



Civil Resolution Tribunal

Date Issued: June 5, 2020

File: ST-2019-010060

Type: Strata

Civil Resolution Tribunal

Indexed as: *Dale v. The Owners, Strata Plan 1852*, 2020 BCCRT 629

B E T W E E N :

ALASTAIR DALE and VALERIE LUCAS

APPLICANTS

A N D :

The Owners, Strata Plan 1852

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicants Alastair Dale and Valerie Lucas own a strata lot (unit 203) in the respondent strata corporation The Owners, Strata Plan 1852 (strata).
2. The applicants say the strata hired a contractor to complete remedial work in unit 203 after a flood from the strata lot above. The applicants say the contractor failed

to complete the necessary repairs. They say the strata instructed them to pay another contractor for repairs, but then refused to reimburse them. The applicants claim \$2,840.40 for the combination of repairs, mileage and their time.

3. The strata says the remediation contractor's work was complete and satisfactory. The strata says the claimed repair costs were for additional work that was contracted by the applicants and was not a strata responsibility under the bylaws. The strata asks me to dismiss the dispute.
4. The applicants are represented by primary applicant Valerie Lucas. The strata is represented by strata council member M.S.

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 by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a scenario with both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
7. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. In *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the court recognized that oral

hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.

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. In their Notice of Claim, the applicants sought a total of \$2,840.40 for “repairs, mileage and unit owners’ time”. In submissions, the applicants claimed \$2,765.44, with a specific breakdown of repair expenses. Because it was tied to specific payments, I use the \$2,765.44 figure and infer that the remaining \$74.96 is the claim for mileage and time spent.

ISSUE

11. The issues in this dispute are:

- a. Must the strata pay the applicants \$2,765.44, broken down as:
 - i. \$412.16 for the cost of a tub surround the applicants bought, which was then cut to the wrong size by the strata’s remediation contractor, Industrial Hazmat Services (IHS),
 - ii. \$274.40 for a 2nd toilet needed because IHS did not buy an adaptor,
 - iii. \$614.88 being the price the applicants paid for another tub surround because the first replacement tub surround was improperly installed by HIS,
 - iv. \$1,239 for Major League Property to complete the 2nd tub surround installation, and

- v. \$225 in tribunal fees?
- b. Must the strata pay the applicants \$74.96 for their time spent and mileage?

EVIDENCE AND ANALYSIS

- 12. In a civil dispute such as this, the applicants must prove their claim. They bear the burden of proof on a balance of probabilities.
- 13. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or where necessary to give context to these reasons.

Bylaws

- 14. The applicable bylaws are those filed at the Land Title Office (LTO) on April 10, 2008, which mainly adopt the Standard Bylaws set out in the *Strata Property Act* (SPA).
- 15. Under Bylaw 2, an owner must repair and maintain their own strata lot, except where the strata is responsible for the repair under the bylaws.
- 16. Bylaw 5 requires an owner to obtain the strata's written approval before making an alteration to a strata lot involving the building's structure, common property (CP) within strata lot boundaries, or those parts of the strata lot the strata must insure under section 149 of the SPA.
- 17. Bylaw 8 requires the strata to repair and maintain all CP and a strata lot where the duty includes the building's structure, among other things.
- 18. Bylaw L13.0 says that an owner is responsible for repair, maintenance, replacement and insurance of any "inside plumbing fixtures", which I find includes toilets, bathtubs, tub surrounds, sinks and related hardware inside a strata lot.
- 19. The strata does not have a bylaw making it responsible to pay for strata lot repairs where an owner's negligence causes damage to other strata lots.

