



Civil Resolution Tribunal

Date Issued: July 6, 2021

File: ST-2021-000264

Type: Strata

Civil Resolution Tribunal

Indexed as: *Boulet v. The Owners, Strata Plan VIS 6395*, 2021 BCCRT 741

B E T W E E N :

MARC BOULET

APPLICANT

A N D :

The Owners, Strata Plan VIS 6395

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about repairs resulting from a roof leak.
2. The applicant, Marc Boulet, co-owns a strata lot (SL21) in the respondent strata corporation, The Owners, Strata Plan VIS 6395 (strata).

3. Mr. Boulet submits a tree limb punctured the roof of the building above SL21 causing water damage to common property and parts of SL21. He says the strata was negligent in attending to the roof repair and forced him to file an insurance claim with his personal insurer. Although Mr. Boulet originally sought an order that the strata reimburse him \$4,300.00 for the estimated cost of repairs, in his amended reply submissions discussed below, he now seeks an order that the strata pay his insurer \$4,384.31, which is the entire amount of Mr. Boulet's insurance claim paid by his insurer including a \$200.00 deductible paid by Mr. Boulet.
4. The strata submits that it was not negligent and relied on its contractor to inspect the roof for damage. It says it is only responsible to repair common property and the building's structure, including replacement of damaged insulation. The strata says it is not responsible for SL21 repairs, which it says make up the majority of Mr. Boulet's claimed expenses. I infer the strata asks that Mr. Boulet's claims be dismissed.
5. Mr. Boulet is self-represented, and the strata is represented by a strata council member.
6. For the reasons that follow, I find the strata was negligent in attending to water damage investigation and repairs and order it to pay Mr. Boulet's insurer a total of \$3,656.16.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the 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.
8. 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.

9. 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.
10. 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.

Preliminary Matters

No Facilitation

11. In a March 26, 2021 preliminary order, a CRT vice chair directed that this dispute be moved to adjudication without the need for a facilitated settlement conference, given the parties' agreement to such a process.

Late Submissions

12. On June 17, 2021, after I was assigned this dispute, CRT staff notified me of an issue with the strata's submissions. Originally, in April 2021, the strata prematurely submitted its response to the applicant's claims as evidence uploaded to the CRT online portal. CRT staff removed the strata's submissions from evidence to allow Mr. Boulet to first provide his submissions. On April 14, 2021, the parties were advised that the strata's submissions were removed from evidence and could be provided when requested. Later in April, when the strata was requested to provide its submissions, it simply referred to its earlier April response uploaded as evidence, stating it had no further submissions. On June 16, 2021, the strata notified CRT staff that it could no longer view its original submissions and claimed not to have received the CRT's April 14, 2021 email about them being removed from evidence.
13. For reasons of procedural fairness, on June 17, 2021, I instructed staff to advise the parties that the strata would be given an opportunity to provide its response submissions and that Mr. Boulet would then be given an opportunity to provide a final reply. The strata provided its response on June 23, 2021 and Mr. Boulet provided his final reply on

June 25, 2021. Mr. Boulet objected to the additional time the CRT allowed the strata to provide its response, but I find the strata would have been prejudiced if it was not given a reasonable opportunity to provide a response to Mr. Boulet's submissions. I find the process followed by the CRT adequately addresses any procedural fairness issues. I accept the strata's response submissions and Mr. Boulet's amended final reply submissions and have considered them in my analysis.

ISSUES

14. The issues in the dispute are:

- a. Was the strata negligent in attending to the roof repairs?
- b. Was the strata negligent in attending to the water damage repairs?
- c. Is the strata responsible to pay the repair expenses claimed by Mr. Boulet?

BACKGROUND, EVIDENCE AND ANALYSIS

15. In a civil proceeding such as this, the applicant, Mr. Boulet, must prove his 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.
16. The strata is a residential strata corporation created in October 2007 under the *Strata Property Act* (SPA). It contains 40 strata lots in 15 buildings comprised of 1 to 4 strata lots per building. SL21 is a 2-storey strata lot located in a building of 2 strata lots.
17. On July 9, 2019, the strata filed with the Land Title Office a consolidated set of bylaws different from the Standard Bylaws under the SPA. I find these are the bylaws relevant to this dispute. I address the applicable bylaws below, as necessary.
18. The parties agree the roof above SL21 is common property, which is the strata's responsibility to repair and maintain. This is supported by SPA section 72 and bylaw 8(b). It is undisputed that the hole in the roof is the cause of the disputed water damage.
19. The basic facts are undisputed, and I summarize them as follows.

