



Civil Resolution Tribunal

Date Issued: June 22, 2021

File: ST-2020-009256

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 1791 v. Tayeri*, 2021 BCCRT 691

B E T W E E N :

The Owners, Strata Plan LMS 1791

APPLICANT

A N D :

SHAMSOLZAMAN TAYERI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about access to a strata lot.
2. The respondent, Shamsolzaman Tayeri, lives in a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 1791 (strata). The strata says it requires

access to Ms. Tayeri's unit to maintain the common property drainage pipe and investigate the source of water leaks into the unit below. The strata says Ms. Tayeri has refused access to her unit, contrary to the strata's bylaws. It asks for an order permitting it to enter Ms. Tayeri's unit to investigate the source of water leaks, conduct any needed repairs, and clean out the common property drainpipe.

3. Ms. Tayeri says she suffers from serious health issues and that the pipe cleaning equipment would be detrimental to her health. She denies the strata needs to enter her unit lot and says the strata could maintain and repair the pipes from another unit or the parkade.
4. The strata is represented by a strata council member. Ms. Tayeri is self-represented.

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.

ISSUE

9. The issue in this dispute is whether the strata is entitled to enter Ms. Tayeri's unit to investigate the source of a water leak, conduct any necessary repairs, and clean out the common property drainpipe.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this one the strata, as the applicant, must prove its claim on a balance of probabilities. I have reviewed the submissions and weighed the evidence provided, but only refer to that necessary to explain and give context to my decision. I note that Ms. Tayeri provided no evidence or submissions, despite being given opportunity to do so.
11. Ms. Tayeri was provided with a copy of the strata's May 31, 2021 email, submitted as late evidence, but did not respond to it. Given the strata's late evidence is relevant to this dispute and Ms. Tayeri was not prejudiced by the lateness of the evidence, I accept it in this dispute.
12. The strata was created in 1995 and consists of 97 residential strata lots in a 20-floor building. Ms. Tayeri purchased a leasehold interest in strata lot 7, or unit 304, in 1997. None of this is disputed.
13. The strata filed an amended set of bylaws with the Land Title Office on December 14, 2001. I find these are the strata's applicable bylaws.
14. Bylaw 11 and section 72 of the SPA require the strata to maintain and repair common property. Common property is defined in the *Strata Property Act* (SPA) to include pipes within a floor, wall, or ceiling that forms a boundary between strata lots or

between a strata lot and the common property. I find the strata's drainage pipe system is common property based as the pipes necessarily run between strata lots.

15. The strata submitted a January 31, 2016 report by Jeff Besant, professional engineer. Mr. Besant said the building's drainage system was occasionally backing up due to grease build up and clogs in the pipes. He said garburators in each unit, along with the awkward geometry of the building's drainage pipes, contributed to the backups. Mr. Besant said unit 304 (SL7) was closest to the drainage system's problem area and recommended installing an access panel in unit 304 for regular drainage system flushing. Mr. Besant said the drainage line required regular flushing from unit 304 and other areas. I accept Mr. Besant is qualified to provide this expert opinion under the CRT rules, based on his professional credentials and his review of the building's mechanical drawings, piping system report and the strata's depreciation report.
16. The strata asked Ms. Tayeri for access to unit 304 to install an access panel in 2017, but Ms. Tayeri refused. The strata asked Ms. Tayeri for access to her unit to hydroflush the drainage system on October 9, 2018, April 4, 2019, May 13, 2019, and June 19, 2019. Ms. Tayeri refused to allow the strata's contractor to access her unit for these purposes. None of this is disputed.
17. Based on an April 6, 2021 statement from the strata's building manager, and photographs of unit 204, I find there was water leaking from unit 204's ceiling, onto the carpet, on June 13 and 27, 2019. It is undisputed that unit 204 is directly below 304 and that Ms. Tayeri refused to allow the property manager into her unit to investigate the source of the water leaks. I further find the strata requested access to Ms. Tayeri's unit on November 28, 2019, December 18, 2019, November 4, 2020 and November 17, 2020 to investigate the source of the water leaks in unit 204 and to hydroflush the strata's drainage pipe. It is undisputed that Ms. Tayeri either failed to respond or refused to allow the strata access to her unit for these purposes.
18. Section 77 of the SPA requires an owner to allow the strata reasonable access to common property to carry out its repair and maintenance obligations. Bylaw 10.1 requires a resident to allow a person authorized by the strata to enter the resident's

strata lot at a reasonable time, on 48 hours' written notice, to inspect, repair, relace, or maintain common property. I find the strata complied with bylaw 10.1 in giving Ms. Tayeri more than 48 hours' notice of entry, or asking Ms. Tayeri to arrange a time convenient for her, for the strata's contractor to flush the drainage pipe and investigate the source of unit 204's water leaks. I find Ms. Tayeri has failed to comply with section 77 of the SPA and bylaw 10.1 in refusing to allow the strata's contractor to access her unit.

