



# Civil Resolution Tribunal

Date Issued: February 24, 2021

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan EPS 3602 v. North*, 2021 BCCRT 217

BETWEEN:

The Owners, Strata Plan EPS 3602

**APPLICANT**

AND:

KENNETH NORTH and SHARON NORTH

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

## INTRODUCTION

1. The respondents, Kenneth North and Sharon North, own strata lot 225 (unit 1509) in the respondent strata corporation, The Owners, Strata Plan EPS 3602 (strata). Overnight between June 22 and 23, 2019, the Norths left their bathroom faucet

running, causing water to run onto the floor. The water damaged unit 1509, several other strata lots, and common property.

2. The strata's insurer paid to repair the damage and charged the strata a \$40,000 deductible. The strata, in turn, charged the deductible to the Norths. The Norths have paid \$30,000 of the deductible. The strata claims the remaining \$10,000.
3. The Norths give 2 reasons why they should not have to pay the remaining deductible. First, they say that the bathroom faucet and sink were either designed or installed incorrectly, so they are not responsible for the loss. Second, they say that the strata failed to notify them about the increase in the strata's deductible from \$30,000 to \$40,000.
4. The strata is represented by the strata council president. Mr. North represents both respondents.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

7. 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.
8. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the tribunal 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.

### **Preliminary Issue – The Strata’s Lawyer**

9. The Norths take issue with the fact that the strata has had help from a lawyer. They point out that the strata did not request permission to be represented by a lawyer in this dispute, as the CRT’s rules require. They feel that the strata’s use of a lawyer was both intimidating and unfair.
10. The strata is not formally represented by a lawyer in this dispute. I have confirmed with CRT staff that no lawyer was involved on the strata’s behalf as part of the CRT’s process, other than perhaps filing the Dispute Notice. While the CRT’s rules prevent a party from being represented by a lawyer in the CRT’s process without the CRT’s permission, the CRT cannot prevent a lawyer from helping a party behind the scenes, such as by drafting submissions, gathering evidence, or giving legal advice.
11. I also note that CRT rule 1.14 says that a party can have someone help them in the CRT process as long as the helper does not communicate or enter into binding agreements on the party’s behalf.
12. The Norths have not identified any prejudice from the strata’s lawyer’s involvement. The Norths made clear submissions about why they do not believe that they should have to pay the rest of the deductible. They provided relevant evidence in support of their arguments.
13. So, I find that the fact that the strata had a lawyer helping it in some capacity has not impacted the fairness of this hearing.

## **Preliminary Issue – New Evidence**

14. During the evidence collection phase of the CRT dispute, the Norths uploaded an Excel spreadsheet into the CRT's online portal. I was not able to open the file. Through the CRT's staff, I asked the Norths to provide a PDF version of the document, which they did. It is unclear whether the strata has seen a copy of this document.
15. Typically, in these circumstances, I would give the strata an opportunity to provide submissions as a matter of procedural fairness. However, the PDF document in question is just a list of the Norths' evidence and does not contain any new information. So, I find that there is no need to delay a final decision by giving the strata an opportunity to make submissions about the new document.

## **ISSUE**

16. The issue in this dispute is whether the Norths must pay the remaining \$10,000 of the strata's deductible. This raises 2 questions:
  - a. Did the strata fail to notify the Norths about the increased strata insurance deductible?
  - b. Are the Norths' responsible for the water damage under the strata's bylaws?

## **BACKGROUND**

17. In a civil claim such as this, the strata as the applicant must prove its case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
18. The strata consists of 434 apartment-style strata lots in 2 towers. Unit 1509 is on the 15<sup>th</sup> floor. The Norths have owned it since 2016.

