both parties agreed on the remedies sought from the tribunal, I find they must share the expense of tribunal fees. Therefore, I find the owner is entitled to reimbursement of half her tribunal fees which amounts to \$112.50.

29. 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, unless the tribunal orders otherwise.

DECISION AND ORDERS

30. I order that:

- a. The strata is responsible for repairing and maintaining the PRVs on the strata property.

- b. The strata is responsible for repairing and maintaining the water pipes within the walls separating the lower strata lots from the CP electrical rooms.
 - c. The strata is responsible for repairing and maintaining the water pipes within the walls separating the upper strata lots from the exterior CP.
31. I order that within 14 days of the date of this decision the strata must pay the owner \$112.50 in tribunal fees.
32. 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.
33. 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.

Sarah Orr, Tribunal Member