



# Civil Resolution Tribunal

Date Issued: April 9, 2021

File: ST-2020-006096

Type: Strata

Civil Resolution Tribunal

Indexed as: *Zhang v. The Owners, Strata Plan 375*, 2021 BCCRT 371

BETWEEN:

LI ZHANG

**APPLICANT**

AND:

The Owners, Strata Plan 375

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

David Jiang

## INTRODUCTION

1. The applicant, Li Zhang, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan 375 (strata). Mr. Zhang says the strata's contractor, TPC, damaged his strata lot and the building exterior in December 2019. He says the strata lot is now less desirable to live in. He seeks an order for the strata to pay \$4,688 for lost rent and to fix the damage caused by TPC, both inside and outside his strata lot.

TPC is not a party to this dispute. Mr. Zhang says the strata is liable because it was negligent and breached its repair and maintenance obligations. In submissions, Mr. Zhang also claims compensation for mental distress.

2. The strata denies Mr. Zhang's claims. It says Mr. Zhang's strata lot had pre-existing cracks and it is unclear what damage, if any, TPC caused. The strata also says Mr. Zhang's claim for lost rent is unsupported by evidence.
3. Mr. Zhang represents himself. A strata council member represents the strata.
4. For the reasons that follow, I find that the strata was not negligent, nor did it breach its repair and maintenance obligations under the *Strata Property Act* (SPA) and its bylaws. I dismiss Mr. Zhang's claims.

## **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 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.
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 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.

### ***The February 14, 2020 Petition Proceeding***

9. Mr. Zhang filed a petition in the BC Supreme Court on February 14, 2020 and named the strata as the sole respondent. From my review of the petition I find that Mr. Zhang requested a judicial review of a September 30, 2019 CRT decision. I discuss this decision below.
10. In the dispute before me, Mr. Zhang claims relief about damage resulting from TPC's December 2019 repairs. I find his claims are essentially independent of the CRT's September 2019 decision, so I do not need to consider the petition proceeding.

### **ISSUES**

11. The issues in this dispute are as follows:
  - a. Did the strata breach any of its repair and maintenance obligations or act negligently?
  - b. If so, what are the appropriate remedies?

### **EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, Mr. Zhang as the applicant must prove his claims on a balance of probabilities. I have reviewed the parties' submissions and evidence, but only comment on them as necessary to explain my decision.
13. The background facts are undisputed. The strata's property includes 8 duplexes that each contain 2 strata lots. The 16 total strata lots provide residential housing. Mr. Zhang has been one of the registered owners of strata lot 11 in the strata since 2017. Strata lot 11's other owner is not a party to this dispute. Mr. Zhang rents out strata lot 11 to a tenant.

14. There is a crawlspace under strata lot 11's main floor. The strata plan does not show it as part of the strata lot. It is undisputed that the crawlspace is common property. I note that the CRT reached this conclusion in its September 30, 2019 decision.
15. In September 2006, the strata's owners voted to adopt a new set of bylaws. The bylaws and several amendments are registered in the Land Title Office. The following bylaws are relevant:
  - a. Bylaw 2(1), as amended, says that an owner must repair and maintain the owner's strata lot, including all unit doors, windows, and structure, except for repairs and maintenance that are the responsibility of the strata under bylaw 8.
  - b. Bylaw 8 is similar to bylaw 8 of the Schedule of Standard Bylaws. With amendments, bylaw 8(b) says the strata must repair and maintain common property. Bylaw 8(d) says the strata must repair and maintain parts of a strata lot, including painting the exterior of the building.

### ***The September 30, 2019 CRT Decision***

16. The history of this dispute is outlined in the September 30, 2019 decision of *Zhang v. The Owners, Strata Plan 375*, 2019 BCCRT 1146. In that dispute Mr. Zhang requested reimbursement for the cost of repairing water damage to the crawlspace underneath strata lot 11. The CRT member found the crawlspace was common property that the strata had to repair and maintain. The CRT member noted that on June 20, 2019, Mr. Zhang and the strata agreed to a consent order for the strata to repair the foundation under strata lot 11. She ordered the strata to replace the sill plate and joists in the crawlspace within 60 days of her decision. I infer the sill plate lies flat against the foundation and the joist rests vertically against the sill plate.
17. The CRT member found that the perimeter joists near a clothes dryer and under a kitchen sink were the owner's responsibility. She also decided that the strata did not have to reimburse Mr. Zhang the cost of crawlspace repairs because they were unauthorized and not a long-term solution to the water leak problems.

18. Mr. Zhang also requested compensation for cracks inside his strata lot. He provided 2 pictures of cracks above a doorjamb and on the ceiling that he said were caused by foundation issues. The CRT member dismissed this claim as she found it unproven that foundation issues caused them. She also found that, in any event, the cracks were Mr. Zhang's responsibility under the strata's bylaws.

### ***TPC's Repairs and What Damage it Caused***

19. From November 21 to December 16, 2019, the strata's contractor, TPC, completed crawlspace repairs. TPC's December 31, 2019 invoice shows TPC replaced one or more deficient rim joists and sill plates.

20. Mr. Zhang emailed the strata's property manager, TS, on December 11, 2019. He forwarded multiple pictures taken by Mr. Zhang's tenant plus the tenant's text messages about what happened. The pictures show cracks affecting the strata lot's interior. In the texts, the tenant explained that TPC had to raise the duplex 2 to 3 inches in some areas, to replace the rim joists and sill plates. The tenant wrote as well that this caused the cracks.

21. In a December 16, 2019 email, a TPC representative advised TS that the tenant's pictures were an accurate representation of the "collateral damage caused by the repair we have done". TPC estimated it would cost \$1,575 to repair drywall cracks, screw heads that were now "punching out", and trim adjustments.

