



Civil Resolution Tribunal

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File: ST-2020-001058

Type: Strata

Civil Resolution Tribunal

Indexed as: *Lorimer v. The Owners, Strata Plan VR150*, 2020 BCCRT 718

B E T W E E N :

ANDREA LORIMER

APPLICANT

A N D :

The Owners, Strata Plan VR150

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about repair costs for a water leak. The applicant, Andrea Lorimer, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VR150 (strata). Ms. Lorimer says that the strata inappropriately charged back the costs of plumbing repairs to her strata lot. She asks for an order that the strata

reverse the charge back of \$1,595.71. The strata disagrees with Ms. Lorimer's position.

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

JURISDICTION AND PROCEDURE

3. 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.
4. The CRT 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 decide the dispute fairly based on the evidence and submissions provided.
5. 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.
6. 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.

ISSUE

7. The issue in this dispute is whether Ms. Lorimer is responsible for the charged back plumbing costs of \$1,595.71.

EVIDENCE AND ANALYSIS

8. In a civil dispute like this, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their respective 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 strata repealed its previous bylaws and filed new bylaws at the Land Title Office in December of 2001. The strata subsequently filed a number of amendments, none of which are relevant to the issue before me.
10. Bylaw 2.1 says that an owner must repair and maintain their strata lot, except for repair and maintenance that is the strata's responsibility. Bylaw 9 sets out that the strata is responsible for the repair and maintenance of common assets, common property (CP), and some areas of limited common property (LCP) and strata lots, such as the structure and exterior of the building.
11. In September of 2019, the strata arranged for a plumber to investigate a water leak in a different strata lot. The plumber did not find the exact source of the leak but determined that it was coming from Ms. Lorimer's strata lot. According to the details on an invoice, the plumber later found and fixed a problem with the overflow pipe in her bathtub.
12. The plumber charged the strata \$1,595.71 for the repairs. The strata decided that that, as the overflow pipe was not part of the common plumbing stack, it was part of Ms. Lorimer's strata lot and therefore her responsibility to repair and maintain. The strata charged back the amount of the plumbing invoice to Ms. Lorimer's strata lot account. For reasons that are not clear, the strata decided not to charge back the amount of drywall repairs.
13. Ms. Lorimer disagreed with the charge back, and requested a hearing on the matter before the strata council. After the January 27, 2019 hearing, the strata decided not to reverse the charge back of repair costs. The strata's property manager informed

Ms. Lorimer of this decision in a January 30, 2019 letter, which referred to the bylaws about responsibility for repair and maintenance.

14. In their submissions to the CRT, the parties expressed differing views about where the pipe involved with the leak was located and who is responsible for its maintenance and repair. Ms. Lorimer says that the problem pipe was inside the wall, which is part of CP. The strata says the problem was located within the strata lot and not in CP.
15. Section 1 of the *Strata Property Act* (SPA) defines CP pipes as being located within a floor, wall or ceiling that forms a boundary between strata lots, strata lots and CP, or between a strata lot and another parcel of land. CP pipes may also be located wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the CP.
16. Although the plumber may have needed to open the wall to investigate the leak, this does not establish the location of the problem. According to information on the plumber's invoice, the leak from the overflow pipe was caused by a gap between the bathtub and a washer. Based on the information before me (including a diagram of the plumbing installation), I find that the leaking pipe was not within a wall, but was behind the bathtub. It was not connected with a CP pipe but rather with the tub drain that runs underneath it. As the overflow pipe was within the strata lot and served only the bathtub, I find that it was not CP. Rather, it is part of the strata lot.
17. The fact that the leaking pipe was not CP is, by itself, not determinative of whether Ms. Lorimer is responsible for the charged back plumbing costs. Section 158(2) of the SPA allows for the charge back of an insurance deductible but does not contemplate the charge back of other types of expenses, including repair costs. In order for the strata to charge back repair costs to a strata lot account, it must have the authority to do so under a valid and enforceable bylaw or rule that creates the debt (see *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512).

18. The strata's bylaw 34 contemplates the reimbursement of repair costs if an owner, family member, or guest causes damage to CP, LCP or common facilities. However, as this responsibility is confined to damage to CP, LCP and common facilities, I find that this bylaw does not apply to here. Bylaw 37 says that, if a negligent or deliberate act results in damage that gives rise to a claim under the strata's insurance policies, an owner will be responsible for paying the reasonable costs of remedying the bylaw contravention, being an amount equal to the strata's insurance deductible.
19. In this case, the strata did not make an insurance claim as the repair costs were less than its deductible. Therefore, there was no deductible for Ms. Lorimer to reimburse. I find that bylaw 37 permits only the charge back of insurance deductibles, and not the repair costs themselves.
20. Even if I am incorrect, I find that the wording of bylaw 37 requires that an owner engage in a negligent act in order to bear responsibility. To establish negligence, it must be shown that Ms. Lorimer owed the strata a duty of care, Ms. Lorimer breached the standard of care, the strata sustained damage, and the damage was caused by Ms. Lorimer's breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27). I find that Ms. Lorimer owed the strata a duty of care under bylaw 2.1 to repair and maintain her strata lot. I accept that the overflow pipe inside the strata lot leaked, and that the leak caused the strata to incur the plumbing charges. The key consideration in this analysis is whether Ms. Lorimer 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).
21. Ms. Lorimer's evidence is that she seldom took baths and usually used the shower. There had been a previous leak when water spilled on the bathroom floor, but I find that the evidence does not show that Ms. Lorimer knew or ought to have known that there was a problem with the overflow pipe in the bathtub. I also find that the evidence does not establish that Ms. Lorimer failed to take reasonable steps to maintain or repair her bathtub in the circumstances. As I find that Ms. Lorimer did

not fail to meet the standard of care for repair and maintenance of her bathtub, negligence has not been established.

22. I find that the strata's bylaws do not permit the charge back of repair expenses in situations where there is no negligence by the strata lot owner, as is the case here. As the \$1,595.71 charge back to Ms. Lorimer's strata lot is invalid, it must be reversed.

CRT FEES AND EXPENSES

23. Under section 49 of the CRTA, and the CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I therefore order the strata to reimburse Ms. Lorimer for CRT fees of \$225. There was no claim for dispute-related expenses.
24. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Lorimer.

ORDERS

25. I order that:
- a. the \$1,595.71 charge back of repair costs to Ms. Lorimer's strata lot account be reversed, and
 - b. within 30 days, the strata must pay Ms. Lorimer \$225 as reimbursement of tribunal fees.
26. Ms. Lorimer is also entitled to post-judgment interest under the *Court Order Interest Act*.

27. Under sections 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. The order can also be enforced by the Provincial Court of British Columbia if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Lynn Scrivener, Tribunal Member