



Civil Resolution Tribunal

Date Issued: June 10, 2021

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan 1773 v. Horvath*, 2021 BCCRT 641

BETWEEN:

The Owners, Strata Plan 1773

APPLICANT

AND:

BRIGETTE HORVATH

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The respondent Brigette Horvath owns strata lot 44 (SL44) in the applicant strata corporation The Owners, Strata Plan 1773 (strata). In November 2019, the bathtub in

SL44 overflowed, causing damage to the strata lot below. The strata made an insurance claim to repair the damage and paid a \$5,000 deductible.

2. The strata says Ms. Horvath must pay its insurance deductible under *Strata Property Act* (SPA) section 158(2). The strata seeks an order requiring Ms. Horvath to reimburse it for the \$5,000 insurance deductible and \$865.20 in legal fees necessary to pursue this dispute.
3. The strata also says that Ms. Horvath damaged a common property (CP) electrical socket in July 2019. The strata claims \$129.00 for the socket repair.
4. Ms. Horvath says the tub overflow was “accidental”. She says she is entitled to documentation that the repair work was completed satisfactorily before she considers paying the deductible. Ms. Horvath also says the strata failed to comply with SPA requirements about unapproved expenditures.
5. Ms. Horvath disputes the electrical socket repair charge, and says the strata failed to give her notice as required under SPA section 135. She also says she already paid \$60 towards the socket repair.
6. The strata is represented by a strata council member. Ms. Horvath represents herself.
7. For the following reasons, I find Ms. Horvath must pay the strata the \$5,000 deductible. I dismiss the strata’s claims for \$129.00 for the electrical socket repair and \$865.20 for legal fees.

JURISDICTION AND PROCEDURE

8. 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.

9. 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.
10. 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.
11. 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.
12. CRT documents incorrectly show the name of the respondent as The Owners, Strata Plan, VIS 1773. Based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan 1773. 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.

Late Evidence

13. Ms. Horvath submitted evidence after the CRT's deadlines. I find the CRT provided the parties with a reasonable opportunity to respond to all the submitted evidence and I find no prejudice in admitting any of it. Considering the CRT's mandate for flexibility, I have admitted the late evidence.

ISSUE

14. The issue in this dispute is whether Ms. Horvath must pay the strata any of the following:
 - a. \$5,000 for the water damage insurance deductible,

- b. \$129,000 for CP electrical socket repair, and
- c. \$865.20 in legal fees.

EVIDENCE AND ANALYSIS

15. In a civil proceeding such as this, the strata must prove its claims on a balance of probabilities. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.

a. Bylaws

16. The applicable bylaws are the SPA Standard Bylaws, subject to amendments that I find are not generally relevant to this dispute. The one exception is a bylaw amendment about legal costs, which I address later in this decision.

17. Bylaw 3(1)(a) and (b) prohibit an owner from causing a hazard, nuisance or unreasonably interfering with the rights of other persons to use and enjoy the CP or (c) another strata lot.

18. Bylaw 3(2) prohibits an owner from causing damage, other than reasonable wear and tear, to the CP or those parts of a strata lot which the strata corporation must repair and maintain under the bylaws or insure under SPA section 149.

19. SPA section 149 provides that the strata maintain property insurance on the CP, common assets, buildings on the strata plan and fixtures that were built or installed by the owner developer as part of the strata lot's original construction.

b. Tub Overflow

20. On November 12, 2019, the bathtub in SL44 overflowed, causing damage to SL44 and the strata lot below. Video evidence of the leak, taken from inside the strata lot below SL44, shows a steady stream of water coming through the ceiling.

21. The parties agree that the tub overflow was accidental rather than intentional. The strata does not say that Ms. Horvath was negligent in causing the overflow.

22. After the tub overflow, the strata made an insurance claim for water damage repairs.
23. On November 13, 2019, First General Vancouver Island (First General), an independent contractor provided by the strata's insurer, prepared an estimate of \$1,661.53 for initial demolition, dehumidifying, debris removal and asbestos testing, and a further \$6,304.31 for repairs to floor covering, removing and replacing the popcorn ceiling, texturing the drywall, sealing the ceiling with latex based stain blocker, cleaning the carpet, and performing necessary repairs in the kitchen in the strata lot below SL44.
24. Shortly afterward, JP, the owner of the damaged strata lot below SL44, emailed Ms. Horvath explaining that a restoration company had attended to assess the damage to her strata lot. When Ms. Horvath questioned whether the damage would exceed the strata's deductible, JP wrote that the damage was likely over \$5,000 because replacement of kitchen flooring and a large area of popcorn ceiling was required.
25. On December 11, 2019, First General invoiced the strata \$1,661.53 for emergency services following the tub overflow.
26. First General then provided reconstruction services for the strata lot below SL44. On February 28, 2020, First General invoiced the strata \$6,0004.10 for those reconstruction services. First General applied the \$5,000 deductible, leaving \$1,304.31 payable after sales tax. Based on these documents, I find that the strata paid the \$5,000 deductible to its insurer.
27. On November 3, 2020, the strata's property manager, SW, prepared and signed a Certificate of Completion stating that he had reviewed the work completed by First General and its subcontractors. SW stated that the work was completed to his satisfaction for the approved insurance loss-related repairs.

