



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 1148 v. Diggines, 2021 BCCRT 752*

BETWEEN:

The Owners, Strata Plan LMS 1148

APPLICANT

AND:

SUSAN DIGGINES

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about is responsible for paying an insurance deductible for a water damage insurance claim. The respondent, Susan Diggines, owns a strata lot in the applicant strata corporation, The Owners, Strata Plan LMS 1148 (strata). The strata says Mrs. Diggines is liable under the bylaws because occupants in her strata lot caused the water damage. It seeks an order for payment of \$30,000.

2. Mrs. Diggines disagrees. She says the strata largely relies on evidence from an engineer, and the evidence does not prove the occupants caused the damage.
3. A strata council member represents the strata. Mrs. Diggines represents herself.
4. For the reasons that follow, I find the strata has proven its case. I order Mrs. Diggines to pay the amounts set out below.

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. Some of the evidence in this dispute amounts to a "they said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.
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.

ISSUES

9. The issue in this dispute are as follows:
 - a. What is the standard of liability?
 - b. Is Mrs. Diggins liable under that standard?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the strata as the applicant must prove its claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
11. I begin with the undisputed background facts. The strata's property includes 3 low-rise buildings that provide residential apartment-style housing. Mrs. Diggins owns strata lot 119, located on floor 3 of building 3 of the strata plan.
12. On October 24, 2018, a sprinkler line section located in the ceiling of strata lot 119 broke, leading to rapid water ingress. Mrs. Diggins' family member, TD, was present and living there at the time. TD's friend, EK, was also present.
13. The strata alleges that TD or EK hit the sprinkler head, causing the water ingress. In witness statements both TD and EK said that the sprinkler line began leaking spontaneously. They deny touching or hitting it. TD says they were sitting on a sofa in the living room when they heard a creaking noise from the ceiling. Water began to drip down from above the sprinkler, located in the center of the room. The noise and leak worsened. I find the strata's version of events is more likely for the reasons discussed below.

14. The resulting water damage was severe. TD or EK recorded 2 videos. The first shows that water rapidly entered the strata lot from an area around the sprinkler head. The second shows a large portion of the ceiling subsequently collapsed, exposing the wood framing above.
15. In an October 24, 2018 document, a contractor noted there was extensive damage to strata lot 119 and several adjoining strata lots. The strata subsequently filed an insurance claim. There is no dispute that the strata's insurance deductible is \$30,000 and that repairs exceeded this amount.
16. In a July 31, 2019 letter, the strata's property manager advised Mrs. Diggines that it would be charging back the insurance deductible to her strata lot account. The strata council held a hearing in early August 2019 at Mrs. Diggines' request. In an August 20, 2019 email, a strata council member advised Mrs. Diggines that it would add the deductible to her strata lot account.

Issue #1. What is the standard of liability?

17. Section 158(2) of the *Strata Property Act* (SPA) permits a strata corporation to sue an owner for repayment of an insurance deductible if that owner is "responsible" for the loss or damage that gave rise to the claim. Unless modified by the bylaws, the strata does not need to establish fault under this provision. See *Yang v. Re/Max Commercial Realty (482258 BC Ltd.)*, 2016 BCSC 2147 at paragraph 139 and *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 519.
18. I must therefore consider the bylaws to determine what standard of liability applies. In May 2014, the strata repealed its existing bylaws and registered a complete set of new bylaws. The strata subsequently amended its bylaws several times, but these amendments are not relevant to this dispute.
19. In its July 2019 letter the strata cited bylaws 2.1.4 and 2.1.5 as authority to charge back the insurance deductible. I will consider bylaw 2.1.4 first. It says the following:
20. 2.1.4. An owner shall indemnify and save harmless the Strata Corporation from the expense or any maintenance, repair or replacement rendered necessary to the

common property, limited common property, common assets or to any strata lot by the owner's act, omission, negligence or carelessness or by that of an owner's visitors, occupants, guests, employees, agents, tenants or a member of the owner's family, but only to the extent that such expense is not reimbursed from the proceeds received by operation of any insurance policy. In such circumstances any insurance deductible paid or payable by the Strata Corporation shall be considered an expense not covered by the proceeds received by the Strata Corporation as insurance coverage and will be charged to the owner. [Emphasis added.]

21. Several CRT decisions have held that the words “owner’s act, omission, negligence or carelessness” are to be read collectively and import a standard of negligence. See, for example, *Hu v. The Owners, Strata Plan BCS 3507*, 2020 BCCRT 74. Although it is not binding, I find the reasoning in *Hu* persuasive. I find that by adopting this wording, the strata intended to only charge back expenses if there was negligence proven under bylaw 2.1.4.
22. Given the above, I find the strata must prove that Mrs. Diggines’ visitors, occupants, guests, or family members were negligent to charge back the insurance deductible under this bylaw. It is undisputed that both TD and EK fit within one or more of these categories.
23. As discussed below, I find that TD or EK were negligent. I do not find it necessary to discuss bylaw 2.1.5 for this reason.

Issue #2. Is Mrs. Diggines liable under the required standard of negligence?

