



# Civil Resolution Tribunal

Date Issued: June 18, 2020

File: ST-2020-000658

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan 1166 v. Fedoryshyn*, 2020 BCCRT 675

**B E T W E E N :**

The Owners, Strata Plan 1166

**APPLICANT**

**A N D :**

DEREK FEDORYSHYN

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell, Vice Chair

## **INTRODUCTION**

1. This dispute is about who must pay for water damage in a strata corporation.
2. The applicant, The Owners, Strata Plan 1166 (strata) is a strata corporation existing under the *Strata Property Act* (SPA). The respondent, Derek Fedoryshyn, is co-owner of strata lot 29 (SL29) in the strata.

3. The strata says that on December 21, 2018, there was a water leak from SL29, which damaged common property hallways and other strata lots. The strata asks for an order that Mr. Fedoryshyn pay \$3,316.00, which it describes in the Dispute Notice as for an insurance deductible and associated fees.
4. Mr. Fedoryshyn says the strata's claim should be dismissed. He says the leak was caused by a common property pipe, so he is not responsible to pay. He also says the strata has not proven the amount of the deductible.
5. The strata is represented by a strata council member in this dispute. Mr. Fedoryshyn is self-represented.
6. For the reasons set out below, I dismiss the strata's claims.

## **JURISDICTION AND PROCEDURE**

7. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
8. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconference, 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.
9. 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.

10. 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 – Mr. Fedoryshyn’s Insurer***

11. As discussed below, Mr. Fedoryshyn’s insurer paid \$3,000.00 towards the strata’s \$5,000.00 insurance deductible. Mr. Fedoryshyn says this should not have occurred, and that the \$3,000.00 payment should be reversed. I find that in this dispute, I have no jurisdiction to make an order about this payment by Mr. Fedoryshyn’s insurer. First, the insurer is not a party. Second, section 121(1) of the CRTA says the CRT’s strata property jurisdiction includes only claims in respect of the SPA. The \$3,000.00 payment from Mr. Fedoryshyn’s insurer is not a claim arising under or governed by the SPA, so I find I have no jurisdiction to decide it as part of this dispute. I therefore make no findings about it.

## **ISSUES**

12. The issues in this dispute are:

- a. Must Mr. Fedoryshyn pay the strata for the remaining insurance deductible or related costs?
- b. If so, how much?

## **BACKGROUND AND EVIDENCE**

13. I have read all the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding like this one, the applicant strata must prove its claims on a balance of probabilities.

14. The parties agree that the leak came from a water pipe located within a wall behind the SL29 kitchen. The evidence confirms that the leak damaged several strata lots and common property hallway areas on the first, second, and third floors.

15. In its dispute application, the strata says the leak occurred on December 21, 2018. However, I find this cannot be correct, and I find instead that the leak occurred on December 20, 2018. This is established by the evidence from Brent Jansen Plumbing (BJP), which the strata hired to investigate and repair the leaking pipe. BJP's invoice shows that its technician attended the strata building on December 20, 2018 between 5:00 and 7:00 pm, did a leak investigation, and found bubbling in the corner of the kitchen ceiling in unit 109. The property manager's invoice and the insurer's proof of loss document also show that the leak occurred on December 20, 2018.
16. BJP's January 11, 2019 invoice says that on December 22, 2018, its technician sourced the leak to SL29, behind the kitchen sink at countertop height. The invoice says the technician found a cracked half inch hot water supply line in the wood stud, "due to potential building settling." The technician repaired the cracked pipe section, and confirmed there was no further leakage.
17. The strata filed an insurance claim, and a contractor repaired the damage.
18. On June 7, 2019, the strata sent a letter to Mr. Fedoryshyn stating that the repair costs were "a result of water damage within your unit", so the strata had charged \$6,316.00 to his strata lot account. Invoices attached to the letter show that the charge was made up of \$5,000.00 for the insurance deductible, \$843.50 for plumbing repairs, and \$472.50 in charges from the strata's property management firm for site visits and tradesperson supervision.
19. A February 26, 2019 letter from the strata's insurance adjuster confirms that the strata's insurance deductible was \$5,000.00. The parties agree that Mr. Fedoryshyn's insurer later paid the strata \$3,000.00 towards the deductible. Mr. Fedoryshyn has not paid the remaining \$3,316.00 charged to his strata lot account, and the strata filed this dispute seeking payment.

## REASONS AND ANALYSIS

### *Legislation and Bylaws*

20. I find that SPA section 158(2) applies to this dispute. It says that a strata corporation may sue an owner to recover an insurance deductible if the owner is responsible for the loss or damage that gave rise to the claim.
21. I also find that strata bylaw 43 is relevant. Bylaw 43 was amended as part of a package of amendments the strata filed with the Land Title Office on February 27, 2018. Since amended bylaw 43 was in force at the time of the December 21, 2018 leak, I find it applies to this dispute. The relevant portions of bylaw 43 provide as follows:
- a. Bylaw 43(6) (in part) – an owner must reimburse the strata’s maintenance, repair or replacement costs, plus any losses or damages to a strata lot, common property, or limited common property if the owner is responsible for the loss or damage, or if the loss or damage arises from an act, omission, negligence, or carelessness of the owner, or the owner’s guests, employees, agents, tenants, volunteers, or pets.
  - b. Bylaw 43(6)(v) – an owner is responsible for the expenses in 43(6) only to the extent that the expense is not covered by insurance, excluding the insurance deductible, which is the owner’s responsibility.
  - c. Bylaw 43(7) – an owner is responsible even if the owner is not negligent, and such responsibility will be construed as a strict liability standard for the purposes of paying the insurance deductible under SPA section 158(2).
  - d. Bylaw 43(8)(a) – without restricting the generality of bylaw 43, an owner is responsible for any water escape damage from the owner’s strata lot, or any damage caused by an appliance, equipment, or fixture forms a part of the owner’s strata lot.