20. On March 23, 2020, Mr. Boulet returned to SL21 from vacation. On March 27, 2020, he emailed the strata about a tree limb on the roof of SL21 and that the roof gutters were full of debris. The strata replied by email on March 28, 2020, stating it was aware of the issues as strata council members had made a list of items requiring the strata's attention about 2 weeks prior, on about March 12, 2020. The strata's reply also states it was difficult to obtain tradespeople due to COVID-19.
21. The May 14, 2021 strata council meeting minutes show 5 owners, including Mr. Boulet, emailed the strata about gutter cleaning and debris on the roofs. The minutes reflect the strata council was in the process of receiving quotations for this work. The strata also emailed Mr. Boulet on this date to advise it was in the process of locating a contractor for the gutter cleaning work.
22. The gutter cleaning was completed between July 22 and 28, 2020. The contractor that cleaned the gutters also removed the tree limb from the roof above SL21. The gutters were cleaned by the same contractor a second time in October 2020.
23. On November 20, 2020, Mr. Boulet noticed water damage in the ceiling of the main bedroom on the upper floor of SL21. The next day he reported it to his insurer, who advised him to contact the strata, which he did by email. The strata acknowledged the email and arranged for the gutter cleaning contractor to investigate the roof on November 22, 2020. The contractor identified a hole in the roof at or near where the tree limb had been and temporarily repaired it. The strata arranged for a roofing contractor to permanently repair the roof on November 23, 2020.
24. Also on November 23, 2020, Mr. Boulet attempted to contact the strata's property manager about the damage to SL21 and was also in contact with his personal insurer. He eventually arranged for his personal insurer to send a contractor, Service Master of Victoria (Service Master), to investigate the damage. Based on Mr. Boulet's notes from a telephone conversation with the strata's property manager and a subsequent email from the property manager, I find the property manager advised Mr. Boulet it carried insurance with a \$10,000 deductible, and that because the damage was likely below the deductible, the property manager advised Mr. Boulet to proceed with an insurance claim under his personal policy. In a subsequent email on November 23, 2020, the property

manager asked Mr. Boulet to provide a copy of the Service Master “invoice for emergency repairs and estimate of repairs” for the strata to review.

25. Service Master attended SL21 on November 23, 2020. From the Service Master quotation, and the undisputed evidence of Mr. Boulet, the interior drywall and insulation was removed from a portion of the main bedroom exterior walls and ceiling to allow for these areas to be properly dried. A portion of the ceiling drywall in the bedroom immediately below the main bedroom was also removed. A small section of baseboard and carpet underlay in the main bedroom was also water damaged.
26. On November 30, 2020, Mr. Boulet provided the property manager with a copy of the Service Master quotation dated November 27, 2020, including estimated emergency repairs. Mr. Boulet suggested the strata was responsible for the damage due to negligence. The property manager acknowledged receipt of the email and quotation on December 1, 2020, confirmed it would be reviewed by the strata, and that Mr. Boulet would be informed of the strata’s decision.
27. At a December 15, 2020 strata council meeting, the strata considered Mr. Boulet’s request that it pay for the costs identified in the Service Master quotation. On December 16, 2020, the property manager emailed Mr. Boulet to inform him the strata did not agree with his claim of negligence, the repair expenses were his responsibility, and he could file a dispute with the CRT if he disagreed with the strata’s decision.
28. On December 17, 2020, Mr. Boulet asked his personal insurer to proceed with an insurance claim under his policy. Following a strata council hearing on January 5, 2021, the strata again denied Mr. Boulet’s request to take responsibility for the Service Master expenses. Mr. Boulet applied for dispute resolution services with the CRT and the Dispute Notice was issued January 20, 2021.

Was the strata negligent in attending to the roof repairs?

29. In summary, Mr. Boulet says the strata was negligent for the following reasons:
 - a. It was aware a tree limb had fallen on the roof above SL21 about March 12, 2020 and did not have it removed until about July 22, 2020, 4 months later, and

