



Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

NORISON LJUNGGREN

APPLICANT

A N D :

The Owners, Strata Plan LMS 690

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about a chargeback for strata lot repairs.
2. The applicant, Norison Ljunggren, co-owns strata lot 26 (SL26) in the respondent strata corporation, The Owners, Strata Plan LMS 690 (strata). Mr. Ljunggren says the strata improperly charged him \$2,956.43 for repairs to SL26's window sill and ceiling. Mr. Ljunggren says he is not responsible for the repair costs because the damage

resulted from a faulty common property (CP) window. Mr. Ljunggren also claims that the strata failed to hold a timely hearing contesting the chargeback and the strata failed to deliver its hearing decision timely. Mr. Ljunggren requests an order requiring the strata to remove the chargeback from his strata lot account.

3. The strata says Mr. Ljunggren is responsible for the chargeback because he allegedly delayed reporting the moisture issues. The strata says Mr. Ljunggren was negligent in failing to report the problem and this was the primary cause of the strata lot damage.
4. Mr. Ljunggren is self-represented in this dispute. The strata is represented by a strata council member.
5. For the reasons set out below, I find Mr. Ljunggren is not responsible to pay the chargeback, and the strata must reverse it.

JURISDICTION AND PROCEDURE

6. 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.
7. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.

8. 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.
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.

Evidence resubmission

10. The strata submitted evidence which I was unable to view. At my request, the strata resubmitted this evidence. I find that Mr. Ljunggren was not prejudiced by the resubmission of this evidence because he was given an opportunity to respond to the documents. So, I have considered the strata's resubmitted evidence, and Mr. Ljunggren's response to this evidence, in this decision.

ISSUE

11. The issue in this dispute is whether the strata must remove the chargeback from Mr. Ljunggren's strata lot account.

BACKGROUND AND EVIDENCE

12. In a civil proceeding like this one, Mr. Ljunggren, as applicant, must prove his claim on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
13. The strata is a strata corporation created in 1992 under the *Condominium Act*. The strata continues to exist under the *Strata Property Act* (SPA) and consists of 44 residential strata lots in multiple 2-storey buildings.
14. The strata filed a complete set of amended bylaws at the Land Title Office (LTO) on July 9, 2012. Subsequent bylaw amendments were filed at the LTO that are not relevant to this dispute. So, I find that the July 9, 2012 bylaws govern this dispute. I address the applicable bylaws as necessary in my reasons below.

15. Mr. Ljunggren sent the strata a February 3, 2020 email, including 3 photographs, saying the that his ceiling was discoloured, but not wet. Mr. Ljunggren's email also said that moisture had been coming through his window, even when closed. The strata says that it also noticed condensation in SL26's exterior window the same day while independently inspecting windows.
16. The strata hired MTM On the Level Contracting (MTM) to inspect SL26. The strata provided a report from MTM's employee, Mark Lapka. Mr. Lapka says he examined the strata lot and recommended the replacement of the window sills and trims and the damaged ceiling materials. Since the report was prepared by a restoration tradesperson, I am satisfied that the report meets the criteria for an expert report under CRT rule 8.3.
17. Mr. Lapka's report says that SL26 had high levels of moisture at the window frames but not at the ceiling. Mr. Lapka says the window glass inserts showed high air infiltration which may have caused high condensation around the window frame. Mr. Lapka also said insulation in the attic was missing. He said the cold exterior air meeting the warm interior air was causing the ceiling drywall to "bleed" and peel the paint.
18. Based on this inspection, the strata hired MTM to repair SL26's window sill and ceiling in February 2020. MTM sent the strata a February 24, 2020 invoice for \$3,941.90 for the ceiling and window sill repairs to SL26.
19. In an August 18, 2020 letter, the strata said it had imposed a \$3,941.90 chargeback against Mr. Ljunggren's strata lot account for the repairs. The letter said Mr. Ljunggren was responsible to pay this amount because he failed to repair and maintain the strata lot resulting in moisture damage. The strata attached a copy of MTM's repair invoice.
20. Mr. Ljunggren requested a hearing to contest the chargeback on August 26, 2020. On September 25, 2020, the strata emailed Mr. Ljunggren offering an October 1, 2020 hearing date. Mr. Ljunggren was not available that date and a hearing was eventually held on October 8, 2020. In an October 22, 2020 letter and email, the strata notified

Mr. Ljunggren that it was charging back 75% of the repairs' cost to his strata lot account. This equaled \$2,956.43.