19. The strata filed a complete set of bylaws in the Land Title Office on November 10, 2017. There have been amendments filed since then, but none are relevant to this dispute. I set out the relevant bylaws later in this decision.
20. As mentioned above, the water damage occurred overnight from June 22 to 23, 2019. One of the Norths left the bathroom tap partially on overnight. The Norths say that because the spout does not extend fully over the sink, a slow stream of water landed on the bathroom counter and then ran onto the floor.
21. Mr. North emailed the property manager on the morning of June 23, 2019, to tell them about the incident. At the time, Mr. North did not believe that it had affected other strata lots.
22. The strata's insurer hired a restoration contractor, who determined that there was damage to several other strata lots and some common property. The restoration and repairs costs exceeded the strata's \$40,000 deductible.
23. On July 23, 2019, the strata sent the Norths a letter charging them the \$40,000 deductible for water damage. The Norths disputed the charge. In 2020, the Norths paid \$30,000 towards the deductible, but refused to pay the remaining \$10,000.

## **EVIDENCE AND ANALYSIS**

### **Did the strata fail to notify the Norths about the increased strata insurance deductible?**

24. The Norths say that the strata failed to notify them that the strata's insurance deductible had increased from \$30,000 to \$40,000. They say that they would have increased their own insurance if they had known about the increased strata deductible. So, they say that they should not have to pay the remaining \$10,000 of the deductible.
25. On June 3, 2019, the strata's insurer emailed the strata that it was increasing the strata's deductible for water damage from \$30,000 to \$40,000. The renewed policy took effect on June 21, 2019.

26. The strata says that it notified the owners, including the Norths, about the increased deductible in 2 ways, both on June 4, 2019. First, the strata says that the property manager posted a memo in the strata's lobby. Second, the strata says that it sent an email to every owner who had signed up to receive email notifications through the property manager's online portal. The email and memo say essentially the same thing: that the deductible increased from \$30,000 to \$40,000 and that owners should consult with their insurers to make sure they had appropriate coverage.
27. The Norths deny receiving an email about the deductible on June 4, 2019. The Norths say that they did not know that the strata's deductible had increased until the strata emailed the insurance certificate on July 16, 2019.
28. Section 154(c) of the SPA says that the strata must inform owners "as soon as feasible" of any change to the strata's insurance deductible.
29. Section 61 of the SPA lists the ways that the strata can send documents to an owner. Section 61(1)(b)(vii) says that the strata can send documents to an owner's email address only if they have provided the strata with an email address for that purpose. It is undisputed that the Norths provided their email address to the strata through the online portal. It is also undisputed that they clicked a box in the online portal indicating that they wished to be sent strata-related documents by email.
30. To address the Norths' allegation that they did not receive the June 4 email, the property manager asked its web services provider, Web Wizards, to provide records about whether the email went to Mr. North's email address.
31. The Norths say that the records that Web Wizards provided are meaningless "computer jargon" that do not prove anything on their own. I infer that the Norths say that an ordinary person could not decipher the records, and that the strata should have provided expert evidence to explain what they mean. I disagree. While the records include some apparently technical aspects, I find that an ordinary person can draw a reasonable conclusion from the records.

32. According to the Web Wizards' invoice, it searched for records about an email with the subject line "ONE PACIFIC – 2019/20 Strata Insurance". In its email to the property manager attaching the records, Web Wizards said that the "emails were sent June 4, 2019". The records include lines that show the property manager's email address as the sender and Mr. North's email address as the recipient. Then, the records say "Recipient ok" next to Mr. North's email address. I find that the most reasonable interpretation of these records is that the email about the insurance deductible was successfully sent to Mr. North's email address.
33. If the Norths did not receive this email, it is unclear why not. However, I find that it does not matter. I find that under section 61 of the SPA, the strata must send the email to the correct email address, which I find it did. I find that the strata was not responsible for confirming that the Norths received it. I find that the strata properly notified the Norths of the increased deductible by emailing Mr. North.
34. The Norths also say that the strata should have used a more reliable method of communication than email for such important information. However, as discussed above, section 61 only allows the strata to notify owners via email if the owner has given permission. As discussed above, the Norths chose to receive notifications by email.
35. The Norths also say that the increased deductible should have been communicated to the owners via strata council minutes, which it never was. This is undisputed. However, section 61 of the SPA does not say that the strata can notify owners by including a note in strata council minutes. Also, while section 154(b) of the SPA requires the strata to report on insurance coverage at each annual general meeting, it does not say anything about strata council meetings. So, I find that the strata did not have to include information about the increased strata deductible in strata council minutes.
36. Because of my finding that the strata notified the Norths about the increased insurance deductible, I do not need to consider their argument that a failure to notify them meant would make the strata responsible for the \$10,000 difference.

