



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 2371 v. Urban Nook Investments Ltd.*, 2021
BCCRT 1214

BETWEEN:

The Owners, Strata Plan LMS 2371

APPLICANT

AND:

URBAN NOOK INVESTMENTS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. The applicant strata corporation, The Owners, Strata Plan LMS 2371 (strata), claims chargebacks, bylaw fines and move in/out fees from the respondent strata lot owner, Urban Nook Investments Ltd. (Urban).

2. As set out in the Dispute Notice, the strata claims that Urban owes it \$5,000 for emergency repairs from a 2019 water leak, \$195.19 for “reviewing and stopping a water leak”, plus another \$226.80 as an unspecified “owner chargeback”. The strata also claims \$1,400 in alleged unpaid bylaw fines and \$957.03 in alleged unpaid “move in/out fees”.
3. Urban denies the strata’s claims. It says it is not responsible for the 2019 water leak, it does not know what the \$226.80 chargeback is for, and it does not owe the strata for the claimed chargebacks, fines or fees. It also says that parts of the strata’s claims are barred under the *Limitation Act*.
4. The strata is represented by a council member and Urban is represented by an employee or officer.
5. For the reasons that follow, I dismiss the strata’s claims.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
9. 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

10. The issues in this dispute are:
 - a. To what extent, if any, does Urban owe the strata the claimed chargebacks?
 - b. Are the strata's claims out of time under the *Limitation Act*?
 - c. To what extent, if any, must Urban pay the claimed \$1,400 in fines and \$957.03 in move fees?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this one, the applicant strata must prove it claims on a balance of probabilities (meaning "more likely than not").
12. I have read the parties' submissions and weighed their evidence, but only refer to what is necessary to explain my decision.
13. The strata plan was created on April 17, 1996 under the *Condominium Act* and continues to exist under the *Strata Property Act* (SPA). The strata building is a 33 floor tower with a mix of residential and commercial strata lots. Urban's strata lot (unit 1403) is on the 14th floor in the residential section. Urban rents or leases unit 1403 to tenants.

To what extent, if any, does Urban owe the strata the claimed chargebacks?

14. The strata says it discovered a leak from Urban's unit 1403 on January 8, 2019. It hired Pacific West Mechanical Ltd. (Pacific) to inspect and stop the leak.
15. According to Pacific's January 2019 invoice, its technician attended an "active leak" in the master bathroom of unit 1403. It found water leaking from the "hot side integral stop for the shower valve". It shut down the water to unit 1403 and capped water lines to temporarily stop the leak. Pacific charged the strata \$195.19 for this work, which the strata then charged back to Urban. This charge undisputedly remains unpaid.
16. The strata also hired Avenue Restoration Services Ltd. (Avenue) to perform emergency response services. Avenue's March 1, 2019 invoice describes responding to a "multi unit loss" from a failed plumbing in unit 1403. It states that Avenue attended after hours on January 8, 2019 to establish the affected areas, extract water and set up drying and purifying equipment. It then attended on 9 additional days to perform further work, including mould remediation. Avenue charged the strata \$11,968.76 for its emergency services.
17. On July 12, 2019, the strata applied a charge back of \$11,968.76 to Urban's strata lot account. Urban's insurer undisputedly paid \$6,968.76 of the invoiced amount. I note there is no correspondence between the parties nor insurance records or other evidence explaining the reason Urban's insurer agreed to pay the \$6,968.76. The strata does not say that it made an insurance claim and there is no evidence that it did. So, I find the strata likely did not make an insurance claim.
18. As mentioned, the strata claims Urban owes it the \$5,000 chargeback balance for Avenue's emergency repairs. It also claims payment of the \$195.19 chargeback for Pacific's work and an unexplained \$226.80 chargeback. Urban denies the claims.
19. The strata's bylaw 3(1)(iii) requires an owner to repair and maintain their strata lot and keep it in a state of good repair, "reasonable wear and tear exempted". The strata, on the other hand, is responsible under section 72 of the SPA and its bylaws to maintain and repair the common property and common assets.

