



# Civil Resolution Tribunal

Date Issued: November 30, 2020

File: ST-2020-005705

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 2969 v. O'Hearn*, 2020 BCCRT 1355

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

The Owners, Strata Plan LMS 2969

**APPLICANT**

**A N D :**

DANIEL O'HEARN

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## INTRODUCTION

1. This dispute is about payment for a plumbing inspection. The applicant, The Owners, Strata Plan LMS 2969 (strata), says that it discovered a water leak believed to originate in Daniel O'Hearn's (respondent's) strata lot. As Mr. O'Hearn was not home,

the strata directed its hired plumber to determine the source of the leak in Mr. O'Hearn's strata lot and stop it. The strata claims \$575.80, the cost of the plumber's weekend service call.

2. Mr. O'Hearn says he authorized the strata to enter his apartment to assess the leak, but not to hire a plumber. He says there was no longer an active leak when the strata and plumber attended his strata lot, so hiring a plumber was unnecessary. So, Mr. O'Hearn denies owing anything for plumber fees, which he also says are excessive.
3. The strata is represented by a strata council member in this dispute. Mr. O'Hearn is self-represented.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
6. 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.

7. 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**

8. The issue in this dispute is whether Mr. O'Hearn is responsible for strata-ordered plumbing work in his strata lot, and if so, does he owe the strata \$575.80 or another amount?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, the strata, as the applicant, must prove its claims on a balance of probabilities. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.
10. The strata was formed in 1997, and includes a residential tower. Mr. O'Hearn owns strata lot 179 in the tower, where he lived in 2018. The strata repealed and replaced its bylaws under the *Strata Property Act* (SPA) in 2001. It amended its bylaws several times after that, although most of those amendments are not relevant to this dispute.
11. This dispute involves a shower faucet leak. Bylaw 3.1 says that an owner must maintain and repair their strata lot, except for repair and maintenance that is the responsibility of the strata. Under SPA section 72(3), the strata took responsibility for repairing and maintaining specific portions of strata lots via bylaw 11.1(d). I find none of the strata's responsibilities set out in bylaw 11.1(d) include faucet plumbing in a strata lot. The parties do not deny that the leaking shower faucet and plumbing in this dispute were part of Mr. O'Hearn's strata lot. I find Mr. O'Hearn was responsible for repairing and maintaining the shower faucet and attached plumbing.
12. The undisputed evidence is that Mr. O'Hearn discovered that his shower faucet was not working properly, so he removed it to diagnose the problem. On Saturday, June 27, 2018, he re-attached the faulty faucet without repairing it, showered, then went to work. Around that time, the owner of the strata lot below Mr. O'Hearn's strata lot called

the concierge and reported water leaking from the ceiling. The concierge called a plumbing company, Werner Smith Mechanical Inc. (Werner), that determined the leak likely originated in Mr. O'Hearn's strata lot. Mr. O'Hearn agrees that the concierge telephoned Mr. O'Hearn, told him that there was water on the ceiling of the unit below his, and asked permission to enter Mr. O'Hearn's strata lot to investigate. Mr. O'Hearn gave his permission. On the evidence before me, I find Mr. O'Hearn did not mention his recent plumbing work to the concierge, and did not place any restrictions on the leak investigation.

13. The concierge brought the Werner employee to strata lot 179. According to Werner's invoice for its inspection, which is undisputed, Werner removed the shower faucet and found that electrical tape was being used as a gasket. Werner said this was not sealing and was causing water to leak inside the wall. Werner shut off internal water valves in the wall and said the faucet needed to be replaced. The invoice for the inspection and water shut-off totalled \$575.80, and was addressed to FirstService Residential (FirstService), the strata's property managers. In a July 25, 2018 letter to Mr. O'Hearn, the strata said it had paid the invoice, and asked Mr. O'Hearn to reimburse the strata within 30 days, since the leaking faucet was Mr. O'Hearn's responsibility and not the strata's. The strata says it applied this expense to Mr. O'Hearn's strata account as a "charge-back", but Mr. O'Hearn did not pay for it.
14. Mr. O'Hearn objected to the plumber expense in August 2018 and July 11, 2019 correspondence to the strata council. I find the council also heard Mr. O'Hearn's objections in person around July 2019. The strata continued to seek reimbursement of the Werner plumbing fees after hearing Mr. O'Hearn's objections.
15. Mr. O'Hearn says that he did not give the strata permission to hire a plumber to determine the source of the water leak, which he says was unnecessary and unduly expensive. He says that he thought the concierge would simply look for leaking appliances, running faucets, or water from the unit above. However, I found above that Mr. O'Hearn did not tell the concierge to limit the extent of the investigation.