Background Facts

20. In May 2019, water leaked through the ceiling of unit 203.
21. On May 19, 2019, ProPacific, a remediation contractor, inspected unit 203 through Ms. Lucas' insurer. ProPacific reported that the leak was caused by a toilet overflow in the unit above. When drywall was removed to investigate, asbestos was identified in the drywall.
22. The strata hired ProPacific to do asbestos drywall removal as part of the leak remediation.
23. On July 24, 2019, MR, from the strata's property manager Colyvan, emailed the applicants to say that because ProPacific was unable to complete the job in a timely way, a new contractor, Industrial Hazmat Services (IHS) would be assigned the task of drywall removal.
24. On July 25, 2019, SJ from IHS examined unit 203 and concluded the bathroom walls and ceiling were wet with sewage water. SJ recommended that all drywall, fixtures and flooring be removed and replaced. I find that SJ's recommendation about what needed replacement was not a promise by the strata to pay for those repairs, because SJ was not a representative of the strata council.
25. On August 1, 2019, IHS provided the strata with an estimate of \$3,602.80 to repair damage caused by the leak.
26. On August 1, 2019, IHS provided the strata with a separate quote of \$5,873.37 for work to install the fixtures that had to be removed to replace the drywall, apply paint, and install the baseboard and new vinyl floor coverings.
27. On August 1, 2019 SJ provided the applicants with estimates for rebuilding the unit 203 bathroom. SJ wrote that he would "advise" the strata that the "tub, sink vanity, toilet and tub surround" would be purchased by the applicants. SJ's estimate shows that he understood the applicants would purchase replacement bathroom fixtures,

at their own cost, that IHS would install instead of re-installing the fixtures that existed at the time of the leak.

28. On August 16, 2019, the applicants emailed the strata requesting approval of the proposed repairs as soon as possible.
29. I find that strata council president M.S. told the applicants that repairs would require approval by strata council. I say this because the applicants admit this is what Colyvan told them in late October 2019, and they did not produce a document to prove that the strata council approved payment for those repairs at an earlier point. This is also consistent with the Bylaws, which require strata council approval for any renovations inside a strata lot that involve CP or structural issues and in this proposed renovation there may have been plumbing or drywall work that extended into the CP. As well, the applicants say M.S. told them, verbally, that “if estimates were reasonable, approval would likely not be a problem”. The applicants say they took this as the strata’s agreement to pay for the repairs. M.S. who was a participant in these verbal discussions, contests this evidence, saying the strata council only approved funding of the initial remediation work.
30. On September 3, 2019, SJ of IHS emailed the applicants to say that the property manager had informed IHS that it could “move ahead with the work”. The applicants emailed SJ to say that they would not get “full approval” from the strata until the September 24, 2019 strata council meeting and would email him once they had that approval. Based on the applicants’ email, I find that they understood that some aspects of the work might be payable by them personally, because they were awaiting some further approval from the strata.
31. On September 4, 2019, the applicants emailed SJ of IHS to say that they had a tub, tub surround, vanity/sink and toilet ready to be installed, which they would leave in the suite when the work was ready to start.
32. On October 17, 2019, SJ of IHS emailed the applicants to say that the shower surround IHS initially installed did not work in the space because it had to be modified to fit, and the result was not satisfactory to SJ.

33. It is uncontested, and the photographs provided show, that the tub surround installation by IHS was deficient. SJ wrote that IHS would replace it with a similar style surround, but in the correct size.
34. Based on the receipt filed in evidence, I find that the applicants paid \$614.88 for a 2nd tub surround after IHS' unsatisfactory installation left the first surround unusable.
35. The applicants say that in an October 19, 2019 telephone conversation, M.S. told Mr. Dale it would be acceptable to hire a contractor and have the repairs completed and submit reasonable costs to the strata for reimbursement. The strata disputes this evidence.
36. On October 21, 2019, the applicants say that RR of Colyvan Property Management attended at their unit and advised that the strata would "pay for the replacement and installation of the damaged tub surround and completion of the remaining repairs which were painting and fixture installation."
37. On October 26, 2019, the applicants say RR also told them that the strata council would have to approve reimbursement for the repairs they had paid for. The applicants say this was the first they learned that the strata council would have to approve the reimbursement. I do not accept this evidence. Based on the earlier communications, I find that the applicants understood that the strata needed to approve the work. I further find that the applicants knew that some components of the work, such as the purchase of replacement fixtures, were personal expenses. I find that the applicants knew that the strata council would consider the reimbursement, and make its decision based on the allocation of responsibility in the Bylaws.
38. The applicants submit that IHS damaged the bathroom's existing fixtures while doing strata-funded remediation work, and that therefore the strata should have to pay the cost of replacing the fixtures and installing them.

