



# Civil Resolution Tribunal

Date Issued: April 15, 2020

File: ST-2019-007768

Type: Strata

Civil Resolution Tribunal

Indexed as: *Li v. The Owners, Strata Plan EPS1069*, 2020 BCCRT 403

BETWEEN:

MING LI

**APPLICANT**

AND:

The Owners, Strata Plan EPS1069 and  
Section 2 of The Owners, Strata Plan EPS1069

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

## INTRODUCTION

1. This dispute is about record retention and boiler repair and maintenance in a sectioned strata corporation.
2. The applicant, Ming Li, is an owner of a strata lot in Section 2 of The Owners, Strata Plan EPS 1069, which the parties refer to as the Office Section. The applicant says

that the Office Section and The Owners, Strata Plan EPS 1069 (strata) have failed to comply with the *Strata Property Act* (SPA) and provide him with records and documents he requested about the failure of 2 boilers and their repair. He also says that the Office Section and the strata were negligent in maintaining the boilers and caused the loss of the warranty on the boilers. The applicant asks for orders that he be provided with his requested documents, and that the respondents pay him \$20,000 for the repair of the boilers and \$100,000 for warranty-related costs or the replacement of the boilers.

3. The Office Section says that the applicant has been provided with documents he requested, denies that it was negligent, and denies that it is responsible for the damages claimed by the applicant. The strata denies that it failed to provide the applicant with requested documents, was negligent, or is responsible for the damages claimed by the applicant.
4. The applicant is self-represented. The strata is represented by a member of the strata council and the Office Section is represented by a member of its executive council.

## **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 the parties and witnesses questions and inform itself in any 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.
9. Tribunal documents incorrectly show the name of the Office Section as Strata Corporation 2 of Strata Plan EPS 1069. Based on section 193(4) of the SPA and the strata's bylaws, the correct legal name of the Office Section is Section 2 of The Owners, Strata Plan EPS 1069. I have exercised my discretion under section 61 of the CRTA to direct the use of the Office Section's correct legal name in these proceedings. Accordingly, I have amended the style of cause above.

## **ISSUES**

10. The issues in this dispute are:
  - a. whether the Office Section or strata should be ordered to provide the applicant with copies of documents about the 2017 boiler issues to the applicant,
  - b. whether the respondents were negligent in repairing boilers 1 and 2 such that they are responsible for the \$20,000 restoration cost, and
  - c. whether the executives of the Office Section were negligent in repairing boilers 1 and 2 such that they are responsible for the \$100,000 cost of obtaining new warranty coverage or the replacement cost of the boilers.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

11. The strata has 3 separate sections. Its bylaws set out the repair and maintenance responsibilities of each section at bylaw 13. Bylaw 13.1 states that each section

shall repair and maintain the fixtures, fittings, other apparatus and equipment used in connection with the limited common property of the section, facilities common to the section, or other assets of the section.

12. The strata has a contract with ESC Automation (ESC) for building maintenance and annual systems inspections. In September of 2017, a technician from ESC advised the strata that boilers 1 and 2 needed to be fixed. As the boilers could not be operated until the repairs were completed due to safety concerns, the strata lots in the Office Section had no heat. ESC provided a quote of \$6,930 to perform the necessary repairs.
13. A disagreement developed about whether the strata or the Office Section were responsible for the boilers' repair and maintenance costs. This disagreement and a decision by the Office Section to seek other quotes delayed the start of work to fix the boilers. The Office Section retained a different company to perform the repairs, but further issues were discovered with the boilers that required more extensive repairs and additional parts. These issues caused further delays. As a result, the strata lots in the Office Section did not have heat for several weeks. The repairs also cost more than expected.
14. In *Hou v. The Owners, Strata Plan EPS 1069*, 2018 BCCRT 855, another tribunal member determined that boilers 1 and 2 serve only the Office Section and that the section, not the strata, is responsible for their repair and maintenance. The tribunal member determined that the \$27,606.82 cost of the boiler repairs was appropriately charged to the Office Section under bylaw 13.

### ***Record Retention and Requests***

15. The applicant says that he requested records about the boilers so he could understand why the repairs were delayed for more than a month. He says that he was not provided with the records he requested. The applicant asks for an order that the respondents provide him with the service contracts, "service notification", "council decision discussion" and all email communication related to the breakdown and loss of heating in September of 2017.

