



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Spier v. Walton*, 2020 BCCRT 149

B E T W E E N :

Marinus Spier and Roberta Spier

APPLICANTS

A N D :

Colleen Walton

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about damages arising from a water leak.

2. The applicants, Marinus Spier and Roberta Spier, own a strata lot (unit 406) in a strata corporation, The Owners, Strata Plan NW 883 (strata). Unit 406 is located directly below unit 506, which is owned by the respondent, Colleen Walton.
3. The applicants say that in April 2018, someone in unit 506 failed to turn off the bathroom sink faucet, which caused water to leak into unit 406. They say this water caused damage, and required extensive repairs. They seek reimbursement of a \$2,500.00 insurance deductible, plus \$521.30 for cleaning costs.
4. The respondent denies the applicants' claims. She says the faucet was shut off at all relevant times. The respondent says she was not negligent, so under common law and the strata's bylaws she is not liable for the insurance deductible or other costs.
5. The strata corporation is not a party to this dispute.
6. The applicants are represented by Marinus Spier in this dispute, and the respondent is self-represented.
7. For the reasons set out below, I find that the respondent is not liable for any of the applicants' expenses arising from the April 2018 water leak.

JURISDICTION AND PROCEDURE

8. 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.
9. 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.

10. 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.
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, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

Preliminary Issue – Strata Insurance Deductible

12. In their submissions, the applicants say the respondent should also pay the strata's \$5,000 insurance deductible. That issue was not raised in the Dispute Notice, and the strata is not a party to this dispute. For those reasons, I have not addressed the respondent's liability to the strata in this decision.

ISSUES

13. The issues in this dispute are:
 - a. What caused the water leak into unit 406?
 - b. Is the respondent liable for the applicants' insurance deductible and cleaning costs arising from that leak?

EVIDENCE AND ANALYSIS

14. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding like this one, the applicant must prove their claims on a balance of probabilities.

15. The evidence shows that water leaked into unit 406 around April 23, 2018. The strata hired Phoenix Restorations (Phoenix) to perform the initial cleanup. Phoenix's report includes photos of the affected areas in unit 406, and documents the water damage. The applicants say, and I accept, that they had to vacate their home for about 22 days during the repairs, in part due to required lead and asbestos abatement, as well as construction delays.
16. The majority of the applicants' repair and relocation costs were covered by their insurance. In this dispute, the applicants seek reimbursement of the \$2,500.00 insurance deductible, plus \$521.30 in post-construction cleaning costs they incurred before moving back into their strata lot.

Cause of Leak

17. For the following reasons, I find the leak was caused by a leaking faucet in the bathroom of unit 506.
18. The strata hired Keith Plumbing & Heating Co. Ltd. (Keith) to investigate the leak at the time it occurred.
19. The evidence indicates that Keith has subsequently been renamed or acquired by a new company, Modern Niagara Building Services (Modern Niagara). Some later documents bear the Modern Niagara name and logo. For convenience, and since the status of Keith is not in dispute, in this decision I refer to all documents from Modern Niagara and Keith as "Keith".
20. Keith's April 23, 2018 service report says that there was water "from units above" coming into the pharmacy occupying the ground floor commercial strata lot. The report further states as follows:

After a thorough leak investigation tracked down the source to be coming from unit 506 bathroom lav faucet not sealing correctly causing water to dribble down the body and onto the counter and making its way down five stories into the pharmacy.

21. Keith's technician recommended the installation of a new "single hole lav faucet".
22. Keith's May 28, 2018 invoice is consistent with its April 23, 2018 report. The invoice says that technician ML thoroughly investigated the leak on April 23, 2018, and found out that the source was the unit 506 lavatory faucet. The report says:

