



Civil Resolution Tribunal

Date Issued: October 21, 2021

File: ST-2021-001632

Type: Strata

Civil Resolution Tribunal

Indexed as: *Bindra v. The Owners, Strata Plan EPS3829*, 2021 BCCRT 1113

B E T W E E N :

JASVINDER BINDRA

APPLICANT

A N D :

The Owners, Strata Plan EPS3829

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about water damage in a strata corporation.
2. The applicant, Jasvinder Bindra, owns a leasehold interest in strata lot 42 (SL42) in the respondent leasehold strata corporation, The Owners, Strata Plan EPS 3829 (strata).

3. It is undisputed that a radiant heating system pipe in the SL42 leaked, causing water damage to the strata lot directly below SL42 (SL26).
4. Ms. Bindra says she is not responsible for the pipe repairs because the radiant heating system is common property, as defined in the *Strata Property Act* (SPA) and the strata must repair common property under the strata's bylaws. Ms. Bindra also says she is not responsible for the cost of SL26's repairs. She asks for the following orders:
 - a. the strata repair the common property radiant heat leak in her strata lot,
 - b. the strata reimburse her \$795.90 for the plumbing chargeback invoice,
 - c. the strata cancel the chargeback invoices totalling \$5,229 issued to her for the cost of repairs in both SL42 and SL26, and
 - d. the strata reimburse her \$129.79 for two portable electric heaters.
5. The strata disputes Ms. Bindra's claims, and says she is responsible for all repair costs because the radiant heating system is located in SL42 and controlled by SL42.
6. Ms. Bindra is self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.

9. 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.
10. 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.

Preliminary Issue

11. Ms. Bindra's requested remedies changed during the course of the CRT facilitation process. In her dispute application, she requested an order that the strata reimburse her for the \$795.50 plumbing chargeback, but not for the further \$5,299 in chargebacks for repairs to SL42 and SL26. During facilitation, these remedies were added. Although the Dispute Notice was not amended, I find the strata had notice of the changes in requested remedies, and specifically responded to these added remedies when providing evidence and submissions. So, I find no procedural fairness problem in considering the amended remedies raised during facilitation.

ISSUES

12. The issues in this dispute are:
 - a. Is the radiant heating system pipe common property, and is the strata responsible for its repair and associated costs, and
 - b. What are the appropriate remedies, if any.

EVIDENCE AND ANALYSIS

13. As the applicant, Ms. Bindra must prove her claims on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.
14. The strata was created in 2016 and includes 157 strata lots in two buildings. The strata's bylaws are filed in the Land Title Office.
15. The following facts are undisputed. On September 4, 2020, a water leak was reported in SL26. The strata sent a plumber to investigate. The plumber identified a broken pipe in the radiant heating system as the source of the leak. A letter from the plumber indicates that the broken pipe was located within the concrete floor of SL42 and needed to be repaired as soon as possible. The strata conducted emergency repairs and charged back the repair costs to Ms. Bindra.
16. Ms. Bindra requested a strata council hearing, which was held on February 11, 2021. Following the hearing, the strata wrote to Ms. Bindra on February 18, 2021 and maintained its decision that the leaking pipe was Ms. Bindra's responsibility because the "broken line could be isolated to within" SL42, and she had exclusive use of the heating system and controlled it from SL42.
17. Bylaw 2 says an owner must repair and maintain their strata lot, except for repair and maintenance that is the responsibility of the strata under the bylaws.
18. Bylaw 8(b) says the strata must repair and maintain common property that has not been designated as LCP.
19. Common property is defined in the SPA to include, among other things, pipes, wires, cables, chutes, ducts and other facilities for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, if they are located within a floor, wall or ceiling that form a boundary between a strata lot and another strata lot, or wholly or partially within a strata lot, if they are capable or being and intended to be used in connection with the enjoyment of another strata lot or the common property.

Is the radiant heating system pipe common property?