28. Ms. Horvath alleges that the repair work was never done, that SW's signature on the Certificate of Completion was false, and that repair costs were less than the \$5,000 deductible. She also submits that the strata's documents were fraudulent, inconsistent and involved "questionable accounting practices." I find she did not prove these contentions. I find that SW's signature on the Certificate of Completion is an electronic signature, not a false one. Based on the video and photographic evidence, First General's estimates and invoices, the Certificate of Completion and JP's emails to Ms. Horvath, I find that the repair work made necessary by the tub overflow was satisfactorily completed and cost over \$5,000.

29. It is uncontested that Ms. Horvath has not reimbursed the strata for the \$5,000 insurance deductible.

Must Ms. Horvath reimburse the strata for its insurance deductible, under the SPA or bylaws?

30. The question is whether the SPA or bylaws require Ms. Horvath to pay the strata for the \$5,000 insurance deductible given that her tub overflowed accidentally.

31. SPA section 158(1) provides that the payment of an insurance deductible in a claim on the strata corporation's insurance is a common expense to which all owners contribute through strata fees. Section 158(2) states that a strata may sue an owner to recover a deductible if the owner "is responsible for the loss or damage that gave rise to the claim."

32. The courts have found that section 158(2) of the SPA permits a strata corporation to sue an owner for repayment of a deductible even where the owner is not at fault, on the basis that the word "responsible" does not require the strata to prove that an owner is negligent: *Yang v. Re/Max Commercial Realty (482258 BC Ltd.)*, 2016 BCSC 2147 at paragraph 139.

33. The standard of responsibility set by SPA section 158(2) may be modified by bylaw: *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 519; *The Owners, Strata Plan BCS 1589 v. Nacht*, 2019 BCSC 1785, upholding the CRT decision 2017 BCCRT 88 on appeal.

34. Although the decision does not bind me, I also agree with the CRT member in *The Owners, Strata Plan VIS 6634 v. Brown*, 2017 BCCRT 86, that section 158(2) provides a standalone right for a strata to sue an owner and does not require a strata corporation to have a bylaw as a “pre-condition” to doing so. Here, it is uncontested that the bylaws do not modify the standard set by section 158(2).
35. Given that the issue is the application of the section 158(2) standard, I find the decision in *Mari v. Strata Plan LMS 2835*, 2007 BCSC 740 applicable.
36. In *Mari* the owners appealed a Provincial Court decision that they pay a \$5,000 deductible to their strata for a water damage insurance claim. Their washer overflowed due to a faulty water level switch. The issue was the interpretation of the word “responsible” in SPA section 158(2), because there were no bylaws that modified that standard. The court considered the meaning of “responsibility” as discussed in *Beazer East Inc. v. Environmental Appeal Board et al*, 2000 BCSC 1698. In *Beazer*, the court found “responsible for” referred to legal authority and obligations with respect to something. In *Mari*, the court applied that reasoning to find the owners were “responsible” without proof of negligence because they used the washer. The court pointed out that section 158(2) allows the strata to set the same standard for deductible payment as would exist in a single-family residence: *Mari* at paragraph 12.
37. Applying *Mari*, I find that the bathtub overflowed and was the source of water escape from inside SL44. Where bylaws do not modify the responsibility standard, an owner is responsible “for what occurs within their unit”: see *Wawanesa Mutual Ins. Co. v. Keiran*, 2007 BCSC 727 at paragraph 12.
38. Given this binding case law, I find that Ms. Horvath is liable to pay the strata’s \$5,000 insurance deductible. I say this because, though accidental, Ms. Horvath’s or her occupants’ actions in using the tub caused the overflow resulting in damage to her strata lot and the strata lot below.
39. In reaching this conclusion, I have considered Ms. Horvath’s submissions about the deductible. I address the relevant submissions below.