The faucet was not sealed correctly hence causing the water to dribble down the body and onto the counter, making its way down five floors to the pharmacy.
23. This information from the invoice is repeated in a September 2019 report Keith sent the strata. The September 2019 report says Keith's technician installed a new single hole faucet on April 27, 2018.
24. I place significant weight on these reports from Keith, as they set out the technician's specific and reasoned explanation about the source of the leak based on firsthand observation and documentation from the time the leak was active.
25. Based on Keith's reports, I accept that the source of the water ingress into unit 406 was the leaking bathroom faucet in unit 506. While the applicants assert that someone in unit 506 left the faucet running, I find this is speculative, and not supported by any evidence. I am more persuaded by the specific explanation set out in the Keith reports.
26. I note that Phoenix's reports say the cause of the leak was a "burst water pipe" in unit 506. However, I place little weight on that evidence, because the Phoenix reports also say the technician was unable to access unit 506. This means that the Phoenix technician did not actually observe a burst pipe. There is also no subsequent evidence confirming that there was a broken pipe, or that any pipe was repaired. For these reasons, I prefer the evidence about causation of the leak set out in the Keith reports, and rely on it.
27. I therefore conclude that the source of the water entering unit 406 was a leaking bathroom faucet in unit 506.

Responsibility for Leak

28. In their submissions to the tribunal, the applicants say that since the leaked water came from the bathroom tap in unit 506, the respondent should reimburse them for their insurance deductible and cleaning costs.
29. I find the respondent is not responsible for these costs, for the following reasons.
30. The *Strata Property Act* (SPA) and the strata's bylaws do not contain provisions that specifically address water damage and repair costs between strata lot owners. Bylaw 2(1) states that an owner must repair and maintain their strata lot, except for repair and maintenance that is the responsibility to the strata corporation. There is no suggestion in this dispute that the claimed costs are the strata's responsibility.
31. The applicants say that respondent is liable if she is found responsible for the leak, regardless of whether she is negligent. I disagree. Based on the relevant law, and the lack of any bylaw to the contrary, I find that in order to succeed in their claim the applicants must prove the respondent was negligent (see for example *Averin et al v. Ball*, 2019 BCCRT 608).
32. In order to prove negligence, the applicants must prove that the respondent owed them a duty of care, that she breached the standard of care, and the applicants' damage was caused by the respondent's breach of the standard of care (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
33. I accept that as a neighbour and fellow strata lot owner, the respondent owed the applicants a duty of care. The applicable standard of care is reasonableness (see *Burris v. Stone et al*, 2019 BCCRT 886 at paragraph 28).
34. I find the evidence before me does not establish that the respondent breached the standard of care by acting unreasonably in the circumstances. The standard of care expected of the respondent is not perfection. The standard of reasonableness is based on what would be expected of an ordinary, reasonable, and prudent person in similar circumstances.

35. I find the facts of this dispute are similar to those in *Averin*. In that case, water damage in a lower strata lot was caused by a leaking dishwasher hose and a leaking faucet in the strata lot above. The Vice Chair found the upstairs strata lot owner was not negligent and therefore not liable, even though the water damage was caused by leaks in their strata lot. The Vice Chair based this conclusion on the fact that there was no evidence the respondent was aware of the leaks before the applicant reported water ingress, no evidence the respondent did anything to cause the leaks, and no evidence the respondent ought to have been aware of the leaks. The Vice Chair also found the respondent's steps after the leaks were reasonable.
36. While the reasoning in *Averin* is not binding on me, I find it persuasive and rely on it, particularly given the similar facts in that dispute. There is no indication in the evidence before me that the respondent was aware, or ought to have been aware, that the faucet was leaking, or that she did anything to cause the leak. The Keith invoice refers to the water as a "dribble", which means there was not a large quantity of water at any one time. I find the fact that the bathroom counter may have been wet does not, in itself, mean the respondent ought to have taken steps to investigate or repair the faucet. I also find there is no evidence the respondent acted unreasonably after the leak was discovered, particularly since the faucet was replaced within 4 days of the discovered leak.
37. For these reasons, I find the respondent did not breach the standard of care, and is therefore not negligent. Since she was not negligent, and there is no bylaw that makes her liable for the repair costs, I find the respondent is not obligated to pay the applicants' insurance deductible or cleaning expenses.
38. I therefore dismiss the applicants' claims, and this dispute.

TRIBUNAL FEES AND EXPENSES

39. The applicants were unsuccessful in this dispute. In accordance with the CRTA and the tribunal's rules I find they are not entitled to reimbursement of tribunal fees. Neither party claimed dispute-related expenses, so none are ordered.

ORDER

40. I order that the applicants' claims, and this dispute, are dismissed.

Kate Campbell, Vice Chair