20. Ms. Bindra says the pipe falls within the SPA definition of common property. The strata disputes this and says the pipe is not common property.
21. Ms. Bindra says the radiant heating system is for the whole building, the radiant heating in SL42 is connected to a common boiler system, and the heating costs for SL42 come out of her monthly strata fees and are based on unit entitlement. The strata does not dispute this.
22. The strata's position on the pipe is somewhat inconsistent. A December 21, 2020 email from the strata's property manager to Ms. Bindra and others, advised that the strata council had deemed the pipe limited common property (LCP) and found Ms. Bindra responsible for the cost of the repairs. In its submissions the strata does not argue that the pipe is LCP. The only designated LCP for SL42 on the strata plan is a balcony. The strata plan does not show any other LCP designated to SL42 and there is no evidence that the strata designated the pipe as LCP by a resolution passed at an annual or special general meeting under SPA section 74. So, I find the pipe is not LCP.
23. The strata now says the pipe does not fall within the definition of "common property" because there is a heating "manifold" within SL42 that takes energy from the "common heating system", and uses it to heat the hot water for SL42 and the in-floor piping. The strata says the piping after the manifold is for SL42 and does not serve or benefit any other strata lot. The strata says heat within SL42 can be turned on or off at the manifold for repair purposes. The strata says it is only the radiant heat pipes located before the manifold that are common property, while the pipes after the manifold are the responsibility of Ms. Bindra.
24. I appreciate that the strata is indicating that Ms. Bindra has some control over the radiant heating system in SL42 because of the manifold. However, this does not mean that the radiant heating system pipe falls within the definition of common property. Here, it is undisputed that the pipe is located within the concrete floor between SL42 and SL26. It is also undisputed that the pipe is part of the strata's

radiant heat system. So, I find that the pipe falls within the SPA's definition of common property because it is a heating system pipe that is located within the concrete floor that forms a boundary between a strata lot (SL42) and another strata lot (SL26).

25. Ms. Bindra says the strata is responsible for the repair of common property under bylaw 8. The strata does not dispute this. Given my finding that the pipe is common property, I find the strata is responsible for the pipe under bylaw 8.

What are the appropriate remedies, if any?

26. As noted above, Ms. Bindra asks for the following orders, which I will deal with in turn:

- a. the strata repair the common property radiant heat leak,
- b. the strata reimburse her \$795.90 for the plumbing chargeback invoice,
- c. the strata cancel the chargeback invoices totalling \$5,229 issued to her for the cost of repairs in both SL42 and SL26, and
- d. the strata reimburse her \$129.79 for two portable electric heaters.

Repair the pipe

27. I find the evidence indicates that the pipe has already been repaired. So, I find that it is not necessary to order the strata to repair the pipe.

The \$795.90 plumbing chargeback

28. On February 17, 2021, the strata's property manager sent Ms. Bindra a letter requesting she repay the strata \$795.90 for the emergency plumbing visit to identify and confirm the source of the water leak.
29. Ms. Bindra submitted evidence that she paid the strata \$795.90. While the strata disputed this in its Dispute Response, it acknowledged payment in its submissions. Ms. Bindra also provide evidence that her February 26, 2021 cheque to the strata for \$795.90 was deposited on March 8, 2021. So, I find that Ms. Bindra paid the strata for the plumbing invoice.
30. As I have found that the pipe was common property and the strata is responsible for the repairs under bylaw 8, I find the strata is responsible for the cost of the emergency plumbing visit. I order the strata to reimburse Ms. Bindra \$795.90 for the plumbing visit.

The \$2,835 property management chargeback

31. On March 18, 2021, the strata's property manager sent Ms. Bindra a letter and invoice requesting she repay the strata \$2,835 for the extra hours the property manager spent dealing with the "in floor radiant heating leak" in SL42, outside the "agency agreement". Ms. Bindra says the strata never advised her that she would be charged for any additional property management fees.
32. Ms. Bindra says the invoice charged for 27 hours between September 3, 2020 and January 18, 2021. Ms. Bindra says she was not advised that the strata had decided she was responsible for the pipe repairs until December 21, 2020. Ms. Bindra says she should not be responsible for any extra property management fees incurred by the strata.
33. In order for the strata to charge Ms. Bindra for additional property management fees incurred in investigating the radiant heating system pipe issue, the strata would need a bylaw authorising it to do so (see *Rintoul et al v. The Owners, Strata Plan KAS 2428*, 2019 BCCRT 1007 at paragraph 33).

34. The strata says Ms. Bindra is responsible for the additional property management fees under bylaw 2(3). Bylaw 2(3) says that if an owner is responsible for any loss or damage to another strata lot or common property, they must indemnify the strata from “the expense of any maintenance, repair or replacement rendered necessary”.
35. I find bylaw 2(3) does not apply to this issue and does not govern whether Ms. Bindra has to reimburse the strata for property management fees that the strata incurred in addressing the radiant heating system pipe issue. I say this for two reasons. First, because there is no evidence that Ms. Bindra is responsible for the damage, which I will discuss further below. Second, even if Ms. Bindra was responsible for the damage, I find that the property management fees are not a maintenance, repair or replacement expense. So, I find the strata has no basis to charge back the additional property management fees to Ms. Bindra.
36. Ms. Bindra asks for an order that I “cancel” the property management invoice. However, it is undisputed that Ms. Bindra has not paid the strata \$2,835 for the property management fees. So, I order the strata to remove the property management charge from Ms. Bindra’s strata lot account.

