



Civil Resolution Tribunal

Date Issued: December 24, 2020

File: ST-2020-003077

Type: Strata

Civil Resolution Tribunal

Indexed as: *Bray v. The Owners, Strata Plan 244*, 2020 BCCRT 1461

B E T W E E N :

DENNIS BRAY

APPLICANT

A N D :

The Owners, Strata Plan 244

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about repairs in a strata corporation, arising from replacement of exterior siding on strata buildings in 2011.

2. The applicant, Dennis Bray, owns strata lot 7 (SL7) in the respondent strata corporation, The Owners, Strata Plan 244 (strata).
3. Mr. Bray says that when the strata replaced exterior siding on the strata buildings in 2011, the roof vents were covered, which resulted in damage to the ceiling of SLS7. He also says the horizontal siding on an end wall exterior to SL7 was poorly installed, and now has gaps and a cracked plank. Mr. Bray requests orders that the strata pay \$1,500 for ceiling repairs and “accept responsibility” for any future water damage on the exterior wall.
4. The strata says that the claimed ceiling repairs are Mr. Bray's responsibility, as it involves the interior his strata lot. The strata also says this claim is barred under the *Limitation Act* (LA), as the alleged problem occurred over 10 years ago. About the exterior wall, the strata says the gaps are due to temperature fluctuations, and its contractor inspected the wall and confirmed there is no possibility of water ingress.
5. Mr. Bray is self-represented in this dispute. The strata is represented by a strata council member.
6. For the reasons set out below, I dismiss Mr. Bray's claims.

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 legal principles. 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, videoconference, 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.
11. CRT documents incorrectly show the name of the respondent as The Owners, Strata Plan, VIS 244. Based on section 2 of the *Strata Property Act* (SPA), the correct legal name of the strata is The Owners, Strata Plan 244. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the strata's name above.
12. In August 2020, CRT staff referred this dispute to me on a preliminary basis, to determine whether any of Mr. Bray's claims were barred under the LA. In my September 4, 2020 preliminary decision, I said I needed more evidence to determine that question. I have therefore addressed the application of the LA in this final decision.

ISSUES

13. Mr. Bray's dispute application included 2 additional claims, about a leaking hose bib and a door frame. These claims were resolved during the CRT's facilitation process, and the Dispute Notice was amended to remove them. I have therefore not addressed these claims in this decision.
14. The issues in this dispute are:
 - a. Is Mr. Bray's claim about ceiling repairs barred under the LA?
 - b. If not, must the strata pay to repair the SL7 ceiling?

- c. Is the strata responsible for water damage to the exterior wall?

BACKGROUND

15. I have read all the evidence and submissions provided but refer only to that which I find relevant to provide context for my decision. In a civil proceeding like this one, Mr. Bray, as applicant, must prove his claims on a balance of probabilities.
16. The strata was created in 1976, and consists of 20 townhouse-style strata lots in 2 separate buildings. Mr. Bray's SL7 is an end unit in building 2. Land title documents show that Mr. Bray became the owner of SL7 in June 2013. He says his parents were the original owners of SL7, and they are now deceased. I accept that evidence, as it is uncontradicted.
17. The strata filed consolidated bylaws with the Land Title Office in June 2011. I find these are the bylaws applicable to this dispute. The strata also filed some bylaw amendments in August 2018, which are not relevant to this dispute.

REASONS AND ANALYSIS

Limitation Act

18. The strata submits that Mr. Bray's claim for SL7 ceiling repairs was filed out of time. Mr. Bray disagrees. He says the matter was raised with the strata council in 2012 and 2016, but the council ignored it, so it would be unfair if the limited period rendered the issue closed.
19. For the following reasons, I find the ceiling repair claim was filed too late, and dismiss it.
20. The LA applies to CRT disputes. The LA sets out limitation periods, which are specific time limits for pursuing claims. If the time limit expires, the right to bring the claim disappears, and the claim must be dismissed. This is mandatory, which means the CRT has no discretion not to apply the LA even if a party perceives it as unfair.

21. Section 6 of the LA says that the basic limitation period is 2 years, and that a claim may not be started more than 2 years after the day on which it is discovered. A claim is “discovered” when the applicant knew or reasonably knew they had a claim against the respondent and a court or tribunal proceeding was an appropriate remedy.
22. The parties agree that the exterior cladding of the strata buildings was replaced sometime in 2011. Mr. Bray says the cladding was improperly installed and the roof vents were covered. He says this caused “truss lift”, and “shortly after” the new siding was installed, and the upstairs ceiling of SL7 raised up and separated from the interior walls along the joint line.
23. Mr. Bray says his parents owned SL7 at the time. Mr. Bray provided an excerpt from an unsigned statement from his brother. According to Mr. Bray, his brother said the following:
- He looked at the ceiling shortly after the new siding was installed.
 - It was clear that the drywall between the wall and ceiling was starting to separate. There was a half inch gap running the length of the spare bedroom, which later spread into the pantry.
 - Mr. Bray’s mother asked the strata council to investigate. The strata sent an engineer, but he gave no opinion.
 - Later, Mr. Bray’s mother asked the brother to call the engineer. The brother spoke to the engineer, and felt it was clear he did not want to be involved.
 - It is unclear whether the engineer ever provided any opinion, and the brother does not remember the engineering firm’s name.
24. Mr. Bray says the strata should have taken action at that time, but the strata “claimed it was not a strata/council matter.”
25. Mr. Bray says he became the owner of SL7 in 2013 after his mother passed away, and SL7 was then vacant until 2016 when he moved in. Mr. Bray says the SL7 ceilings

were still damaged in 2016, showing separation and water stains. He says he asked the strata council to investigate again in 2016, to see if it would now consider it a common property issue. Mr. Bray says that in 2016, it “was obvious that this was a case of truss uplift, a well-known phenomenon resulting from poor ventilation in the dead air space of the roof.”

