



Civil Resolution Tribunal

Date Issued: November 27, 2019

File: ST-2019-005884

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wang v. The Owners, Strata Plan EPS3444*, 2019 BCCRT 1334

BETWEEN:

LU WANG

APPLICANT

AND:

The Owners, Strata Plan EPS3444

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This dispute relates to costs associated with a plumbing leak.
2. The applicant, Lu Wang (owner), owns strata lot 26 (710) in the respondent strata corporation, The Owners, Strata Plan EPS3444 (strata).

3. The owner says that the respondent incorrectly charged them \$669.90 for investigation and repairs for water damage to the strata lot located directly below the owner's strata lot (610) because the leak was related to common property. They also say the strata caused them to complete repairs to 710 at a cost of \$800.00 which did not resolve the water leak into 610.
4. The owner requests orders that they are not responsible for the charged-back amount of \$669.90 and that the strata must reimburse them \$800.00 for unnecessary repairs the strata requested they complete to 710.
5. The strata denies the owner's claims and asks that they be dismissed.
6. The owner is self-represented. The strata is represented by a strata council member.
7. For the reasons that follow, I find the strata incorrectly charged the owner \$669.90 for investigation and repair of the leak into 610 and I order the charge reversed. I also find the strata is not responsible for the \$800.00 repair costs incurred by the owner and dismiss the owner's claim in this regard.

JURISDICTION AND PROCEDURE

8. 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. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
9. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances 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. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

10. The tribunal may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
11. 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, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

12. The issue in this dispute are:
 - a. What is the source of the water leak into 610?
 - b. Is the owner responsible for the strata's \$669.90 repairs relating to 610?
 - c. Is the strata responsible for the owner's \$800.00 repairs to 710?

BACKGROUND, EVIDENCE AND ANALYSIS

13. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
14. In a civil proceeding such as this, the owner must prove each of their claims on a balance of probabilities.
15. The strata was created in 2016 under the *Strata Property Act* (SPA). It is an airspace parcel strata corporation consisting of 134 residential strata lots in a high-rise building located in Vancouver, B.C.

16. At the time the strata was created, the owner developer filed a Form Y at the Land Title Office (LTO) that included bylaws that were different from the Standard Bylaws under the SPA. Subsequent bylaw amendments that are relevant to this dispute have also been filed at the LTO. I address relevant bylaws as necessary in my analysis below.
17. It is undisputed that the resident of 610 reported a water leak in the bathroom ceiling about March 19, 2019. The strata hired a plumber to investigate the leak. On March 26, 2019, the strata's plumber cut an opening in the drywall ceiling of 610 and determined the leak was from the toilet of 710. The plumber submitted an invoice to the strata for \$243.60, which I infer the strata paid. The description on the invoice stated in part, "Cut a hole in the bathroom ceiling in unit 610. Traced the leak is caused by the toilet of 710".
18. The strata communicated this information to the owner by telephone on April 2, 2019 advising that it was the owner's responsibility to address the leak. The owner says they agreed to hire their own plumber to complete the investigation. According to the owner, the strata did not provide any further information until about April 23, 2019, when the owner says they received a "notice of infraction" from the strata stating the repair was the owner's responsibility. Copies of correspondence between the owner and strata were not provided in evidence, however, I infer from the owner's submissions that they received a copy of the \$243.60 invoice from the strata's plumber with the 'notice of infraction" and were asked to pay the strata that amount.
19. The owner states their plumber attended 710 on May 2 and 3, 2019. This is confirmed in May 3, 2019 letter from the owner's plumber and a September 25, 2019 email to the owner from the 610 landlord or landlord's agent (landlord). Based on the overall evidence and submissions, I find that the owner's plumber replaced the toilet and the wax seal in 710 on May 3, 2019.
20. A written statement was provided by the owner's plumber confirming he attended 710 on May 2, 2019 and did not find any signs of leaking around the toilet. The

statement also says the plumber returned on May 3 and at approximately noon and observed the leak in 610 “from the joint of the toilet drainage pipe, which is located at the floor of unit 710 and the ceiling of unit 610.” The statement also says the owner’s plumber “observed that the MJ of the pipes connection has become a little misplaced, which most possibly resulted from the outside unexpected force.” Overall, I take this statement to mean that the owner’s plumber saw water escaping from around the pipe clamp covering the pipe joint and believed the waste pipe had been displaced. The owner says no other work was completed in 710 after May 3, 2019. The landlord agrees the leak was not repaired on May 3, 2019 and was still leaking after the owner’s plumber replaced the toilet and wax seal in 710. The landlord also says the owner’s plumber had completed the 710 repairs before the landlord observed the active leak in 610 below.

