



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Taub v. The Owners, Strata Plan NW 3249*, 2020 BCCRT 628

B E T W E E N :

ALEJANDRO A. TAUB

APPLICANT

A N D :

The Owners, Strata Plan NW 3249

RESPONDENT

A N D :

ALEJANDRO A. TAUB

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a chargeback for replacing fire-detection equipment in a strata lot. Alejandro A. Taub (owner) owns the strata lot in the strata corporation, The Owners, Strata Plan NW 3249 (strata). The owner filed the initial claim in this dispute and the strata filed a counterclaim.
2. In late December 2017, the owner's tenant, CN, set off fire alarms in the strata lot and throughout the building. The strata charged the owner's strata lot account \$632.89 for a contractor, CFPL, to attend and replace a smoke alarm and heat detector in the strata lot. The owner says the strata should reverse the charge because the equipment was defective through no fault of the owner or CN. The owner says the strata is responsible for making sure the fire-detection equipment is in working order.
3. The strata disagrees and says the owner is responsible for the condition of fire-detection equipment in the strata lot, including the cost of replacement or repairs. The strata says CN needlessly increased the contractor's costs by setting off a building-wide alarm and initially denying the contractor access to the strata lot. The strata seeks payment of the \$632.89 charged back to the owner's strata lot account in its counterclaim.
4. The owner represents himself. A strata council member, LR, represents the strata.

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. The strata provided its evidence to the tribunal late. As the owner did not object and had the opportunity to provide submissions, I have considered the strata's evidence.

ISSUES

10. The issues in this dispute are as follows:
 - a. Who is responsible for maintaining the fire-detection equipment in the strata lot?
 - b. Was the strata entitled to charge back \$632.89 of the contractor's December 2017 invoices to the owner?
 - c. Must the owner reimburse the strata \$632.89 for the contractor's December 2017 invoices?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the owner and the strata must each prove their claims on a balance of probabilities. I have reviewed all the evidence and submissions and only reference them as necessary to give context to my decision.

12. For the reasons set out below, I find this dispute is essentially about interpreting and applying the strata's chargeback bylaw. In summary, I find that the bylaw requires the owner or his tenant, CN, to be negligent for the strata to charge back repairs. I also find that the evidence supports the conclusion that neither the owner nor CN were negligent, and as a result the strata must reverse the chargeback at issue.
13. I will begin with the undisputed facts. On the evening of December 27, 2017, CN was cooking in the strata lot. The cooking set off the strata lot's smoke alarm. CN tried to silence it and inadvertently set off a building-wide alarm. The parties dispute how CN set off the building-wide alarm and I will discuss this in greater detail below.
14. As a result of the alarm, the fire-rescue department and the strata's contractor for fire prevention services, CFPL (contractor), sent personnel. The contractor turned off the building alarms. Although not explicitly stated in the evidence, I infer it also turned off the strata lot's smoke alarm. The contractor then replaced the 2 smoke alarms in the hallway because they were faulty.
15. After finishing this work, the contractor determined that it required access to the strata lot to replace its heat detector and reset the strata lot's fire-detection equipment. The contractor was unable to gain access to the strata lot as by then, CN had left for the evening. The contractor notified the strata that the building's fire-detection system would be impaired until the contractor could complete its work. CN provided the contractor access the next day to finish repairs.
16. The contractor invoiced the strata \$712.95 on December 27, 2018, for replacing the 2 hallway smoke alarms and making an after-hours service call. The contractor invoiced the strata \$266.70 the next day for replacing both the heat detector and smoke alarm in the strata lot as both were found faulty. The strata originally charged back the 2 invoices' total of \$979.65 to the owner's strata lot, but subsequently reduced the amount by \$346.75. This latter amount was the contractor's estimate for the cost of replacing the 2 hallway smoke detectors. The chargeback at issue is therefore \$632.89.

Issue #1. Who is responsible for maintaining the fire-detection equipment in the strata lot?