39. The strata disagrees, saying it approved the renovation work proceeding, but did not agree to pay for fixtures or installation.
40. On October 30, 2019, the applicants emailed the strata asked to be reimbursed for \$2,607.99 for “bathroom repairs”.
41. On October 30, 2019, the applicants received an invoice from Major League Property Development Specialists Ltd. for \$1,239.00. Based on the invoice, I find that this \$1,239.00 was paid by the applicants for the proper installation of the 2nd tub surround.
42. On November 26, 2019, the applicants met with strata council. The applicants requested payment for certain repairs done to their strata lot.
43. On November 29, 2019, the strata wrote to the applicants to say it would “pay for the last tub surround that was purchased and installed by the contractor” the applicants had hired (my emphasis added).
44. The strata refused to pay for expenses to replace plumbing fixtures, such as the tub, sink, or toilet.
45. In the November 29, 2019 letter, the strata also wrote that it would not pay IHS for any tub surround installation work. The strata did not specify what amount it was prepared to pay the applicants.

Analysis

46. The strata says it approved the renovation work being done but did not tell the applicants it would pay for any work outside the remediation of the leak itself.
47. Under Bylaw L13.1, I find that the applicants are responsible to repair and replace the tub, tub surround, toilet and related hardware, even where replacement occurred due to a leak from another strata lot.
48. Having said that, I find that the strata here nonetheless committed to paying for the 2nd tub surround and installation. Based on the November 29, 2019 letter from the

strata to the applicants, the strata agreed to pay for the tub surround and installation completed by Major League Property Development Specialists Ltd. on October 30, 2019. Therefore, I find that the strata must reimburse the applicants \$614.88 for the tub surround purchase and \$1,239.00 for installation.

49. I turn to the remaining claims for reimbursement. Above, I found that the first tub surround was improperly installed by IHS, leaving it useless. However, IHS is not party to this dispute, and so I dismiss the applicant's claim for the first tub surround price (\$412.16).
50. I also dismiss the applicants' claim for \$274.40 for a 2nd toilet they say was needed because IHS did not buy an adaptor. IHS is a non-party, and so I cannot order relief against it. Under the Bylaws, the strata is not responsible for replacement toilets. As well, I find that the claim regarding the 2nd toilet cost was not proven on the evidence.

TRIBUNAL FEES, EXPENSES AND INTEREST

51. 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. Because the applicants were largely successful in this dispute, I order the strata to reimburse the applicants for \$225 in tribunal fees.
52. I dismiss the applicants' claim for mileage and time spent on the dispute, because these claims were not supported by particulars or evidence. The applicants did not claim other dispute-related expenses.
53. The *Court Order Interest Act* (COIA) applies to the tribunal. The applicants are entitled to pre-judgement interest on the \$1,853.88 from October 30, 2019, the date of the installation invoice, to the date of this decision. This equals \$21.59.
54. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDERS

55. I order that, within 30 days of this decision, the strata pay the applicants a total of \$2,100.47, broken down as:

- a. \$1,853.88 as reimbursement for a tub surround purchase and installation,
- b. \$21.59 in COIA interest, and
- c. \$225 in tribunal fees.

56. The applicants are also entitled to post-judgement interest under the COIA.

57. I dismiss the applicants' remaining claims.

58. 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.

59. 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 applicants 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.

Julie K. Gibson, Tribunal Member