Civil Resolution Tribunal

Date Issued: December 9, 2020

Files: ST-2019-007217 and ST-2019-007595

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 1906 v. Rogers*, 2020 BCCRT 1392

B E T W E E N :

The Owners, Strata Plan LMS 1906

APPLICANT

A N D :

DEVON ROGERS

RESPONDENT

A N D :

The Owners, Strata Plan LMS 1906

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Chad McCarthy

INTRODUCTION

1. This dispute is about an underground water leak on strata corporation premises. The applicant, and respondent by counterclaim, The Owners, Strata Plan LMS 1906 (strata), says there was a water leak underneath the slab foundation of strata lot 91, owned by the respondent, and applicant by counterclaim, Devon Rogers. The strata says that Mr. Rogers failed to report the water leak to the strata, and failed to allow timely access to the strata lot to repair voids under the foundation caused by the leak.

2. The strata initially claimed $1,407.90 for unpaid strata fees, and an order that the owner remove the tenants occupying the strata lot so that water leak repairs could proceed. In its submissions, the strata acknowledged that the claimed strata fees have been paid, and that the tenants relocated during water leak repairs. So, I find that those claims have already been resolved, and I need not address them in my decision. The strata still claims the following, in dispute number ST-2019-007217:

    a. $13,198.71 for water use charges that the strata says resulted from the water leak not being reported earlier,

    b. $2,153.17 for a plumbing repair bill to fix the water leak,

    c. $3,600 for the cost of repairing underground voids caused by the water leak, and

    d. $6,000 for the estimated cost of removing and replacing the strata lot's floors when repairing the leak and fixing underground voids.

3. Mr. Rogers says that the tenants reported leaking plumbing inside the strata lot that was unrelated to the underground water leak, and that those issues were repaired. However, Mr. Rogers says that the tenants did not inform him of an underground water leak, or the sound of water from that leak, so he was unaware of it and could not report it to the strata. Mr. Rogers says that the underground leak is entirely the strata's responsibility, and he denies owing the strata anything.

4. Mr. Rogers counterclaims against the strata for the following, in dispute number ST-2019-007595:

a. $30,000 for stress, prejudice, and discrimination against the tenants,

b. $4,000 for tenant hotel and meal expenses during the strata's repairs,

c. $10,000 for allegedly "dangerous" conditions in which the tenants lived for a year because of strata repair delays,

d. $10,000 for poor strata practices, including inadequate communications with Mr. Rogers, causing him stress and anxiety, and

e. $6,000 for laminate flooring in the strata lot, to replace the floors removed during the strata's water leak repairs.

5. The strata denies owing Mr. Rogers anything, or that it delayed repairs, communicated poorly, or behaved unprofessionally. The strata also says that the strata lot's floors are Mr. Rogers' responsibility, and because they are non-original upgrades, they are covered under his insurance policy.

6. Mr. Rogers is self-represented in this dispute. The strata is represented by a strata council member.

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. 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. Although the parties' submissions each call into question the credibility of the other party in some respects, the credibility of interested witnesses cannot be determined solely by whose personal demeanour in a proceeding appears to be the

most truthful. The most likely account depends on its harmony with the rest of the evidence. Further, in the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.

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.

11. The strata's claims were made in CRT dispute number ST-2019-007217, and Mr. Rogers' counterclaims were made in CRT dispute number ST-2019-007595. I find that both dispute files relate to the same subject matter, and that the parties had an opportunity to address the evidence and arguments in both dispute files when making their submissions on the claims and counterclaims. So, I find it is most efficient and fair to decide the claims and counterclaims together in this decision.

Counterclaims for Tenant Remedies

12. I find that some of Mr. Rogers' counterclaims are requests for remedies for the tenants of strata lot 91, known as unit 49. However, none of the tenants are named as parties in this dispute. Mr. Rogers does not claim to represent any of the tenants, or to be authorized to seek remedies on their behalf. Although at least one of the tenants provided a witness statement that is in evidence, I find that none of the tenants participated as a party to this dispute, or sought relief from the CRT.

