



# Civil Resolution Tribunal

Date Issued: January 23, 2020

File: ST-2019-006029

Type: Strata

Civil Resolution Tribunal

Indexed as: *Szabo v. The Owners, Strata Plan LMS 1970*, 2020 BCCRT 79

**BETWEEN:**

KRISZTINA SZABO

**APPLICANT**

**AND:**

The Owners, Strata Plan LMS 1970

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

## INTRODUCTION

1. This is a dispute about repair costs for water leaks. The applicant, Krisztina Szabo, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 1970 (strata). She says that the strata has inappropriately charged the repair costs

for several water leaks to her strata lot's account. She asks for an order that the strata remove these charges from her account. On its dispute response form, the strata agrees with the applicant's description of her claim, and says it has no opinion on her requested resolution.

2. The applicant is self-represented. The strata is represented by a member of the strata council.

## **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 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.
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 applicant is responsible for the outstanding repair costs that have been charged to her strata lot's account.

## **EVIDENCE AND ANALYSIS**

8. The strata is comprised of a commercial section and a residential section. The residential section repealed its previous bylaws and filed new bylaws with the Land Title Office in November of 2013. Bylaw 3 states that an owner must repair and maintain their strata lot, except for repair and maintenance that is the responsibility of the strata corporation or section under bylaw 13.
9. Bylaw 39 addresses insurance and damage to property. According to bylaw 39(2), the owner of a strata lot is obligated to pay the strata or a section the amount of any insurance deductible required to be paid by the section or strata in relation to an insurance claim which is the result of physical damage to the common property (CP), limited common property (LCP), or those portions of a strata lot which the strata or a section is required to insure for which the owner, tenant or occupant of the strata lot or their guests are responsible, or the source of which originates in that owner's strata lot.
10. Bylaw 39(3) provides that the strata or a section may sue an owner tenant or occupant for damages suffered (including an insurance deductible or repair costs incurred) as a result of physical damage caused by or resulting from the acts or omissions of that owner, tenant or occupancy, or their guests or invitees, to CP, LCP or those portions of a strata lot which the strata or a section is required to repair or insure.
11. The applicant owns strata lot 114 in the residential section, which is also known as suite 314. The applicant says that water leaks are a common occurrence in the strata's building, and that the strata hires On Side Restoration (On Side) to investigate the problems and fix any damage.

12. The strata determined that some water leaks had originated in the applicant's strata lot. In letters dated April 5, 2018, June 13, 2018, February 6, 2019, and June 28, 2019, the strata charged back repair costs associated with these leaks to the applicant's strata lot account.
13. The applicant admits that there was 1 leak for which she was responsible due to a problem with her bathtub. The applicant says that she and her insurance company have paid for all of the charges associated with this leak. The applicant says that there were no other leaks in or from her strata lot. According to the applicant, the strata reversed some of the charges from her strata lot's account after 2 hearings, but later the charges were re-assessed against her strata lot. In a July 9, 2019 email message, the applicant asked for an explanation as the charges appeared to be duplicates of what she had paid already. The property manager responded that the amounts had been "charged in relation to leaks from your unit" and that she should contact On Side for an explanation or investigation of the charges.
14. The applicant questions how she can be responsible for the charges when the leaks were not determined to have come from her strata lot. The applicant says that On Side's technicians have told her that there are problems with the building's sprinkler system and that the leaks could come from anywhere within the walls. The applicant wonders whether the source of problem might be CP, and therefore the strata's responsibility. The applicant is frustrated by her dealings with the strata as she feels that the charges have not been explained. Further, the applicant says the situation is causing her difficulty in obtaining insurance coverage and is interfering with her plans to sell her strata lot.
15. The applicant provided evidence and submissions in support of her position. The strata filed a Dispute Response in which it agreed with the applicant's claim description, but did not provide any additional information. The strata did not provide evidence or submissions despite having the opportunity to do so, and did not offer an opinion on the applicant's requested resolution for the dispute.

16. In all 4 letters to the applicant, the property manager stated that the repair costs had been deemed to be the applicant's responsibility as owner of the strata lot. It would appear that the strata decided not to make insurance claims for these incidents and therefore was not seeking reimbursement of insurance deductibles.
17. Section 116(1) of the *Strata Property Act* (SPA) allows a strata corporation to impose a lien on a strata lot for specific types of debts. A chargeback of repair costs is not a lienable charge under the SPA. In order to collect amounts that cannot form the basis of a lien against a strata lot, a strata corporation must have the authority to do so under its bylaws. Specifically, a strata corporation's bylaws must create an obligation that the owner pay or grant the strata corporation the authority to collect that amount (see *Ward v. The Owners, Strata Plan VIS 6115*, 2011 BCCA 512 at paragraphs 40 – 41). Further, a demand letter cannot create an obligation to make a payment (*Ward* at paragraph 40).
18. In *Robertson v. The Owners, Strata Plan NW 87*, 2017 BCCRT 37, a tribunal vice chair determined that a chargeback of a plumbing invoice to a strata lot owner was invalid as there was no bylaw giving the strata the authority to do so. Although not binding upon me, I find that the reasoning in *Robertson* applies to the situation before me.
19. As noted, bylaw 39(2) permits the strata to charge the amount of an insurance deductible to a strata lot owner. In my view, the strata's authority under bylaw 39(2) is confined to an insurance deductible and does not extend to repair charges. Bylaw 39(3) allows the strata to sue a strata lot owner to recover repair costs, but it does not provide for a chargeback to the strata lot account.
20. I find that, under its bylaws, the strata does not have the authority to charge repair costs to a strata lot's account. Therefore, the chargebacks of the On Side repair invoices to the applicant's strata lot account are not permitted by the strata's bylaws and are invalid. Accordingly, the charges listed in the property manager's April 5, 2018, June 13, 2018, February 6, 2019, and June 28, 2019 letters must be removed from the applicant's strata lot account.

21. As the chargebacks are not valid, it is not necessary for me to consider whether the evidence supports the conclusion that the repair costs relate to leaks that originated inside the applicant's strata lot as required by bylaw 39(2).

## **TRIBUNAL FEES AND EXPENSES**

22. Under section 49 of the CRTA, and the tribunal rules, the tribunal generally will 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. I therefore order the strata to reimburse the applicant for tribunal fees of \$225.00. The applicant did not make a claim for dispute-related expenses.

23. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicant.

## **ORDERS**

24. I order that:

- a. the strata remove the charges listed in the property manager's letters dated April 5, 2018, June 13, 2018, February 6, 2019, and June 28, 2019 from the applicant's strata lot account, and
- b. within 30 days of the date of this order, the strata pay the applicant \$225.00 as reimbursement for tribunal fees.

25. 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 an order of the BCSC.

26. 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 an order of the BCPC.

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Lynn Scrivener, Tribunal Member