26. Mr. Bray says council members looked at the ceiling damage in 2016, but refused to take responsibility because they said it was due to other causes such as earthquake or SL7 sitting empty.
27. Mr. Bray says that the following year (around 2017) he became a strata council member, and arranged to have the roof membrane replaced. He says the roofers noticed that the roof vents were covered when the siding was replaced. Mr. Bray says covering the vents prevented ventilation between the roof and the ceiling, causing the roof joists to warp and then the trusses to lift, which in turn caused the SL7 ceiling to separate from the walls.
28. I find that a 2-year limitation period applies to the ceiling damage claim, as it is a claim to remedy damage that allegedly occurred as a result of an act or omission, as discussed in section 1 of the LA. In Mr. Bray’s own statement, he says he knew when the roofer replaced the roofing membrane in 2017 that the covered roof vents were the cause of the ceiling damage in SL7. Based on that statement, I find Mr. Bray’s ceiling damage claim was discovered no later than December 2017. Mr. Bray did not file his CRT dispute until April 14, 2020, which is over 2 years later.
29. For these reasons, I find Mr. Bray’s ceiling damage claim was filed outside the 2-year limitation period, and is barred under the LA. I therefore dismiss it.
30. Mr. Bray submits that the limitation period may not apply to structural features. I agree that under SPA section 72 and the strata’s bylaws, the strata has an ongoing duty to repair and maintain common property, such as the exterior siding and the roof assembly. However, I find this does not apply to the ceilings inside Mr. Bray’s strata lot. The interior of a strata lot is the owner’s responsibility to repair and maintain, unless the bylaws provide otherwise, or the strata has been negligent: see *Vasilica*

v. The Owners, Strata Plan NW 17, 2018 BCCRT 216 and *Di Lollo v. The Owners, Strata Plan BCS 1470*, 2018 BCCRT 24. In this case the strata's bylaws do not make it responsible to repair the SL7 ceiling, so in order to succeed in his claim Mr. Bray must prove the strata was negligent. A claim of negligence is subject to the LA.

31. Mr. Bray also submits that since the council was informed of the problem in 2012 and 2016 but refused to act, the limitation period should not apply. I disagree. As set out in LA section 8, a claim is discovered, and the limitation period starts to run, when the applicant knew or reasonably knew they had a claim against the respondent and a court or tribunal proceeding was an appropriate remedy. I find Mr. Bray reasonably knew he had a claim against the strata by December 2017 at the latest, and therefore had until December 2019 to file a claim.
32. Even if I were wrong about the December 2017 discovery date, minutes from an April 5, 2018 special general meeting show that Mr. Bray attended and raised the issue of truss lift. According to the minutes, Mr. Bray said truss lift had been apparent in some units for approximately 12 years.
33. Based on these minutes, I find that Mr. Bray had until April 5, 2020, at the latest, to file any claim against the strata about truss lift. Since he did not file his CRT dispute until April 14, 2020, I find the claim about ceiling damage due to truss lift is barred until the LA.
34. For these reasons, I dismiss Mr. Bray's claim for ceiling repairs.

Exterior Wall

35. Mr. Bray says the horizontal siding on the exterior wall of building 2, outside SL7, is faulty. He says there are large gaps in the joints, one piece of siding is cracked, and the corners of many siding planks have moved away from the walls.
36. The parties agree that the hardie board (fiber cement) siding is common property, and therefore the strata's responsibility to repair and maintain under SPA section 72.

37. Based on the photos Mr. Bray provided, I accept that there are some gaps between siding planks, and that some of them appear to have warped slightly away from the wall. The photos also show that 1 siding plank is cracked. Mr. Bray says it was covered with clear coating to repair it, and suggests that this repair is insufficient.
38. The strata says it consulted a contractor, who confirmed that the separation between the siding boards would reduce in warmer weather, and that there was no concern about water ingress due to flashing and rain screen behind the siding. The strata provided an excerpt from council meeting minutes that summarize that opinion. I place no weight on that evidence, or the strata's submission about it, as there is no direct evidence from the contractor before me. Specifically, there is no written report, invoice, or other document to confirm the contractor's opinion.
39. However, as applicant, Mr. Bray bears the burden of providing his claims. I find he has not done so here. I find the photos are not sufficient evidence to establish that the siding was incorrectly installed, faulty, in need of repair, or likely to leak. I also place no weight on Mr. Bray's opinion on this subject, as there is no evidence that he is a qualified expert in carpentry, building technology, or a similar field. I find Mr. Bray has not provided evidence to establish that the siding needs repair, or is likely to leak.
40. For these reasons, I dismiss Mr. Bray's claim about the exterior siding. I also note that in any event, I would not grant his claimed remedy for an order that the strata "accept responsibility" for any future water damage related to the wall. The CRT does not generally grant "prospective orders", or orders about future events that have not yet occurred.

CRT FEES AND EXPENSES

41. 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.
42. The strata is the successful party. It paid no CRT fees and claims no dispute-related expenses. I therefore do not award them to any party.

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

ORDER

44. I dismiss Mr. Bray's claims and this dispute.

Kate Campbell, Vice Chair