13. I find that I lack jurisdiction under the CRTA to order remedies requested on behalf of non-parties, such as the tenants. Specifically, I find the $30,000 claimed for alleged stress, anxiety, and discrimination against the tenants is a claim on behalf of the

tenants, and Mr. Rogers has failed to explain why he is entitled to $30,000 for the alleged wrongs against the tenants. Similarly, I find the $10,000 claimed for the tenants allegedly having to live in "dangerous" and unreasonable conditions for a year is a claim on behalf of the tenants, and Mr. Rogers has not explained why he should be paid that amount. I also find that the $4,000 claimed for hotels and meals during the tenants' relocation was for expenses incurred by the tenants, not Mr. Rogers. Mr. Rogers does not directly confirm that he paid anything for the tenants' relocation, and provided no evidence that he paid for any tenant hotel, meal, or other expenses.

14. In the context of the CRT, "standing" means the right of an applicant to bring a dispute for resolution by the CRT. The tribunal has previously decided that a party does not have standing to make a claim relating to the interests of a non-party (see *Africh v. The Owners, Strata Plan EPS3495*, 2020 BCCRT 415 and *Action Rooter Ltd. v. Alice Chen (dba Beaconsfield Inn)*, 2020 BCCRT 135). Similarly, I find that Mr. Rogers does not have standing to bring the tenant-related dispute claims, which are about the interests of non-parties. So, I dismiss Mr. Rogers' counterclaims for $30,000 for tenant stress, anxiety, and discrimination, $10,000 for allegedly dangerous tenant living conditions, and $4,000 for tenant hotel and meal expenses. I make no further findings on these counterclaims.

Other Evidence

15. During the CRT facilitation stage, the strata requested that Mr. Rogers provide an invoice for plumbing repairs inside strata lot 91. Mr. Rogers did not submit such an invoice. The strata says that the invoice may show that the plumber advised Mr. Rogers there was a problem underneath the strata lot before the strata discovered the water leak. So, the strata says Mr. Rogers should submit the invoice, because it may show he failed to report a known water leak. However, as explained in my reasons below, even if the invoice showed that Mr. Rogers knew about a suspected underground plumbing issue and failed to report it, this would not change the outcome of my decision. Given the CRT's mandate of speed, efficiency, and flexibility, I find it is unnecessary to order the invoice's production, because I find its alleged contents

would not change my decision. So, I find the invoice's absence is not unfair to the strata, and I decline to order Mr. Rogers to produce it.

ISSUES

16. The issues in this dispute are:

    a. Whether Mr. Rogers failed in a duty to report a suspected underground water leak to the strata.

    b. If so, does Mr. Rogers owe the strata $13,198.71 for a water bill, $2,153.17 for plumbing and foundation repairs, $3,600 for subsurface repairs, and $6,000 for flooring repairs, or different amounts?

    c. Whether the strata owes Mr. Rogers $10,000 or another remedy for stress and anxiety caused by poor strata practices and communications, and $6,000 for replacement laminate flooring.

EVIDENCE AND ANALYSIS

17. In a civil proceeding like this one, the strata, as the applicant, must prove its claims on a balance of probabilities. Mr. Rogers must prove the counterclaims to the same standard. While I have read all the parties' submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

Background

18. The strata was formed in 1995 as an amalgamation of Strata Plan NW 464 and Strata Plan LMS 1819. In 2017, the strata filed new, consolidated bylaws under the *Strata Property Act* (SPA) in the Land Title Office. The parties do not dispute the bylaws.

19. The strata has several buildings, each containing multiple, adjacent, 2-level townhouses. Strata lot 91 is between strata lots 90 and 92 in the same building. Mr. Rogers owns strata lot 91, but he rents it out to tenants and does not live there.

