



Civil Resolution Tribunal

Date Issued: June 8, 2021

File: ST-2020-009422

Type: Strata

Civil Resolution Tribunal

Indexed as: *Abdool v. The Owners, Strata Plan NW 3130*, 2021 BCCRT 629

B E T W E E N :

CAMILLE ABDOOL and LENNARD SMITH

APPLICANTS

A N D :

The Owners, Strata Plan NW 3130

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicants, Camille Abdool and Lennard Smith, are the former owners of strata lot 18 (unit 108) in the respondent strata corporation, The Owners, Strata Plan NW 3130 (strata). The strata hired a restoration contractor to dry out the applicants' utility

room after a leak in the ceiling above unit 108. The strata charged the restoration contractor's \$1,845.08 invoice to the applicants' strata lot account. The applicants disputed the charge but ultimately paid it when they sold unit 108 in December 2020.

2. The applicants say that they did not agree to pay the contractor's invoice. They also say that the leak damaged common property, not unit 108, and in any event, originated in a common property pipe. So, they say they are not responsible for the contractor's invoice and ask for an order that the strata reimburse them \$1,845.08.
3. The strata says that the charge relates to repairing damage within unit 108, so it was the applicants' responsibility under its bylaws. The strata also says that its bylaws authorized it to charge the restoration contractor's invoice to the applicants. The strata asks that I dismiss the applicants' claims.
4. Ms. Abdool represents the applicants. The strata is represented by a strata council member.

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. The applicants provided some of their evidence late because they inadvertently failed to upload email attachments onto the CRT's online portal. CRT staff provided this late evidence to the strata so that the strata could comment on it. The strata did not object to this. I find that there is no procedural unfairness in allowing the late evidence, and given that the CRT's mandate includes flexibility, I have admitted the late evidence.
9. 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.
10. As for the applicants no longer owning unit 108, in *Downing v. Strata Plan VR2356*, 2019 BCSC 1745, the BC Supreme Court said that the fact that an owner becomes a former owner does not, by itself, result in their no longer being an "owner" under the SPA or remove the CRT's ability to decide a dispute. The court also noted the finding in *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32, that the SPA definition of "owner" includes former owners. Given these decisions, I find that I have jurisdiction to consider the applicants' claim even though they no longer own unit 108.

ISSUE

11. The issue in this dispute is whether the strata was authorized to charge the restoration contractor's invoice to the applicants.

BACKGROUND AND EVIDENCE

12. In a civil claim such as this, the applicants must prove their 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.

13. The strata consists of 56 strata lots in 14 buildings. Each building has 4 strata lots, 2 on the ground floor and 2 on the second floor. Unit 108 is a ground floor unit.
14. The strata filed a complete set of bylaws in the Land Title Office on September 13, 2001. There have been several amendments since then, but none are relevant to this dispute. Bylaw 2(1) says that an owner must repair and maintain their strata lot, except for repair and maintenance that is the strata's responsibility under the bylaws. Bylaw 9(1)(b) says that the strata must repair and maintain common property that is not designated as limited common property.
15. The background facts are undisputed. The water damage at issue came from a leaky pipe in the ceiling above the applicants' utility room. The applicants reported the issue to the strata on either January 15 or 16, 2020 (the evidence is not clear, but the exact date does not matter). A restoration contractor attended on January 16, 2020, at the strata's request. The contractor cut a hole in the utility room ceiling and set up fans to dry out the area for several days. The owner of the strata lot above unit 108 eventually fixed the leak. The contractor charged the strata \$1,845.08, which the strata paid. On April 17, 2020 the strata charged the contractor's invoice back to the applicants. The applicants disputed the charge and did not pay the strata until December 10, 2020, when they sold unit 108.

ANALYSIS

16. The applicants argue that the strata is responsible for the contractor's invoice because the leak came from a common property pipe. They also say that the strata failed to properly address the leak. Finally, they argue that unit 108 was not damaged.
17. The strata argues that the bylaws make the applicants responsible for repair and maintenance of unit 108, subject to certain exceptions that do not apply here. The strata says that the leak only damaged unit 108 and did not damage any common property, so the applicants must pay for the repairs under the bylaws. The strata says it does not matter whether the leak came from a common property pipe. The strata

also says that its bylaws authorized it to charge the cost of the repairs to the applicants. The strata does not identify which bylaw gave it this authority.

18. I find that I do not need to determine most of the issues that the parties raised. In *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512, the Court of Appeal found that a strata corporation must have a bylaw to charge legal fees to an owner because legal fees are not “lienable” under section 116 of the SPA. Many CRT cases have extended this principle to repair costs because, like legal fees, there is nothing in the SPA that authorizes a strata corporation to charge them to an owner. This is true even when the strata voluntarily pays to repair something that is an owner’s responsibility under its bylaws. The strata still must have a bylaw authorizing it to charge the repair costs to the owner, or else have the owner’s agreement (see, for example, *Huang v. The Owners, Strata Plan EPS1910*, 2019 BCCRT 1072). I agree with this reasoning, although previous CRT decisions are not binding on me. There is no evidence that the applicants agreed to pay for the restoration contractor.
19. As mentioned above, the strata says that its bylaws authorized it to charge the applicants for the contractor’s invoice, but does not say which bylaw. The strata does have several bylaws that authorize it to recover certain costs from owners. Bylaw 7(3) says that if there is damage that gives rise to a claim under the strata’s insurance, the owner of the strata lot where the damage originated must reimburse the strata for its deductible. Bylaw 7(5) says that if an owner causes damage to common property that is not covered by insurance, the owner must pay the cost of repair. Bylaw 24(2) says that an owner must reimburse the strata for the costs of enforcing the strata’s bylaws and rules.
20. I find that none of these bylaws apply to this dispute. I find that there is no bylaw authorizing the strata to recover money it voluntarily paid to do repairs that are an owner’s responsibility. It follows that the strata had no legal authority to charge the restoration contractor’s invoice to the applicants.
21. For this reason, I find that the strata must reimburse the applicants \$1,845.08.

TRIBUNAL FEES, EXPENSES AND INTEREST

22. 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 strata to reimburse the applicants \$225 in CRT fees. The applicants did not claim any dispute-related expenses.
23. The *Court Order Interest Act* (COIA) applies to the CRT. The applicants are entitled to pre-judgement interest from December 10, 2020, the date they paid the strata, to the date of this decision. This equals \$4.09.

DECISION AND ORDERS

24. Within 30 days of the date of this order, I order the strata to pay the applicants a total of \$2,074.17, broken down as follows:
- a. \$1,845.08 in debt,
 - b. \$4.09 in prejudgment interest under the COIA, and
 - c. \$225 for CRT fees.
25. The applicants are also entitled to post judgement interest under the COIA, as applicable.

26. 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.

Eric Regehr, Tribunal Member