



Civil Resolution Tribunal

Date Issued: January 21, 2020

File: ST-2019-005401

Type: Strata

Civil Resolution Tribunal

Indexed as: *Liu v. The Owners, Strata Plan EPS3242*, 2020 BCCRT 72

BETWEEN:

YAN MING LIU

APPLICANT

AND:

The Owners, Strata Plan EPS3242

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about an unpaid invoice for elevator repairs. The respondent, The Owners, Strata Plan EPS3242 (strata), is a strata corporation. The applicant, Yan Ming Liu (owner), owns a strata lot in the strata.
2. The parties agree that in September 2018 one of the elevators of the strata jammed its doors. This trapped 2 individuals inside. The owner's tenant pushed the doors open. The elevator occupants escaped unharmed, but the doors were damaged. The strata charged back \$3,430.00 for repairs to the owner's strata lot account.
3. The owner says the repair charges should be reversed. The strata disagrees. The strata did not file a counterclaim seeking payment of the chargeback.
4. A strata council member represents the strata. The owner is represented by his rental agent, Koon Hung So.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.

7. 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 questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. 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

9. The issue in this dispute is whether the owner must pay \$3,430.00 for elevator repairs.

BACKGROUND AND EVIDENCE

10. In a civil claim such as this, the applicant strata bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. The key facts are undisputed. As noted above, the owner rented his strata lot to a tenant. The owner resides elsewhere.
12. The strata has multiple elevators. On September 22, 2018, one of the elevators' doors jammed with 2 occupants inside. There is no indication that the occupants caused the jam. The doors were ajar, leaving only a foot of space.
13. One of the occupants of the jammed elevator was related to the tenant. The occupants told the tenant, presumably using a mobile phone, that they were trapped. The tenant told the strata's concierge and the concierge called the elevator repair company. The company said it would send a technician but did not say when they would arrive.
14. After about 10 to 15 minutes the tenant decided to push open the elevator doors a few inches so that the elevator occupants could leave.

15. The technician arrived later that same day. It is unclear how long it took the technician to arrive. The technician determined that the tenant damaged the elevator doors when he pushed them open. The technician wrote this down on several invoices, including a December 14, 2018 invoice for \$3,430.00 in elevator repairs. There is no dispute that the tenant damaged the doors.
16. I find that the damaged elevator, including its doors, is common property. The strata's elevators are designated as common property on the filed strata plan and the parties do not dispute the elevator at issue is common property.
17. The strata sent the owner a letter dated October 1, 2018. The strata wrote it received a complaint that the owner's tenant had breached a bylaw. The strata referred to the elevator incident of September 22, 2018, described above. The strata wrote it had decided to charge the cost of repairing the elevator back to the owner's strata lot. The strata quoted bylaws 3.2 and 3.3.
18. The owner provided the only copy of this letter. It appears to be missing a page. The parties did not comment on this. In any event, I find the missing page is unnecessary for my decision.
19. The strata's bylaws are filed in the Land Title Office. Bylaw 3.2 says a tenant must not cause damage, other than reasonable wear and tear, to common property or common assets.
20. Bylaw 3.3 says that an owner must indemnify the strata from necessary repair expenses to common property if the expenses result from a tenant's "willful act or negligence". The indemnity is limited to the extent that the expense is not recovered from the proceeds of insurance. There is no indication that the strata made an insurance claim and the owner does not say it should have.
21. In a January 21, 2019 letter, the strata advised the owner that it levied a fine of \$200.00 against the owner's strata lot. The strata cancelled the fine in March 2019. The fine is not part of this dispute.

22. The strata wrote to the owner in a March 20, 2019 letter that it had paid \$3,430.00 for the elevator repairs and charged this amount back against the owner's strata lot account.
23. I conclude from the correspondence that the strata fined the tenant under bylaw 3.2 and charged back the repair expense to the owner's account under bylaw 3.3. This interpretation is most consistent with the October 1, 2018 letter as it referred to both bylaws and notified of the impending charges at that time.

POSITIONS OF THE PARTIES

24. The owner says the repair charges should be reversed. He says it was reasonable for the tenant to help the trapped elevator occupants. He also says the strata failed to properly deliver notice of its decision to charge him for repairs. The owner also disputes the chargeback amount.
25. The strata disagrees. It says that the tenant should have waited for the elevator technician. The strata acknowledges the initial December 14, 2018 repair invoice did not have a proper breakdown and provided 2 revised invoices. However, it does not say the chargeback amount should be reduced. The strata largely did not address the owner's notice concerns.