20. Section 1(1) of the SPA defines common property, in part, as that part of the land and buildings shown on the strata plan that is not part of a strata lot. Under SPA section 68(1), a strata lot lower boundary is midway between the surface of the structural portion of the floor facing the strata lot, and the surface of the same portion facing the common property below, unless otherwise shown on the strata plan. Here, Strata Plan LMS 1906 only contains an explanatory plan, and does not show individual strata lots. However, I find that side elevation views in Strata Plan NW464 show strata lot 91's lower boundary, which is above grade. So, I find that strata lot 91's lower boundary is "otherwise shown on the strata plan." Further, it is undisputed that strata lot 91 has a slab foundation. Considering the evidence before me, I find that the slab foundation, and the area below it, are below the strata lot 91 boundary and are common property. I also find that strata lot 91's laminate flooring is part of the strata lot, and is not common property.

21. The strata's overall water use is metered, but each strata lot's use is not. The strata says it received a water bill for the strata complex in the fall of 2018 that showed greater-than-normal water use. This bill is not in evidence, although a later water bill dated November 23, 2018 was submitted. I find there is no evidence showing what the strata's usual water bill was at that time of year, or the volumes of water consumed. The submitted bill does show that August to November 2018 water charges were greater than May to August 2018 water charges, and that "metered" sewer charges were based on 90% of the metered water consumption.

22. The strata hired Breakwater Contracting Ltd. (Breakwater) to investigate the cause of the allegedly increased water consumption. Breakwater provided a letter dated December 9, 2019 describing its activities. Breakwater said 2 of its employees walked around the strata on October 2, 2018 but did not observe "anything" on the ground's surface. On October 3, 2018, 2 employees attended the strata again, and after some investigation detected the sound of a "rushing" water leak at unit 49, which is strata lot 91. Breakwater said that a strata council member knocked on strata lot 91's door and told the tenant who answered about the water sound. Breakwater says the person who answered said, "oh, that's the noise I heard." I place limited weight on this statement, because it is not clear on the evidence whether the author of the

Breakwater statement overheard this conversation, or if another Breakwater employee or the strata later told the author about the tenant's alleged statement. In any event, this statement does not indicate when the tenant first heard a noise.

23. An October 4, 2018 invoice from TPS The Plumbing Shop Ltd. (TPS) to the strata's property management company details repair work undertaken at strata lot 91 because of the suspected leak. The invoice says TPS was called for a water leak under the slab floor. TPS jackhammered through the floor and found a leak under a wall. TPS replaced a section of water main and provided a new water supply line into the strata lot, and tested the connection. TPS then backfilled the area with sand, re-concreted the holes in the slab foundation, and tested the water again.

24. Mr. Rogers says, and the strata does not directly deny, that one of the adjacent townhouses was also affected by the water leak. I find this is consistent with the TPS invoice that identified the leak as being underground and under a wall.

25. The strata says, essentially, that Mr. Rogers knew about the water leak but failed to report it to the strata. The strata alleges that it was delayed in discovering and fixing the leak because of this failure to report, and that further damage occurred during the delay. The strata seeks compensation for damage related to this alleged delay. Mr. Rogers says the leak and related repairs are not his responsibility.

The SPA and Bylaws

26. Section 72 of the SPA says a strata corporation is generally responsible for the repair and maintenance of common property. Under SPA section 72(2), strata bylaws can make an owner responsible for repairs and maintenance of some limited common property (LCP). However, I find that does not apply in this dispute because the area below strata lot 91 is not designated as LCP.

27. Presently, legislation does not allow a strata corporation to enact bylaws that make an owner responsible for repair and maintenance of common property that is not LCP. SPA section 72(2)(a) says a strata may make an owner responsible for repair and maintenance of common property other than LCP by bylaw "only if identified in the

regulations". There is no regulation that currently permits this, so bylaws can only make an owner responsible for repair and maintenance of LCP. I find that the leaking pipe that resulted in the damage in this dispute is non-LCP common property. So, an owner cannot be responsible to repair and maintain that pipe or the common property surrounding it.

