



# Civil Resolution Tribunal

Date Issued: March 3, 2021

File: ST-2020-006391

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 2780 v. Lee*, 2020 BCCRT 243

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

The Owners, Strata Plan NW 2780

**APPLICANT**

**A N D :**

ANDREW LEE

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. This is a strata property dispute about water damage between 2 strata lots.

2. The applicant, The Owners, Strata Plan NW 2780 (strata) is a strata corporation existing under the *Strata Property Act* (SPA). It is represented by a strata council member.
3. The respondent, Andrew Lee, owns strata lot 23 (SL23) in the strata and is self-represented.
4. The strata says an October 2018 leak from SL23 to the strata lot below (SL13), caused damage to the bathroom ceiling in SL13. The strata says that under its bylaws, Mr. Lee is responsible to reimburse the strata for the costs to repair his toilet (\$372.75) and the bathroom ceiling of SL13 below (\$682.50). This totals \$1,055.25, which the strata paid and has charged to SL23's account. The strata seeks an order that Mr. Lee pay this amount to the strata.
5. Mr. Lee denies the leak came from SL23 or that his toilet caused the leak. He also says the strata delayed notifying him of his alleged responsibility to pay the repair expenses. Mr. Lee also disagrees with the amount of the expenses and says the strata is not consistent in charging water leak expenses to owners. He asks that this dispute be dismissed.
6. For the reasons that follow, I dismiss the strata's claims and this dispute.

## **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. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, email, 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.

## **ISSUES**

11. The issues in this dispute are:
  - a. Did the October 2018 leak originate in SL23?
  - b. If so, is the strata entitled to recover \$1,055.25 in repair expenses from Mr. Lee?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

12. In a civil proceeding such as this, the applicant strata must prove its claims on a balance of probabilities.
13. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
14. The strata is a strata corporation located in Richmond B.C. created in June 1988 under the *Condominium Act*. The strata continues to exist under the SPA and consists of 30 residential strata lots in a single 3-storey building.
15. The strata plan shows SL23 is located directly above SL13.
16. The strata repealed its bylaws, the Standard Bylaws under the SPA, and filed a complete new set of bylaws at the Land Title Office (LTO) on November 9, 2017. No subsequent bylaw amendments have been filed so I find the November 2017 bylaws

govern this dispute. I address the applicable bylaws as necessary in my reasons below.

17. The parties agree to the basic facts, which are:

- a. In October 2018, the owner of SL13 reported a water leak in the bathroom ceiling of SL13 to the strata (October 2018 leak).
- b. The strata arranged for Artisan Plumbing & Heating Ltd. (Artisan) to investigate the SL13 leak.
- c. On October 12, 2018, Artisan was provided access to SL23 and replaced the toilet tank supply tube and wax seal at the base of the toilet. Mr. Lee was present when this work was completed.
- d. In December 2018, the strata provided Mr. Lee with a statement of account for SL23 that showed the \$372.75 cost of the Artisan repair had been charged to the account on November 7, 2018. Mr. Lee disputed the charge and requested details of it on 3 occasions. In February 2019, the strata property manager advised Mr. Lee he had been away, and would investigate the cost.
- e. The strata arranged for Dennis Lai Renovations and Home Improvements (Lai) to complete repairs to the bathroom ceiling of SL13 at a cost of \$682.50. The repairs were not completed until February 2019.
- f. In March 2019, the strata provided Mr. Lee with copies of Artisan invoice #17942 in the amount of \$372.50 (Artisan invoice) and Lai invoice #386709 in the amount of \$682.50 (Lai invoice).
- g. On June 28, 2019, Mr. Lee requested a hearing with the strata council and was invited to attend the next strata council meeting scheduled for September 12, 2019. He declined the strata's invitation to attend the meeting in person and relied on written submissions.
- h. On September 25, 2019, the strata wrote to Mr. Lee through its property manager to advise the strata council expected full payment of the Artisan and

Lai invoices that had been paid on his behalf. Copies of the Artisan and Lai invoices were attached to the letter.

- i. Mr. Lee involved his insurance company, which appears to have denied his claim after communicating with the strata's property manager.
- j. On March 27, 2020, the strata wrote to Mr. Lee confirming its position the leak came from SL23's bathroom toilet and that the cost of the repairs were that of Mr. Lee's, citing bylaw 31(1). The letter requested full payment by April 10, 2020, failing which the strata would apply to the CRT.
- k. Further communications between the parties did not resolve the issue and in June 2020, the parties agreed the strata would request dispute resolution services of the CRT.
- l. The CRT Dispute Notice for this dispute was issued on August 21, 2020.

18. Based on the definition of common property under section 1(1) of the SPA, and the boundaries of a strata lot under section 68(1) of the SPA, I find the toilet is part of SL23 and the bathroom ceiling of SL13 is part of SL13. I find no common property was damaged as a result of the October 2018 water leak.

***Did the October 2018 leak originate in SL23?***

19. There is no dispute there was leak into SL13 in October 2018. In his submissions, Mr. Lee concedes the strata notified him of the leak. He agreed to allow Artisan's representative access to SL23 on October 12, 2018. Mr. Lee confirms he was present when the Artisan representative attended his strata lot but says the representative did not identify any leak from or around the SL23 toilet. Mr. Lee's explanation is that the representative changed the toilet's supply tube and wax seal because of age, and not because of any leak.

20. The strata relies on the description on the Artisan invoice, which states:

Call for leak in unit 208 [SL13] bathroom. Cut hole in ceiling and found toilet leak above. Accessed unit 308 [SL23] and replaced leaking toilet supply tube and wax seal as required. Checked, OK.

