



Civil Resolution Tribunal

Date Issued: October 31, 2019

File: ST-2019-002347

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS 2611 v. Kaboodani*, 2019 BCCRT 1243

B E T W E E N :

The Owners, Strata Plan BCS 2611

APPLICANT

A N D :

REZA KABOODANI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. The respondent, Reza Kaboodani (owner), owns a strata lot in the applicant strata corporation, The Owners, Strata Plan BCS 2611 (strata). This dispute is about

payment of a \$25,000.00 insurance deductible. The strata says that the owner is responsible for the deductible because the owner's tenant hung a hanger on a sprinkler head in the owner's strata lot causing it to turn on and resulting in water damage to multiple strata lots and common property. JE, who I infer is a strata council member, represents the strata

2. The owner provided only a brief response saying he had not spoken to anybody about this matter. I infer from this that when he filed his Dispute Response he did not yet have his response formulated. The owner did not provide evidence or submissions, although invited to do so. The owner represents himself.

JURISDICTION AND PROCEDURE

3. 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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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 way it considers appropriate.
6. 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

7. The issue in this dispute is whether the respondent or his tenant were negligent, causing water damage, and whether the owner must reimburse the strata the \$25,000.00 insurance deductible.

EVIDENCE, FINDINGS AND ANALYSIS

8. In a civil dispute such as this, the applicant must prove its claim. It bears the burden of proof on a balance of probabilities.
9. While I have reviewed all of the material provided, I have only commented below on the evidence and submissions necessary for this decision.

The Incident

10. The strata is a large multi-level building. On January 1, 2018 the strata's fire alarm went off. The strata's concierge checked the fire panel and noticed a water pump problem on the floor where the owner's strata lot is located. The concierge went to the owner's floor and saw water coming out of the owner's strata lot.
11. Firefighters arrived and turned the water off. According to the strata's management services report, the firefighters gave the tenant a notice of violation. The report also stated that the building manager called a company to install a new sprinkler head in the owner's strata lot. All of this information was provided by the concierge who was on duty the night of the incident. The respondent chose not to provide evidence to dispute this information and did not provide an alternate explanation.
12. The restoration services company's investigation report said that the tenant hung something on the sprinkler head causing it to go off. The report noted that there was significant estimated damages of up to \$95,000.00 and structural restoration costs up to \$215,000.00. I find this proves that the owner's tenant caused the water damage, especially since the owner provided no contrary evidence.

13. The strata says that it met with the owner in early 2018 who said he did not have liability insurance. The owner told the strata he wanted it to pursue his tenant for any damages.
14. The strata sent the owner multiple letters, including from its lawyer, informing him that he was responsible for the insurance deductible and not the tenant, but he did not respond.
15. As noted, the owner did not provide any evidence or submissions to the tribunal disputing the above information despite being given the opportunity to do so, apart from the Dispute Notice where he only said that he had not talked to anybody yet.

The Applicable Law

16. The strata says that the owner is responsible to reimburse it for the deductible under the bylaws and the *Strata Property Act* (SPA).
17. Section 158(2) of the SPA states that the strata is able to sue the owner in order to recover the deductible portion of an insurance claim if the owner is responsible for the loss or damage that gave rise to the claim.
18. The strata filed amended bylaws with the Land Title Office in 2009 which include bylaw 50(1). The bylaw states that an owner will indemnify or reimburse any expense incurred due to the owner's or tenant's act, omission, negligence or carelessness but only to the extent that such expense is not covered by insurance. It says that in such circumstances, any insurance deductible paid or payable by the strata will be considered an expense not covered by the proceeds received by the strata as insurance coverage and will be charged to the owner.
19. Similar wording to this bylaw was considered by the British Columbia Provincial Court in *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 519. In *Morrison* the trial judge found this bylaw language imparts a negligence standard. The court determined that the wording in the bylaw must be read as a whole. Including the words 'negligence' and carelessness means that the strata must prove that the owner's tenant was actually negligent in order for the owner to be liable for the

strata's expense. This decision is binding upon me and I will consider the circumstances of this case based on this standard.

20. I accept the evidence that the owner's tenant hung something on the sprinkler head causing it to go off. The reports from the concierge and the restoration company support this finding. There is no evidence to the contrary.
21. The strata's argument is that the owner's tenant was negligent. To succeed in negligence, the applicant must show that: (1) the respondent owed the applicant a duty of care; (2) the respondent's behaviour breached the standard of care; (3) the applicant sustained damage; and (4) the damage was caused by the respondent's breach. The strata says that the owner's tenant knew or ought to have known that he should not hang something on the sprinkler head and that it was foreseeable that it would result in the sprinkler turning on causing water flooding into his unit, the common property, and other strata lots. I agree.
22. I note that this dispute is similar to the facts in *MacDonald v. Wang*, 2019 BCCRT 651, although in that dispute the applicant was another owner and not the strata. In that decision the tribunal member found that as the owner of a neighbouring strata lot, the respondent owed a general duty of care to the applicant. The tribunal member noted that when water escaped the suite in the exclusive control of the respondent or their tenant, the law allowed him to draw an inference that the respondent was liable in negligence for the escaped water unless the respondent provided an explanation to show otherwise. The tribunal member referred to *Westsea Construction v Billedeau*, 2010 BCPC 109 at paragraph 39 and *Fontaine v. ICBC* [1998] 1 SCR 424. The tribunal member noted that the respondent was unable to provide an explanation and it was not disputed that the tenant caused the water leak by hanging clothing from the fire sprinkler. This was not a case where the cause of the leak was disputed or unknown or not attributable to the tenant or owner. Accordingly, the tribunal member concluded that the respondent was liable in negligence to the applicant.

23. This decision is not binding on me, but I find its reasoning persuasive. I find here that the tenant owed the strata, and the other owners, a duty of care and he breached that standard by hanging something on a sprinkler head. It is common knowledge that a sprinkler head is not for hanging things on. There is no explanation for why the tenant did this. It is also foreseeable that a sprinkler is there to contain water which will be released if triggered and that this will cause damage when this happens. The evidence establishes that the strata sustained damage and that the damage was caused by the tenant's breach of the standard of care.
24. Therefore, based on the evidence, the strata has proved that that the tenant's negligence caused the sprinkler to break open and caused the water ingress into the owner's strata lot, other strata lots, and the common property. Accordingly, I find the owner is responsible.
25. I also find bylaw 52(1) and SPA section 158(2) allow an order that the owner reimburse the strata for the insurance deductible because the owner's tenant's negligence caused the damage. Therefore, the owner must reimburse the strata for the \$25,000.00 insurance deductible.

TRIBUNAL FEES, INTEREST AND EXPENSES

26. Under section 49 of the CRTA, and the tribunal's rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As the strata was successful in this dispute it is entitled to have its \$225.00 tribunal fees reimbursed.
27. The strata is entitled to interest under the *Court Order Interest Act* (COIA). The strata sent the owner an email which included the \$25,000.00 invoice on March 13, 2018 demanding payment by March 27, 2018. Therefore, I find the strata is entitled to interest from March 28, 2018 to the date of this order.

ORDERS

28. I order that within 30 days the owner pay the strata a total of \$25,891.85, broken down as follows:
- a. \$25,000.00 as reimbursement of the insurance deductible,
 - b. \$666.85 in pre-judgement interest under the COIA, and
 - c. \$225.00 in tribunal fees.
29. The strata is entitled to post-judgement interest under the COIA from the date of this order, as applicable.
30. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia (BCSC), a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 123.1 of the Act 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.
31. 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.