REASONING AND ANALYSIS

21. Mr. Ljunggren says he did not agree to pay for MTM's repair services. This is not specifically disputed by the strata, who hired MTM, and there is no evidence that Mr. Ljunggren agreed to pay. So, I find Mr. Ljunggren is not responsible to pay based on any agreement.
22. However, Mr. Ljunggren is responsible for the maintenance of his strata lot. Bylaw 2(1) says owners are responsible for repairing and maintaining their strata lots, except for repairs and maintenance that are the strata's responsibility.
23. Section 1 of the SPA says CP includes the part of a building that is not part of a strata lot. Section 68(1) of the SPA identifies the boundaries of a strata lot where the strata lot is separated from CP or another strata lot by a wall, floor, or ceiling. Section 68(1) says the strata lot boundary is midway between the surface of the structural portion of the wall, floor or ceiling that separates the strata lot from the CP or another strata lot, unless the strata plan identifies different boundaries.
24. Since the strata plan does not designate the window or attic area as part of SL26 or as limited common property, I find that both these areas are CP. Based on MTM's photographs I find that the window sill damage extends across the midpoint of the exterior wall. So, I find that a portion of the damaged window sill is CP and another portion is part of SL26 under SPA section 68(1). I find that the interior ceiling is part of SL26 under SPA section 68(1).

Did the strata damage SL26 by negligently failing to repair and maintain the CP?

25. Based on Mr. Lapka's undisputed report, I find that moisture from the exterior window caused the window sill damage and missing attic insulation caused the ceiling damage. As stated above, I find that the window and attic area are CP and SPA section 72 and bylaw 12 say the strata is responsible for maintaining CP. However, under the SPA and caselaw, it is well established that a strata corporation is not responsible for strata lot damage resulting from inadequate CP repair or maintenance, unless the strata was responsible for that CP and was negligent in repairing or maintaining it (see *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231 and *Kayne v. LMS 2374*, 2013 BCSC 51). Notably, the courts have also confirmed that a strata corporation is not an insurer.

26. According to *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3, to successfully demonstrate strata negligence, Mr. Ljunggren must prove that:

- a. The strata owed him a duty of care,
- b. The strata breached the applicable standard of care,
- c. Mr. Ljunggren sustained damage, and
- d. That damage was caused, in fact and in law, by the strata's breach.

27. I find that the strata owed the owners a duty of care, under the SPA and its bylaws, to repair and maintain the window and the attic area. The standard of care owed by the strata was reasonableness. This means that in repairing and maintaining the window and the attic area, the strata needed to act reasonably, not perfectly, in the circumstances (see *Basic*, referring to *John Campbell Law Corp. v. Strata Plan 1350*, 2001 BCSC 1342, *Weir v. Strata Plan NW 17*, 2010 BCSC 784, and *Wright v. Strata Plan No. 205* (1996), 1996 CanLII 2460 (BCSC), aff'd (1998) 1998 CanLII 5823 (BCCA)).

28. The question is, did the strata act reasonably in the circumstances, in repairing and maintaining the CP window and attic area? I find that Mr. Ljunggren has failed to

prove that the strata breached the standard of care by failing to repair or maintain the window or provide sufficient insulation in the attic. Although Mr. Lapka's report says that air infiltration through the window sill and missing insulation caused the damage, I find that this is not sufficient evidence to prove that the strata was negligent. Mr. Ljunggren has not proved that the strata was aware, or reasonably ought to have been aware, that the exterior window was defective or that the insulation was missing in the attic. The strata says it independently discovered that SL26's exterior window was defective by visually inspecting windows on the same day that Mr. Ljunggren reported the damage. I find that the strata promptly hired MTM to investigate and repair the defects when discovered. I find that Mr. Ljunggren has not proved that the defects to the window or attic defects were caused by the strata's negligence.

29. Mr. Ljunggren has the burden of proving his claim. For the above reasons, I find that Mr. Ljunggren has failed to prove that the strata negligently failed to repair and maintain the attic. So, I find that the strata is not responsible for repairs to SL26. I must now determine whether the strata was entitled to chargeback SL26's repair costs to Mr. Ljunggren's strata lot account.

Was the strata entitled to chargeback the repair costs?