ANALYSIS

26. Under section 72 of the *Strata Property Act* (SPA), the strata has the obligation to repair and maintain common property. I find that the strata was obliged to repair the elevator at issue, as it is common property.
27. Given the above, I find that bylaw 3.3 applies as it is about who pays for necessary repairs to common property.
28. The owner raised issues about whether the strata properly delivered notice of its decision to charge back elevator repairs to his account. However, the owner did not say what bylaw or SPA provision the strata breached.

29. SPA section 135 provides certain notice requirements if the strata is seeking the costs of remedying a contravention of a bylaw or rule. However, I do not find SPA section 135 applicable in these circumstances. This is because the owner agrees the tenant damaged the elevator and the strata has proceeded to charge back costs under bylaw 3.3. The question is whether the strata may recover its costs under bylaw 3.3, rather than for a contravention of a bylaw. Given this, I do not find that the strata has breached any notice requirements.
30. Under bylaw 3.3, the owner must pay for the elevator repairs if the tenant caused damage through a willful act or negligence. The *Oxford Dictionary of English* defines willful to include an intentional harmful act. I find that bylaw 3.3 requires the tenant to either intentionally or negligently cause damage for the owner to be liable.
31. The parties agree that the tenant did not intend to damage the elevator doors. I must therefore consider whether the tenant was negligent. The legal test is stated in *Mustapha v. Culligan*, 2008 SCC 27. The following elements must be present to show negligence:
- a. the tenant owed a duty of care to the strata,
 - b. the tenant breached the duty by not meeting the standard of care, and
 - c. as a result of the breach, the strata suffered a loss.
32. I find that the tenant had a duty to refrain from damaging the strata's common property, including the elevator. Did the tenant breach the standard of care? I find that he did for the following reasons.
33. I find that the evidence and submissions show that the tenant should have waited for help. The tenant knew an elevator technician was on the way. When phoned, the elevator repair company did not advise anyone to act immediately. There was nothing that indicated the elevator occupants were in any immediate danger. The tenant waited 10 to 15 minutes before acting. There was nothing specific that caused him to act and I find he could have waited longer. The tenant was not

following the advice of the elevator repair company when he forced the doors open. The tenant therefore breached the standard of care.

34. The owner says the elevator had pre-existing deficiencies, as noted in strata council meeting minutes dated September 11, 2018. The minutes show that, by that time, the strata had hired a contractor to improve the “ride quality” of its elevators and the work was continuing. There is no indication that the strata should have shut down any of the elevators. I find that the elevator’s pre-existing issues did not justify the tenant’s decision to force the elevator door open.
35. I also find that the tenant’s breach caused the strata to suffer a loss. There is no dispute that the tenant damaged the elevator doors by pushing them open. This is also supported by the technician’s invoice notes.
36. For these reasons, I conclude the tenant was negligent. Under bylaw 3.3, the owner is therefore liable for necessary repair costs.
37. How much should the owner pay for elevator repairs? The elevator repair company provided an initial December 14, 2018 invoice for \$3,430.00. However, it later provided two revised invoices of the same date, totaling \$3,430.01. The strata says the repair company provided the revised invoices in September 2019. They are as follows.
 - a. The first invoice was for labour, materials and GST for repairing the elevator doors. This cost \$2,777.82.
 - b. The second was for the service call of releasing the “trapped passengers”. This cost \$652.19.
38. The strata explains that the second invoice relates to the additional costs of a service call. I find that the strata had to incur the service call fee of \$652.19 regardless of whether the tenant was negligent. As noted above, there is no indication that the tenant or the elevator occupants caused the elevator’s doors to jam. Bylaw 3.3 does not allow the strata to charge back the service call fee.

39. The owner says the invoiced amount of \$2,777.82 is unreasonable. I disagree as there is nothing before me that suggests the technician overcharged the strata.
40. Given the above, I order the strata to immediately reduce the \$3,430.00 chargeback on the owner's strata lot account to \$2,777.82.
41. In arguments, the owner asked for a further decision about the strata's use of a subcommittee to consider bylaw infractions. I find this matter was raised late and is irrelevant to the issue in this dispute and so I make no finding about it.
42. I dismiss the owner's remaining claims.

TRIBUNAL FEES AND EXPENSES

43. 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. I see no reason in this case not to follow that general rule.
44. The owner was partially successful in this dispute. He paid \$225.00 in tribunal fees. Within 15 days of the date of this order, I order the strata to reimburse tribunal fees of \$112.50. The parties do not claim dispute-related expenses, so I do not order any.
45. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against the owner.

ORDERS

46. I order that the strata immediately reduce the \$3,430.00 chargeback from the owner's strata lot account to \$2,777.82.
47. Within 15 days of the date of this order, I order the strata to reimburse the owner \$122.50 in tribunal fees.

48. I dismiss the owner's remaining claims.
49. 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.
50. 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.

David Jiang, Tribunal Member