Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS 1208 v. Lee*, 2021 BCCRT 1290

B E T W E E N :

The Owners, Strata Plan BCS 1208

APPLICANT

A N D :

LEEANN MAY HING LEE

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Richard McAndrew

INTRODUCTION

1. This dispute is about a strata lot water leak.

2. The applicant, The Owners, Strata Plan BCS 1208 (strata) is a strata corporation existing under the *Strata Property Act* (SPA). The respondent, Leeann May Hing Lee, owns strata lot 9 (SL9) in the strata.

3. The strata says water leaked from SL9 on June 23, 2019, which damaged common property hallways and other strata lots. The strata claims $25,000 for reimbursement of its insurance deductible and $210 for locksmith fees to enter SL9 to stop the leak.

4. Mrs. Lee says the strata's claims should be dismissed. She says that the strata has not proved that the water leak was caused by her or her former tenant's negligence. Mrs. Lee also says that she has already paid the locksmith fees. She also says that the strata is not entitled to reimbursement of the locksmith fees under the bylaws and the strata did not comply with the SPA's procedural requirements.

5. The strata is represented by a strata council member. Mrs. Lee is self-represented.

6. For the reasons set out below, I dismiss the strata's claims.

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. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.

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.

Late evidence

11. Both parties submitted evidence late. The strata submitted an insurance adjuster's letter and Mrs. Lee submitted an email from her former tenant, MS. I find that both parties' late evidence is relevant and neither party was prejudiced because they both had an opportunity to respond. So, I have allowed the parties' late evidence and I have considered it in my decision. Mrs. Lee also submitted an additional document in response to the strata's late evidence which was not delivered to the strata. However, since I find in favour of Mrs. Lee anyway, I find that I do not need to view or consider this document.

ISSUES

12. The issues in this dispute are:

    a. Must Mrs. Lee pay the strata $25,000 for its insurance deductible?

    b. Must Mrs. Lee pay the strata $210 for the locksmith fees?

BACKGROUND AND EVIDENCE

13. In a civil proceeding like this one, as the applicant, the strata must prove its claims on a balance of probabilities. I have read all the evidence provided but refer only to evidence I find relevant to provide context for my decision.

14. The strata says water leaked out of Mrs. Lee's strata lot, into a common property hallway and other strata lots, on June 23, 2019. In contrast, Mrs. Lee said the leak occurred on June 24, 2019. However, based on the June 29, 2019 plumbing invoice from National Hydronics Ltd. (National) and the June 23, 2019 locksmith invoice from, A & W Lock & Key Service (A & W), I find that the leak occurred on June 23, 2019.

15. The parties agree that Mrs. Lee's tenant at the time, MS, was not home when the leak was discovered. The strata hired a locksmith, A & W, to let plumbing contractor, National, into SL9. A & W's June 23, 2019 locksmith invoice charged the strata $210.

16. National's June 29, 2019 invoice says that upon entering SL9, it found the entire strata lot was flooded with about 2 inches of water. Further, it says that SL9's toilet water supply line had broken off the toilet at the plastic connector. National repaired the leak by replacing the water supply line and it charged $719.25 for the repairs.

17. The strata says that its insurance deductible for water damage is $25,000, which Mrs. Lee does not dispute. The deductible is also stated on the strata's insurance policy.

18. On Side Restoration Services Ltd. (On Side) performed water remediation services. On Side sent the strata a September 5, 2019 invoice for $25,000, representing the strata's insurance deductible for the water repairs. Neither party provided a remediation report or itemized invoice from On Side describing its work. However, the strata provided a February 25, 2020 insurance adjuster letter showing that the insurance providers paid a total of $40,580.53 for the water damage repairs. Based on the total repair cost and the extent of the water leak, I am satisfied that the strata incurred $25,000 in insurance deductible expenses relating to this leak.

19. The strata's property managers sent Mrs. Lee a September 11, 2021 letter saying that it was charging back the $25,000 insurance deductible to her strata lot account. It is undisputed that Mrs. Lee has not paid any portion of this chargeback.

20. The property managers also sent Mrs. Lee a September 24, 2021 letter saying that it was charging back $210 to her strata lot account for the locksmith fees. Though she

denies responsibility for this expense, Mrs. Lee says that she has already reimbursed the strata for the locksmith fees.

