



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Adamson v. The Owners, Strata Plan LMS 3744*, 2021 BCCRT 964

B E T W E E N :

CLAIRE ADAMSON

APPLICANT

A N D :

The Owners, Strata Plan LMS 3744

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This strata property dispute is about payment of repair costs after a water leak.
2. The applicant, Claire Adamson, owns strata lot 116 (SL116) in the respondent strata corporation, The Owners, Strata Plan LMS 3744 (strata).

3. Ms. Adamson says the strata wrongly charged her \$15,053.11 for water leak repairs. She admits there was a leak from SL116 in February 2020, which damaged common property. Ms. Adamson's insurance paid the first \$10,000 of the repair costs, but the strata charged her an additional \$15,053.11. The strata did not make a claim on its insurance, since the damage was under its \$35,000 deductible.
4. Ms. Adamson says SL116 is rented out, she lives elsewhere, and the strata failed to notify her that it had increased its insurance deductible from \$10,000 to \$35,000. Ms. Adamson says this lack of notification means she did not know that she should update her personal insurance to cover the new deductible amount. As remedy in this dispute, Ms. Adamson requests an order that the strata reverse the \$15,033.11 charge on her strata lot account.
5. The strata says it was Ms. Adamson's responsibility to ensure she received strata documents, such as annual general meeting (AGM) minutes, which documented the insurance deductible increase. The strata says it took all reasonable steps to notify owners of the deductible increase, including having all AGM notice packages and minutes available online. The strata says Ms. Adamson's claim should be dismissed.
6. Ms. Adamson is self-represented in this dispute. The strata is represented by a strata council member.
7. For the reasons set out below, I allow Ms. Adamson's claim, and order the strata to reverse the \$15,033.11 charge on her strata lot account.

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). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.

9. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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 in the interests of justice and fairness.
10. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
11. Under CRTA section 123, 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

12. The issues in this dispute are:
 - a. Did the strata inform Ms. Adamson of the increase to its insurance deductible?
 - b. If not, must the strata reverse the \$15,053.11 water leak repair charge on Ms. Adamson's strata lot account?

REASONS AND ANALYSIS

13. In a civil claim like this one, Ms. Adamson, as applicant, must prove her claim on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.
14. SPA section 154(c) says a strata corporation must inform owners and tenants as soon as feasible of any material change to its insurance coverage, including any increase in an insurance deductible.

15. Based on the evidence before me in this dispute, I find the strata did not inform Ms. Adamson about the increase in its insurance deductible from \$10,000 to \$35,000 “as soon as feasible”, as required under SPA section 154(c).
16. Ms. Adamson says she never received any notice or information that the strata’s insurance deductible had increased from \$10,000 to \$35,000 until after the February 25, 2020 leak incident. Ms. Adamson says she carries insurance on her strata lot, which she renews annually. Ms. Adamson says she renewed her insurance in May 2019 for coverage up to \$10,000 because she believed that was still the strata’s deductible based on a recent notice she received through her tenant.
17. Ms. Adamson says her insurance company would not permit a retroactive change, so she was not covered for the leak-related damage above \$10,000. Ms. Adamson says she always carried personal insurance to cover up to the strata’s deductible amount, and would have increased her coverage to \$35,000 if the strata had notified her of the change, so she should not be responsible to pay the additional \$15,033.11 charge.
18. The strata says it took all reasonable steps to inform owners about the deductible change in 2019. However, I find that this is not proven by the evidence before me. Rather, I find the strata has provided contradictory statements about how it allegedly informed Ms. Adamson about the deductible increase.
19. In its Dispute Response Form, the strata says the deductible increase information was included in the November 2019 AGM minutes, which the strata says Ms. Adamson received from her tenant after the minutes were hand delivered to the tenant.
20. I agree, based on the evidence, that the November 2019 AGM minutes included notification of the deductible increase. However, the insurance documents show that the deductible increased on May 31, 2019, when the annual policy was renewed. I find that informing owners of a deductible increase more than 5 months after it takes effect is not “as soon as feasible”, as required under SPA section 154(c). Therefore, I find the strata did not meet the notice requirements by including the information in

the AGM minutes. For the same reason, I find notice “as soon as feasible” would not be met by including the information in the AGM notice package, which was likely circulated in October 2019 but was not provided in evidence.

21. Also, I find the evidence before me does not establish that Ms. Adamson received the AGM minutes or notice package, or any other notification of the deductible increase, before the February 2020 leak. As noted, the strata says in the Dispute Response Form that Ms. Adamson received the AGM minutes from her tenant. However, Ms. Adamson provided an affidavit from the tenant who occupied SL116 until December 2019, who says she routinely reviewed all communications from the strata and notified Ms. Adamson of any significant issues, but does not recall ever seeing or receiving any notices about changes to the strata’s insurance deductible.
22. SPA section 61 lists the ways a strata corporation can send a “notice or other record or document that the strata corporation is required or permitted to give to a person under [the SPA]”. I find that a notice about an increased insurance deductible required under SPA section 154(c) is a “notice” for the purpose of SPA section 61.
23. SPA section 61 says that if the person has provided the strata with an address outside the strata plan for receiving notices, the strata must either leave the notice with the person, or mail it to the provided address.
24. Ms. Adamson says she provided the strata with an address outside the strata plan for receiving notices and other documents. The strata disputes this.
25. I find the email correspondence in evidence shows that Ms. Adamson gave the strata written notice of an outside address for receiving strata documents in 2017. The emails show that she received permission to rent out her strata lot starting in March 2017, and provided the strata property manager with a Form K Notice of Tenant’s Responsibilities. On the Form K, Ms. Adamson provided a mailing address in Vancouver, outside the strata plan.

