



# Civil Resolution Tribunal

Date Issued: October 19, 2020

File: ST-2020-003222

Type: Strata

Civil Resolution Tribunal

Indexed as: *0915438 B.C. Ltd. v. Parker*, 2020 BCCRT 1176

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

0915438 B.C. LTD.

**APPLICANT**

**A N D :**

STEPHANIE PARKER

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Trisha Apland

## **INTRODUCTION**

1. This is a dispute about a water leak in a strata corporation.
2. The applicant corporation 0915438 B.C. Ltd. (0915438) owns strata lot 2 (SL2) on the first floor of a strata corporation building. The respondent, Stephanie Parker, owns strata lot 10 (SL10), which is situated directly above SL2 on the second floor.

3. 0915438 says that on July 7, 2019 a washing machine (washer) in Ms. Parker's strata lot malfunctioned, thereby causing water to enter SL2 and damage its ceiling and walls. 0915438 seeks \$1,496.73 for the costs to repair the water damage.
4. Ms. Parker says the washer in her SL10 failed due to normal wear and tear and without any negligence or nuisance on her part. Ms. Parker denies that she is responsible for the repair costs.
5. 0915438 is represented in this dispute by its property manager. Ms. Parker is self-represented.
6. The strata corporation is not a party to this dispute.

## **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, 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.
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.

## **ISSUE**

11. The issue in this dispute whether Ms. Parker must pay for 0915438's repair costs.

## **EVIDENCE AND ANALYSIS**

12. In a civil dispute such as this, 0915438 as the applicant, must prove its claim on a balance of probabilities. I have reviewed all of the parties' submissions and evidence provided but refer only to that needed to explain my decision.

### ***Background Facts***

13. There is no dispute that Ms. Parker's 9-year-old washer failed on July 7, 2019 and caused water to enter and damage SL2's ceiling and walls. Ms. Parker's strata lot was tenanted at the time the washer failed. There are no statements in evidence from Ms. Parker's tenants and the tenants are not named parties in this dispute.

14. The "Emergency Invoice" from the restoration company, On Side Restoration, shows that it inspected and extracted the water from SL2 on July 7, 2019. As there is no evidence that the leak continued beyond July 7, 2019, or evidence of a further water leak from SL10, I find this was an isolated incident. I find the water leakage from SL10 into SL2 stopped on the same day the washer failed.

15. As for the cause of the leak, Ms. Parker submitted an invoice from Bas Appliance, which inspected the washer after it failed. The invoice says: "Machine leaked between the tub and drain hose, causing damage to the flooring". Ms. Parker also submitted photographs of the connection between the tub and drain hose. It shows the failed connection was on the back of the washer behind the access panel. 0915438 does not dispute the leak failed at the connection point shown in the photograph. I accept Ms. Parker's evidence on the leak's source. I note that there is no evidence on the leak's precise cause, only that the leak was located at the washer's connection point.

## ***The Strata Property Act and Bylaws***

16. The *Strata Property Act* (SPA), the strata corporation's bylaws and its rules provide the framework under which a strata corporation operates.
17. I find the bylaws applicable to this dispute are Standard Bylaws 2(1) and 3(1). Bylaw 2(1) states that an owner must repair and maintain their strata lot, except for repair and maintenance that is the responsibility of the strata corporation. There is no allegation in this dispute that the washer was the strata corporation's responsibility to repair or maintain. I find the washer was Ms. Parker's responsibility to repair and maintain under the bylaws.
18. Bylaw 3(1) says that an owner, tenant, occupant or visitor must not use a strata lot in a way that causes a nuisance or unreasonably interferes with the rights of other persons to use and enjoy another strata lot. I find that this bylaw applies to both Ms. Parker and her tenants.
19. The SPA and the strata bylaws do not contain provisions that specifically address water damage and repair costs as between strata lot owners.
20. Based on the bylaws above, and lack of any bylaw to the contrary, I find that 0915438 must prove that Ms. Parker is responsible for the water damage under the law of negligence or the law of private nuisance.

## ***Is Ms. Parker Responsible in Negligence?***

21. To prove negligence, 0915438 must show that Ms. Parker owed it a duty of care, that she breached the standard of care, that 0915438 sustained damage, and that the damage was caused by Ms. Parker's breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27). I find the standard is based on what would be expected of an ordinary, reasonable, and prudent person in similar circumstances (see *Spier v. Walton*, 2020 BCCRT 149 at paragraphs 33 and 34, which I find persuasive though not binding).

22. I find that Ms. Parker owed 0915438 a duty of care as the owner of the strata lot above SL2. I also find that SL2 was damaged from water that escaped from Ms. Parker's washer. However, for the reasons that follow, I find that 0915438 has not proven, on the evidence, that Ms. Parker's actions or inactions fell below a reasonable standard of care and caused the loss.
23. First, there is no evidence, and nor was it argued, that Ms. Parker or her tenants caused the washer's connection to fail. Ms. Parker asserts that the washer failed due to normal wear and tear. It is common knowledge that mechanical parts can wear down over time. I find this is one plausible explanation for the leak at the connection point. 0915438 did not provide any contrary explanation. There is also no evidence to suggest that Ms. Parker or her tenants did something improper to the washer to cause the leak.
24. Second, I find the machine's defect was hidden behind a back panel and would not be visible on an ordinary inspection by Ms. Parker or her tenants. I find no evidence that Ms. Parker knew or ought to have known the 9-year-old washer might fail, such as by a slow drip.
25. Third, 0915438 provided no evidence that a 9-year-old washer should be regularly inspected by a professional or that a washer requires regular maintenance to its mechanical parts and connections. I find the standard of care did not require Ms. Parker to routinely inspect or service the washer by a professional.
26. Fourth, this is not a situation where Ms. Parker failed to respond to the leak in a timely way or where a failure to respond caused the loss. Again, the water in SL2 was remediated on the same day the washer failed.
27. I find that 0915438 has not proven that Ms. Parker breached the standard of care in her repair, maintenance or use of the washer, and so I find she was not negligent. I find Ms. Parker is not responsible under the law of negligent to reimburse 0915438's repair costs.

### ***Is Ms. Parker Responsible in Nuisance?***

28. I turn now to 0915438's claim in nuisance.

29. A private nuisance occurs when a person substantially and unreasonably interferes with a property owner's use or enjoyment of their property. I find this is the same standard imposed by the strata's bylaws. However, if the person is not aware of the problem that causes the interference, and had no reason to know of the problem, they will not be liable because they did not act unreasonably (see *Theberge v. Zittlau*, 2000 BCPC 255).

30. The normal use of the washer in SL10 was clearly not a nuisance itself. However, the escaped water that damaged SL2 could be classified as a nuisance if Ms. Parker did not act reasonably once she became aware, or should have been aware, of the leakage.

31. For the reasons discussed above, I find no evidence that Ms. Parker should have known the washer might leak before the July 7, 2019 incident. I also find that Ms. Parker did not act unreasonably or allow the leak to continue once she became aware of it. I find Ms. Parker is not liable in nuisance for this isolated leak event. I find that 0915438 has not therefore, proved its nuisance claim.

32. As there is no bylaw that makes Ms. Parker strictly liable for the repair costs to SL2, I find that Ms. Parker is not obligated to reimburse 0915438 the claimed \$1,496.73 in repair costs. I dismiss 0915438's claim.

### **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. Because 0915438 was unsuccessful in its claims, it is not entitled to reimbursement of its CRT fees. There was no claim for expenses.

## **ORDER**

34. I dismiss 0915438 B.C. Ltd.'s claims and this dispute.

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Trisha Apland, Tribunal Member