16. Mr. O'Hearn also says that there was no longer an active leak by the time the plumber arrived, because it only occurred while he was showering, so there was no need for an extensive plumbing inspection. However, Mr. O'Hearn does not explain how the strata could have known that the water leak was inactive without entering his strata lot and verifying the leak's source by removing the faucet, especially given that Mr. O'Hearn failed to mention his recent, incomplete shower faucet repair work to the concierge or anyone else. I find it was not appropriate for the strata to wait to see if the leak stopped on its own, given the obvious potential for serious ongoing water damage to neighbouring strata lots and common property if it did not stop. Strata bylaw 10.1(a) says that a resident must allow a strata-authorized person to enter a strata lot without notice in an emergency, to ensure safety or prevent significant loss or damage. In these circumstances, I find that the water leak was an emergency, and that entering strata lot 179 was needed to prevent potentially significant water damage. So, I find the strata did not need to notify Mr. O'Hearn or obtain his permission for the concierge and Werner to enter the strata lot.
17. Mr. O'Hearn says that there is a process in place to prudently determine the scope or urgency of repairs, and that the strata, FirstService, and the concierge disregarded it. However, Mr. O'Hearn did not identify or explain any such process or procedure. Mr. O'Hearn suggests that this procedure involved informing him of ceiling stains in the unit below his. He says that if the strata had followed that procedure, or had told him what the suspected issue was, he would have told the strata that he knew what needed to be fixed. I am not persuaded by this argument, as elsewhere in his submissions, Mr. O'Hearn admits that the concierge told him about the water leak in the unit below that appeared to be coming from strata lot 179, yet he did not inform the concierge about his recent shower faucet troubles. I find that because of Mr. O'Hearn's omission, the likely cause of the water leak remained unknown to the strata, the concierge, and Werner, until they conducted an inspection that involved removing some of the shower faucet plumbing. I find that a plumber was reasonably required to remove this plumbing, as there is no evidence before me showing that this was a part of the concierge's duties, or that he had the necessary plumbing skills.

18. Mr. O’Hearn also says that the strata disregarded his responsibility for making repairs to his strata lot by hiring Werner without his permission. I find that Werner performed no repairs. On the available evidence, I am satisfied that Werner only inspected strata lot 179 to the extent needed to determine the cause of the water leak, and shut off a water valve to prevent further leaks. I find this was within the scope of the strata’s responsibility to maintain common property and common assets under SPA section 3, and its ability to enter the strata lot on an emergency basis to prevent significant water damage.
19. Mr. O’Hearn says he should not owe anything for plumbing services because the strata “overstepped” its authority by engaging Werner for the water leak. However, in his August 2018 and July 2019 correspondence with the strata, Mr. O’Hearn said that he was willing to pay some amount toward Werner’s invoice, but that the full amount was excessive. Mr. O’Hearn now says this offer was as a courtesy for inconvenience costs, which he no longer extends. But, on balance, I find that the offer was an acknowledgement of at least partial responsibility for Werner’s fees.
20. More significantly, Mr. O’Hearn does not deny that the leak resulted from his own negligence. In his July 11, 2019 email to the strata council, Mr. O’Hearn said he did not deny responsibility for what happened, and wrote “Yes this is MY negligence” (emphasis in original). I find that he does not deny applying an ineffective electrical tape seal to the faucet plumbing as noted by Werner, or that the water leak was entirely his fault.
21. Mr. O’Hearn is liable in negligence if the evidence shows he owed the strata a duty of care, he breached the applicable standard of care, and that his breach caused the strata reasonably foreseeable loss or damage (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3). I find that Mr. O’Hearn had a duty to properly repair his shower faucet so that it would not leak into adjacent strata lots or common property. I find he failed to properly repair his shower faucet, and to report his incomplete repairs to the strata or the concierge despite knowing about the water leaking into the unit below. I find these were failures to meet a reasonable standard of care in the circumstances. I find these failures caused the strata to take reasonably

necessary steps to prevent potentially significant water damage, which I find included Werner's plumbing inspection. I agree that this was negligence by Mr. O'Hearn.

22. Further, in 2014, the strata filed amended bylaw 4.4 in the Land Title Office. It says that an owner must indemnify and save harmless the strata from the expenses of any necessary maintenance, repair, or replacement to a strata lot, including those caused by any defect in the property that the owner is responsible to repair and maintain under the bylaws, regardless of fault. I found above that the shower faucet plumbing was Mr. O'Hearn's responsibility to repair and maintain. I find that maintenance of property includes inspections. On balance, I find that Werner's emergency water leak inspection was, in the circumstances, necessary maintenance to strata lot 179 caused by a shower faucet plumbing defect. So, I find that Mr. O'Hearn must indemnify the strata for the Werner inspection expense. There is no evidence that the strata made an insurance claim for the Werner expense, or that the expense exceeded an insurance deductible, so under bylaw 4.4 I find Mr. O'Hearn is responsible for the entire amount of the Werner expense.
23. I find that the strata reasonably incurred the \$575.80 expense of hiring Werner to determine the source of the water leak on short notice and on a weekend. So, for the above reasons, I find that Mr. O'Hearn owes the strata \$575.80 in damages for negligence and under bylaw 4.4. I allow the strata's claim.

## **CRT FEES, EXPENSES, AND INTEREST**

24. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The strata was successful and paid \$225 in CRT fees, so I order Mr. O'Hearn to reimburse those fees. Neither party claimed any CRT dispute-related expenses, so I order none.
25. The *Court Order Interest Act* applies to the CRT. I find the strata is entitled to pre-judgment interest on the \$575.80 in damages, calculated from August 25, 2018, the

day after the due date described in the strata's July 25, 2018 letter, to the date of this decision. This equals \$20.86.

26. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. O'Hearn.

## **ORDERS**

27. I order that, that within 30 days of the date of this order, Mr. O'Hearn pay the strata a total of \$821.66, broken down as follows:

- a. \$575.80 for plumbing services,
- b. \$20.86 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$225 in CRT fees.

28. The strata is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

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.

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Chad McCarthy, Tribunal Member