



# Civil Resolution Tribunal

Date Issued: October 16, 2019

File: ST-2019-003234

Type: Strata

Civil Resolution Tribunal

Indexed as: *Thompson v. The Owners, Strata Plan KAS 3267*, 2019 BCCRT 1190

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

JOSEPHINE THOMPSON

**APPLICANT**

**A N D :**

The Owners, Strata Plan KAS 3267

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

## **INTRODUCTION**

1. The applicant, Josephine Thompson, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan KAS 3267 (strata). The applicant claims that the strata's water supply system deposited sand into her strata lot's plumbing fixtures. She says that the sand restricted her hot water pressure. She claims

\$1,129.24 in plumbing costs that she incurred to restore proper water pressure to her strata lot.

2. The strata says that the applicant's strata lot's internal plumbing fixtures are her responsibility to repair and maintain.
3. The applicant 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 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.
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.

## **ISSUE**

8. The issue in this dispute is whether the applicant is entitled to be reimbursed for the plumbing costs.

## **BACKGROUND AND EVIDENCE**

9. In a civil claim such as this, the applicant must prove her case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
10. The strata consists of 158 strata lots in 13 buildings. The applicant owns strata lot 27, which is on the third floor of a 4 floor building. The applicant has owned her strata lot since 2008. At the times relevant to this dispute, the applicant has rented her strata lot to long-term tenants.
11. The strata filed a complete set of bylaws in the Land Title Office on November 29, 2011, which repealed and replaced all previously filed bylaws. The strata has filed several bylaw amendments since then but none are relevant to this dispute.
12. Bylaw 2(1) says that an owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the strata's responsibility under the bylaws. Bylaw 8(d) says that the strata must repair some parts of a strata lot, none of which are relevant to this dispute.
13. Bylaw 8(b) says that the strata must repair and maintain common property.
14. The strata is located beside a lake. The strata has a geothermal water heating system, which draws water from the lake.
15. The applicant says that the strata has had problems with its hot water for years, which she attributes to the geothermal system. The applicant provided evidence about strata-wide hot water pressure issues from 2014 to 2016. This dispute involves the buildup of sand in the applicant's strata lot's plumbing fixtures. There is no evidence that the previous strata-wide problems are linked to this buildup of

sand. Therefore, I find that the evidence about these hot water pressure issues is not relevant to this dispute.

16. The applicant's problems with sand building up in her plumbing fixtures began in late 2016, when her tenant reported low hot water pressure. On December 16, 2016, a plumber attended. The plumber's invoice indicates that he removed the cartridges of the applicant's faucets and found that they were full of debris, which he cleaned out. The plumber charged \$319.84.
17. On March 13, 2017, the applicant emailed the property manager about low hot water pressure. In this dispute, the strata provided emails between the strata council and the property manager about this issue. The property manager said that other strata lots in the applicant's building have had "issues", but none as consistently as the applicant. It is unclear whether these other strata lots had issues specifically with debris building up in their plumbing or with water pressure more generally. It appears that the strata paid to have a plumber attend but the outcome of that attendance is not in evidence.
18. On March 26, 2018, the applicant emailed the property manager that the tenant was only getting a "dribble" of water out of the showers.
19. On April 4, 2018, the property manager told the applicant that the problem was likely debris clogging the hot water lines in the applicant's plumbing fixtures. The property manager said that fixing internal plumbing was her responsibility.
20. The applicant replied that she thought that the debris must be coming from the lake. The property manager responded that the hot water does not come from the lake, it comes from the municipal water supply. He said that no one else had complained about water pressure.
21. Around the same time, the applicant met with a strata council member in her strata lot to talk more about the problem. In a follow up email, she expressed frustration that she had never received a satisfactory explanation about why her strata lot had

such problems with hot water pressure while other strata lots in the same building did not.

22. The strata responded that the applicant needed to do a better job maintaining her fixtures to prevent the buildup of debris. The strata said that it was a “well known fact” that the municipal water was silty.
23. On April 24, 2018, the applicant had a plumber attend to replace the cartridges in the bathroom at a cost of \$601.81.
24. In February 2019, the strata experienced another strata-wide issue problem with hot water pressure and temperature. When the strata resolved the building-wide issue, the applicant’s strata lot’s hot water pressure remained low. The property manager said that another unit had recently had the same problem, which they fixed by replacing the cartridges. The property manager suggested that the applicant hire a plumber to do the same.
25. On March 5, 2019, the applicant hired another plumber. According to the invoice, the plumber removed the tub and shower cartridges and discovered “grains of sand and grit”. The plumber said that it “could have only come outside of the unit from the common hot water system that strata maintains”. The plumber charged \$236.25.
26. The applicant wrote the strata a letter dated March 28, 2019, outlining her ongoing issues with water pressure, flow and temperature. She said that the sand and silt in the cartridge could only have come from outside the unit. She alleged that the build-up was caused by the strata’s “lake-loop-geothermal-water boiler-type system”.
27. On July 9, 2019, the applicant’s plumber wrote the applicant an email explaining what they had found when they repaired the valves and cartridges in the bathrooms in March 2019. The plumber confirmed that the cartridges and valves are 90% located within the wall and the other 10% outside the wall where the handles attach to the cartridges.