- b. It did not have the roof inspected for damage after the tree limb was removed, and
 - c. The tree limb caused the roof damage.
- 30. The strata says it was not negligent because it relied on its gutter cleaning contractor that removed the tree limb to inspect the roof in July and October 2020, when the gutters were cleaned, and the contractor did not identify any roof damage. It also says that Mr. Boulet also did not advise of water damage in SL21 until November 2020, 8 months after the tree limb was first reported on the roof.
- 31. The strata relies on *John Campbell Law Corp. v. Owners, Strata Plan 1350*, 2001 BCSC 1342, where the British Columbia Supreme Court considered a case where a common property sewer pipe became blocked by a tree root and caused sewage to flood the plaintiff owner's strata lot. The court dismissed the owner's claim for damages, finding that although the strata corporation had not routinely inspected the sewer pipes for blockage, that was not the general practice of strata corporations. The court found the strata corporation acted reasonably in the circumstances because the blockage could not have been anticipated and it took immediate steps to correct the blockage when the issue was discovered. *John Campbell* establishes that a strata corporation must act reasonably in performing its duty to repair common property and is not an insurer.
- 32. The strata says it took all reasonable steps to inspect and maintain the common property roof, consistent with the practice of other strata corporations. Relying on the court's decision in *John Campbell*, the strata says it should not be held responsible to reimburse Mr. Boulet simply because the common property roof failed or was damaged through no fault of the strata, and caused damage to SL21. However, unlike in *John Campbell*, the strata has not established what a strata corporation's general practice is for roof cleaning or inspection, or if the strata actually performed any roof cleaning or inspection.
- 33. Although the strata stated it asked the gutter cleaning contractor to inspect the roof in July and October 2020 when the gutters were cleaned, it did not provide any evidence to support its assertion, such as a copy of the contract, written instructions it provided to the gutter cleaning company, or a written statement from the workers who cleaned

the gutters and allegedly inspected the roof. Therefore, it is unclear if the roof where the tree limb fell was inspected at the time the tree limb was removed or at all until the water damage was reported by Mr. Boulet in November 2020. A photograph of the hole in the roof was provided in evidence. Based on the size of the hole in the photograph, it does not seem reasonable that the hole could have been overlooked if a roof inspection had occurred. Considering the overall evidence, and the fact the strata stated no roof damage had ever occurred in its 12 years of existence, I find the roof area above SL21 was not inspected until November 2020, when Mr. Boulet alerted the strata to signs of moisture in the main bedroom ceiling. Therefore, I do not find *John Campbell* assists the strata in these circumstances.

34. The strata may be liable for Mr. Boulet's expenses if it was negligent in repairing and maintaining common property: see, for example, *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231. The fact that damage occurred is not always sufficient to prove the strata was negligent, according to the Supreme Court of Canada (SCC). In *Fontaine v. British Columbia (Official Administrator)*, [1998] 1 SCR 424, the SCC found that the applicant always bears the burden of proving that the damage was caused by the respondent's negligence. If the damage might reasonably have occurred without negligence, Mr. Boulet's claim is not proven.
35. In order to establish the strata's negligence, Mr. Boulet must show that the strata owed him a duty of care, that the strata breached the standard of care, and that he sustained damage as a result of that breach: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27. The standard of care that applies to a strata corporation with respect to the maintenance of common property is reasonableness: *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784.
36. There is no question that under the SPA and bylaws the strata owed Mr. Boulet a duty of care to repair and maintain the roof. It is undisputed that the water damage occurred because of the hole in the roof. The question that remains is whether the strata's actions to investigate and repair the roof were reasonable.
37. For the reasons that follow, I find the strata's actions were reasonable. Despite my finding that the strata did not have the roof inspected, I find it acted reasonably. From

the photograph in evidence, the limb was overhanging the gutter. The size of the tree limb is unclear from the photograph and is not otherwise described. If it was easily removed by the gutter cleaning contractor, there would be no reason to believe any roof damage had occurred, especially if the contractor was not familiar with roof inspections as Mr. Boulet suggests. There is also no evidence, such as a photograph when the tree limb was discovered, that the tree limb caused the roof damage. It is possible that the roof damage occurred at a later date caused by a different tree limb that was unnoticed by the parties. So, I do not find Mr. Boulet has proved the strata was negligent about inspecting the roof.

38. Finally, there is no evidence water ingress occurred until it was reported by Mr. Boulet in November 2020. The strata took immediate steps to have to have the roof repaired as soon it was aware of the moisture in SL21. Therefore, I find the strata was not negligent in repairing the roof.

Was the strata negligent in attending to the water damage repairs?

