



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Portnoy v. The Owners, Strata Plan LMS 2781*, 2020 BCCRT 650

B E T W E E N :

ROMAN PORTNOY

APPLICANT

A N D :

The Owners, Strata Plan LMS 2781

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about damage to, and theft of personal items from, a vehicle parked in a strata corporation's underground parking area.
2. The applicant, Roman Portnoy owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 2781 (strata). Mr. Portnoy is self-represented, and the strata is represented by a strata council member.

3. Mr. Portnoy says the strata and its property manager “failed to ensure the security of the [strata’s] buildings” resulting in damage to his parked vehicle and theft of personal items that were inside his vehicle. He seeks an order that the strata reimburse him \$1,850.00, which he estimates was the cost to replace his vehicle’s broken window and his stolen personal items.
4. The strata does not dispute Mr. Portnoy suffered vehicle damage and theft of his personal belongings, but it denies liability. The strata says it makes every effort to keep its buildings secure but is not legally obligated to do so. The strata says Mr. Portnoy’s claims should be dismissed.
5. For the reasons that follow, I dismiss Mr. Portnoy’s claims and this dispute.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). 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 CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, email, 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 CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT 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 CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

PRELIMINARY ISSUE

10. In the Dispute Notice for this dispute, Mr. Portnoy claimed the strata's property manager, in addition to the strata, failed to ensure the safety of the strata buildings. Given the property manager was not a named party in this dispute and did not have the opportunity to provide submissions, I decline to make any orders involving the property manager. However, I find the property manager is an agent of the strata and the law of agency applies. In other words, the strata is responsible for its property manager's actions when the property manager is acting in its capacity as the strata's agent, which is not disputed by the strata.

ISSUES

11. The issues in this dispute are:
 - a. Is the strata responsible to reimburse Mr. Portnoy for the cost to repair the damage to his vehicle and the value of his stolen personal items?
 - b. If so, what amount is appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

12. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
13. In a civil proceeding such as this, Mr. Portnoy, as applicant, must prove his claims on a balance of probabilities.
14. The strata was created in May 1997 under the *Condominium Act* and continues to exist under the *Strata Property Act* (SPA). It consists of 221 strata lots in 2 high-rise buildings located in Vancouver B.C. Based on the strata plan, there are 2 levels of

underground parking (P1 and P2) that are common to both buildings and serviced by one or more elevators from each of the 2 buildings.

15. The underground parking areas are marked as common property on the 6 cross-sectional views contained in the strata plan. The underground parking driving aisles are marked as common property on the strata plan. The individual parking stalls are identified by dotted lines on the plan views. Based on my review of the strata plan, I find the individual parking stalls are common property. I also note there are other common property areas on the parking levels such as storage and bicycle storage areas.
16. I note at the outset, that the strata participated in the facilitation stage of this dispute. It also participated in the tribunal decision process by making submissions, but it did not provide any evidence.
17. The relevant facts are not contested. This dispute arose on July 30, 2019, when Mr. Portnoy discovered the rear window of his vehicle was smashed, and personal items were taken from his vehicle while it was parked in Mr. Portnoy's designated common property parking stall located on P2.
18. At that time, the strata was having one of its elevators repaired. I infer the elevator being repaired was not in working order. The total number of elevators in the building is unclear. The strata does not dispute Mr. Portnoy's claim that at least 1 working elevator had its FOB system deactivated on July 30, 2019, when Mr. Portnoy's loss occurred.
19. On July 30, 2019, Mr. Portnoy emailed the strata's property manager to confirm their telephone conversation earlier that afternoon. Mr. Portnoy wrote that the strata's concierge called Mr. Portnoy in the morning of July 30, 2020 to advise that that his vehicle, parked in his assigned parking stall on P2, had been broken into by someone smashing the rear window. Mr. Portnoy stated that because the "operational elevator was working without a FOB, anybody could get to any floors, including the parkade on P2". He said this was the reason why someone was able to access P2 and smash the rear window of his vehicle. He advised the property

manager that he would proceed to replace the smashed rear window and requested the strata reimburse him for the cost.

20. Later on July 30, 2019, Mr. Portnoy again wrote to the property manager listing the personal items that were missing from his vehicle and providing estimates of his losses. He stated that his vehicle damage and the theft of his personal items occurred because the “operating elevator” did not require FOB access for at least 3 weeks, and that the concierges confirmed they knew the FOB readers were deactivated. Mr. Portnoy did not provide written statements from the strata’s concierges about their knowledge of deactivated elevator FOB readers.
21. In early October 2019, the strata denied Mr. Portnoy’s reimbursement request as shown in an email dated October 7, 2019 from the property manager to Mr. Portnoy. Neither Mr. Portnoy’s request for reimbursement nor the strata’s denial letter is before me.
22. On October 21, 2019, Mr. Portnoy had a hearing with the strata council and argued that under the contract between the elevator repair company and the strata, the elevator repair company was responsible to carry insurance that would cover his loss. The elevator repair contract was not provided in evidence.
23. Later in October, the strata again declined Mr. Portnoy’s reimbursement request. Following further correspondence exchanged between the parties in November and December 2019, the strata advised Mr. Portnoy it would obtain a legal opinion on his potential claims against the strata’s and the elevator repair company’s insurance. No such legal opinion was provided in evidence.
24. Mr. Portnoy applied for dispute resolution with the CRT and the Dispute Notice for this Dispute was issued February 3, 2020.

