



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Oldesloe v. The Owners, Strata Plan VR 1741*, 2020 BCCRT 14

B E T W E E N :

KARL OLDESLOE

APPLICANT

A N D :

The Owners, Strata Plan VR 1741

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This is a dispute about damage caused by a leaky skylight. The applicant, Karl Oldesloe, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VR 1741 (strata). The applicant says that the strata failed to repair and maintain the skylight, which caused damage to his strata lot. The strata paid \$9,644.76 to repair the applicant's strata lot and charged these repair costs back to

the applicant's strata lot. The applicant asks for an order that the strata reverse the chargeback.

2. The strata says that it acted reasonably in addressing the issues with the skylight. The strata says that the applicant is responsible for the cost of repairing the damage to his strata lot under the bylaws. The strata asks that I dismiss the applicant's claim.
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.

8. In the parties' statement of facts, they "disagree regarding whether or not a hearing was requested or sent to the proper strata address, by the applicant". Section 189.1(2) of the *Strata Property Act* (SPA) says that an owner must request a strata council hearing before applying to the tribunal for dispute resolution unless the tribunal directs otherwise. The tribunal case manager suggested that the parties raise this issue in their submissions, but neither party did so.
9. The purpose of section 189.1 of the SPA is to force parties to attempt to resolve their dispute before starting a tribunal dispute (see *Ball v. The Owners, Strata Plan EPS 3286*, 2019 BCCRT 909). Given the positions that each party took in this dispute, I am satisfied that there would be no practical purpose in forcing the strata to hold a hearing. In addition, the strata did not ask that I refuse to resolve the applicant's dispute for failing to properly request a hearing. Accordingly, I direct that the requirement under section 189.1(2) of the SPA does not apply to this dispute.

ISSUES

10. The issues in this dispute are:
 - a. Did the strata act reasonably in how it addressed the applicant's leaky skylight?
 - b. Can the strata charge back the cost to repair the damage to the applicant's strata lot?

BACKGROUND

11. In a civil claim such as this, the applicant must prove his 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.
12. The strata is a phased strata plan that consists of 66 strata lots in 16 buildings. Each strata lot has 2 floors. The applicant's strata lot has a recessed skylight above an internal stairwell.

13. In the strata's Dispute Response, the strata says that the skylight is part of the applicant's strata lot and therefore the applicant's responsibility to repair and maintain. However, in its submissions, the strata admits that the strata's bylaws explicitly make the strata responsible for repairing and maintaining skylights, which I find is correct.

EVIDENCE AND ANALYSIS

14. On January 2, 2018, the applicant reported to the strata's property manager that the skylight was leaking. Within 15 minutes, the property manager told the applicant that a glass contractor and a roofing contractor, All Seasons, would contact the applicant about the skylight. There is no evidence that the applicant had any issues with the skylight before January 2018.
15. On January 16, 2018, the applicant confirmed to the property manager that All Seasons had attended and resealed the skylight. The exact date that All Seasons resealed the skylight is not clear in the evidence, but the exact date does not matter. The applicant told the property manager that the wall below the skylight needed repainting. The property manager responded that the strata's repair and maintenance obligations do not extend into the strata lot.
16. On March 18, 2018, the applicant again reported to the property manager that the skylight was leaking. There is no evidence that the applicant complained about the skylight between January and March. The applicant told the property manager that the moisture had damaged the drywall and caused mold.
17. The property manager responded on March 21, 2018, that he would contact the strata council. On April 4, 2018, the strata emailed All Seasons to advise that the applicant was still having problems with the skylight. All Seasons put a tarp over the skylight because it was not immediately available to repair it. All Seasons later resealed the skylight again, although the exact date again is not in evidence.
18. Around this time, the strata engaged JWC Western Management (JWC) to investigate the drywall around the skylight, which had become discoloured. On June

13, 2018, the applicant said that the mold was spreading because of rain. The strata responded that they had asked JWC for an update.

19. On July 30, 2018, JWC cleaned, sanded and repainted the walls under the skylight. The strata paid JWC's invoice, even though the strata says that it did not need to. The strata says that it was a gesture of good faith.
20. On December 9, 2018, the applicant emailed the property manager that the skylight was leaking. There is no evidence of any communication between the applicant and the strata about the skylight between June 13, 2018 and this email.
21. All Seasons attended on January 15, 2019, and replaced the skylight. There was significant drywall and insulation damage around the skylight.
22. The strata hired a restoration contractor, Incredible Restorations, which repaired the damage to the applicant's strata lot. On March 20, 2019, Incredible Restorations invoiced the strata \$9,644.76 for this work, which the strata paid.
23. On March 22, 2019, the strata charged \$9,644.76 back to the applicant's strata lot account.