39. I turn now to the strata's actions about the water damage repairs. Having repaired the hole in the roof, the strata relied on Mr. Boulet's communications with his personal insurer and inspection of the water damage by Service Master completed on November 27, 2020. In *Guenther v. Owners, Strata Plan KAS431*, 2011 BCSC 119, the B.C. Supreme Court determined a strata corporation's duty to repair and maintain includes a duty to investigate. At paragraph 40, the court found such a duty requires a strata

...to do that which is reasonable in all the circumstances. What is reasonable will depend on a number of factors including the likelihood of the need to repair, the cost of further investigation, and the gravity of the harm sought to be avoided or mitigated by investigating and remedying any discovered problems

40. In its response submissions, the strata claims its property manager misinformed Mr. Boulet that the repairs were his responsibility in a November 23, 2020 email because the damage was likely below the strata corporation's insurance deductible. Yet for different reasons, namely because the strata said it was not negligent, the strata reached the same conclusion following its review of the Service Master quotation at its

December 15, 2020 strata council meeting. I find the strata's reasons for initially denying Mr. Boulet's request it attend to the repairs are in conflict with its admission that it is responsible for damage to common property including water damaged insulation.

41. I also find the strata chose to accept the Service Master quotation rather than investigate the damage through its own contractor. Although the strata says the quotation does not include emergency repairs, I find the emergency expenses of \$805.46 (plus overhead, profit and taxes) are clearly set out on page 1 of the quotation.
42. I do not agree with the strata that the Service Master information provided by Mr. Boulet is evidence that the repairs are entirely to SL21. Rather, I find the quotation clearly shows the extent of the repairs is mostly due to drying ceiling and wall spaces, and replacing water damaged insulation, which I find inevitably requires removal and replacement of interior drywall to access the insulation.
43. Based on the factors identified in *Guenther*, I find the Service Master quotation identified a need to repair and that moisture in the walls and ceilings of SL21 required remediation. There was no cost to the strata to obtain the Service Master quotation because it was arranged through Mr. Boulet's insurer. For these reasons, I find the strata was unreasonable in its refusal accept the results of the Service Master investigation of the water damage repairs.
44. Further, I reject the strata's submission that it is not responsible to pay any expenses because Mr. Boulet refused to attempt a facilitated resolution.
45. Therefore, I find the strata was negligent in attending to the water damage repairs.

Is the strata responsible to pay the repair expenses claimed by Mr. Boulet?

46. As noted, Mr. Boulet's claimed expenses have been paid by his personal insurer. He asks that the strata reimburse his insurer \$4,384.31 and says he would then seek reimbursement of his \$200 deductible directly from his insurer. I find there is nothing in the CRTA or SPA that restricts me from ordering the strata to pay Mr. Boulet's insurer. I find such an order is appropriate because without it, Mr. Boulet would not have a remedy for the strata's negligent actions.

47. However, given the total amount claimed includes both common property and SL21 expenses, I will first determine the appropriate amount of the strata's expenses. As earlier mentioned, the strata agrees it is responsible for common property expenses including insulation replacement. I have found the interior drywall must be removed in order to replace the insulation, so those expenses are the strata's responsibility. Following *Guenther*, I also find the strata is responsible for the common property investigation expenses, which includes Service Master's emergency expenses.

48. Based on my review of the Service Master quotation, which is the exact amount of its final invoice, I find the following main bedroom expenses of \$543.39 are the responsibility of Mr. Boulet as they do not relate to common property investigation or repair, or the replacement of insulation:

- a. Carpet pad (underlay) \$ 3.51
- b. Relay existing carpet 4.67
- c. Carpet cleaning 128.01
- d. Relocate contents 74.12
- e. Minimum carpet labour 333.08

49. After adjusting for 10% overhead, 8% profit, and taxes, I calculate the total main bedroom of SL21 expenses are \$728.15. Therefore, I find the strata is responsible for the remaining expenses of \$3,656.16. I order the strata to issue a cheque payable to Mr. Boulet's insurer, BCAA, for this amount, and send the cheque to Mr. Boulet.

CRT FEES AND EXPENSES

50. As noted, 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 to deviate from this general rule. Mr. Boulet was the successful party in this dispute and paid \$225.00 in CRT fees. Accordingly, I order the strata to pay Mr. Boulet this amount.

51. No party claimed dispute-related expenses, so I order none.
52. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mr. Boulet.

ORDERS

53. I order the strata, within 14 days of the date of this decision, to:
- a. Issue a cheque payable to BCAA in the amount of \$3,656.16, and to send the cheque to Mr. Boulet, and
 - b. Pay Mr. Boulet \$225.00 for CRT fees.
54. Mr. Boulet is entitled to post-judgement interest for CRT fees under the *Court Order Interest Act*, as applicable.
55. 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.

J. Garth Cambrey, Vice Chair