Is the strata responsible to reimburse Mr. Portnoy for the cost to repair the damage to his vehicle and the value of his stolen personal items?

25. Mr. Portnoy makes several assertions about building security, elevator repairs, uncontrolled elevator access, and thefts from other vehicles parked in the strata’s

common property underground parking garage. Most are not supported by evidence. I find the main thrust of his argument is that while the strata was repairing one of its elevators the FOB system was deactivated. He says this allowed people access to the underground parking area where his vehicle was parked, thereby greatly reducing building's security.

26. The strata disagrees. It denies it is liable to Mr. Portnoy under the SPA and its bylaws. For the following reasons, I find in favour of the strata.
27. I find there are no bylaws that directly address Mr. Portnoy's circumstances that would cause me to find the strata responsible for his vehicle damage or loss of personal items. Nor does the SPA directly address such circumstances. I turn then to Mr. Portnoy's security argument.
28. Section 72 of the SPA requires the strata to repair and maintain common property and common assets. This statutory requirement is restated in bylaw 18(a)(i) and (ii). I find that the strata building's exterior doors and points of entry, including the garage entrance, are either common property or common assets. It follows, and I agree with Mr. Portnoy, that the strata is responsible for its building security. However, the standard of care that applies to a strata corporation with respect to the maintenance of common property is reasonableness (see *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784).
29. In order for Mr. Portnoy to be successful, he must prove the strata was negligent. To prove negligence Mr. Portnoy must show that the strata owed him a duty of care, the strata breached the standard of care, Mr. Portnoy sustained damage, and the damage was caused by the strata's breach (See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at par 33).
30. I have already found the strata owed Mr. Portnoy a duty to keep the building secure. The question then is: Did the strata breach its standard of care about the building security? In other words, were the strata's actions reasonable, and did it know, or should it ought to have known, that the deactivation of the elevator's FOB system

would result in damage to and theft from Mr. Portnoy's vehicle. Based on the evidence before me I cannot reach that conclusion for the following reasons.

31. First, there is no evidence the strata, its property manager or the strata's concierges knew or ought to have known the elevator FOB readers were deactivated. The details of the elevator repairs have not been provided. Mr. Portnoy's assertion that additional security personal were employed by the strata immediately following his request for reimbursement in July 2019 does not mean the strata knew of any security breach before then. Rather, I find any additional security measures taken by the strata after Mr. Portnoy's loss, would support a position that the strata was not aware of any increased building security issues
32. Second, there is no evidence that deactivation of the elevator's FOB readers even occurred.
33. Third, if the elevator FOB readers were deactivated, there is no evidence such action affected any other security points of the building. I find it unreasonable to expect the deactivation of the elevator's FOB readers would also deactivate all other FOB readers located at exterior points of entry such that unrestricted access to the building without a FOB would be permitted.
34. Fourth, if the deactivated elevator FOB readers only affected elevator access, a FOB would still be required to enter the building. Mr. Portnoy's argument that a resident may have unrestricted access to all floors within the building does not assist him, given Mr. Portnoy's vehicle was parked in the underground parking area. Further, even if the elevator FOB readers were working, one would expect that most, if not all building residents would always have access to the underground parking areas in order to access their own parked vehicles, storage lockers or bicycles.
35. For all of these reasons, I find that Mr. Portnoy has failed to prove that the strata breached its standard of care and acted unreasonably. Therefore Mr. Portnoy has failed to prove the strata was negligent. On that basis, I dismiss Mr. Portnoy's claims and this dispute.

36. As earlier noted, the strata did not provide any evidence. I considered whether I should draw an adverse inference as a result, but I find that Mr. Portnoy's failure to prove his claims outweighs the strata's failure to provide evidence. It was open to Mr. Portnoy to obtain strata documents under section 36 of the SPA to assist him in proving his claim, but he did not to do so.
37. As earlier noted, there is also email evidence that confirms the strata was investigating the possibility of the elevator repair company's or strata's insurance policy covering Mr. Portnoy's loss, but it does not appear that investigation concluded. Given Mr. Portnoy only pursued relief from the strata corporation, I find he made a conscious decision not to pursue recovery of his loss through any available insurance coverage. Instead, he chose to seek recovery of his loss from the strata.

TRIBUNAL FEES AND EXPENSES

38. 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. Given Mr. Portnoy was not successful, and the strata did not pay tribunal fees, I make no order for reimbursement of tribunal fees. Neither party claimed dispute-related expenses, so I order none.
39. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

ORDER

40. I dismiss Mr. Portnoy's claims and this dispute.

J. Garth Cambrey, Vice Chair