



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 1885 v. Siefert, 2020 BCCRT 1038*

B E T W E E N :

The Owners, Strata Plan NW 1885

APPLICANT

A N D :

ANDRE SIEFERT

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about the repair costs from a water leak. The applicant, The Owners, Strata Plan NW 1885 (strata), is a strata corporation. The respondent, Andrew Siefert is the former owner of residential strata lot 41 (SL 41).

2. The strata says in April 2019 water leaked from SL 41 and caused damage to 2 strata lots below SL 41 (unit 114 and unit 115) and also to the lobby carpet and hall. The strata says Mr. Siefert is responsible for the water damage.
3. Mr. Siefert denies responsibility for the water damage or the repair costs. He says the water came from the strata lot above his.
4. The strata is represented by KO. The owner is self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. 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 fairly decide the dispute based on the evidence and submissions provided.
7. 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.
8. 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

9. A preliminary issue arises about jurisdiction since Mr. Siefert no longer owned the strata lot when this dispute started. The Dispute Notice was issued on February 27, 2020 but Mr. Siefert sold SL 41 on April 16, 2020. The strata submitted an amended Dispute Notice on April 16, 2020. It is undisputed that Mr. Siefert owned SL 41 at the time of the water leak.
10. This issue was addressed in *The Owners, Strata Plan BCS 2742 v. Wijewardena et al*, 2019 BCCRT 121 and, although I am not bound by it, I find the CRT member's analysis persuasive. In *Wijewardena*, the strata also sought reimbursement of water leak repair costs from a former owner. The CRT member noted that although the *Strata Property Act* (SPA) restricts who can make a request for resolution of strata property disputes with the CRT, it does not restrict who may be named as a respondent. There is also no restriction under the CRTA for a former owner to be a respondent in a strata property claim.
11. Under section 121 of the CRTA, the CRT has jurisdiction over a claim for money owing under the SPA. Given there is no restriction under the SPA or the CRTA for a former owner to be a respondent and the CRT has express jurisdiction to decide a claim for money owing under the SPA, I find Mr. Siefert is not statute-barred from participating in this dispute.

ISSUE

12. The issue in this dispute is whether Mr. Siefert must reimburse the strata for the cost of damage from the water leak.

BACKGROUND AND EVIDENCE

13. I have read all of 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. On April 2, 2019, unit 115 reported a water leak. A plumber attended the same day but was unable to access SL 41. According to their invoice, the plumber returned the next day and found the laundry valve in the storage area in SL 41 was open and water was spraying onto the floor. Mr. Siefert did not deny this. The plumber believed Mr. Siefert's cat knocked open the valve which caused the water leak. They also stated the leak in unit 115 and the lobby stopped after they turned off the valve. The plumber invoiced the strata \$336 for their services.
15. The water leak caused damage to unit 114, unit 115, and the lobby. On April 3, 2020, Pro Carpet Care (Pro Care), a restoration company, attended and extracted the water, removed the wet carpet underlay, and set up drying equipment for 4 days in all affected areas. Pro Carpet invoiced the strata \$5,714.41 for its services.
16. In a November 26, 2019 letter to Mr. Siefert, the strata demanded payment for SL 41's outstanding balance, which included Pro Carpet's invoice. For unknown reasons, the strata did not charge back the plumber's invoice to Mr. Siefert.

ANALYSIS

Is Mr. Siefert responsible for the water leak?

17. Mr. Siefert denies the water leak was from SL 41 and says he is not responsible for the repair costs. He says the ceiling of his strata lot was wet and that the water leak originated from the unit above his, but the strata failed to conduct further investigations.
18. The strata says the water damage to the other strata lots and the lobby was caused by SL 41's laundry valve. The strata denies SL 41's ceiling was wet and says Mr. Siefert was referring to an unrelated water leak in 2017 that originated from the strata lot above his. The strata provided an August 2017 invoice from a plumber that showed there was a drainage backup in SL 41 that caused a water leak into the parkade. I give no weight to the strata's argument since the invoice indicated the water leak originated in Mr. Siefert's bathroom and did not mention either the strata lot above SL 41 or whether the ceiling in SL 41 was wet. Despite this, I am not

persuaded by Mr. Siefert's argument that the leak was from the strata lot above his. Mr. Siefert submitted no evidence that his ceiling was wet and provided no other arguments even though the CRT sent a reminder to him. I find Mr. Siefert had sufficient opportunity to provide evidence and to respond to the strata's submissions, but he chose not to.

