



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Africh v. The Owners, Strata Plan EPS3495*, 2020 BCCRT 480

B E T W E E N :

MICHAEL AFRICH

APPLICANT

A N D :

The Owners, Strata Plan EPS3495

RESPONDENT

A N D :

ONNI 1695 MAIN STREET HOLDING CORP.

RESPONDENT BY THIRD PARTY CLAIM

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about allegedly defective exhaust ducting from a clothes dryer in a residential strata lot, and its claimed effects on the strata lot tenant.
2. The applicant, Michael Africh (tenant), rented a strata lot known as unit 311B at the respondent strata corporation, The Owners, Strata Plan EPS3495 (strata). The tenant says the clothes dryer in the strata lot did not vent properly to the outdoors because of blocked or incomplete ducting, which produced airborne allergens that affected his health. He says the strata did not adequately address the dryer venting issue, which forced him to move out of the strata lot for health reasons. The tenant claims \$20,566.80 for moving expenses, missed work, additional rent at his replacement accommodations, increased commuting expenses, and the cost of obtaining reports about the dryer venting. He also claims \$12,500 in general damages for stress, illness, and loss of quality of life.
3. The strata says the tenant does not have standing to bring this claim because the strata only owes a duty to maintain the strata's common property ducting to the strata lot owner, not the tenant. The strata also says the tenant and others initially mis-identified the location of the strata lot's dryer duct, which has now been verified to work correctly, and in any event has not resulted in any tenant health issues or damages. The strata denies the tenant's claims.
4. The strata filed a third party claim against the developer of the strata property, ONNI 1695 MAIN STREET HOLDING CORP. (Onni). The strata and Onni agree that the strata lot's dryer ducts are operating correctly, and that the tenant suffered no duct-related injuries or damages. However, the strata says that if the tribunal finds it liable to the tenant for any dryer duct-related damages, those amounts should be paid by Onni for improper construction of the ducts. Onni denies the strata's claim.
5. The tenant is self-represented in this dispute. The strata is represented by a strata council member. Onni is represented by an employee.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.
9. 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.
10. The strata says the tenant does not have standing to bring his claims. I address this argument in my reasons below.

ISSUES

11. The issues in this dispute are:
 - a. Is the strata responsible for the tenant's moving-related expenses and general damages? (Tenant's claim)

- b. Must Onni reimburse the strata for any moving-related expenses and general damages the strata owes the tenant? (Strata's third party claim)

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the tenant must prove his claims on a balance of probabilities. Similarly, the strata must prove its third party claim to the same standard. I have read all of the submitted evidence, but refer only to the evidence I find relevant to provide context for my decision.

Is the strata responsible for the tenant's moving-related expenses and general damages? (Tenant's claim)

13. The parties did not directly identify which strata lot the tenant rented, but I infer from the evidence that it was strata lot 169. It is part of a condominium tower. The tenant says his lease began in April 2018. Although there is no lease agreement in evidence, the parties do not deny that the tenant leased the strata lot, or that his move-in date was in April 2018.
14. The tenant says he developed recurring respiratory illnesses shortly after moving in, resulting in "constant" visits to his doctor, as well as an allergist and an endocrinologist. The tenant submitted redacted medical chart notes of his family physicians for May 28, 2018 onward. I reviewed those notes. While the redacted notes show the tenant's physicians recorded and investigated his subjective complaints, I find they do not contain a clear diagnosis, or suggest that the reported symptoms were caused by conditions in the tenant's strata lot. The tenant did not submit any other medical records, such as reports from the allergist or endocrinologist.
15. The tenant says there were long-standing moisture issues at the strata lot, which he attributed to improper dryer venting. He also says his symptoms worsened after a May 31, 2019 duct cleaning at the strata lot. The strata hired a company to blow air through the dryer ducts from the strata lot to the outdoors, to clean them. The tenant says dust and mold were blown back into the strata lot due to blockage in the dryer

ducts. However, in the only medical examination chart notes after the May 31, 2019 cleaning that were not fully redacted, dated June 24, 2019, the tenant's physician found that the tenant was congested and looked tired, but that his tympanic membranes and pharynx were normal and his chest was clear. Another examination finding from that visit was redacted. The physician's assessment was "sinusitis?" without mentioning a potential cause, and she provided prescriptions for medications.