## **Are the Norths responsible for the water damage under the strata's bylaws?**

37. The strata relies on section 158(2) of the SPA, which allows the strata to sue an owner for repayment of a deductible if the owner is “responsible” for the loss or damage. The strata also relies on its bylaws 35.5(b), 37.1 and 37.2. Together, these bylaws say that an owner must repay the strata for a deductible if the owner is “responsible” for the underlying damage. Bylaw 37.1 says that “without limiting the generality of the word “responsible”, an owner is responsible for the owner’s own acts or omissions”.
38. The BC Supreme Court has consistently held that under section 158(2), the word “responsible” is not equivalent to negligence. See *Yang v. Re/Max Commercial Realty (482258 BC Ltd.)*, 2016 BCSC 2147. That said, a strata corporation can pass a bylaw imposing the higher negligence standard. For example, in *The Owners, Strata Plan BCS 1589 v. Nacht*, 2019 BCSC 1785, the strata corporation’s bylaws incorporated the negligence standard by requiring an owner to pay the strata’s deductible if the owner’s “act, omission, negligence or carelessness” caused the loss or damage.
39. The strata says that its bylaws do not import a standard higher than “responsible”. I agree. Even though bylaw 37.1 refers to “acts and omissions”, which could suggest the negligence standard, the bylaw qualifies this by saying that it does not “limit the generality of the word ‘responsible’”. I find that this means that the strata did not intend to hold owners to the negligence standard, and that the strata may collect a deductible by an owner who is responsible for the damage.
40. Turning to the Norths’ arguments, they say that they are not responsible for the damage because the bathroom faucet and sink design or installation is faulty. They say that it is clearly a flaw that water from the bathroom faucet will run onto the countertop instead of down the drain. The Norths rely on a letter from their insurance adjuster. In that letter, the adjuster said that they had reviewed the faucet’s manufacturer’s instructions and determined that the installer had not followed them. The adjuster’s qualifications are not in evidence, so I find that I cannot accept their letter as expert evidence under the CRT’s rules. I therefore place no weight on this letter.

41. Still, even without expert evidence, the Norths make a compelling point. It stands to reason that a running bathroom faucet should not run water onto the floor. However, even if this is a design or installation error as the Norths allege, I find that the Norths are still “responsible” for the damage. The bylaw does not say that the Norths must be *solely* responsible for the damage. While the design and installation of the faucet and sink may have been a contributing factor to the water damage, so was the fact that the Norths left the tap running overnight.
42. Therefore, I find that the Norths were responsible for the water damage within the meaning of the bylaw. I find that the Norths must pay the remaining \$10,000 deductible.

### **TRIBUNAL FEES, EXPENSES AND INTEREST**

43. 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 order the Norths to reimburse the strata \$225 in CRT fees. The strata did not claim any dispute-related expenses.
44. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to pre-judgement interest on the \$10,000 deductible from July 23, 2019, the date of the chargeback, to the date of this decision. This equals \$212.59.
45. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against the Norths.

### **DECISION AND ORDERS**

46. I order that within 28 days of the date of this order, the Norths pay the strata a total of \$10,437.59, broken down as follows:

- a. \$10,000 for the remaining deductible,
- b. \$212.59 in pre-judgment interest under the COIA, and
- c. \$225 in CRT fees.

47. The strata is also entitled to post judgement interest, as applicable.

48. 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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Eric Regehr, Tribunal Member