30. There are no provisions in the SPA for chargebacks unrelated to insurance deductibles. So, the strata's ability to claim them must be provided for in the bylaws.
31. I find that the strata charged back the cost of MTM's repair invoices under bylaw 7(a). This bylaw says in part that an owner must indemnify and save harmless the strata corporation for the expense of any maintenance, repair, or replacement rendered necessary to the CP or to any strata lot by their act, neglect or carelessness. The strata claims that it is entitled to chargeback the repair costs under bylaw 7(a) because Mr. Ljunggren was allegedly neglectful.
32. In *Robertson v. The Owners, Strata Plan LMS 1952* and *Leguerrier v. The Owners, Strata Plan K 776*, 2020 BCCRT 958, tribunal members found that the standard for neglect was lower than negligence. Although not binding on me, I find the reasoning in *Robertson* and *Leguerrier* persuasive and apply it here.

33. The strata argues that MTM's report says the windowsills and trim were completely rotten, the ceiling was collapsing, the humidistat was turned off or broken, and the window seal had failed. I find this is not proven by the evidence before me. Mr. Lapka's report does not state that there was any rot or say that the ceiling had any damage other than discoloration and paint peeling. There is no contrary evidence to support the strata's assertions.
34. The strata also says that MTM told it that the bedroom was in a state of disrepair and the strata lot damage might pose a structural risk. However, I place no weight on that evidence because it is hearsay. While the CRT may accept hearsay evidence, I find no reasonable basis to do so here. Similarly, Mr. Ljunggren says that Mr. Lapka told him that the extent of the window damage was not noticeable without removing the existing structure. I place no weight on this statement because it also hearsay and I find that Mr. Lapka's report is the best evidence of his opinions.
35. I have also considered MTM's February 24, 2020 invoice which says it replaced SL26's window trim and sills, replaced damaged ceiling drywall, painted the ceiling, replaced the missing insulation, and replaced the dehumidstat. MTM also provided several photographs which appear to show to some discoloration in the edges between the window trim and the window sill.
36. Although the strata argues that Mr. Ljunggren's failure to report the window moisture damage as soon as it occurred was neglectful, I find that there is no evidence before me showing when the moisture damage occurred. As stated above, the photographs show some discoloration which I accept is moisture damage based on Mr. Lapka's report. However, I am unable to determine the extent of the moisture damage or draw a conclusion that Mr. Ljunggren neglected to promptly report the damage from the photographs. In the absence of evidence showing that the window damage was noticeable before it was reported on February 3, 2020, I am unable to conclude that Mr. Ljunggren neglected to promptly report the defect.
37. Similarly, there is no evidence before me showing that Mr. Ljunggren reasonably should have been aware of the ceiling damage before he reported it. There is no

evidence showing that the ceiling damage persisted for any significant time before Mr. Ljunggren reported it.

38. For the above reasons, I find that the Mr. Ljunggren did not commit an act, neglect or carelessness under bylaw 7(a) by failing to report the defects. So, I find that the strata was not entitled to impose a chargeback against Mr. Ljunggren's strata lot under bylaw 7(a). Further, the strata does not have any further bylaws authorizing chargebacks against owners' strata lots. Without a bylaw authorizing chargebacks against owners, So, I find that the strata was not entitled to impose the October 23, 2020 chargeback on Mr. Ljunggren's strata lot account, and must reverse it.
39. Section 34.1 of the SPA says the strata must hold a council meeting within 4 weeks of an owner's request and the strata must provide a written decision within 1 week after the hearing. Mr. Ljunggren argues that the chargeback should also be set aside because he claims the strata breached SPA section 34.1 by failing to conduct his hearing and provide its decision within these time limits. However, based on my above finding that the strata was not entitled to impose the chargeback, I find it unnecessary to also determine whether the chargeback should be set aside if the strata violated SPA section 34.1.

CRT FEES AND EXPENSES

40. The *Court Order Interest Act* (COIA) applies to the CRT. As Mr. Ljunggren was successful in this dispute, in accordance with the CRTA and the CRT's rules I find he is entitled to reimbursement of \$225.00 in CRT fees. Neither party claimed dispute-related expenses, so none are ordered.
41. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners of SL26.

ORDERS

42. I order the following:

- a. The strata must immediately remove the \$2,956.43 chargeback imposed on October 23, 2020 for MTM's February 24, 2020 invoice from Mr. Ljunggren's strata lot account
- b. Within 30 days of this order, the strata must reimburse Mr. Ljunggren \$225 for CRT fees.

43. Mr. Ljunggren is entitled to postjudgment interest under the *Court Order Interest Act*, as applicable.

44. 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.

Richard McAndrew, Tribunal Member