



Civil Resolution Tribunal

Date Issued: June 8, 2020

File: ST-2019-009811

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 1709 v. McDade*, 2020 BCCRT 632

B E T W E E N :

The Owners, Strata Plan LMS 1709

APPLICANT

A N D :

MALISSA MCDADE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about an insurance deductible that a strata corporation paid after a water leak incident. The applicant, The Owners, Strata Plan LMS 1709 (strata) says that it made an insurance claim as a result of a leak from a strata lot owned by the respondent, Malissa McDade. The strata paid the \$10,000 insurance deductible and charged this amount back to the respondent's strata lot account. As the respondent

has not reimbursed the strata, it asks for an order that the respondent pay it \$10,000. The respondent acknowledges that a leak came from her strata lot but says that, as she was not negligent, she is not responsible for the strata's insurance deductible.

2. The strata is represented by a member of the strata council. The respondent is self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. 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.

ISSUE

7. The issue in this dispute is whether the respondent must reimburse the strata for the \$10,000 insurance deductible.

BACKGROUND, EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, an applicant must prove their claims on a balance of probabilities. The parties provided evidence and submissions in support of their positions. While I have considered all of this information, I will refer to only what is relevant to the issue before me and necessary to provide context to my decision.
9. The respondent is an owner of strata lot 26, which is also known as suite 307. In April of 2018, a water leak caused damage to suites 307, 207 and 106, as well as some common property (CP).
10. There is no dispute that the leak originated in a water supply line in a toilet inside the respondent's strata lot. However, after the leak, the respondent heard from other residents about leaks and water pressure issues elsewhere in the strata. She asked her plumber to test the water pressure in her strata lot. According to the plumber's invoice, he recorded pressure of more than 100 pounds per square inch (PSI). This is higher than the 80 PSI the respondent says the city Plan Checker/Inspector told her was identified on the building's engineering drawings. The respondent learned that a pressure release valve (PRV) in the strata's mechanical room had malfunctioned and was replaced shortly after the leak.
11. The strata made a claim on its insurance and paid the \$10,000 deductible. The strata charged back this amount to the respondent's strata lot account. As she suspected that the PRV malfunction and water pressure issues had something to do with the leak, the respondent asked the strata to reverse the chargeback. The strata considered the request, but decided not to reverse the chargeback. The respondent has not reimbursed the strata for the insurance deductible.

12. The strata's submissions focus on who is "responsible" for the water line failure and associated damage. Although the strata amended its bylaws in late 2018 to make owners responsible for any damage resulting from (among other things) toilets in their strata lots, this bylaw amendment was not in force at the time of the leak in this case. Therefore, the version of the bylaws filed at the Land Title Office in 2009 applies. Bylaw 4.4 states that an owner must indemnify the strata corporation from the expense of any maintenance, repair or replacement to CP, limited common property, common assets or any strata lot by the owner's act, omission, negligence or carelessness. Bylaw 4.4 also provides that the strata's insurance deductible will be charged to the owner.
13. The British Columbia Provincial Court considered very similar wording to bylaw 4.4 in *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 519. At paragraph 17, the court found that the words were to be read collectively and import a standard of negligence. The court stated that this wording "requires some affirmative act or failure to act sounding in negligence before an owner is liable to indemnify the [strata] for losses not covered by insurance". Losses not covered by insurance would include an insurance deductible.
14. To establish negligence, the strata must show that the respondent owed it a duty of care, the respondent breached the standard of care, the strata sustained damage, and the damage was caused by the respondent's breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27). I find that the respondent owed the strata a duty of care under bylaw 3.1 to repair and maintain her strata lot. I accept that the toilet supply line failed inside the respondent's strata lot and that the leak caused damage in various areas, including CP. The key consideration in this analysis is whether the respondent breached the standard of care. I find that the applicable standard of care is reasonableness (see, for example, *Burris v. Stone et al*, 2019 BCCRT 886).
15. The parties provided evidence from plumbers and municipal personnel about water pressure, the PRV, and pressure tolerance of the strata's plumbing system. I find that this information does not assist me in determining whether the respondent breached her standard of care.

16. Although the respondent submits that she had noticed “chunky, black residue/particles” in the water from a bathtub faucet, she did not identify any other plumbing issues before the leak. There is no indication in the evidence before me that the respondent knew about maintenance or operational issues with her toilet and failed to address them. The respondent was not at home when the leak started, but there is nothing to suggest that her behaviour prolonged or worsened the leak.
17. The strata has not presented evidence to show that the respondent failed to take reasonable steps to maintain or repair the toilets in her strata lot. In particular, there is no evidence of previous leaks from the toilets or evidence that the respondent should have had reason to know that the water line was at risk of failing. Although the strata’s plumbing contractor suggested that the supply line was old, this individual did not examine the toilet. As such, I do not give weight to this comment. Keeping in mind that the strata bears the burden of proving that the respondent did or failed to do something that caused the supply line to leak, I find that the strata has not established that the respondent failed to meet the standard of care.
18. Based on the evidence before me and the bylaws that were in place at the time of the April 2018 leak, I find that the strata has not established that the respondent was negligent. Accordingly, I find that the respondent is not responsible for the insurance deductible, and dismiss the strata’s claim for reimbursement.

TRIBUNAL FEES AND EXPENSES

19. 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. As the strata was not successful, I dismiss its claim for reimbursement of tribunal fees.
20. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the respondent.

ORDER

21. I dismiss the strata's claims and this dispute.

Lynn Scrivener, Tribunal Member