40. Ms. Horvath submits that a $\frac{3}{4}$ vote of owners is required for the strata to pay the deductible. I disagree. SPA section 158(3) expressly permits the strata to pay an insurance deductible either by special levy or from the contingency reserve fund without owner approval at a general meeting. Therefore, I find that the strata was entitled to pay the \$5,000 deductible and seek reimbursement from Ms. Horvath.
41. Ms. Horvath submits that the damage from the overflowing bathtub was not a “major peril” covered by the strata’s insurance. SPA section 149(4) places a mandatory duty on the strata to insure the building and fixtures to full replacement value against “major perils”. Major peril is defined in *Strata Property Regulation* 9.1(2) to expressly include water escape. Based on the documents filed in evidence, I find that the strata’s insurance covered the repairs, either as a major peril or otherwise. In any event, the precise reason for coverage does not excuse Ms. Horvath from her obligation to pay the deductible.
42. Ms. Horvath also submits that she was entitled inspect the damage and decide on and approve the repairs, including accessing the other strata lot to do so. Again, I do not agree. Based on SPA section 158(2), I find the strata was not required to have Ms. Horvath inspect or approve the repairs, nor to grant her access to the strata lot on the floor below.
43. Ms. Horvath also made submissions about production of documents. None of the relief claimed in the Dispute Notice is for documents, nor did Ms. Horvath bring a counterclaim. Therefore, I find that issue is not before me. To the extent that Ms. Horvath’s evidence and submissions touched on other issues, I have confined my decision to the relief sought in the Dispute Notice only.
44. I find that Ms. Horvath must reimburse the strata \$5,000 for its water damage insurance deductible, within 30 days of this decision.

Must Ms. Horvath reimburse the strata for its costs to repair the damaged hydro socket?

45. The strata claims \$129.00 for repair costs to a CP electrical socket it says was damaged or altered by Ms. Horvath. Bylaw 6 requires an owner to obtain the strata's prior written permission before altering CP.
46. Section 135(1) of the SPA says that a strata corporation may not require a person to pay the costs of remedying a bylaw contravention unless it has received a complaint and given the person written particulars (details) of the complaint and a reasonable opportunity to answer the complaint, including a hearing if requested. The requirements of section 135 must be strictly followed before a repair charge for a bylaw contravention can be imposed: see *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.
47. On July 16, 2019, BB of Bremner Electric attended at the strata and observed a CP hallway plug that was not sitting properly in the wall. Based on the information recorded on Bremner Electric's invoice, I find that BB inspected the socket and noted that there were 2 single conductors running into the electrical box from the back side of the box, without grounding. The implication of BB's observation was that someone had attempted to re-route the socket to use the electricity inside SL44. BB documented that, while he was trying to repair the plug, someone was pulling on the conductors from inside the strata lot. BB said words to the effect of "don't pull those wires through the wall". Someone then snipped the wires from the strata lot side of the wall. BB knocked at the SL44 door twice but there was no answer. BB invoiced the strata \$189.00 for this repair.
48. Ms. Horvath submits that some other people, M and L, left SL44 unsecured for a period of time. It is unclear how this relates to the allegation that she or someone she permitted inside SL44 damaged the CP hallway plug. Ms. Horvath also says that at some point she paid \$60 in cash against the invoice but disputed the remaining \$69. Because these amounts do not add up to the \$189.00 invoice total, I find that Ms. Horvath contests the remaining \$129.00, not \$69.00. The strata has limited its socket repair claim to the \$129.00.

49. On September 9, 2019, the strata council met and noted that it had received notice of an electrical alteration at strata lot 44. Council authorized payment to Bremner Electric for the repair and decided to recover the cost from Ms. Horvath.
50. On November 27, 2019, the strata property manager wrote to Ms. Horvath requesting payment of \$129.00 for repair to the damaged hydro socket.
51. On May 5, 2020, the strata's then legal counsel wrote to Ms. Horvath asking her to pay the hydro socket repair cost of \$129.00. The May 5, 2020 letter offered Ms. Horvath an opportunity to respond and to request a hearing by May 26, 2020. However, the letter did not explain the reason for the \$129.00 charge nor mention the applicable bylaw.
52. Even if Ms. Horvath altered the CP electrical socket without permission, I would not order her to pay the strata the \$129.00. I say this because I find the strata failed to comply with the notice provisions in SPA section 135. Specifically, I find that none of the strata's letters gave Ms. Horvath the details of the complaint, including an explanation of the alleged alteration and specific bylaws in issue. Rather, the strata's correspondence demanded the \$129.00 as part of a list of demands for payment. I find that strata's correspondence did not comply with SPA section 135 regarding the \$129.00 charge for hydro socket repair costs. Because the requirements of SPA section 135 are strict, I dismiss the strata's claim to be reimbursed the claimed \$129.00 for the electrical socket repair.

CRT FEES, EXPENSES AND INTEREST

53. 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. The strata was largely successful party here. I therefore order Ms. Horvath to pay the strata its \$225 in CRT fees.