21. Mr. Lee also says he would have been aware of any leak associated with the toilet “because the bathroom floor would be all wet before it would cause [a] leak into unit 208 downstairs”. Although Mr. Lee says he graduated from the British Columbia Institute of Technology “in mechanical systems”, he did not provide any details about his expertise. Therefore, I do not accept Mr. Lee’s opinion as expert evidence and place little weight on his statement.
22. Absent any evidence supporting Mr. Lee’s assertion there was no leak from SL23, such as a written statement from the Artisan representative who investigated the leak and completed the toilet repair, or an expert witness confirming a leak would be obvious, I prefer the description of the leak investigation and repair described on the Artisan invoice and I accept it. The description also aligns with the strata’s submission that the leak into SL13 stopped after the repairs to Mr. Lee’s toilet were completed, which Mr. Lee did not dispute.
23. For these reasons, I find the October 2018 leak originated in SL23 and was related to Mr. Lee’s toilet.

***Is the strata entitled to recover \$1,055.25 in repair expenses from Mr. Lee?***

24. As mentioned, the strata seeks to recover \$1,055.25 in repair expenses from Mr. Lee.
25. In order for the strata to be entitled to repayment of its expenses, it must have a valid bylaw that makes Mr. Lee responsible for the expenses. This follows a broad interpretation of the court’s findings in *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512 at paragraphs 40 and 41 that is often cited in CRT decisions. In *Ward*, the BC Court of Appeal found in order for a strata corporation to collect legal fees, the strata corporation must have the authority to do so under a valid and enforceable bylaw or rule that creates the debt.

26. As I have found in other CRT disputes, legal fees and other strata expenses that are not captured by section 116 of the SPA are often referred to as non-lienable debts. This is because the claimed debt amount cannot be included in a Certificate of Lien filed under section 116. See for example, *Guo v. The Owners, Strata Plan NW 1975*, 2020 BCCRT 1324 at paragraph 35. Essentially, non-lienable debt includes any debt other than strata fees, special levies, a strata lot's share of a judgement against the strata corporation, and work order expenses under section 85 of the SPA. I find the \$1,055.25 in repair expenses claimed by the strata in this dispute is a non-lienable debt.
27. Before a strata corporation can collect money from an owner, section 112(1) of the SPA requires the strata corporation to give the owner at least 2 weeks written notice demanding payment and indicating what action may be taken if payment is not made. Section 112(1) expressly includes an initiating notice (also known as a Dispute Notice) under section 6(1) of the CRTA. Put another way, a strata corporation cannot take action against an owner to collect a debt through the CRT, unless it demands payment in writing and allows 2 weeks to pass before making application to the CRT.
28. Although not argued by either party in this case, I find the strata's March 27, 2020 demand letter to the owner complies with section 112(1), as the Dispute Notice was not issued until August 21, 2020, well after the 2 week period had passed.
29. The strata relies on bylaw 31 as its authority to recover its expenses. I reproduce the relevant parts of bylaw 31 as follows (my emphasis):
- (1) An owner is deemed to be responsible for any loss or damage caused to the common property, limited common property, common assets or to any strata lot, when the cause of such loss or damage originated within the owners' strata lot and the loss or damage is not covered by the strata corporation's policy
  - (4) If any loss or damage is deemed to be the responsibility of an owner under subsection (1)... of this bylaw does not exceed the insurance deductible for an insurance policy held by the strata corporation, the owner is strictly liable and

shall indemnify the strata corporation for any resulting expense for maintenance, repair, or replacement rendered necessary, which it is [sic] the strata corporation's responsibility to perform.

30. Particulars of the strata's insurance policy are not before me. The strata says the total cost of the repairs is below its insurance deductible. Mr. Lee does not dispute this, so I accept that is the case.
31. It is clear from bylaw 31(1) that Mr. Lee is responsible for the loss or damage to SL13, based on my finding the cause of the leak was Mr. Lee's toilet. However, I find the last phrase in bylaw 31(2) that I have emphasised above means Mr. Lee is only liable for expenses paid by the strata that are the strata's responsibility. In other words, bylaw 31(2) does not require Mr. Lee to reimburse the strata for repairs that are not the strata's responsibility. For the following reasons, I find the strata was not responsible to pay the repair expenses at issue here.
32. Bylaw 2 says an owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the strata's responsibility.
33. Bylaw 9 addresses repair and maintenance required by the strata and includes common assets, common property, certain limited common property, and certain parts of strata lot under bylaw 9(d). I have already determined that no common property was damaged during the October 2018 leak. The only damage was to the bathroom ceiling in SL13, which was repaired by the strata along with Mr. Lee's toilet. Since the strata is not responsible for the repairs to the toilet or the bathroom ceiling, it is not entitled to recover the related expenses from Mr. Lee.
34. On this basis, I dismiss the strata's claims and this dispute.
35. Given this finding, I do not need to consider Mr. Lee's other arguments.
36. Mr. Lee did not file a counterclaim, so I make no order about payment of the expenses charged back to SL23.



## **CRT FEES AND EXPENSES**

37. 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 to deviate from this general practice. Mr. Lee is the successful party but did not pay CRT fees or claim dispute-related expenses. Therefore, I make no order for CRT fees or expenses.
38. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Lee.

## **ORDER**

39. I dismiss the strata's claim and this dispute.

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J. Garth Cambrey, Vice Chair