28. Bylaw 3.3 says that any owner who does not report any deficiencies they are aware of, in a timely manner and in writing, will share the cost of repairs with the strata corporation. "Deficiencies" is not defined. In any event, I find bylaw 3.3 contravenes section 72 of the SPA, because it attempts to make strata lot owners responsible for non-LCP common property. SPA section 121(1) says a bylaw is not enforceable to the extent that it contravenes the SPA. So, I find bylaw 3.3 is not enforceable to the extent it requires an owner to pay for the cost of repairs and maintenance to non-LCP common property, such as repairs to the leaking underground pipe and slab foundation, which are the strata corporation's responsibility.

29. I also note that bylaw 4.4(f) says that an owner or tenant must not do anything that would "increase the risk of damage or claim to the Strata Corporation's insurance policy" (reproduced as written). However, the bylaw does not provide a specific remedy for breaking it, and the strata does not claim payment of a fine or remediation costs under this bylaw.

30. Bylaws 33.4 through 33.7 say that strata lot owners may owe the strata amounts for damage originating in a strata lot, or damage caused by an owner or occupant. It is undisputed that the owner or tenants did not cause the underground, non-LCP common property water pipe leak to occur. The strata only alleges that it could have prevented additional damage if Mr. Rogers had promptly reported the leak to the strata. So, I find that Mr. Rogers did not "cause" the water leak or resulting damage within the meaning of bylaws 33.4 to 33.7, although I discuss below whether Mr. Rogers negligently failed to report the leak. Therefore, I find that bylaws 33.4 through 33.7 are not applicable in these circumstances, because the disputed water damage was not "caused" by the acts of Mr. Rogers or the tenants, and did not originate inside strata lot 91.

31. Further, bylaw 33.8 says that the strata is responsible for paying the strata's insurance deductible where a loss originates from the rupture or malfunction of a permanent public facility, supply line, or sewer system that extends from common property to a strata lot. I find that is the case here, and that bylaw 33.8 is consistent with the strata being responsible for the leaking non-LCP common property water pipe below strata lot 91.

32. For the above reasons, I find that the leaking underground pipe was the strata's responsibility to maintain and repair, as was strata lot 91's slab foundation and everything below it.

Did Mr. Rogers fail in a duty to report an underground water leak to the strata?

33. The strata says that Mr. Rogers had a duty to report a suspected under-slab leak, and sounds of "rushing water", to the strata. The strata says, and Breakwater confirms, that water sounds were audible from outside strata lot 91 on October 3, 2018. However, on balance, I find the evidence before me does not show that the strata or any other tenants, visitors, or strata lot owners, heard any water sounds before that date. The strata says that the water leak existed for several weeks before October 3, 2018, based in part on alleged comments from the City of Chilliwack about water usage that are not in evidence. I find that apart from the strata's poorly supported allegations about the timing of the leak, there is no evidence before me showing when the water leak started.

34. According to the strata, an unidentified strata lot 91 tenant told a strata council member that a plumber attended the strata lot sometime before October 2, 2018, and the plumber said there was a problem that he could not fix. The strata says that this problem was the underground leak, and the tenant said they told Mr. Rogers about it.

35. Mr. Rogers says, and a witness statement from a tenant, CG, confirms, that there was a leak in strata lot 91's bathroom shower and a water issue under the kitchen sink. Mr. Rogers says that a plumber was called, who fixed those issues, although it

is not clear when. CG confirms that when later questioned about the alleged water noise around strata lot 91, CG said that she had told Mr. Rogers about the shower and kitchen leaks, and that they had been fixed. I find it likely there was a miscommunication, and the strata assumed CG was talking about underground water sounds when she was not. Mr. Rogers says he received an invoice from his plumber for the shower and kitchen work that is not in evidence. As noted, the strata suspects that this invoice shows Mr. Rogers knew about a possible underground water leak before October 3, 2018.