The \$2,394 SL26 repairs chargeback

37. On April 1, 2021, the strata’s property manager sent Ms. Bindra a letter requesting Ms. Bindra repay the strata \$2,394 for the cost of SL26’s repairs.
38. Ms. Bindra says SL26’s owner, or their insurer, should be responsible for the cost of SL26’s repairs. SL26’s owner is not a party to this dispute.
39. The strata relies again on Bylaw 2(3) to say that Ms. Bindra is responsible for the cost of SL26’s repairs. As noted above, bylaw 2(3) says that if an owner is responsible for any loss or damage to another strata lot or common property, they must indemnify the strata for any repair costs. Bylaw 2(3) also says that, without limiting the generality of the word “responsible”, an owner is responsible for the owner’s own acts or omissions, as well as those of any tenants, and others.

40. I find the bylaw 2(3) also does not apply here. Bylaw 2(3) does not say that Ms. Bindra has to reimburse the strata for damage that originated in Ms. Bindra's strata lot, regardless of her behaviour. In any event, I have already found that the pipe that caused SL26's damage was common property. The strata has not provided any evidence or submissions that Ms. Bindra damaged the pipe and caused SL26's damage, or any other basis to find that Ms. Bindra was otherwise responsible for SL26's damage. So, I find that the strata has no basis to charge back SL26's repair costs to Ms. Bindra.
41. For clarity, I make no finding as to whether the strata or SL26's owner is responsible for SL26's repair costs. That issue is not before me. SL26's owner is not a party to this dispute, so it would be procedurally unfair for me to decide that issue.
42. As with the property management invoice above, Ms. Bindra also asks for an order that I cancel the SL26 repair invoice. However, it is undisputed that Ms. Bindra has not paid the strata \$2,394 for SL26's repairs. So, I order the strata to remove SL26's repair charge from Ms. Bindra's strata lot account.

\$129.79 for two portable electric heaters

43. Ms. Bindra says she contacted the strata about temporary heaters required to heat SL42 while the radiant heat system pipe was being repaired. The strata advised her if the radiant heat leak was determined to be a strata responsibility, the strata would reimburse her for two heaters at a maximum cost of \$100 each. Emails between Ms. Bindra and the strata's property manager confirm this. Ms. Bindra also submitted an invoice confirming the amount paid for the two heaters.
44. The strata does not dispute the amount claimed for the heaters. However, the strata says that Ms. Bindra did not seek reimbursement for the heaters before commencing this CRT dispute. The strata also maintains that Ms. Bindra is responsible for all repair costs, including the associated cost of portable heaters while the repairs were completed.

45. The strata does not dispute agreeing to repay Ms. Bindra for the heaters in the event the strata was responsible for the radiant heat system pipe repairs. I have already found that the strata is responsible for the pipe's repair, so I find the strata is also responsible to repay Ms. Bindra \$129.79 for the cost of the two portable electric heaters required, and agreed to, while the pipe was being repaired.

CRT fees, expenses and interest

46. 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 therefore order the strata to reimburse Ms. Bindra \$225 in CRT fees. Ms. Bindra did not claim any dispute-related expenses and so I award none.

47. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Bindra is entitled to pre-judgment interest on the plumbing invoice payment (\$795.50) and the portable electric heaters (\$129.79) from March 8, 2021, the date the Ms. Bindra paid the invoice, to the date of this decision, which I find is reasonable in the circumstances. This equals \$2.59.

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

ORDERS

49. Within 30 days of the date of this decision, I order the strata to:

- a. remove the \$2,835 property management charge and the \$2,394 SL26 repair charge from Ms. Bindra's strata lot account, and
- b. pay Ms. Bindra a total of \$1,153.28, broken down as follows:
 - i. \$795.90 for the plumbing visit charge,
 - ii. \$129.79 for the two portable electric heaters,

- iii. \$2.59 in pre-judgment interest under the COIA, and
- iv. \$225 in CRT fees.

50. Ms. Bindra is also entitled to post-judgment interest under the COIA.

51. 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.

Leah Volkers, Tribunal Member