26. Since Ms. Adamson provided an address outside the strata plan for receiving notices, under SPA section 61 the strata had to either deliver the insurance deductible notice to her in person, or mail it to the provided address in Vancouver.
27. The strata does not say it delivered the notice to Ms. Adamson in person. I also find the evidence before me does not establish that the strata mailed it to her. I find the strata provided contradictory evidence on this point. In a September 8, 2020 letter to Ms. Adamson, written after the leak incident, the strata's property manager wrote, "The minutes are available on the website and outline the different strata insurance deductibles, as well notices were posted and delivered door to door." Thus, the strata did not say at that time that it mailed any notice about the deductible increase, including the AGM minutes, to Ms. Adamson. Based on the strata's submissions, I find that "posted" means displayed in the strata building, rather than mailed.
28. In a December 14, 2020 letter to Ms. Adamson, the property manager made a contradictory statement. He wrote that the information about the deductible increase was provided to all owners and residents by emailing, mailing to offsite owners, posting in the building and hand delivered notice as soon as the council was aware of the latest increase.
29. As explained above, emailing and posting notices in the building do not meet the SPA section 61 requirements for delivering required notices. Also, there is no evidence, such as a copy of an email, that the strata emailed this information to Ms. Adamson.
30. Also, although the property manager asserted that the information was "mailed to offsite owners", this contradicts his earlier statement in the September 8, 2020 letter that does not say notices were mailed. Also, the strata did not provide any evidence showing when such a notice was mailed, by whom, what the notice said, or to what address Ms. Adamson's alleged copy was mailed. For these reasons, I find the evidence before me does not establish that the strata mailed any notification about the deductible increase to Ms. Adamson before the February 2020 leak.
31. For this reason, I find this dispute is significantly different from the CRT's earlier decision in *The Owners, Strata Plan EPS 3602 v. North*, 2021 BCCRT 217, which the

strata cites as authority. In *North*, the strata corporation provided evidence from its web services provider which the CRT member found confirmed that an email was successfully sent to the owners' email address. There is no such confirming evidence in this case, such as a postal receipt, or statement from someone who addressed an envelope to Ms. Adamson's correct offsite address. Also, I note that since Ms. Adamson provided an address outside the strata plan, notification by email would not meet the SPA section 61 requirements. This is different from *North*, where the owners lived in the strata. But in any event, I find there is no evidence that the strata emailed Ms. Adamson any notification about the deductible increase, including AGM minutes.

32. In this dispute, the strata also argues that Ms. Adamson should have checked its website to obtain the notification about the deductible increase. However, this is not a permitted method of providing required notices under SPA section 61.
33. The strata argues that Ms. Adamson should have followed up to obtain the AGM package if she did not receive it in late 2019, I am not persuaded by this argument for 2 reasons. First, as explained above I find that notice about the May 31, 2019 deductible change more than 5 months later is not "as soon as feasible". Second, I find the evidence before me does not establish that the strata provided notice to Ms. Adamson by hand delivery or by postal mail to her offsite address, as required under SPA section 61.
34. In conclusion, I find based on the evidence, that the strata did not meet the requirements of SPA section 154(c) by informing Ms. Adamson about the deductible increase as soon as feasible, or at any time before the February 2020 flooding incident.
35. The SPA does not set out any specific remedy for a breach of SPA section 154(c). However, CRTA section 123(2) gives the CRT authority to make an order directed at the strata, if the order is necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights.
36. Although Ms. Adamson did not use this particular language, I infer from her submissions that she claims the strata treated her significantly unfairly by charging

her for damages above \$10,000 without having notified her that the deductible had increased beyond \$10,000.

37. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the BC Court of Appeal said a significantly unfair action is one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable. In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the BC Court of Appeal confirmed that an owner's reasonable expectations may also be relevant in determining whether the strata's actions were significantly unfair.
35. When an owner's reasonable expectations are relevant, as I find they are here, I must determine whether the strata violated those expectations with a significantly unfair action or decision: see *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44.
38. I find that Ms. Adamson had a reasonable expectation that the strata would follow the SPA, which includes sending the deductible increase notice required under SPA section 154(c) in the manner required under SPA section 61 (in person or by postal mail to her provided address). As explained above, I find the strata did not do this, and did not send her any notice of the deductible increase. I find that by not giving Ms. Adamson notice of the deductible increase as required under SPA sections 61 and 154(c), and charging her for the repair costs over the previous \$10,000 deductible, the strata treated Ms. Adamson significantly unfairly.
39. I accept Ms. Adamson's uncontradicted evidence that she had previously maintained personal insurance to cover the strata's deductible amount, and that she would have increased her coverage before the February 2020 leak if she had been notified about the increased deductible. I therefore allow Ms. Adamson's claim, and find the appropriate remedy for the strata's significant unfairness is to order the strata to reverse the \$15,033.11 charge on Ms. Adamson's strata lot account.

CRT FEES AND EXPENSES

40. As Ms. Adamson was successful in this dispute, in accordance with the CRTA and the CRT's rules I find she 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 to Ms. Adamson.

ORDERS

42. I order that:
- a. The strata must immediately reverse the \$15,033.11 charge on Ms. Adamson's strata lot account.
 - b. Within 30 days of this decision, the strata must reimburse Ms. Adamson \$225 for CRT fees.
43. Ms. Adamson is entitled to postjudgment interest under the *Court Order Interest Act*, as applicable.
44. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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.

Kate Campbell, Vice Chair