36. Even if Mr. Rogers knew about a possible or actual water leak underneath strata lot 91, this does not necessarily mean he was required to report it to the strata, or was responsible for the consequences of not reporting it. I find the strata is alleging that Mr. Rogers was negligent. According to *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3, to prove negligence, the strata must show that Mr. Rogers owed the strata a duty of care, he breached the applicable standard of care, and his breach caused the strata reasonably foreseeable loss or damage.

37. I find Mr. Rogers may have had a duty of care to report a suspected common property water leak to the strata if he knew, or should have known, that there might be a damaging leak. For example, similar duties arise in *The Owners, Strata Plan BCS3084 v. Goldin*, 2019 BCCRT 793, which suggests a strata corporation might have a duty of care to notify strata lot owners about water pressure issues, and *Luo v. Ding*, 2020 BCCRT 834 where there was a duty of care for a tenant to report property damage to a landlord. If Mr. Rogers owed a duty to the strata, the applicable standard of care is that of a reasonable person in the same circumstances.

38. Would a reasonable person in the same circumstances as Mr. Rogers have reported a suspected water leak to the strata? I found above that strata bylaw 3.3 is unenforceable here, and I am not aware of any applicable bylaw, contract, or legislation that required Mr. Rogers to report suspected common property damage or deficiencies to the strata in this case. However, the strata says Mr. Rogers should have reported the leaking water pipe to the strata even though he was not responsible

for it, because he knew there was a problem, and because the problem was causing ongoing water damage.

39. I found above that the evidence fails to show Mr. Rogers or his tenants heard any underground water sounds before October 3, 2018, when the strata first identified them. I also find that Mr. Rogers did not see, and his tenants did not notify him about, any damage related to the water leak before it was diagnosed by the strata's contractors on October 4, 2018. Further, I find that even if Mr. Rogers' own plumber had told him about a possible plumbing issue below strata lot 91, as the strata alleges, the evidence before me does not show that any resulting water damage was known or reasonably suspected by Mr. Rogers until the strata dug through the slab foundation and discovered the leak and the damage. As noted, the evidence does not show that any other person, or the strata, detected or suspected a water leak until the strata hired professional contractors to investigate a strata water consumption issue. I find Mr. Rogers did not breach the standard of care in the circumstances.

40. Even if Mr. Rogers had breached the standard of care, I would have found that the strata failed to show that the breach caused any additional water damage. As noted, there is no reliable evidence before me showing when the water leak began. Further, the strata does not say exactly when Mr. Rogers should have reported the suspected leak, or how much damage was caused between that time and October 3, 2018. I find that the question of how much damage likely occurred on which days before October 3, 2018 is beyond ordinary knowledge and requires expert evidence, and there is no such expert evidence before me. I find the strata has failed in its burden of showing that Mr. Rogers' alleged failure to report water damage caused any additional damage as claimed.

41. Overall, I find Mr. Rogers was not negligent when he failed to report water sounds or a suspected water leak to the strata before October 3, 2018, even if his plumber had informed him about a possible underground plumbing issue near strata lot 91.

Does Mr. Rogers Owe The Strata Anything?

42. Given my finding that Mr. Rogers was not negligent for failing to report common property water sounds or a suspected leak to the strata, I find he is not responsible for any strata loss or damages resulting from the strata not discovering the leak earlier. As noted, the strata is entirely responsible for maintaining and repairing the common property underneath strata lot 91, including the slab foundation, water pipes, and earth. I find Mr. Rogers is not responsible for any common expenses, or common property losses or damage, resulting from the common property water pipe leak under strata lot 91. I also find the evidence fails to show that any further damage occurred after the plumbing repairs stopped the water leak in early October 2018. So, I find any alleged delays in repairs did not result in further damage to common property or strata lot 91.