17. The parties raised the issue of who is normally responsible for the repair and maintenance of the fire-detection equipment. The owner says the strata is responsible because it hired the contractor that installed the fire detection equipment. The strata says it initially paid for repair and maintenance of the fire detection equipment as the building was at risk.
18. The strata's bylaws are registered in the Land Title Office. Under section 72(1) of the *Strata Property Act* (SPA) and bylaw 11.1, the strata must maintain common property and common assets. Bylaw 3.1 says an owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the strata's responsibility under the bylaws. The bylaws do not specifically say who is responsible for repairing and maintaining fire detection devices.
19. I find that determining responsibility for the fire-detection equipment depends on whether it is common property or part of the strata lot. However, the parties did not directly address this issue in their evidence or submissions. In any event, the parties are not claiming for ongoing maintenance costs of fire-detection equipment in the strata lot. The specific claim before me is for the cost of the contractor's invoices that the strata has already paid for and charged back to the owner's strata lot.
20. Given this, I find the real issue between the parties is whether the strata appropriately charged back the contractor's December 2017 service calls. I will consider the chargebacks below. I decline to make any findings on which party should normally pay for the repair and maintenance of the fire-detection equipment in the strata lot.

Issue #2. Was the strata entitled to charge back \$632.89 of the contractor's December 2017 invoices to the owner?

21. For the following reasons, I find the strata inappropriately charged the owner for the contractor's December 2017 service calls under the bylaws. I find that the charges should be reversed.

22. A strata corporation is not entitled to charge back costs it has incurred to an owner without an enforceable bylaw or rule that creates the debt. See *Shen v. The Owners, Strata Plan LMS 1005*, 2020 BCCRT 63, at paragraph 28, citing *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512 and *Rintoul et al v. The Owners, Strata Plan KAS 2428*, 2019 BCCRT 1007. Although tribunal decisions are not binding, I find these decisions persuasive.
23. The strata says it charged back the cost of the contractor's invoices under its bylaws. It did not identify which bylaw in its submissions or evidence. Having reviewed the strata's bylaws, I find that the strata proceeded under bylaw 4.4. Bylaw 4.4 says in part that an owner shall indemnify the strata for the cost of any maintenance, repair or replacement rendered necessary to common property, limited common property, common assets or to any strata lot by an owner's act, omission, negligence or carelessness, or that of an owner's tenants.
24. I do not find it necessary to determine whether the fire-detection equipment in the strata lot is common property or part of the strata lot. Under bylaw 4.4, the strata can charge back repairs regardless of this distinction.
25. Several tribunal decisions have found that the phrase "owner's act, omission, negligence or carelessness" must be read collectively and import a standard of negligence. See, for example, *The Owners, Strata Plan BCS 2174 v. Liu*, 2020 BCCRT 366 and *Hu v. The Owners, Strata Plan BCS 3507*, 2020 BCCRT 74. Although not binding, I find the reasoning in these decisions applicable to this dispute. I find that bylaw 4.4 requires the owner or the owner's tenant to be negligent before any repair costs may be charged back to the owner.
26. To prove negligence, the strata must show that the owner or CN owed it a duty of care, the owner or CN breached the standard of care, the strata sustained damage, and the damage was caused by the owner's or CN's breach: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 33.
27. I am satisfied that the owner and CN each owed the strata a duty of care in their roles as owner and occupant of a strata lot of the strata. The main question is

whether they breached the standard of care, which is reasonableness. See *Burris v. Stone et al*, 2019 BCCRT 886 at paragraph 28, which I find applicable.