Did the strata act reasonably in how it addressed the applicant's leaky skylight?

24. It is a well-established legal principle that a strata corporation is held to a standard of reasonableness, not perfection, in its repair and maintenance obligations (see *John Campbell Law Corp. v. Owners, Strata Plan 1350*, 2001 BCSC 1342). This means that the strata is not responsible for the damage to the applicant's strata lot unless it was negligent (see, for example, *Mejduk v. The Owners, Strata Plan LMS 2854*, 2019 BCCRT 1269). The parties agree that the question is whether the strata acted unreasonably in how it addressed the repairs to the skylight.
25. The applicant says that the strata was negligent because it waited nearly a year after the applicant first notified the strata of the skylight leak before replacing it. The applicant says that the strata has provided no reasonable explanation for the delay.

He says that the strata should have known that leaving a leaky skylight unrepaired for so long would cause damage to the strata lot below. He therefore says that the strata should have to pay for the repairs to his strata lot.

26. The strata concedes that the initial repairs of the skylight were ineffective. The strata says that this does not mean that it acted unreasonably in its response to the leaks.
27. The strata argues that it responded appropriately and reasonably each time the applicant brought an issue to its attention. The strata says that there was no undue delay in effecting repairs.
28. The strata's main argument is that its council is made up of lay volunteers with no expertise about building envelope design or repair. The strata says that its council reasonably relied on contractors to investigate and recommend solutions, and the strata followed their advice. This submission reflects the reasoning in *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74, which says that where a strata corporation retains a professional to perform its repair and maintenance obligations and reasonably follows that professional's advice, the strata corporation has fulfilled its statutory duty, even if that professional was wrong. The strata says that there is no evidence that it was negligent in its selection or instruction of All Seasons or JWC. The applicant does not allege that these companies lacked the necessary skills or qualifications to repair the skylights.
29. I agree with the strata. It is undisputed that the bylaws make the applicant responsible for repairing the damaged parts of his strata lot. There is no evidence that the strata failed to follow the advice of the professionals it hired, or that the professionals were unqualified. Also, the applicant did not tell the strata that the skylight was leaking on an ongoing basis. His emails suggest that it was an intermittent issue. I agree with the strata that each time the applicant raised the issue of his skylight, the strata acted reasonably promptly to address it.
30. Also, with respect to the strata tried to repair the skylight twice before replacing it, the strata may have several reasonable options to undertake repairs. Just because

a strata takes a more cautious approach that turns out in hindsight to have been ineffective does not mean that the initial choice was unreasonable (see *Weir v. Strata Plan NW 17*, 2010 BCSC 487). I find that the strata's

31. In sum, I find that the strata acted reasonably in fulfilling its repair and maintenance obligations on the skylight.

Can the strata charge back the cost to repair the damage to the applicant's strata lot?

32. As discussed above, the strata had no obligation to repair the applicant's strata lot. However, for reasons that are not clear, the strata decided to instruct Incredible Restorations to repair the applicant's strata lot and paid Incredible Restorations' invoice. There is no evidence that the strata told the applicant that it expected him to pay for the Incredible Restorations repairs. It appears that the strata assumed that the applicant knew that he would have to pay the strata back for these repairs, while the applicant assumed that the strata had taken responsibility for the repairs. Neither assumption was correct.

33. The question is whether the strata, having arranged for and paid for the repairs, can charge the repair costs back to the applicant's strata lot.

34. In *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512, the Court of Appeal found that a strata must have a bylaw to charge back legal fees to an owner. The tribunal has extended this principle to any cost that cannot be liened under section 116(1) of the SPA. On this point, I agree with and adopt the tribunal's reasoning in *Ho v. The Owners, Strata Plan LMS 1178*, 2018 BCCRT 245. In this dispute, the repair costs to the applicant's strata lot cannot be liened under section 116(1) of the SPA and the strata does not have a bylaw allowing it to charge the repair costs to the applicant.

35. Neither party raised this issue so I requested supplementary submissions from both parties. In response, the strata conceded that it had no legal authority to impose the

charge back on the applicant's strata lot. The strata said that it would voluntarily remove the chargeback.