REASONS AND ANALYSIS

Insurance deductible

21. SPA section 158(2) provides for the recovery of the strata's insurance deductible where an owner is "responsible" for damage that occurs. However, when a strata corporation adopts a stricter negligence standard, the strata corporation must prove negligence and not simply "responsibility" when charging an owner with an insurance deductible under section 158(2) of the SPA (*Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 519 (CanLII), 2011 BCPC 0519).

22. The strata filed bylaws with the Land Title Office (LTO) on November 20, 2009, which repealed and replaced all previous bylaws. The strata also filed further bylaws amendments at the LTO which are not relevant to this dispute.

23. Bylaw 42(1) says that an owner must reimburse an insurance deductible to the strata corporation for insurance claims relating to loss or damage to one or more strata lots or to their carpeting, appliances, fixtures or other improvements which was caused by the owner/occupant's negligence.

24. In contrast, bylaw 43(1) says an owner shall indemnify and save harmless the strata from the expenses of any maintenance, repair or replacement of common property or any strata lot rendered necessary by the owner or their tenants, to the extent that such expenses exceed insurance coverage. In such circumstances, the strata's insurance deductible will be charged to the owner's strata lot account.

25. Mrs. Lee says that bylaws 42(1) and 43(1) conflict. Bylaw 42(1) requires the strata to prove that Mrs. Lee negligently caused the leak to recover its insurance deductible. In contrast, proof of negligence is not required under 43(1). Since the 2 bylaws set different standards of responsibility for recovery of the strata's insurance premium, I find bylaws 42(1) and 43(1) ambiguous when read together.

26. To interpret conflicting bylaws, the individual bylaws must be read as a whole (*Semmler v. The Owners, Strata Plan NES3039*, 2018 BCSC 2064 at paragraph 18) An interpretation which allows the bylaws to work together harmoniously and coherently should be preferred (*Carnahan v. Strata Plan LMS522*, 2014 BCSC 2371)

27. Mrs. Lee argues that, since the bylaws conflict, bylaws 42(1)'s negligence standard applies and she refers to the CRT decision in *Ruan v The Owners*, Strata Plan BCS 1964, 2019 BCCRT 128. In *Ruan*, a strata corporation's bylaw held owners responsible for leaking water beds and appliances without proving owner negligence. The strata corporation also had another bylaw that required proof of owner negligence to recover the strata corporation's insurance deductible. The Vice Chair found that the most reasonable interpretation of the bylaws was that the negligence standard applied to the recovery of insurance deductibles because that bylaw specifically referred to insurance deductibles. The Vice Chair reached the same conclusion in considering similar bylaws in *Clark v. The Owners, Strata Plan LMS 3938*, 2017 BCCRT 62.

28. Here, both bylaws 42(1) and 43(1) specifically refer to the reimbursement of the strata's insurance deductible. However, I find that the bylaws have the following significant differences:

    a. Bylaw 42(1) applies a negligence standard but bylaw 43(1) does not.

    b. Bylaw 42(1) only applies to strata lots but bylaw 43(1) applies to common property and strata lots.

    c. Bylaw 43(1) says that the strata can charge an owner for the strata's insurance deductible in circumstances when repair costs are not covered by the strata's insurance coverage. So, I find that this bylaw applies only when repair costs exceed the insurance coverage. Bylaw 42(1) applies to all amounts of damage.

29. Based on the above, I find that the most reasonable interpretation of the bylaws is that bylaw 42(1) imposes a negligence standard for damage to strata lots that is within the strata's insurance coverage and bylaw 43(1) does not require proof of negligence

for common property damage or losses relating to strata lots that exceed the strata's insurance coverage.

30. The strata has not provided any submissions or evidence that its repair expenses exceeded its insurance coverage. So, I find that the strata must prove that Mrs. Lee was negligent to recover the insurance deductible under bylaw 42(1).

31. Although the strata argues that the leak required repairs to both common property and strata lots, the strata has not provided evidence or submissions allocating the repair expenses between common property and strata lots. Without such evidence, I find that the negligence standard under bylaw 42(1) applies to the strata's entire claim for the insurance deductible. For the above reasons, I find that the negligence standard applies and the strata must prove that Mrs. Lee or her tenant was negligent to recover the deductible.

32. To prove negligence, the strata must show that Mrs. Lee owed it a duty of care, she breached the standard of care, the strata sustained damage, and the damage was caused by Mrs. Lee's breach (see *Mustapha v. Culligan of Canada Ltd*., 2008 SCC 27, at paragraph 33).

33. I accept that as a strata lot owner, Mrs. Lee owed the strata a duty of care. Further, as the occupant, I find that Mrs. Lee's former tenant owed the strata the same duty of care. Further, I find that the applicable standard of care is reasonableness (see *Burris v. Stone et al*, 2019 BCCRT 886 at paragraph 28).