54. As far as dispute-related expenses, the strata claims reimbursement of \$865.20 in legal fees for preparing and filing the CRT application. The strata submits that the CRT should reimburse its legal fees under SPA section 133. The strata also submits that it is entitled to recover actual legal costs following the decision in *The Owners, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA 377 (*Baettig*).
55. Section 133(1) says a strata corporation may do what is reasonably necessary to remedy a bylaw contravention, including doing work on the strata lot or common property, and removing objects from CP. Section 133(2) says the strata may require that the reasonable costs of remedying a bylaw contravention be paid by the person who may be fined for the contravention.
56. In *Baettig*, the BC Court of Appeal considered a case where the strata sought legal costs in relation to registering a lien against an owner's strata lot. In paragraph 68 of that decision, the court reasoned that the same legislative intent underlies both sections 118, which addresses costs that can be added to a Certificate of Lien, and 133 of the SPA – that strata owners who comply with the bylaws and rules should not have to shoulder the burden of remedying infractions by non-compliant owners. The court stated as follows in paragraph 67:
- There has been scant judicial consideration of the meaning of “reasonable costs” in the context of s. 133 of the SPA, although one case is capable of being read as suggesting that the phrase encompasses the actual legal costs associated with bringing a court action: see *Strata Plan VR19 v. Collins*, 2004 BCSC 1743 (CanLII) at para.17.
57. I find that the discussion about section 133 in *Baettig* is incidental to the matters decided (sometimes called *obiter dicta*) and does not include a conclusive finding about legal fees claimed under section 133. I also find that the facts in *Baettig* can be distinguished from those in this dispute. This dispute is not a court action involving about adding reasonable legal costs to a Certificate of Lien.
58. While the CRT's mandate is inexpensive resolution, parties in strata disputes are permitted to be assisted by lawyers. Under CRT rule 9.5(3)(b) the CRT may order

one party to pay another party's legal fees in a strata property dispute but only in extraordinary circumstances. The question is whether such extraordinary circumstances apply here, and as discussed below, I find they do not.

59. CRT rule 9.5(4) says that in considering whether and to what degree legal fees should be ordered paid, the CRT may consider the complexity of the dispute, the degree of involvement by the representative, whether a party or its representative caused unnecessary delay or expense, and any other factors the CRT considers appropriate.
60. As part of this analysis, I must consider whether the strata's specific bylaws allow it to charge an owner for costs, including legal fees, in these circumstances. I say this because, under CRTA section 123(1)(c), the CRT has the authority to order payment of money owed under a strata bylaw.
61. On January 13, 2020, the strata filed a bylaw amendment at the Land Title Office (LTO) introducing bylaws 5(4) and 43(3)(c). Bylaw 5(4) provides that if an owner makes an alteration without the strata's prior written approval, any costs or expenses payable by the owner under the bylaws, including legal costs, shall be added to the owner's strata lot account and become due and payable the next month.
62. I find that bylaw 5(4) addresses only the recovery of legal costs relating to unauthorized alterations. Therefore, I find it does not apply to the strata's successful claim for the \$5,000 insurance deductible.
63. Bylaw 43(3)(c) provides for recovery of money owing to the strata, including legal fees incurred where the strata brings legal proceedings in "Small Claims Court". I find that bylaw 43(3)(c) does not apply to this dispute, which is not a small claims court lawsuit.
64. Turning to the other considerations under CRT rule 9.5(4), this dispute is not complex. The CRT decides many water damage deductible claims between unrepresented parties.

65. It is undisputed that the strata chose to retain legal counsel to prepare its application for dispute resolution. However, the strata was not formally represented by a lawyer in the CRT process. While this is not determinative, it too suggests that the dispute is not complex.
66. I find that although Ms. Horvath disagreed with the strata's claims, she did not cause unusual delays. In considering this factor I have also weighed the fact that the strata brought an unsuccessful claim for the socket repair.
67. Having considered the rule 9.5(4) factors and the bylaws, I find that this dispute is not extraordinary. I therefore dismiss the strata's claim for \$865.20 in legal fees.
68. The *Court Order Interest Act* (COIA) applies to the CRT. The date the strata paid the deductible is not in evidence. I find that the appropriate date to award interest from is February 28, 2020 the date that First Residential applied the deductible to its account, to the date of this decision. This equals \$54.39.
69. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Horvath.

ORDERS

70. I order that within 30 days of this order, Ms. Horvath pay the strata a total of \$5,279.39, broken down as:
 - a. \$5,000 for the strata's insurance deductible,
 - b. \$54.39 in prejudgment interest, and
 - c. \$225 in CRT fees.
71. The strata is also entitled to post-judgement interest under the COIA.
72. I dismiss the strata's claims for \$129.00 for the electrical socket repair and \$865.20 for legal fees.

73. 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.

Julie K. Gibson, Tribunal Member