22. Based on TPC's email and Mr. Zhang's December 2019 email, I find it clear that TPC damaged Mr. Zhang's strata lot during the crawlspace repairs of November and December 2019. I find it likely that Mr. Zhang's tenant accurately identified the damage in the text messages and photos attached to Mr. Zhang's December 2019 email. This is because I find the tenant was in the best position to observe the damage as it occurred. TPC's email also corroborates the tenant's version of events. I also accept that repairs would cost \$1,575 based on TPC's estimate and the lack of any other estimate in evidence.

23. In a June 1, 2020 email, Mr. Zhang advised TS that TPC caused cracks in the duplex's exterior as well. Mr. Zhang attached photos to the email showing cracks in the exterior stucco.
24. I find that the building exterior is common property and the strata must maintain it under bylaw 8. The parties do not dispute this. However, on balance, I do not find that TPC caused any damage to the building exterior. This is because the cracks were not identified by Mr. Zhang, his tenant, or TPC in December 2019. Mr. Zhang also complained of exterior cracks to the strata council in a November 8, 2018 letter, before TPC began the crawlspace work in November 2019. Given this, I find that exterior cracks shown in the June 2020 email were likely pre-existing.

***Did the strata breach any of its repair and maintenance obligations or act negligently?***

25. In general, the strata is not liable for the actions of its independent contractors. See, for example, *Ashcroft v. The Owners, Strata Plan KAS 1492*, 2019 BCCRT 206. Mr. Zhang does not say TPC was negligent and TPC is not a party to this dispute, so I will not comment on this further. Instead, Mr. Zhang says the strata acted negligently and failed to meet its repair and maintenance obligations.
26. The SPA and the strata's bylaws set out the repair and maintenance obligations of the strata and its owners. SPA sections 3 and 72 require the strata to repair and maintain common property and common assets. As noted above, bylaw 8 also requires the strata to repair and maintain such property. Section 72(3) permits the strata to take responsibility for repair and maintenance of specified parts of a strata lot, but I find there are no relevant bylaws to that effect.
27. In discharging its repair and maintenance obligation, the strata must act reasonably. The starting point for the analysis should be deference to the decisions made by the strata council as approved by the owners: *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784 at paragraphs 23 to 32. Similarly, an owner cannot direct the strata how to conduct its repairs: *Swan v. The Owners, Strata Plan LMS 410*, 2018 BCCRT 241 at paragraph 51.

28. As stated earlier, bylaw 2(1) says that an owner must repair and maintain the owner's strata lot. That said, if the strata is negligent, it may then be liable for resulting damage to owners' strata lots: *Kayne v. LMS 2374*, 2013 BCSC 51 and *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231. The test for negligence is set out by the Supreme Court of Canada in *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3. In order to succeed in a negligence claim, Mr. Zhang must prove 1) the strata owed Mr. Zhang a duty of care, 2) the strata breached the standard of care, which is reasonableness in this case, 3) Mr. Zhang sustained a loss, and 4) the loss was caused in fact and in law by the strata's negligence. The fourth factor considers whether the loss is too remote to warrant recovery.
29. I will first start with Mr. Zhang's claim for the damage to his strata lot shown in the December 11, 2019 email. I find that under bylaw 2(1), Mr. Zhang is responsible for repairing such damage, and not the strata.
30. The strata might still be liable for such damage if it was negligent. I find that it was not. There is nothing before me to indicate that the strata breached the standard of care by acting unreasonably. The parties entered into a consent agreement for the strata to repair the crawlspace. TPC's invoice shows the work was necessary to replace parts that were "rotten and falling". There is no evidence that the strata failed to follow TPC's advice or the advice of any other professional, or that TPC was not qualified. There is no indication that the strata interfered with TPC's work or failed to ensure the work was completed. I therefore find the strata is not responsible for repairing the inside of Mr. Zhang's strata lot.
31. This leaves the exterior cracks Mr. Zhang identified in his June 1, 2020 email. Mr. Zhang limited his claim to cracks caused by TPC. Contrary to Mr. Zhang's submissions, I have found that TPC did not cause these exterior cracks. Regardless, I would still find that the strata did not fail to meet its obligation to repair or maintain common property, including the duplex exterior of strata lot 11.
32. As noted in *Weir* at paragraph 29, in carrying out its repair and maintenance duty, the strata must act in the best interests of all the owners and endeavour to achieve the

greatest good for the greatest number. That involves implementing necessary repairs within a budget that the owners as a whole can afford and balancing competing needs and priorities.

33. The strata plan shows the strata's duplexes were built in the 1970s. I find from this that the duplex exteriors would likely show some wear and tear from being over 40 years old. There is no indication that the exterior cracks require any immediate repairs or should otherwise be a priority. For example, there is no evidence that the cracks will grow if left unattended. While the cracks may have a displeasing appearance, I do not find the strata acted unreasonably by not repairing them.
34. Mr. Zhang asked for the following remedies: compensation for lost rent, an order for the strata to repair damage inside and outside of strata lot 11 caused by TPC, and \$2,000 for what I find is a claim for mental suffering. Given my finding above that the strata was not negligent and did not breach its repair and maintenance obligations, I decline to make these orders.
35. I dismiss these claims.

## **CRT FEES AND EXPENSES**

36. 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.
37. The strata is the successful party. It paid no CRT fees and claimed no dispute-related expenses. I therefore do not order reimbursement for any parties.
38. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Zhang.



## **ORDERS**

39. I dismiss Mr. Zhang's claims and this dispute.

---

David Jiang, Tribunal Member