21. A video was taken by the landlord. The parties agree the video was taken on May 3, 2019, although there was no evidence provided as to the exact time the video was recorded. The video was taken in 610’s bathroom looking up into the exposed bathroom ceiling space. The video shows a plumbing clamp is located on the waste pipe servicing 710’s toilet on the underside of the concrete flooring. The video also shows water running down the vertical section of pipe that travels up into 710 and dripping into the open bathroom ceiling space of 610. I cannot determine from the video if the water is leaking from around the pipe clamp or from a point above the clamp in 710. However, I conclude the clamp covered the “MJ” joint referenced by the owner and the owner’s plumber.
22. On May 8, 2019, the strata’s plumber returned to the site because of reported ongoing leaks into 610. Access to both strata lots was granted, with access to 710 granted by the owner’s friend. The strata’s plumber and the landlord were both present. The owner was not present. The strata’s plumber and the landlord each confirm that they flushed the 710 toilet 3 times and observed no resulting leaks into 610. The strata’s plumber submitted a second invoice to the strata totaling \$426.30 for the May 8, 2019 work, which I infer the strata paid. The description on the invoice states the strata’s plumber cut the firestop from around the waste pipe. It

also describes the process used to test 710's toilet with no resulting leaks into 610 and that the strata's plumber contacted the owner's plumber who advised 710's toilet and wax seal was replaced. A representative of the strata's plumber says that, other than on May 3 and May 8, 2019, it did not complete any work in 610. Based on this, the representative concluded that the new toilet and wax seal resolved the leak issue.

What was the cause of the water leak into 610?

23. The owner says the leak continued after the wax seal was replaced in 710 so it was not the wax seal that caused the leak as the strata alleges. They say that water was leaking from an "MJ" joint in the waste pipe immediately below 710's toilet and that because the pipe is common property, the strata is responsible for all repair costs. The owner also says that someone must have repaired the broken pipe from 610 to stop the water leak.
24. The strata says after the wax seal was replaced, the leak into 610 stopped. Therefore, it says the leak was related to the wax seal. In any event, the strata says the pipe or pipe joint the owner alleges was leaking is not common property.
25. For the reasons that follow, I find it is more likely than not that the cause of the leak was not related to the replacement of the toilet or wax seal in 710.
26. I will first address the responsibility for the waste pipe repair which is at issue.
27. From the photographs, I find the waste pipe to be located within a ceiling that forms a boundary between the 2 strata lots. The pipe is located above the drywalled bathroom ceiling of 610 and below the concrete flooring of 710. Under section 1(1) of the SPA, common property includes pipes if they are located within a ceiling that forms a boundary "between a strata lot and another strata lot" and for this reason, I find the waste pipe is common property. Given the location of the pipe joint and clamp, which is in the ceiling space of 610, I find the joint and clamp are also common property.

28. Section 72(1) of the SPA states the strata is responsible for repair and maintenance of common property. Therefore, I find the strata is responsible for repairing and maintaining the common property waste pipe in question.
29. The owner cites *Taychuk v. The Owners, Strata Plan LMS 744*, 2002 BCSC 1638 in support of their position that the strata should be responsible for the repairs, but I find *Taychuk* does not assist the owner in this case. In *Taychuk*, the BC Supreme Court found a strata corporation was in breach of its statutory obligations to repair and maintain common property piping with respect to discolouration of domestic water over a period of several years. The court found that the applicant owners were not entitled to be exempt from paying their portion of a special levy to repair the piping that lead to the water discolouration. I find the facts in *Taychuk* differ from the facts before me in this case as the owner has not proven the strata failed to repair and maintain the common property waste pipe from 710's toilet.
30. As I have stated, although the video evidence before me shows water was leaking and dripping from the waste pipe, I cannot determine the exact location of the leak. If the leak was coming from above the pipe clamp, it is likely coming from 710 which would make it the owner's responsibility. On the other hand, if the leak was coming from the pipe joint behind the clamp, it would be the strata's responsibility because the pipe (and clamp) are common property.
31. The combined evidence from the owner's plumber and landlord is that the leak continued after the 710 toilet and wax seal were replaced. Both the owner's plumber and landlord witnessed the leak first hand and I accept that this is the case.
32. The strata relies on the statement from its plumber's representative who did not witness the leak, but rather relied on emails and correspondence to conclude the 710 repairs must have been completed after the leak into 610 was observed. While the strata's plumber's representative states that there were no other repairs to 610 other than investigating the leak, that does not mean someone other than the strata's plumber did not complete some type of repair, such as tightening the clamp on the waste pipe joint.