24. To prove negligence under bylaw 2.1.4, the strata must show TD or EK owed the strata a duty of care, breached the standard of care, the strata sustained damage, and that the damage was caused by the breach: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3.
25. In the non-binding decision of *The Owners, Strata Plan BCS 2611 v. Kaboodani*, 2019 BCCRT 1243, the CRT held that tenants owe a general duty of care to the strata and

other owners. I find the same would apply to TD and EK as they were, at a minimum, occupants in a strata lot in the strata.

26. I turn to the evidence. The strata relies on a December 5, 2019 report it requested about the cause of the sprinkler line malfunction. I find this to be expert evidence under CRT rule 8.3. I find the author, AB, stated their qualifications as required by that rule. AB wrote their title as “P.Eng.”, which I find is generally known to mean that this person is a licensed, practising engineer. Mrs. Diggins questioned AB’s report but not their qualifications.
27. The report shows the sprinkler line pipe was connected horizontally to a T-fitting in 2 places. A short pipe extended from the bottom of the T-fitting, connecting to a sprinkler head. Before the water ingress, the sprinkler head protruded from the ceiling of strata lot 119, and the pipes and T-fitting were above the ceiling. The report’s photos show the pipes cracked and severed completely on all 3 sides of the T-fitting.
28. AB wrote that the pipe fractures were “consistent with a rapid external force such as an impact”. They also concluded that it was “improbable” that the fractures would have occurred “without an external impact force”.
29. AB ruled out other causes for the fractures. They conducted flattening tests on pipe samples to determine the pipe’s durability. AB determined it “was not embrittled to the point that it would be able to fracture spontaneously without an external force”. AB also ruled out an “over pressure event” because of the fractography, orientation, and location of the fractures. AB also said there was no evidence that the pipes froze based on historical data from Environment Canada.
30. I place significant weight on AB’s evidence, in part because there is no other expert evidence about the cause of the water ingress. Mrs. Diggins provided reports about sprinkler leaks in other strata lots, but these occurred in previous years at other locations. I do not find them relevant to determining what happened here.
31. Mrs. Diggins said AB should have inspected the site or discussed what happened with TD or EK. I do not find it obvious that AB’s methods were flawed, and there is no

expert evidence to suggest otherwise. AB's report shows they were provided the sprinkler assembly involved in the leak, including the T-fitting and pipe samples. AB based their conclusions on examining these parts. The report includes photos of these components with explanations about the significance of the shapes of the fractures. There is also a photo of the area of the broken sprinkler line above the collapsed ceiling and a table of relevant weather data.

32. Mrs. Diggines also disagrees with the report's conclusions. She says it was possible that the pipe burst due to freezing or a lack of maintenance. However, AB explicitly ruled out freezing and found the pipe was unlikely to have cracked on its own, without an impact. I find that AB's report provides a credible explanation for the pipe damage. Mrs. Diggines has not provided a credible alternative. I note that it was open to Mrs. Diggines to provide a contrary expert report, but she has not done so. I am mindful that the strata bears the burden of proof, and I find it has met the burden here.
33. Mrs. Diggines also says that AB wrote in an April 24, 2019 email to the strata that the evidence of the external impact could have been caused by the broken sprinkler segment hitting the floor, after the water ingress started. I find this submission misinterprets AB's comments. AB wrote that there was some deformation on the escutcheon plate of the sprinkler. AB concluded that this damage could have been pre-existing or caused by either a hit or the sprinkler hitting the floor. I find nothing turns on the cause of the plate deformation. This is because AB did not rely on the deformation to reach their conclusions in the December 2019 report. Instead, AB explicitly relied on their analysis of the pipe fractures, flattening tests, and other evidence.
34. Finally, Mrs. Diggines alleges that the strata conducted the August 2019 hearing in an unfair manner and that all other owners in the strata were influenced by a "clear conflict of interest". I find these allegations speculative and unsupported by any evidence. By then, AB had already emailed the strata on April 24, 2019 to advise that an impact appeared to be the likely cause of the pipe fractures.

35. Based on AB's expert evidence, and the fact that TD and EK were present when the leak started, I find it more likely than not that either TD or EK struck the sprinkler head and caused the pipes connected to the T-fitting to crack and sever on all 3 sides. The video recordings and other evidence show the sprinkler head was previously on the ceiling and not in anyone's way. I find TD or EK breached the standard of care by hitting it. I find the breach caused damage to the strata. I do not find it necessary to determine how or why either of them hit the sprinkler head.
36. As TD or EK was negligent, I find Mrs. Diggins is liable under bylaw 2.1.4 for the claimed insurance deductible. I order her to pay the strata \$30,000.

CRT FEES, EXPENSES AND INTEREST

37. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to pre-judgment interest on the charge back of \$30,000 from August 18, 2020, the date of the strata charged back the insurance deductible to Mrs. Diggins' strata lot account, to the date of this decision. This equals \$120.25.
38. 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. The strata did not claim any dispute-related expenses, so I order none.
39. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mrs. Diggins.

ORDERS

40. Within 14 days of the date of this order, I order Mrs. Diggins to pay the strata a total of \$30,345.25, broken down as follows:
- a. \$30,000 as damages,
 - b. \$120.25 in pre-judgment interest under the *Court Order Interest Act*, and

c. \$225 in CRT fees.

41. The strata is entitled to post-judgment interest, as applicable.

42. 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.

David Jiang, Tribunal Member