28. Although the strata did not explicitly argue that CN breached the standard of care, it provided relevant submissions. It says CN carelessly allowed smoke from the strata lot to enter the hallway and set off the smoke alarms, which in turn triggered the building alarm. The strata also says CN should have provided the contractor access to the strata lot on December 27, 2017.
29. I find that neither the owner or CN breached the standard of care. I will first consider the hallway smoke. According to the contractor's December 27, 2017 work order, CN triggered the building-wide alarm after CN opened his door and allowed smoke to exit the strata lot into the building's common hallways. The strata also provided a December 27, 2018 note (which I find not misdated and made coincidentally a year later), in which an unnamed council member reiterates this is what happened.
30. The owner disagrees and relies on a February 26, 2018 letter from CN to the owner. In the letter, CN denied he set off the building-wide alarm by opening his door. He wrote that the strata lot's fire alarm went off when he had just started cooking. He says there was little smoke at the time. He pushed the silence button on the fire alarm, but this did nothing. He then tried to turn it off by trying the strata lot's heat detector, but this set off the building-wide alarms. He only opened his door after this.
31. I find CN's February 2018 letter is the best evidence on what he did. The contractor's invoice shows that the strata lot had 2 devices – the smoke alarm and a heat detector. In the note, the ex-council member wrote that the strata lot's heat detector could trigger the "main alarm", which I conclude refers to the building-wide alarms. Based on the letter, I find CN's account is both plausible and likely accurate. I conclude that CN did not negligently allow smoke from the strata lot to set off the hallway smoke alarms.
32. I acknowledge the contractor's work order says that hallway smoke set off the building alarm. However, the contractor wrote that its comments were based on

what the fire department advised, rather than its own investigations. Although some records from the fire department are before me, there is no evidence that confirms the fire department found that hallway smoke triggered the building alarm. I therefore place greater weight on CN's February 2018 letter. I also prefer the letter over the ex-council member's note, as the note provides little detail and its writer is not named.

33. I also note that the contractor found both hallway smoke alarms were deficient and had to be replaced, with few details provided. Given this, I find it unclear on the evidence if the hallway smoke could have triggered the hallway smoke alarms, thereby setting off the building alarm. I find this uncertainty benefits the owner's position because the strata must show either the owner or CN was negligent to prove its claim.
34. The strata did not argue whether it was negligent for CN to touch the heat detector to try to turn off the smoke alarm. While under normal circumstances I would consider such an act unreasonable, CN explained that he had tried the smoke alarm's silence button without success. Consistent with this, the contractor found that the strata lot smoke alarm was "faulty" and had to be replaced on December 28, 2017. With the strata's smoke alarm sounding, I find that CN would have been under pressure to try something at the time. Given these unique circumstances, and that the strata did not argue this was negligence, I am satisfied CN acted reasonably.
35. The parties also provided differing submissions on whether CN unreasonably denied the contractor access to his strata lot. CN says he phoned the strata's representative, LR, and was given permission to leave for the evening. LR denies this.
36. Ultimately, I find CN acted reasonably in providing the contractor access the next day. The contractor's invoices indicate it realized it had to do work in the strata lot only after it finished replacing the hallway alarms. CN's letter shows that by then he had left for the evening. The strata did not provide any evidence or submissions to

explain why CN knew or should have known to stay or otherwise provide access later that evening.

37. The strata also says the owner and CN were responsible for making sure the smoke alarm and heat detector were in working order. However, the evidence and submissions before me indicate that the parties relied on the strata's contractors to inspect such equipment and maintain it. There is no evidence that the owner or CN knew or ought to have known the devices were defective. I do not find the owner or CN unreasonably relied on such inspections.

38. In summary, I find the strata should reverse the \$632.89 chargeback for the contractor's December 2017 service calls on the owner's strata lot.

Issue #3. Must the owner reimburse the strata \$632.89 for the contractor's December 2017 invoices?

39. I have found the \$632.89 chargeback on the owner's strata lot should be reversed. This is because the strata's claim for payment is based on bylaw 4.4, and the strata failed to meet the bylaw's requirements. I therefore dismiss this claim.

TRIBUNAL FEES AND EXPENSES

40. 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.

41. The owner succeeded in its claim and the strata did not. I therefore order the strata to reimburse the owner for tribunal fees of \$225. The owner did not claim any dispute-related expenses, so I do not order any for either party.

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

ORDERS

43. I order that:

- a. the strata immediately reverse the \$632.89 charge on the owner's strata lot account for the contractor's December 2017 service calls;
- b. within 14 days of the date of this order and decision, the strata pay the owner \$225.00 as reimbursement for tribunal fees; and
- c. all the strata's claims are dismissed.

44. 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.

45. 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