16. The applicant also says that the document disclosure should not be limited to what is set out in the SPA. The applicant's position is that all records that have a direct or indirect effect on a strata's finances should be available to owners so that they can verify that the strata council or executive "have done a prudent job" and have not acted in a reckless or corrupt manner. The applicant's view is that the SPA sets out only a "minimum standard" about what access should be given to owners.
17. The Office Section says that the applicant has been provided with the invoices pertaining to the repairs of boilers 1 and 2, and that he is aware of all the circumstances surrounding the repairs as he was a council member at the time. The Office Section also says that the applicant is not entitled to correspondence between council members. The strata admits that it did not provide the applicant with a copy of the contract with ESC, but states that it otherwise complied with its obligations.
18. Section 35 of the SPA sets out the scope of records that a strata must prepare and retain. The retention requirements apply to, among other things, contracts to which the strata corporation is a party, correspondence sent or received by the strata corporation, and reports respecting repair and maintenance of major items. The *Strata Property Regulation* sets out at section 4.1 the length of time for which each type of document must be retained.
19. Section 36 of the SPA states that the strata corporation must provide copies of requested documents to an owner who requests them within 2 weeks. The SPA does not excuse a strata corporation from the obligation to provide copies of documents if the requesting owner may have had access to the information due to membership on a strata council.
20. The applicant argues that the strata and Office Section have an obligation to disclose many more documents than are listed in the SPA. The British Columbia Supreme Court stated in *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610 at paragraph 8 that the purpose of the SPA is to "ensure that members of the strata corporation are informed of the decisions taken and the money spent on their

behalf". The SPA sets out specific types of documents that must be retained and disclosed rather than a blanket obligation. I find that the SPA does not create an obligation that a strata retain or produce records that are not listed in section 35. Further, the British Columbia Supreme Court has held that the tribunal does not have the jurisdiction to expand document production obligations beyond those set out in section 35 of the SPA (see *The Owners, Strata Plan NWS 1018 v. Hamilton*, 2019 BCSC 863 at paragraph 25).

21. In this case, the applicant requested copies of service contracts and all email communication related to the boiler breakdown and loss of heating in September of 2017. I am satisfied that some of the records requested by the applicant are not included in the scope of section 35.
22. At paragraph 21 of *Kayne*, the Court distinguished between a strata corporation and members of a strata council when discussing the obligation to disclose correspondence. In terms of council correspondence, the Court said that the disclosure obligation applies to "correspondence by an officer that is authorized by council to be sent on behalf of council or by an officer who has been delegated by council the power to deal with a matter". At paragraph 22, the Court said that the SPA did not intend to include all correspondence between council members that may or may not relate to the business of the council. I find that the applicant's request for "all email communication" is outside this scope.
23. Some of the documents requested by the applicant were within the scope of section 35. Based on the correspondence in evidence, it appears that the applicant's document requests caused confusion arising from the fact that the strata and Office Section had different property managers. There was some uncertainty about which property manager was responsible for retaining which records, and this was compounded by the fact that there had been a recent change in property managers. It is not clear whether the previous property manager returned its records as required by section 37 of the SPA.

24. Although it is apparent that the applicant found the situation to be frustrating, I find that the property managers were attempting to provide the applicant with records he was entitled to under section 35 of the SPA. His requests were escalated up to the executive level of one property management firm and I find that they were not ignored. However, although the applicant did receive some of the requested records, he did not receive all of them until they were disclosed as evidence in this dispute. It is not clear whether this was the result of inadvertence or a belief that the applicant's requests had been satisfied already.
25. I accept that the applicant did not receive copies of all of the documents he requested within the 2-week time period set out in section 36 of the SPA, and that he did not receive all of these documents until they were provided in evidence for this dispute. However, I find that the applicant has not established that there are additional documents within the scope of section 35 of the SPA that have yet to be disclosed. Accordingly, it is not necessary for me to make an order for document production. I would point out that any future document requests must be dealt with by the strata and the Office Section in compliance with the time frame set out in section 36 of the SPA.

### ***Boiler Repairs***

26. The applicant says that the boiler repairs should have been done right away. His position is that the strata and Office Section failed to repair the boilers in a timely manner due to negligence. In the applicant's view, the "responsible parties" should pay the costs of restoration, which he says are \$20,000. The applicant suggests that the strata council and Office Section executive members are responsible, but also says that if the boilers were not properly maintained by ESC, then it should bear the cost of repairs. The individual council and executive members and ESC are not parties to this dispute and I cannot make any orders against them. Accordingly, I will confine my analysis to the named respondents.
27. The Office Section admits that it is responsible for the repair and maintenance of boilers 1 and 2. It states that it retained a proper HVAC contractor to carry out the

repairs on the boilers 1 and 2, and says that the applicant's allegation of negligence is speculative, without merit, and not supported by the evidence. The strata says it met all of its duties and denies that it failed to service or repair the boilers.