16. After the May 31, 2019 cleaning, the tenant complained to the strata, through the owner of the strata lot, about the suspected blocked dryer ducts. The duct cleaning company and other building engineering companies were engaged by both the strata and the tenant to investigate the duct work. Some of these companies initially suspected, incorrectly, that the dryer ducts might vent through exhaust ports in the soffits above the strata lot balcony, or in the exterior wall of the building. They found that the strata lot's dryer was not venting through those ports. After discussing the dryer vent issue together with the owner at a September 2019 strata council meeting, the tenant says he moved out of the strata lot for health reasons in September 2019.
17. Onni later provided Heating, Ventilation, and Air Conditioning (HVAC) system plans for the building. The strata and Onni say the plans show the dryer in the strata lot vents through ducting built into the balcony floor, as do the dryers in several adjacent strata lots. I find the strata lot dryer ducts exit the building near the front edge of the balcony floor, and were designed to be concealed. Based on witness statements, I find several people, including a strata representative, Onni employees, and a duct cleaning company employee, verified that the strata lot balcony ducts were connected to the strata lot dryer exhaust, and were correctly venting air from the dryer.
18. Turning to the tenant's claims, he says the strata has a duty to repair and maintain common property, under section 72 of the *Strata Property Act* (SPA). None of the parties deny that the dryer duct work is common property. The tenant acknowledges that the strata does not have a direct obligation to repair or maintain common

property upon a tenant's request. But he argues the strata must repair or maintain common property within a reasonable amount of time, and that it did not do so.

19. SPA section 72 says that the strata corporation must repair and maintain common property and common assets. Section 3 provides additional detail on this obligation, stating that "the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation **for the benefit of the owners**" (my emphasis).
20. I find the section 72 obligation to repair and maintain common property is a duty to owners, not to tenants. This means the strata cannot be liable to the tenant for a breach of a section 72 duty, as there is no such duty to the tenant. While the tenant may also be alleging that the strata was negligent in investigating the dryer duct issue, on the evidence before me I find such a claim does not arise under the SPA, or within the tribunal's strata jurisdiction set out in CRTA section 121(1).
21. The tenant also suggests that the strata's delays, including delays in providing HVAC plans and previous dryer duct cleaning records to the strata lot owner, were unfair to him. But I find the strata cannot not liable for delays in fulfilling an obligation it does not owe the tenant. Further, I note that under SPA section 36, the strata is not required to make HVAC plans and previous duct cleaning records available to the tenant. Also, I find the strata lot owner requested records from the strata when prompted by the tenant, but the tenant did not request any records directly from the strata.
22. In considering whether the strata's actions were significantly unfair to the tenant, the courts have interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith and/or unjust or inequitable (see *Reid v. Strata Plan LMS 2503*, 2003 BCCA 128). In *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, the BC Court of Appeal established a test for significant unfairness, which was restated in *The Owners, Strata Plan LMS 1721 v. Watson*, 2018 BCSC 164 at paragraph 28:

- a. What is or was the expectation of the affected owner or tenant?