19. I accept the plumber's invoice as evidence of the source of the leak since the plumber visited the site at the time of the leak and inspected the plumbing. I find the invoice documents the plumber's findings. In addition, there is no evidence to the contrary from another tradesperson or expert about the source of the leak. I also accept Pro Care's invoice as evidence of the extent of damage caused by the leak. I find the water leak originated from SL 41's laundry valve based on the plumber's 2019 invoice. I say this because the invoice indicated the leak in unit 115 stopped after the laundry valve was turned off.

Is Mr. Siefert responsible for the repair cost?

20. A strata corporation is not entitled to charge back costs it has incurred to an owner without an enforceable bylaw or rule that creates the debt. See *Shen v. The Owners, Strata Plan LMS 1005*, 2020 BCCRT 63, at paragraph 28, citing *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512 and *Rintoul et al v. The Owners, Strata Plan KAS 2428*, 2019 BCCRT 1007. Although CRT decisions are not binding, I find these decisions persuasive.
21. The strata was created in 1982. In October 11, 2001, the strata filed consolidated bylaws at the Land Title Office. The relevant bylaws and amendments in this dispute are:
 - a. Bylaw 7(3) says if loss or damage to a strata lot, common property, or limited common property originates from a strata lot that gives rise to a valid claim under the strata's insurance policy, the owner of the strata lot the damage originated from is responsible for the deductible portion of the strata's policy relative to the loss or damage.

- b. Bylaw 7(5) says if a strata lot owner causes damage to common property or common facilities that is not covered by insurance, the strata lot owner is responsible for the loss and must promptly reimburse the strata for the full cost of repair or replacement of the damage done.
22. I find bylaw 7(3) does not apply since the strata did not make a claim under its insurance policy to pay for the repair costs. Based on the wording in bylaw 7(5), I find the strata is not required to prove that Mr. Siefert was negligent. Instead, the strata must only show that the water leak originated in SL 41, which I find it did.
23. However, I also find that under bylaw 7(5), Mr. Siefert is only responsible for the repair costs for damage to the common property and not for any damage to the other strata lots. In its invoice Pro Care, itemized the services it provided, what areas of the building the services were for, and the amounts it charged for each service. I have reviewed Pro Care's invoice and deducted any costs for unit 114 and unit 115. I also reduced some services that applied to all areas affected by the water leak to 1/3 to reflect the portion that would apply to the lobby. I find the strata is entitled to \$1,497.37 broken down as follows:
- a. \$50 for service call (reduced from \$150),
 - b. \$150 for extracting water, removing wet underlay, and setting up drying equipment in the lobby and halls,
 - c. \$20 for disposing of wet underlay (reduced from \$60),
 - d. \$30 for antibacterial spray (reduced from \$90),
 - e. \$500 for equipment rental to dry the lobby and hall,
 - f. \$150 for inspection on April 4, 2019,
 - g. \$100 for reinstalling carpet and underlay (reduced from \$300),
 - h. \$33 for underlay (reduced from \$99),

- i. \$100 for inspection on April 8, 2019 and equipment removal (reduced from \$300)
- j. \$203.94 for an 18% contractor fee on \$1,133 (reduced from \$804.96), and
- k. \$160.43 for GST and PST on \$1,336.94.

CRT FEES, EXPENSES AND INTEREST

24. Under section 49 of the CRTA, and the CRT rules, the CRT will generally 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. Since the strata was partially successful, I order Mr. Siefert to reimburse the strata for 50% of the CRT fees which is \$112.50. The strata did not claim dispute-related expenses.
25. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to pre-judgement interest on the restoration invoice from December 17, 2019, the date payment was due according to the strata's November 26, 2019 letter to Mr. Siefert, to the date of this decision. This equals \$21.61.
26. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Siefert.

ORDERS

27. I order that within 14 days of this decision, Andre Siefert must pay The Owners, Strata Plan NW 1885 a total of \$1,631.48 broken down as follows:
- a. \$1,497.37 as reimbursement for repair costs charged back under the strata's bylaws,
 - b. \$21.61 in pre-judgement interest under the COIA, and
 - c. \$112.50 for CRT fees.

28. The Owners, Strata Plan NW 1885 is also entitled to post-judgement interest under the COIA.
29. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court 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.

Rama Sood, Tribunal Member