43. Specifically, I find Mr. Rogers is not responsible for a $13,198.71 increase in water expenses due to the water leak, and I dismiss the strata's claim for this amount. I find that the strata's water bills are common expenses, which the strata is responsible for, and that any alleged bill increases were caused by the water leak, which the strata is also responsible for. Even if Mr. Rogers was responsible for increased water expenses, I still would have dismissed the strata's claim, because I find the strata has failed to provide evidence confirming that the water leak under strata lot 91 caused an increase in usage.

44. I also find Mr. Rogers is not responsible for $2,153.17 in TPS plumbing repairs and foundation repairs resulting from the water leak, or $3,600 for later subsurface repairs invoiced by POLY-MOR Canada Inc., and I dismiss those claims.

45. In its Dispute Notice, the strata also claimed an estimated $6,000 to replace strata lot 91's floors. I found above that the floors are part of strata lot 91, so Mr. Rogers is responsible for maintaining and repairing them under bylaw 3.1(a). Neither party's submissions clearly state when the floors were repaired or by whom. The strata provided no proof of actual or estimated replacement flooring costs, although it submitted a $2,477.37 Atmosphere Interiors invoice that included flooring removal during the subsurface repairs. The strata did not explain this invoice, and on balance

I find it is not for flooring maintenance or repair, but is part of the subsurface repairs that were the strata's responsibility. On the other hand, Mr. Rogers suggests that he paid an insurance deductible and that his insurance costs will increase because of the underground water leak. He also submitted a $561.79 flooring materials invoice addressed to him from Journey Flooring & Finishings Inc. On balance, I find that Mr. Rogers was responsible for flooring costs in strata lot 91, and the strata did not pay to replace the floors it removed for subsurface repairs. So, I dismiss the strata's claim for $6,000 for replacement flooring.

Does the Strata Owe Mr. Rogers Anything?

46. Given my finding that Mr. Rogers was responsible for replacing the floors in his strata lot, and that he appears to have done so, I dismiss his counterclaim for $6,000 in replacement flooring costs. I note that Mr. Rogers may seek to recover his flooring costs under an applicable insurance policy, but I make no findings about insurance coverage or payments as they are not at issue in this dispute.

47. I turn now to Mr. Rogers' claim for $10,000 for stress and anxiety caused by poor strata practices and communications. I find that Mr. Rogers' claim is not based on the strata's failure to act in accordance with specific SPA provisions, but is for allegedly unprofessional actions that caused him stress and anxiety. As noted above, I make no findings about the strata's allegedly poor behaviour toward the tenants because the tenants are not parties to this dispute. However, I considered all of the evidence and arguments about the strata's behaviour in deciding Mr. Rogers' claim.

48. It is undisputed that the strata sent Mr. Rogers letters by standard mail on March 20, 2019 and May 8, 2019, informing him of the water damage under his strata lot and the need for further foundation repairs. Mr. Rogers says he did not read these letters because they were "disguised" to look like regular, non-urgent strata communications. He says he did not read any strata communications about the water leak until the strata sent a registered letter dated June 28, 2019, because the strata did not send him a text message or call him, or send a letter with a different but unspecified appearance. The strata says it failed to reach Mr. Rogers by telephone

despite repeated attempts over several months, and that his voicemail box was always full.

49. There are no photographs of the strata letters in evidence. On balance, I find that the strata did not disguise its letters to Mr. Rogers, and was not required to identify them in any particular way to distinguish them from other correspondence. Further, I find that the strata was not required to take any additional steps to inform him about needed foundation repairs, under the SPA or otherwise, because Mr. Rogers actually received the strata's letters. I find the strata is not responsible for Mr. Rogers' failure to open mail from the strata, or to otherwise be reasonable available by telephone or voicemail.