- b. Was that expectation on the part of the owner or tenant objectively reasonable?
 - c. If so, was that expectation violated by an action that was significantly unfair?
- 23. Here, the tenant expected the strata to inspect and repair the common property dryer ducts in a timely fashion. I find this was not a reasonable expectation, given that the strata owed the tenant no duty to repair or maintain the ducts. Further, the strata did not violate this expectation, because I find it investigated the issue without excessive delay and confirmed that there was nothing wrong with the strata lot's dryer ducts. In addition, the strata owed the tenant no duty to disclose HVAC plans or previous duct cleaning records, and the tenant did not directly request them from the strata, so I find it was not reasonable for the tenant to expect any disclosure of those records.
- 24. On the evidence before me, I find the strata did not owe the tenant a duty to repair and maintain common property, and did not treat the tenant significantly unfairly. As a result, I dismiss the tenant's claims for moving-related expenses, and his claims of general damages for stress, illness, and loss of quality of life.
- 25. Even if I had found the strata owed the tenant a duty to repair and maintain the dryer ducts in a timely fashion, I still would have dismissed the tenant's claims because I find he has not proven them. Above, I found the dryer ducts were connected to the strata lot dryer and were venting air as designed. Photographic evidence shows dust, lint, and water marks on the tile floor of the closet where the strata lot's combined washer/dryer was located, as well as dust on the walls of the closet, on the back of the dryer, and on an air filter. However, there is no evidence of mold in strata lot, and the evidence does not show that any unusual or excessive respiratory irritants were present. Further, the redacted and incomplete medical records provided by the tenant do not conclusively diagnose a medical condition, and in any event do not suggest a link between the tenant's reported symptoms and the conditions in the strata lot.

26. Overall, while I acknowledge the tenant reported respiratory symptoms, the evidence does not demonstrate that something about the strata lot caused those symptoms, or that the symptoms were severe enough to force him to move out.
27. Finally, even if I had found the strata breached an obligation to the tenant, the tenant provided no evidence to support the damages claimed, such as receipts, other comparable rental listings, lease agreements, or other documentation. The tenant says an itemized breakdown of his costs was available, but he did not explain why he failed to provide that breakdown to the tribunal. Parties are told during the tribunal's facilitation stage to provide all relevant evidence and are referred to a list of typical types of evidence. There is no explanation for the absence of evidence of damages, which I expect the applicant should have been able to provide. Therefore, the tenant has not proven he suffered any damages.
28. I note the strata says the tenant disclosed confidential email correspondence from the negotiation and facilitation stage of this dispute, contrary to tribunal rules. Given that I dismiss the applicant's claim for other reasons, I find it is not necessary to address this argument. Also, the correspondence in question was simply a transmission of documents which were also submitted as evidence, so the disclosure appears to comply with tribunal rule 1.11(1)(c).

Must Onni reimburse the strata for any moving-related expenses and general damages the strata owes the tenant? (Strata's third party claim)

29. The strata says if the tenant's claims against the strata are dismissed, the strata's third party claim against Onni should also be dismissed.
30. I found above that the strata does not owe the tenant any of the amounts claimed. Therefore, I find Onni does not need to reimburse the strata. As a result, I dismiss the strata's third party claim against Onni.
31. I make no finding about the tribunal's jurisdiction to hear the strata's third party claim. The parties did not make arguments about the tribunal's jurisdiction to hear this claim, and given that there is nothing for Onni to reimburse, the issue is moot.

However, I observe that the strata's claim against Onni does not appear to arise under the SPA, or within the tribunal's strata jurisdiction as set out in section 121(1) of the CRTA. It might be considered a claim in negligence or contract law, but as noted I do not need to make such a determination.

TRIBUNAL FEES AND EXPENSES

32. Under section 49 of the CRTA and 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.
33. The tenant was unsuccessful in his claims against the strata, so he is not entitled to reimbursement of his tribunal fees. The strata did not pay any fees or claim any expenses in that matter. While the strata submitted a bill for legal services in this dispute, it did not claim those amounts, which the tribunal does not normally pay in any event.
34. The strata was unsuccessful in its third party claim against Onni, so the strata is not entitled to reimbursement of the tribunal fees it paid for that claim. Onni did not pay any fees or claim any expenses.
35. As a result, I make no order for reimbursement of tribunal fees and expenses.
36. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

ORDER

37. I dismiss the tenant's claims against the strata, the strata's third party claim against Onni, and this dispute.

Chad McCarthy, Tribunal Member