



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Matthews v. The Owners, Strata Plan LMS 1335*, 2020 BCCRT 1110

B E T W E E N :

BARBARA MATTHEWS

APPLICANT

A N D :

The Owners, Strata Plan LMS 1335

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about a charge for a pest inspection in a strata corporation.
2. The applicant, Barbara Matthews, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 1335 (strata). She says the strata unfairly charged back \$420 to her strata lot account for bedbug inspections in her

neighbours' strata lots. She says there is no evidence that bedbugs originated from her suite and no bylaw that permits the strata to impose the chargeback on her. She requests that the \$420 chargeback be withdrawn.

3. The strata denies Ms. Matthews' claim. It says that because the bedbugs were in Ms. Matthews' strata lot and she failed to immediately contact the property manager or her surrounding neighbours, the inspection costs should be her responsibility.
4. Ms. Matthews is self-represented. The strata is represented by a member of the strata council.

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.

ISSUE

9. The issue in this dispute is whether the strata must reverse the \$420 chargeback to Ms. Matthews' strata lot account.

EVIDENCE AND ANALYSIS

10. 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 Ms. Matthews must prove her claims on a balance of probabilities.
11. The strata was created in 1994 and consists of a 4-story building with 52 strata lots. Ms. Matthews lives on the third floor.
12. The strata's bylaws are those filed in the Land Title Office on May 4, 2018. I discuss the bylaws relevant to this dispute below as necessary.
13. The background facts are largely undisputed. In about late June 2019, Ms. Matthews discovered bedbugs in her strata lot. She says she immediately hired a pest control company. Along with having her strata lot sprayed and treated, Ms. Matthews says she disposed of some items of furniture, including a mattress and a sectional couch, all at her own expense. Ms. Matthews says she followed the instructions provided by the pest control company and the last treatment was completed on September 25, 2019. She says there has been no further evidence of bedbugs in her strata lot.
14. Ms. Matthews submitted receipts from her pest control company showing she paid for various services from June to September, including spraying, the purchase of mattress bags and "bug moats", and the removal of her sectional couch. Ms. Matthews also submitted a photo showing her electrical outlets were sprayed and treated.
15. Bylaw 2(1) says an owner must repair and maintain their strata lot, except for repair and maintenance that is the responsibility of the strata. Ms. Matthews argues that she appropriately and effectively addressed the bedbug issue in her strata lot, in

compliance with bylaw 2(1). I agree. I find that Ms. Matthews promptly hired a pest control company to treat and spray her strata lot and there is no evidence before me that there was anything more she should have done to repair or maintain her strata lot.

16. On August 31, 2019, Ms. Matthews contacted a strata council member to advise that when removing her properly bagged box spring mattress from her strata lot, her ex-husband damaged the stairwell walls between the strata's third and second floor. The strata charged back \$881.14 to Ms. Matthews for the wall repair, which she does not dispute.
17. The strata says that August 31, 2019 was its first notice that Ms. Matthews had bedbugs in her strata lot. Ms. Matthews says she advised the strata's property manager about the bedbugs on September 11, 2019, which the strata does not particularly dispute.
18. The strata then arranged for a scent detection dog inspection of the 2 strata lots beside Ms. Matthews', the 2 above Ms. Matthews', and the strata lot below Ms. Matthews' to determine whether the bedbugs had spread. The strata scheduled the inspection with each of the other owners to take place on October 9, 2019, for which the pest control company charged the strata \$420. However, 2 of the strata lot owners were not home for the inspection, so a further inspection was scheduled for October 22, 2019. The owner of the unit below Ms. Matthews ultimately declined the inspection altogether due to a dog allergy. However, the pest control company inspected Ms. Matthews' strata lot and her neighbour's lot on October 22 and charged the strata an additional \$420.
19. There is no evidence before me that any bedbugs were identified as a result of the dog inspections. There is also no evidence before me that the strata lot below Ms. Matthews' was ever inspected, by a dog or otherwise.
20. The strata says that on October 23, 2019, the strata council met with the property manager to discuss the bedbug issue and it decided that that the strata would pay for 1 of the 2 invoices for the dog inspections. The evidence shows that the strata

decided to pay for one of the invoices to give Ms. Matthews a break given the financial expense she had already incurred as a result of the bedbug issue.