33. I prefer the owner's position over that of the strata and find it is more likely than not that the owner's replacement of their toilet and related wax seal did not resolve the leak into 610. I put significant weight on the first-hand observations of the owner's plumber and landlord, both of which confirm the leak continued after the 710 toilet and wax seal were replaced. I put less weight on the statement made by the strata's plumber's representative because neither the representative or the strata's plumber were present on May 3, 2019 to witness the ongoing leak. As a result, I find the owner has proven the toilet or wax seal in 710 was not the cause of the leak into 610.
34. For these reasons, I find the cause of the leak was a failed waste pipe, waste pipe joint or waste pipe clamp, all of which are common property and the strata's responsibility to repair.

Is the owner responsible for the strata's \$669.90 repairs relating to 610?

35. I infer from the owner's submissions that the strata has charged their strata lot account with the amount of the 2 invoices from its plumber totaling \$669.90 (\$243.90 plus \$420.30). The actual letters charging the owner these amounts are not before me, but the owner says they were provided a "notice of infraction" and copies of the 2 invoices.
36. Standard bylaw 2(1) applies to the strata. It states that an owner must repair and maintain their strata lot, except for repairs and maintenance that is the responsibility of the strata.
37. Section 72(3) of the SPA permits a strata corporation, by bylaw, to take responsibility for portions of a strata lot. Standard bylaw 8 also applies to the strata and although the strata does take responsibility for certain parts of a strata lot, none apply to this dispute.
38. Therefore, based on the SPA and strata's bylaws, I find the owner is responsible for repairs and maintenance relating to their strata lot, and the strata is responsible for repairs of common property. Given my finding above that the cause of the leak

resulted from common property and not 710, I find the strata is responsible for investigation and repair. I find the strata must reverse the \$669.90 it charged back to 710 and I so order.

39. On November 6, 2017, the strata filed new bylaw 33(2) at the LTO (new bylaw 33(2)), which replaced a previous bylaw 33(2). New bylaw 33(2) says that if an owner is responsible for any loss or damage to a strata lot, the owner must indemnify and save harmless the strata from any related expense but only to the extent the expense is not covered by the proceeds of the strata's insurance policy.
40. The charge back of the plumbing invoices is not captured by section 116 of the SPA and is commonly referred to as a non-lienable amount, as it cannot be included in the amount of the Certificate of Lien filed under section 116. In order to collect a non-lienable amount, the strata must have the authority to do so under a valid and enforceable bylaw or rule that creates the debt. (See *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512.)
41. Although not argued, I find that new bylaw 33(2) grants the strata authority to charge back the plumbing invoices to the owner's strata lot as set out in *Ward*, but only if the owner is responsible for the damage, which I have found they are not.

Is the strata responsible for the owner's \$800.00 repairs to 710?

42. There is no evidence before me to support this expense, but I infer it relates to the replacement of the toilet and wax seal. Since the owner provided no invoices, receipts or other evidence to support the amount claimed, I dismiss the owner's claim for reimbursement of \$800.00 for 710 repairs.
43. Even if the owner had provided proof of repair expenses, such as paid receipts, I would not grant the relief sought by the owner. I say this because the owner did not provide any evidence that the strata forced them to complete the repairs. While the owner admits the strata stated the leak repairs coming from 710 were the owner's responsibility, there is no evidence the strata gave any specific instructions to the owner to replace the toilet and wax seal. It would appear the owner obtained this

advice from their own plumber and they cannot now request reimbursement of expenses they incurred as a result of obtaining their own independent advice.

TRIBUNAL FEES AND EXPENSES

44. 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. Here, there was mixed success. The owner did not claim dispute-related expenses, so I order none.
45. Given the partial success of the owner, I find they are entitled to one-half of the \$225.00 tribunal fees paid. The strata did not pay tribunal fees. Accordingly, I order the strata to pay the owner \$112.50 for tribunal fees.
46. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the applicant owner.

DECISION AND ORDER

47. I order the strata, within 15 days of this decision, to
 - a. Pay the owner tribunal fees of \$122.50, and
 - b. Reverse plumbing invoice charges of \$669.90 charged to the owner's strata lot account.
48. The owner is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
49. I dismiss the owner's remaining claims.
50. 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). Once filed, a tribunal order has the same force and effect as a BCSC order.

51. 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. Once filed, a tribunal order has the same force and effect as a BCPC order.

J. Garth Cambrey, Vice Chair