20. The strata's argument is minimal. It says the leak was from the shower valve, and maintenance of "the shower and the plumbing associated with the shower is the responsibility of the owner, not the owner's neighbours or the strata". The strata adds there is no reason to excuse this owner from paying for the damage that resulted from the leak. Its position is that Urban is strictly liable for the loss because of its repair and maintenance responsibilities under the bylaws. I note the strata is not arguing that Urban was negligent and nor did it submit evidence to establish negligence.
21. I accept there was a leak from a shower valve in Urban's strata lot on January 8, 2019 and that it caused water damage to the building. My conclusion is supported by the Pacific and Avenue invoices, and there is no contrary evidence. However, I find this does not mean that Urban is responsible to reimburse the strata for the claimed expenses to respond to the leak or repair the damage.
22. Even if Urban is responsible under bylaw 3(1)(iii) to upkeep or maintain the shower valve, I find the strata must have a legal basis to charge Urban's strata lot account for its contractors' investigation and repair work. For the reasons that follow, I find the strata has not proven that it has such a basis.
23. Prior CRT decisions have concluded that a strata corporation is not entitled to charge costs it has incurred to an owner's strata lot account without an agreement or enforceable bylaw or rule that creates the debt: see *Rintoul et al v. The Owners, Strata Plan KAS 2428*, 2019 BCCRT 1007 at paragraphs 33 to 38, citing *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512; *The Owners, Strata Plan LMS1092 v. Souki*, 2021 BCCRT 55 paragraphs 23 to 28; and *Sanchez v. The Owners, Strata Plan BCS 4281*, 2021 BCCRT 26 at paragraphs 21 to 23. Although CRT decisions are not binding on me, I find the reasoning in these CRT decisions persuasive and I adopt it.
24. The strata does not point to any agreement or filed bylaws that contain a provision that would authorize it to charge Urban's strata lot account for Pacific and Avenue's work. Although it is not determinative, I find it would be unfair to allow the strata to control the cost, timing and scope of repairs and then require Urban to pay for them

without an agreement or clear authorization in a bylaw or rule to charge back the expenses.

25. While the strata does not mention it, I considered bylaw 17(c) because it requires an owner to reimburse or indemnify the strata for expenses and damages caused by the owner, its agents, servants, “workmen”, invitees and licensees from a strata lot renovation. However, there is no suggestion that Urban renovated its bathroom shower under bylaw 17 and so I find this bylaw does not apply.
26. Next, I considered bylaw 12 that says the strata can recover from an owner in an action for debt money which the strata is required to expend as a result of an act or omission by an owner or an infraction or violation of the bylaws or rules. I also considered SPA section 133(2), which permits a strata corporation to charge an owner for the reasonable costs of remedying a bylaw contravention.
27. However, there is no evidence that the valve failed from an action or omission of Urban or its tenants or a lack of reasonable maintenance. The strata did not provide any evidence, expert or otherwise, explaining the reason the shower valve failed. I find the valve may have failed for any reason including a defect or regular wear and tear. So, I find the evidence does not establish that Urban breached bylaw 3(1)(iii) or that the strata is entitled to recovery under bylaw 12 or SPA section 133(2). Also, SPA section 135 requires notice of the alleged bylaw breach before charging an owner under section 133(2), which I find did not happen here.
28. I find the strata has no bylaw or rule that authorized the strata to charge Urban for the expenses it incurred to respond to the valve leak. I find the parties had no agreement that Urban would pay in full for the strata’s expenses. The strata has pointed to no authority to require Urban to reimburse it for the repairs performed by its contractors, Avenue and Pacific. For these reasons, I conclude that the strata could not charge Urban’s account for this work.
29. Additionally, there is almost no evidence about the damage caused by the leak apart from the general references in Avenue’s invoice. In addition to emergency response, the invoice says Avenue performed mould remediation, which is part of

the \$11,968.76 expense. Yet Pacific and Avenue attended the leak on the day of the loss to stop and remove the water and there are no records establishing the mould's source or confirming it was caused by the valve leak. So, I find the strata has not proven the full extent Avenue's repairs, such as mould remediation, were necessary because of the shower valve's failure. I find the strata has not established that it is entitled to reimbursement from Urban, over and above what its insurer paid, even if it had the authority to impose the chargeback.

30. For the above reasons, I find that the strata has not established that it is entitled to payment for the claimed chargebacks. I dismiss the strata's claims for the \$5,000 emergency repair, \$195.19 plumbing work and unspecified \$226.80 "owner chargeback".

