



# Civil Resolution Tribunal

Date Issued: December 22, 2020

File: ST-2020-004515

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan KAS1892 v. Kerr*, 2020 BCCRT 1453

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

The Owners, Strata Plan KAS1892

**APPLICANT**

**A N D :**

JUDY KERR and DEVAN KERR

**RESPONDENTS**

---

## REASONS FOR DECISION

---

Tribunal Member:

Lynn Scrivener

## INTRODUCTION

1. This dispute is about an insurance deductible. The respondents, Judy Kerr and Devan Kerr (owners), own a strata lot in the applicant strata corporation, The Owners, Strata Plan KAS1892 (strata). The strata says that there was a water leak from the owners' strata lot and it charged back an insurance deductible to their strata lot account. The

strata asks for an order that the owners pay it \$5,000 for the deductible. The owners deny that they are responsible for the leak or the insurance deductible.

2. The strata is represented by a member of the strata council. Ms. Kerr represents the owners.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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.
5. 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.
6. 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**

7. The issue in this dispute is whether the owners must reimburse the strata for the \$5,000 insurance deductible.

## **EVIDENCE AND ANALYSIS**

8. In a civil dispute like this, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
9. The strata is comprised of 41 residential strata lots. The owners own strata lot 19, which is also known as suite 206.
10. The parties agree that on February 6, 2019, there was a leak from a sprinkler in the strata's lobby. The water supply to the building was shut off for several hours during the day while the problem was being repaired. The leak was significant, and resulted in damage to the lobby, the common hallway, and to suite 107.
11. The parties disagree about the date of the next event, with the strata saying it occurred on February 7 and the owners saying it was February 6. I find that the date of the event is not determinative.
12. The strata says that, at about 5:00 p.m. on February 7, 2019, the occupant of suite 106 (which is below the owners' strata lot) reported that there was water dripping from their ceiling light fixture. It is undisputed that the owners were not present in the strata lot at the time of the leak incident, but a tenant was home. A member of the strata council checked the owners' strata lot for evidence of water and found none. Some time later, 2 other strata council members found water leaking from under the owners' kitchen sink, at the site of a "connection of a water shut off valve". The strata council members turned off the water to the strata lot and the tenant reported that she wiped up a small amount of water from the tiles in front of the kitchen sink.

13. The strata's property manager arranged for a restoration company to do emergency mitigation. There was water damage to suite 106 that was estimated to cost more than \$5,000 to repair, and the strata made a claim under its insurance. According to the evidence, the repairs did not involve any pipes or sprinkler infrastructure between the ceiling of suite 106 and the floor of suite 206.
14. Mr. Kerr, who is a plumber by trade, was concerned that the leak under the sink had been caused by a "hammer pressure" situation related to the shut-off of the building's water during the repair of the leak in the lobby. In a statement to an insurance adjuster, Mr. Kerr explained that a full shut-off of a building's water system can let air into the water lines and the pressure from the air can loosen or dislodge a fitting, resulting in a leak. An insurance adjuster tried to re-create this scenario without success.
15. Testing of the owners' strata lot with a moisture meter by an insurance adjuster revealed moisture in the floor and cabinetry around the kitchen sink and in the drywall of the nearby exterior wall. A contractor noted damage to the bottom of the cupboard and toe kicks near the sink. However, the owners took the position that there was no damage to their strata lot, and no remediation was done by the strata.
16. In a May 14, 2019 letter, the strata's property manager advised the owners that the strata had decided to charge back the \$5,000 insurance deductible to the owners' strata lot account. The strata requested reimbursement, and included an invoice for this amount.
17. The owners corresponded with the strata council, the property manager and others about their belief that they were not responsible for the leak or for insurance deductible. The owners suggested that the strata caused the damage by allowing an unqualified person to shut off the water during the lobby leak, and said that there were procedural irregularities with the strata's decision about the charge back.
18. The owners had a hearing before the strata council on December 9, 2019 about their disagreement about the insurance deductible. The owners presented evidence, including a statement from their tenant about what had occurred at the time of the

leak. After the hearing, the strata council decided not to change its previous decision. In an undated letter to the owners, the strata council confirmed that it would not change its position and asked for payment of the deductible.

19. The owners did not pay the deductible, and the strata commenced this dispute.

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

20. Section 72 of the *Strata Property Act* (SPA) provides that a strata corporation must repair and maintain common property (CP) and common assets. Section 149 of the SPA requires that a strata corporation maintain insurance on CP, common assets, buildings shown on the strata plan, and certain fixtures built or installed on a strata lot.
21. Section 158(1) of the SPA states that payment of an insurance deductible in respect of a claim on the strata corporation's insurance is a common expense and must be contributed to by way of strata fees. However, section 158(2) says that subsection (1) does not limit a strata corporation's capacity to sue an owner to recover the insurance deductible if the owner is responsible for the loss or damage that gave rise to the claim.
22. The strata repealed its previous bylaws and filed a new version at the Land Title Office in 2017. The bylaws are not sequentially numbered, but instead are divided into 10 divisions, with the bylaws within each division commencing with number 1. Accordingly, I will refer to both the division number and bylaw number.
23. Division 1 of the bylaws sets out the owners' duties, including their responsibility for repair and maintenance. According to bylaw 2(2) in this division, an owner must maintain and repair their strata lot, including taps and faucets. Bylaw 2(4) says that owners are responsible for the maintenance and repair of the water piping and valves from the outlet of the water shut off valve in the supply to each suite, to and including the individual faucets. I note that section 1(1)(c) of the SPA defines pipes within a floor, wall or ceiling that forms a boundary between strata lots or between a strata lot

and CP as CP. These items are the strata's responsibility under section 72 of the SPA, as noted above.