## ANALYSIS

### ***Is the applicant entitled to be reimbursed for the plumbing costs?***

28. As mentioned above, the bylaws require the applicant to repair and maintain her own strata lot. The bylaws and section 72 of the *Strata Property Act* (SPA) require the strata to repair and maintain common property. Section 1(1) of the SPA defines “common property”. I find that I find that the hot water supply pipes that connect the applicant’s strata lot’s plumbing fixtures are common property, which is not disputed. I find that the applicant’s plumbing fixtures, including the portion of the cartridges that are in the wall, are not common property, which is also not disputed. Therefore, I find that the faucets and cartridges are the applicant’s responsibility under the bylaws.
29. The applicant argues that because the faucet cartridges are located behind walls, the sand could not have come from within her strata lot. She says that the only other explanation is that the sand came from the strata’s water system. The applicant says that the strata should therefore have to pay to remove the sand.
30. The strata says that the cartridges are part of the applicant’s taps and faucets, which under the bylaws are her responsibility to maintain. The strata says that the applicant rarely inspects her strata lot, which is rented out to long-term tenants. The strata argues that the applicant’s issues are due to a lack of regular maintenance.
31. The strata also says that none of the other 158 strata lots have had the same issues, which suggests that it is not a problem with the strata’s plumbing system. I find that this assertion is not entirely accurate, as at least one other strata lot has had similar problems, according to the strata’s own February 2019 email.
32. It is well-established that a strata is not an insurer, which means that it is only responsible for repairs in the applicant’s strata lot if the applicant can prove that the strata acted negligently. See *John Campbell Law Corporation v. Owners, Strata Plan 1350*, 2001 BCSC 1342 and *Simmons et al v. The Owners, Strata Plan LMS 49*, 2019 BCCRT 753.

33. The burden is on the applicant to prove that the strata was negligent. I find that the only evidence that the applicant has provided about the cause of the sand buildup is from her plumber, who says that the sand came from outside the applicant's strata lot. The applicant essentially asks that I find that the strata negligently failed to properly maintain the water system to prevent sand from clogging her faucets simply based on where the sand came from.
34. I find that the plumber's evidence is not enough to prove that the strata was negligent. I find that the plumber's statement only proves that the sand came from outside the strata lot. The plumber does not address what caused the sand to enter the applicant's strata lot or whether the strata had failed to repair and maintain its water system. The plumber does not identify what the strata could have done to prevent sand from entering the applicant's strata lot. I find that the mere fact that sand built up in the applicant's plumbing fixtures does not necessarily mean that the strata failed to act reasonably in maintaining its water system, especially since the extent of the problem appears to have been unique to the applicant's strata lot.
35. In tribunal disputes, like court cases, expert evidence is required when an issue is outside of the scope of knowledge and expertise of an ordinary person. I find that the questions of what caused the sand buildup and what, if anything, the strata could have done to reduce or eliminate the sand buildup require expert evidence. The applicant provided no expert evidence to answer these questions.
36. I find that the applicant has failed to prove that the strata breached its obligation to repair and maintain the water system. I therefore dismiss her claims for reimbursement.
37. That said, this dispute should not be taken as a conclusive determination that the strata will never have to take steps to address sand building up in the applicant's plumbing fixtures if it continues to be a problem. It is open to the applicant to retain an expert to determine the cause of the problem and identify potential solutions. If the applicant believes that the strata acts unreasonably in addressing future problems, she is free to bring a new tribunal dispute.

## **TRIBUNAL FEES AND EXPENSES**

38. 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. The applicant was not successful so I dismiss her claim for tribunal fees and dispute-related expenses.
39. The strata did not claim any dispute-related expenses.
40. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the applicant.

## **DECISION AND ORDER**

41. I dismiss the applicant's claims, and this dispute.

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Eric Regehr, Tribunal Member