28. In order to establish negligence, the applicant must show that each respondent owed him a duty of care, that the respondents breached the standard of care, and that he sustained damage as a result of that breach (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27). The standard of care that applies to a strata corporation with respect to repairs and maintenance is reasonableness (see *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784).
29. As noted above, the other tribunal member determined that boilers 1 and 2 service only the strata lots in the Office Section or that the Office Section is responsible for their repair and maintenance. Based on the evidence before me, I agree with this finding. There is no indication that the strata made any decisions about the repair of the boilers, and I find that the strata was not negligent.
30. The applicant's position seems to be that the Office Section was negligent because the boiler problems discovered in September were not fixed until November, and at a much higher cost than was contemplated by ESC's quote. I do not agree.
31. This is not a situation where the Office Section was aware of a problem and chose not to act or deliberately delayed repairs. Although there were some delays initially due to the disagreement about responsibility, the Office Section took action by considering the quote from ESC and deciding to get additional repair estimates. The email correspondence in the evidence shows that a member of the Office Section executive was in frequent contact with the contractor asking for updates and the estimated time for completion of the work. The delays were caused by the discovery of additional problems, an increased scope of work, and backordered parts. I find that the expanded scope of work was responsible for the increased costs rather than any action or inaction on the part of the Office Section.
32. Even if there were issues with the contractor's work (which I find is not proven), this would not establish negligence on the part of the Office Section. When a strata



corporation retains a professional to perform its repair obligations and reasonably follows that professional's advice, the strata corporation has fulfilled its statutory duty, even if that professional was wrong (see, for example, *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74 and *Joshi v. The Owners, Strata Plan NW 1833*, 2019 BCCRT 39).

33. I find that the applicant has not proven that the contractor selected by the Office Section was not qualified or was somehow inappropriate for the job. Accordingly, the Office Section was entitled to rely on its professional advice. I find that the Office Section met its standard of care by acting reasonably in dealing with the boiler repairs.
34. I acknowledge that the applicant found the situation frustrating and the lack of heat in the strata lot to be uncomfortable. However, I find that the evidence does not support the conclusion that the Office Section was negligent, and I dismiss this claim.

### ***Boiler Warranty and Replacement Costs***

35. The applicant says the repair of the boilers using non-OEM (original equipment manufacturer) parts voided the warranty on the boilers. He says that the Office Section made bad decisions about the boilers "intentionally or because of negligence", and should be responsible for the additional costs resulting from the loss of the warranty, the cost of obtaining a new warranty, or the costs of replacing the boilers. The applicant says that the \$40,000 line item for HVAC costs in the Office Section's budget may be the result of losing the warranty on the boilers. He also says that the boiler replacement costs could be as high as \$60,000. Taken together, the applicant says the extra warranty costs and replacement costs could be up to \$100,000.
36. The Office Section says it retained a proper contractor to carry out the HVAC repairs and that the applicant has not proven that the use of the non-OEM parts voided the warranty. Even if it did, the Office Section says it relied upon its

contractor's advice to carry out the repairs. The strata denies any negligence around the boiler repairs.

37. Given my finding above that the strata was not involved in the decisions about repairing the boiler, I conclude that the strata was not negligent in the context of the warranty or replacement costs.
38. The notion of the contractor's work voiding the boilers' warranties appears to have come from ESC. In a March 9, 2019 email message to the applicant, ESC stated that the other contractor's use of the non-OEM parts on the boilers' doors voided the warranties. ESC recommended that the doors be replaced and insulation be installed. Documentation from the boiler manufacturer confirms that the boilers have a warranty, but does not state that the use of other manufacturers' parts will void the warranty (either in whole or in part). It is not clear to me where ESC got its information about the boilers' warranties. I find that, based on the evidence before me, the applicant has not proven that the warranty is voided.
39. Even if the warranty was voided, I find that the applicant has not proven that there will be any additional costs for the Office Section. I also find that he has not established that the \$40,000 line item in the budget for HVAC issues has any relationship to the 2017 repairs. I also find that the applicant has not proven that the work done on the boilers will shorten their life spans. I note that ESC's March 9, 2019 email message stated that the boilers still had 10 to 15 years of expected life span left. Finally, I find that the evidence before me does not support the conclusion that the work done to the boilers in 2017 will necessitate their replacement either immediately or sooner than would have been the case had the work not been performed.
40. I find that it was reasonable for the Office Section to rely on the advice from the contractor about the boiler repairs. I find that the Office Section did not intentionally make bad decisions and was not negligent in directing the boiler repairs. Accordingly, I dismiss this claim.

## **TRIBUNAL FEES AND EXPENSES**

41. 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. Although the applicant was not successful, I find that it was necessary for him to file this dispute due to the respondents' initial failure to provide him with all the documents he requested. I therefore order the respondents to each reimburse the applicant for half of the \$225 tribunal fees he paid.
42. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicant.

## **ORDERS**

43. I order that:
- a. within 30 days of the date of this decision, the strata pay the applicant \$112.50 as reimbursement of tribunal fees,
  - b. within 30 days of the date of this decision, the Office Section pay the applicant \$112.50 as reimbursement of tribunal fees, and
  - c. the remainder of the applicant's claims are dismissed.

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Lynn Scrivener, Tribunal Member