24. Division 8 addresses insurance and indemnity. According to bylaw 1(2) in this division, an owner is deemed to be responsible for any loss or damage to CP, limited common property, common assets or any strata lot when the "original cause of any such loss or damage originated within the owner's strata lot", to the extent that the loss or damage is not fully paid from the proceeds of an insurance policy. Bylaw 1(4) says that, if loss or damage is deemed to be an owner's responsibility under 1(2), the owner must reimburse the strata for the full amount of its insurance deductible.

### ***The Insurance Deductible***

25. The strata says the insurance adjusters' investigations confirmed that the source of the leak was under the owners' sink, and therefore they are responsible for the insurance deductible.
26. Although some of the evidence provided by the owners references the possibility that the water that damaged suite 106 could have come from the lobby leak, their submissions do not mention this scenario. While the owners admit that there was a leak under their kitchen sink, they say this was caused by the hammer pressure and was the result of the strata's actions to address the leak in the lobby.
27. Unless it is required under its bylaws, a strata corporation does not need to establish fault before pursuing an owner for repayment of a deductible (see *Yang v. Re/Max Commercial Realty Associates (482258 BC Ltd.)*, 2016 BCSC 2147 at paragraph 139). The strata's bylaws do not contain a requirement that an owner be negligent in order for them to bear responsibility for the strata's insurance deductible. Therefore, the key consideration is whether the available evidence supports the conclusion that the "original cause" of the damage to suite 106 originated in the owners' strata lot.
28. As noted, the strata bears the burden of proof. While the strata provided copies of email correspondence with adjusters that discuss the results of their investigations, the reports themselves are not before me. However, the correspondence before me

shows that the strata's insurer made unsuccessful attempts to recreate the hammer pressure scenario, and that adjusters from both the strata's and the owners' insurers came to the conclusion that the source of the leak was the water line under the owners' kitchen sink. I find that the area in question is inside the strata lot, and is therefore the owners' responsibility to maintain and repair under bylaw 2(4) in division 1.

29. Although Mr. Kerr may be a plumber, I find that I cannot accept his statement to the insurance adjuster as expert evidence about the hammer pressure scenario. The CRT's rule 8.3(7) requires that an expert assist the CRT and not advocate for any party, and Mr. Kerr is a party. Further, I find that he provided only general information about the scenario, and limited information about the strata's specific circumstances. I find that his statement is speculative and do not give it weight.
30. I acknowledge the owners' position that the leak from their sink involved only a minimal amount of water, caused no damage to their strata lot, and could not have been responsible for the volume of water in suite 106. However, I find that this is not supported by the evidence. The documentation from the insurance adjusters confirms the presence of moisture in the kitchen floor, the underside of the cupboard and the drywall, as well as damage to the cupboard and toe kicks. This supports the conclusion that there was a larger volume of water involved with the leak than the "tiny drip" the owners describe.
31. I find that the evidence before me is insufficient to establish that the "original cause" of the leak from the owners' strata lot was an external factor (the hammer pressure or otherwise). As noted above, I find that this leak originated within the strata lot from an area that was within the owners' responsibility to repair and maintain under bylaw 2(4) in Division 1.
32. Given the specific wording of the strata's Division 8 bylaws, I find that the owners must reimburse the strata \$5,000 for the insurance deductible.

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

33. Under section 49 of the CRTA, and the CRT rules, the CRT generally will 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 owners to reimburse the strata for CRT fees of \$225. The strata did not make a claim for dispute-related expenses.
34. The strata asks for pre-judgment interest to be charged at an annual rate of 10% since May 14, 2019, which was the date the owners were notified of the chargeback. The strata says it is its usual practice to charge this rate of interest, but the property manager did not include it in the invoice. In its Dispute Notice, the strata indicated that it was claiming interest based on the *Court Order Interest Act*. I find that the strata has not proven its entitlement to interest at a rate of 10%. The strata is entitled to interest on the insurance deductible under the *Court Order Interest Act*. Calculated from May 14, 2019, this equals \$121.35.
35. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners.

## **ORDERS**

36. I order that, within 30 days of the date of this order, the owners pay the strata a total of \$5,346.35, broken down as follows:
- a. \$5,000 as reimbursement of the insurance deductible,
  - b. \$121.35 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$225 as reimbursement of CRT fees.
37. The strata is also entitled to post-judgment interest under the *Court Order Interest Act*.
38. 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.

---

Lynn Scrivener, Tribunal Member