36. However, the strata argued that section 133 of the SPA allows it to require the applicant to pay the repair costs. Section 133 of the SPA says that the strata may do what is reasonably necessary to remedy a contravention of its bylaws, including by doing work to a strata lot. Section 133 of the SPA also says that the strata may require the owner to pay the reasonable costs of remedying the contravention. The strata says that the applicant breached the strata's bylaws by failing to repair and maintain his strata lot. Therefore, the strata says it was authorized under section 133 of the SPA to repair the applicant's strata lot and require the applicant to pay for it.
37. Section 135 of the SPA says that the strata must not require the applicant to pay the cost of remedying a bylaw contravention unless it has received a complaint about the bylaw contravention and given the applicant a reasonable opportunity to answer the complaint, including a hearing if requested.
38. The strata concedes that it has not yet complied with section 135 of the SPA, but says that it will give the applicant a hearing. The strata argues that it made an honest mistake and it would be unfair to force the other owners to pay for repairs to the applicant's strata lot, especially since the tribunal, not the applicant, raised the issue about the strata's legal authority to charge the repair costs to the applicant.
39. The strata relies on *Hassan et al v. The Owners, Strata Plan LMS 2854*, 2018 BCCRT 303 to argue that the tribunal can be flexible in allowing a party to remedy a failure to comply with the SPA. In *Hassan*, I found that the applicant owners had made alterations to their strata lot in contravention of the SPA. Rather than order them to immediately remove the alterations, I gave them an opportunity to seek approval from their strata corporation. The strata argues that I should adopt a similar philosophy in this dispute by giving the strata a chance to comply with section 135 of the SPA.

40. The also strata relies on *The Owners, Strata Plan NW 307 v. Desaulniers*, 2019 BCCA 343. In that case, the Court of Appeal confirmed that a strata corporation can require an applicant to pay the costs of repairing a strata lot. This point is not controversial. However, I find that the key finding in *Desaulniers* runs contrary to the applicant's argument that it should be given a chance to comply with section 135 of the SPA.
41. In *Desaulniers*, the strata corporation made repairs to an owner's strata lot after the owner was arrested and admitted into psychiatric care. The owner had made alterations to her strata lot that made it unsafe for the other residents of the building. The strata corporation incorrectly thought that a court order had authorized it to make repairs to an owner's strata lot.
42. The strata corporation argued that it had authority under section 133 of the SPA to require the owner to pay for the costs to repair her strata lot. The strata corporation admitted that it had not complied with section 135 of the SPA. However, the strata corporation argued that the Court should forgive its failure to comply with section 135 of the SPA because the owner's serious disability would have made it impossible for her to answer the complaint anyway. The strata corporation argued that it acted in good faith and that it would be unfair to the other owners to pay for the repairs.
43. The Court of Appeal confirmed that the requirements of section 135 of the SPA are clear and strict, and found that the strata corporation could not recover the repair costs from the owner. The Court of Appeal said that when it comes to a strata corporation's compliance with section 135 of the SPA, "there is no leeway".
44. I find that because *Hassan* did not involve section 135 of the SPA, it does not assist the strata. The Court of Appeal's reasoning in *Desaulniers* is binding on me, and I find that it applies directly to this dispute. Section 135 of the SPA does not allow for flexibility even though it means that the other owners will have to pay for repairs that were the applicant's responsibility.

45. I find that the strata's failure to comply with section 135 of the SPA prevents it from relying on section 133 of the SPA to require the applicant to pay the cost of repairs. As mentioned above, there is no bylaw allowing it to charge the repair costs back to the applicant. Therefore, there is no legal basis for the strata to require the applicant to pay for the repairs. For these reasons, I order the strata to remove the chargeback from the applicant's strata lot account, if it has not already done so.
46. In his submissions, the applicant asks for an order that the strata complete further repairs in his strata lot. The applicant also asks for an order for compensation for loss of enjoyment of his strata lot. The applicant did not include either of these claims in his Dispute Notice so they are not properly before me. That said, I would have dismissed both claims based on my findings that the strata acted reasonably in repairing the skylight and that any repairs to the applicant's strata lot were the applicant's responsibility.

TRIBUNAL FEES AND EXPENSES

47. 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 successful so I order the strata to reimburse him \$225 in tribunal fees. The applicant did not claim any dispute-related expenses.
48. 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

49. I order that:
- a. The strata immediately remove the \$9,644.76 chargeback from the applicant's strata lot account, if it has not already done so.

b. Within 14 days of the date of this order, the strata pay the applicant \$225 in tribunal fees.

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 applicant 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.

Eric Regehr, Tribunal Member