- e. Bylaw 43(8)(a)(x) – responsibility under bylaw 48(8)(a) includes where the damage arises from the operation of plumbing pipes, fixtures and hoses located wholly within the strata lot, and which service only that strata lot.

### ***Insurance Deductible***

22. In this case, there is no suggestion that the leak was caused by act, omission, negligence, or carelessness by Mr. Fedoryshyn or his guests, employees, agents, tenants, volunteers, or pets. Thus, under SPA section 158(2) and bylaw 43(8)(a), Mr. Fedoryshyn is only responsible to pay the insurance deductible if the leaky pipe was located wholly within SL29 and serviced only SL29.
23. The strata says it believes the leaky pipe is not common property, so Mr. Fedoryshyn must pay the remaining \$2,000.00 deductible.
24. Mr. Fedoryshyn says he is not responsible to pay. He says the leaky pipe was not located wholly within his strata lot. Rather, he says the pipe was behind the kitchen sink, around countertop-height, inside the shared wall between his strata lot and the one next door.
25. The strata bears the burden of proving its claims in this dispute. I find the evidence before me does not establish that the leaky pipe was located wholly within Mr. Fedoryshyn's strata lot. I therefore find Mr. Fedoryshyn is not responsible to pay the insurance deductible, under SPA section 158(2) and bylaw 43(8)(a).
26. Mr. Fedoryshyn says the pipe is connected to the building's hot water system. I find that this is consistent with BJP's December 22, 2018 plumbing report, which says the technician found a cracked half inch hot water supply line in the wood stud. The photographs Mr. Fedoryshyn provided confirm this, as they show a half inch copper pipe inside the wall, travelling horizontally through a hole in a vertical wooden stud.
27. The strata plan shows that SL29 shares adjoining walls with strata lots on either side. These walls are depicted on the strata plan as thin, solid lines, and there is no specific notation of plumbing within the walls. SPA section 68 sets out how strata lot boundaries are determined when not specifically shown on the strata plan. Section

68(1) says that if a strata lot is separated from another strata lot by a wall, the boundary of the strata lot is midway between the surface of the structural portion of the wall that faces the strata lot and the surface of the structural portion of the wall that faces the other strata lot.

28. As stated above, the plumbing report and the photographs show that the leaky pipe is inside the wall. I place significant weight on the BJP technician's report that the pipe is "in the wood stud". This suggests that the pipe was not wholly within the strata lot, as defined in SPA section 68.
29. It is possible that there are 2 layers of studs between SP29 and the Neighbouring strata lot. This would mean the midpoint of the wall was behind the leaky pipe. However, despite noting SPA section 68, the strata provided no evidence or submissions about where the midpoint of the wall is located, or where the pipe sits in relation to the midpoint. Also, the strata did not specifically contest Mr. Fedoryshyn's argument that the pipe was not wholly within his strata lot, and did not provide contrary evidence, such as photographs, building schematics, or an expert report. For these reasons, I find the strata has not proven that the leaking pipe was located wholly within SL29.
30. I also note that under SPA section 1(1), water pipes within a wall that forms a boundary between strata lots are common property. Thus, I find the leaky pipe is common property. Although bylaw 43(8)(a) does not specifically refer to common property, I find it would be contrary to the SPA to make an owner responsible for repairs or insurance costs resulting from a leak in a common property pipe, where there is no evidence that the owner caused or contributed to the leak.
31. For these reasons, I find that Mr. Fedoryshyn is not responsible to pay the insurance deductible. I dismiss this part of the strata's claim.

### ***Additional Repair Costs***

32. In its dispute application, the strata described the \$3,316.00 amount of its claim as for the insurance deductible and associated fees. As explained above, the evidence shows that \$1,316.00 of the strata's claim is for plumbing repairs and site visits.
33. Repair costs are not governed by SPA section 158(2). That provision only applies to insurance deductibles. However, I find that bylaw 43(8)(a) makes an owner responsible for both repair costs and an insurance deductible bylaw if the leaky pipe was located wholly within SL29 and services only SL29.
34. For the reasons set out above, I find the leaky pipe was not located wholly within SL29, and was common property. I therefore conclude that Mr. Fedoryshyn is not responsible to pay the claimed \$1,316.00 in repair costs. I dismiss the strata's claim.

### **CRT FEES AND EXPENSES**

35. The strata was unsuccessful in this dispute. In accordance with the CRTA and the CRT rules I find it is not entitled to reimbursement of tribunal fees or dispute-related expenses.
36. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Mr. Fedoryshyn or to SL29.

### **ORDER**

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

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Kate Campbell, Vice Chair