To what extent, if any, must Urban pay the claimed \$1,400 in fines?

31. As mentioned, the strata claims \$1,400 in unpaid bylaw fines. The strata submitted some letters its Residential Section sent Urban notifying that the section assessed fines against Urban. The strata does not explain why Urban would owe the strata fines that were imposed by the Residential Section. I find the strata has not proven it is entitled to collect them in any event.
32. Without specificity, the strata says it "dismissed" some of the fines it imposed against Urban but "kept fines involving public urination and disruption of neighbours". Based on the strata's evidence, I find these fines relate to alleged breaches by Urban's tenants. The strata also says the "tenants of this unit were responsible for making other people's comfort in their home difficult, in violation of the strata bylaws".
33. The strata is permitted to fine a tenant for a bylaw contravention under SPA section 130(2). Bylaw 12 says the strata may recover the tenant's debt from an owner for a bylaw contravention. However, the strata does not say it is claiming the tenants' unpaid debt here.
34. Based on the submitted letters, I find the strata is seeking payment for fines the Residential Section imposed directly against Urban for its tenants' alleged bylaw

breaches. SPA section 130(1)(c), says the strata may fine an owner if a bylaw or rule is contravened by an occupant, “if the strata lot is not rented by the owner to a tenant”. Here unit 1403 was rented. I find the strata was not permitted to fine Urban for its tenant’s bylaw breaches under the SPA. So, I find the imposed fines for Urban’s tenants’ alleged contraventions cannot stand.

35. Also, I find the strata has not proven that it followed SPA section 135 before imposing the fines. Section 135 says the strata may not fine a person or require a person to pay the costs of remedying a contravention unless it has received a complaint, given the written particulars of the complaint, and a reasonable opportunity to answer the complaint, including by hearing if requested. The Court of Appeal has found that strict compliance with section 135 is required before a strata corporation can impose fines: *Terry v. The Owners Strata Plan NW 309*, 2016 BCCA 449.
36. While each of the Residential Sections’ letters references an earlier letter, those earlier letters are not before me in evidence and the strata does not explain why not. None of the submitted letters state anything about giving Urban the opportunity to respond to the complaints before it imposed the fines. Without all the records, I find insufficient evidence that the strata complied strictly with SPA section 135. For this reason, I find the fines could not stand even if they were all imposed for Urban’s bylaw contraventions. I dismiss the strata’s claim for payment of bylaw fines.
37. Considering this conclusion, I find no need to address whether Urban or the tenants breached the bylaws or Urban’s *Limitation Act* argument.

To what extent, if any, must Urban pay the claimed \$957.03 in fees?

38. The strata’s last claim is for payment of \$957.03 for “various move in/out fees” that are allegedly outstanding. The strata says Urban’s unit 1403 had multiple tenants with many moves in and out of the building. It says when “unreported moves have been discovered a fee was assessed. All tenants of the building pay move in and move out fees”.

39. As stated in the Dispute Response, Urban denies the claim. It says on many occasions the concierge assumed its tenants were moving when they were not. Urban says its tenants were often travelling with luggage.
40. The strata submitted the Residential Section's letters demanding Urban pay its tenants' move-in fees. Again, it appears that the strata is claiming fees imposed by the Residential Section and not the strata. I also note the fees listed in the submitted letters total about \$450 and not the claimed \$957.03. The strata does not explain these discrepancies. In any event, the strata did not submit evidence, such as its concierge report or witness statements, to support its claim about the tenants' unreported moves. Apart from a reference in the letters, the strata did not provide a copy of any ratified move in/out fee rules and the SPA and bylaws are silent on move fees.
41. I find it is not enough for the strata to assert that Urban owes it money for move fees without establishing the legal basis to impose such fees or providing evidence that the tenants moved in or out without Urban or its tenants paying any required fees. I dismiss the strata's claims over the move fees.

CRT FEES AND EXPENSES

42. 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. As the strata is unsuccessful, it is not entitled to reimbursement. Urban did not pay any CRT fees nor claim any specific expenses.
43. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Urban.

ORDER

44. I dismiss the strata's claims and this dispute.

Trisha Apland, Tribunal Member