19. The strata provided a September 8, 2020 report of Ali Movassagh, president of Mega Hydronics Inc. Mr. Movassagh is an accredited plumber and gas fitter and I accept he is qualified to provide an expert opinion under the CRT rules. Mr. Movassagh set out his understanding of sewage backups in Ms. Tayeri's kitchen sink, the offset of the drainage pipes below unit 304, and the recommendations of Mr. Besant in his prior report.
20. Mr. Movassagh explained that his company had previously attempted to clear an identified blockage in Ms. Tayeri's kitchen drainpipe on July 18, 2019. He said he previously recommended flushing the strata's drainpipe from Ms. Tayeri's kitchen sink but had never been allowed access to do so. Mr. Movassagh strongly recommended flushing the drainpipe from inside Ms. Tayeri's unit, preferably from the kitchen sink, but possibly through Ms. Tayeri's living room wall to the pipe, if necessary. Mr. Movassagh suspected the leaks in unit 204 were relevant to the kitchen drain backup in unit 304 and recommended testing all fixtures in both units and further investigating the leak source.
21. In a May 31, 2021 email the strata says Ms. Tayeri reported water backup in her kitchen sink on April 26, May 2 and May 23, 2021. While the on-call plumbers were able to snake the drainpipe, they were not equipped to hydroflush the drainpipe. I agree with the strata that the ongoing sink back-ups support the prior reports of a more serious blockage in the drainpipe from Ms. Tayeri's strata lot.
22. The strata provided an April 10, 2017 letter from Ms. Tayeri's doctor, which said that Ms. Tayeri was not medically fit to have her apartment modified or renovated to allow

permanent access to the drainage system. From the strata's correspondence to Ms. Tayeri, I find the strata is no longer asking to install a drainpipe access in Ms. Tayeri's strata lot. Rather, it is asking for access to Ms. Tayeri's unit to flush the drainpipe and investigate the water leak into unit 204. So, I find the April 10, 2017 letter does not support Ms. Tayeri's claim that her health issues prevent the strata's contractor from accessing her unit. Ms. Tayeri has provided no evidence that the equipment used to clean the pipes would be detrimental to her health. Further, I find Ms. Tayeri has provided no reason why she cannot vacate her unit during the flushing and investigation work to protect her health, if necessary. On balance, I do not accept Ms. Tayeri's argument that her health prevents her from allowing the strata's contractor to have access to her strata lot.

23. I disagree with Ms. Tayeri that the strata could access the drainpipe from another unit, or from the parkade, given Mr. Movassagh's September 8, 2020 recommendation to flush the drainpipe from inside unit 304 and the further need to access unit 304 to investigate the previous water leaks into unit 204. Ms. Tayeri has provided no contrary expert opinion or provided any explanation for her belief that the drainpipe flushing could be done from elsewhere in the strata building. .
24. Overall, I find Ms. Tayeri has provided no valid reason not to comply with section 77 of the SPA or bylaw 10. I further find the strata's request to access Ms. Tayeri's unit is reasonably necessary and that the strata has followed bylaw 10 in requesting access. I find Ms. Tayeri must allow the strata's contractor to access her unit to investigate the source of unit 204's water leak, conduct any necessary repairs, and clean out the common property drainpipe. The strata must provide Ms. Tayeri with 48 hours' written notice prior to entry into her strata lot.

CRT FEES AND EXPENSES

25. 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.

I find the strata is entitled to reimbursement of \$225 in CRT fees. It did not claim any dispute-related expenses.

26. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Tayeri.

ORDERS

27. I order that Ms. Tayeri must, within 10 days of the date of this order:

- a. Pay the strata \$225 in CRT fees, and
- b. Allow the strata's authorized contractor to enter unit 304 to investigate the source of the water leak to unit 204, conduct any necessary common property repairs, and clean out the common property drainpipe, on the day and time set by the strata.

28. I order the strata to provide Ms. Tayeri with at least 48 hours' written notice of the day and time its contractor will enter unit 304, in accordance with bylaw 10.1.

29. The strata is entitled to post-judgment interest under the *Court Order Interest Act*.

30. 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.

Sherelle Goodwin, Tribunal Member