21. On January 13, 2020, the property manager sent Ms. Matthews a letter that advised \$420 had been charged to Ms. Matthews' strata lot account for the services provided to investigate bedbugs that had originated from her suite. The letter said it was Ms. Matthews' responsibility to pay the invoice in its entirety.
22. Ms. Matthews attended a strata council meeting on February 12, 2020, to discuss the \$420 charge. Following the strata council meeting, the property manager sent a February 18, 2020 letter to Ms. Matthews that stated the strata had a responsibility to ensure the pests had not spread into adjacent units, so it upheld its decision to impose the \$420 chargeback for the investigation.
23. So, the question is whether the strata, having arranged and paid for the dog inspections, had the authority to charge back those costs to Ms. Matthews. The strata argues that because it can be very difficult to control bedbugs once they have spread, it was obligated to investigate whether they had spread to any other strata lots, particularly given the passage of time since Ms. Matthews first discovered them. It also says that it did not receive any report or communication from the pest control company Ms. Matthews had used to confirm the status of the infestation, so the investigation was warranted. For the following reasons, I agree that the strata was entitled to arrange the investigation.
24. Strata bylaw 8(b) says the strata must repair and maintain common property that has not been designated as limited common property. The BC Supreme Court (court) considered a strata's obligations specifically in relation to a bedbug problem in *The Owners, Strata Plan VIS 1437 v. Abolins*, 2018 BCSC 2422. There, the court found that a strata's obligation to manage and maintain common property includes the responsibility to protect common property from harm, including harm from insects and pests.
25. Common property is defined in the *Strata Property Act* (SPA) as including certain items such as pipes and heating or cooling ducts located within a floor, wall or

ceiling that forms a boundary between 2 strata lots. It is undisputed that pests such as bedbugs can spread through pathways provided by pipes, ducts and other common property that are located within strata lot walls, floors, and ceilings.

26. Therefore, I find that as part of its obligation to maintain common property in bylaw 8, the strata was entitled to investigate whether the bedbugs had spread to other strata lots using common property. However, that does not answer the question of whether it was permitted to charge the investigation cost back to Ms. Matthews.
27. Section 116(1) of the SPA allows a strata corporation to impose a lien on a strata lot for specific types of debts. A chargeback of bedbug investigation costs is not a lienable charge under the SPA. In order to collect amounts that cannot form the basis of a lien against a strata lot, a strata corporation must have the authority to do so under its bylaws. Specifically, a strata corporation's bylaws must create an obligation that the owner pay or grant the strata corporation the authority to collect that amount: see *Ward v. The Owners, Strata Plan VIS 6115*, 2011 BCCA 512 at paragraphs 40 – 41 and the non-binding decision in *Zhang v. The Owners, Strata Plan BCS 3462*, 2020 BCCRT 114, with which I agree.

28. The strata relies on bylaw 46(2), which says:

46(2) It shall be the policy of the Strata Corporation that if the Strata Council determines that an owner, his family, his visitors, employees or agents had any degree of control over events which led to damage, as well as repairs to damage, being sustained to the strata lot or common property, whether negligent or not, the owner will be responsible for the payment of the monies not covered by the insurance policy (the deductible) or, in the event an insurance claim is not filed, the cost of repairs equivalent to the deductible. This determination by the Strata Corporation shall be binding upon the owner.

29. The strata says that because the bedbugs originated from Ms. Matthews' strata lot, she should be responsible. However, bylaw 46(2) refers to situations where an owner had a degree of control over "events which led to damage" or "repairs to

damage”. Here, there is no evidence before me that the bedbugs spread or caused any “damage” to the strata lot or common property. I find that the strata’s costs to investigate whether there might be any damage are distinct from costs incurred for damage or to repair damage.

30. Further, bylaw 46(2) only permits the strata to charge an owner back for an insurance deductible or, if an insurance claim is not filed, the “cost of repairs”. Here, there was no insurance claim filed. As stated above, I find the dog investigation costs do not constitute “repairs”.
31. Finally, aside from the strata’s submission that the bedbugs originated in Ms. Matthews’ strata lot, there is no evidence before me proving this allegation. As noted above, it appears the strata lot below Ms. Matthews was never inspected. I am not persuaded that the bedbugs originated in Ms. Matthews’ strata lot simply based on the absence of evidence of another source.
32. In conclusion, I find there is no basis to conclude that Ms. Matthews had a degree of control over events that led to damage or repairs to the strata lot or common property, as required in bylaw 46(2). Therefore, I find that bylaw 46(2) did not give the strata the authority to charge back the \$420 dog investigation cost to Ms. Matthews. In the absence of any bylaw authorizing the chargeback, I order the strata to remove the \$420 charge from Ms. Matthews’ strata lot account.

CRT FEES AND EXPENSES

33. 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. I therefore order the strata to reimburse Ms. Matthews for CRT fees of \$225. Neither party claimed any dispute-related expenses, so none are ordered.
34. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Matthews.

ORDERS

35. I order that:

- a. The strata must immediately reverse the \$420 chargeback from Ms. Matthews' strata lot account, plus any related interest.
- b. Within 30 days of this decision, the strata must reimburse Ms. Matthews \$225 for CRT fees.

36. Ms. Matthews is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.

37. 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.

Kristin Gardner, Tribunal Member