50. Mr. Rogers says that in the same letters about the water leak, the strata also told him that he needed to remove an unsafe exterior-piped gas fireplace from strata lot 91, and that more than 5 people were residing in the strata lot contrary to bylaw 4.5. Mr. Rogers does not deny that the piping was unsafe or that more tenants were residing in strata lot 91 than were permitted. However, he suggests that the strata only asked for the gas fireplace removal because of the water leak dispute. The strata says that the strata lot 91 tenants brought the gas fireplace to the attention of a strata contractor because it was causing a tenant to have health issues. I find the weight of the evidence does not show that the strata singled out Mr. Rogers in its fireplace removal request, or that the request was motivated by anything other than safety concerns that it discovered not long before sending the letters.

51. Similarly, Mr. Rogers suggests that the strata only complained of excess residents in strata lot 91 after the water leak issue arose. He also suggests that another strata lot had more residents than was allowed. Other than Mr. Rogers' unsupported statement, I find there is no evidence showing that another strata lot had more residents than were allowed under the bylaws. I also find there is no persuasive evidence showing that the strata knowingly permitted or would have permitted excess residents to remain in another strata lot. I find Mr. Rogers was not singled out or treated unfairly by the strata's request that the number of strata lot residents be limited as set out in the bylaws.

52. I find that although the parties' communications were less than ideal, the strata made adequate attempts to communicate with Mr. Rogers. I also find Mr. Rogers was not singled out by the strata for having too many residents in his strata lot or for having to remove an unsafe fireplace. Further, I note that Mr. Rogers does not seek any relief for this allegedly poor behaviour, such as an order for better strata communications, an order that he be permitted to keep the gas fireplace, or an order that more residents be allowed in strata lot 91.

53. Having reviewed the evidence and arguments, I find that Mr. Rogers is claiming damages for "stress and anxiety" caused by the allegedly poor strata behaviour described above, which he calls "unjust attacks". Mr. Rogers does not describe his "stress and anxiety" any further, and provided no medical evidence.

54. I note that in the *Mustapha* decision mentioned above, the Supreme Court of Canada said that minor and transient upsets do not constitute personal injury, and hence do not amount to damage. More recently, in *Saadati v. Moorhead*, 2017 SCC 28 at paragraph 28, the court set out the principles for proving mental injury:

> …tort law protects persons from negligent interference with their mental health, [but] there is no legally cognizable right to happiness. Claimants must, therefore, show much more — that the disturbance suffered by the claimant is "serious and prolonged and rise[s] above the ordinary annoyances, anxieties and fears" that come with living in civil society (*Mustapha*, at para. 9). … Ultimately, the claimant's task in establishing a mental injury is to show the requisite degree of disturbance (although not, as the respondents say, to show its classification as a recognized psychiatric illness).

55. I acknowledge Mr. Rogers' statements that he found his interactions with the strata upsetting. However, I find Mr. Rogers has failed to prove that his claimed stress and anxiety were more than minor, or that they rose above ordinary annoyances, anxieties, and fears, becoming serious and prolonged. Having weighed the evidence, I find the strata's actions did not cause compensable stress and anxiety in Mr. Rogers. I dismiss his claim for $10,000 in damages for stress and anxiety.

56. I note that Mr. Rogers' stress and anxiety claim might be characterized as a request for punitive damages, as it is based on the strata's allegedly poor behaviour. While the SPA is silent about punitive damages, the SPA permits the CRT to order a party to pay money, which I find includes punitive damages. However, punitive damages require malicious, oppressive and high-handed conduct by the strata. I find the evidence does not show such conduct toward Mr. Rogers here.

CRT FEES AND EXPENSES

57. 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. I find the strata was unsuccessful in its claims, but Mr. Rogers paid no CRT fees in that dispute number ST-2019-007217. Similarly, Mr. Rogers was unsuccessful in his counterclaims, but the strata paid no CRT fees in that dispute number ST-2019-007595. Neither party claimed CRT dispute-related expenses. So, I order no reimbursement of CRT fees or expenses.

58. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Rogers.

ORDERS

59. I dismiss the strata's claims, Mr. Rogers' counterclaims, and this dispute.

Chad McCarthy, Tribunal Member