34. The strata says that Mrs. Lee and her former tenant, MS, breached the standard of care by failing to maintain the toilet before the leak occurred. The strata says that the tenant was aware that the toilet's plumbing was defective because they had placed a cup under the toilet water supply line before the leak occurred.

35. Mrs. Lee provided a June 22, 2021 email statement from MS saying that they had placed the cup under the water supply line before the leak because they had seen a couple water drops near the toilet tank. MS said that they thought that this water was condensation from the toilet tank because the weather was hot. MS said they did not

notice a water leak and they placed the cup to prevent water from accumulating on the floor. However, MS said that there were only a couple drops of water in the cup each day. MS said that they left the strata lot for the evening on June 22, 2019 and they returned after the strata notified them of the water leak.

36. Mrs. Lee argues that her former tenant was not negligent because they had no reason to suspect that there was a problem with the toilet. Mrs. Lee relies on the CRT decision in *The Owners, Strata Plan KAS 1357 v Amos*, 2018 BCCRT 105. In that decision, a Vice Chair found that the owner was not aware of a defective connection behind a washing machine that could not be seen without pulling the appliance out. However, I find that *Amos* is distinguishable because MS saw small amounts of water accumulating near the toilet before the leak occurred. Based on the presence of the water drops near the toilet and the tenant's positioning of the cup, I find that MS was likely aware that there could be an issue with the toilet plumbing.

37. Other than placing the cup, MS does not say that they took any actions to investigate the source of the water drops. By not doing so after noticing the water drops, I find the tenant did not meet the standard of care of reasonably maintaining the toilet. Rather, I find it is reasonable to infer that water accumulations near a toilet could indicate defective plumbing which Mrs. Lee and MS should have investigated. In making this finding, I rely on *Morrison,* cited above, that says that the standard of care requires strata owners to monitor whether the plumbing fixtures within their strata lot are operating properly.

38. Although I find that Mrs. Lee's tenant breached the standard of care, I find that the strata has not proved that the tenant's failure to maintain the toilet caused the water leak. As discussed above, National's June 29, 2019 invoice says that the water supply line was broken off the toilet. However, the strata has not provided any evidence or submissions showing how this occurred. Notably, the strata has not provided any evidence showing that this leak could have been avoided by any maintenance or repairs by Mrs. Lee or MS.

39. Mrs. Lee argues that expert evidence is needed to prove causation for this plumbing issue and she refers to the CRT decision in *The Owners, Strata Plan LMS2195 v Leung*, 2021 BCCRT 260. In *Leung*, a tribunal member found that an expert opinion was needed to prove that a fire was caused by the owners' acts or omissions. The tribunal member found that determining how the fire started and spread were technical issues that required an expert opinion to prove. Although non-binding, I find the reasoning in *Leung* persuasive and I find that the water leak's cause is also technical. So, I find that expert evidence is needed to prove that Mrs. Lee's tenant's inaction caused the leak.

40. The strata argues that National's invoice provided adequate expert evidence. The invoice was prepared by National's plumber, S. As a plumber, I am satisfied that S has sufficient experience to provide an expert opinion under CRT rule 8.3 about the water leak. So, I accept S's opinion that the leak resulted from the broken water supply line. However, I find that this does not prove MS's inaction caused the water supply line to break. S does not say what, if anything, MS could have done to prevent the water leak. In the absence of evidence showing that MS's inaction caused the water leak, I find that the strata has failed to prove that Mrs. Lee or MS were negligent.

41. For the above reasons, I dismiss the strata's claim for reimbursement of the $25,000 insurance deductible.

Locksmith fees

42. The strata also requests reimbursement of the $210 locksmith expense to enter SL9 and stop the water leak.

43. Based on A & W's June 23, 2019 locksmith invoice, I am satisfied that the strata incurred $210 in locksmith expenses to enter SL9. However, Mrs. Lee says that she has already paid this invoice. The strata has not disputed this or provided evidence, such as Mrs. Lee's strata lot account records, to show that the locksmith expenses are unpaid. Since the strata has not disputed Mrs. Lee's submission or provided evidence that this expense is still unpaid, I find that the strata has failed to prove that

Mrs. Lee still owes this expense. Further, even if Mrs. Lee has not paid this invoice, I find that she does not owe this amount for the following reasons.

44. Bylaw 7(1)(a) says an owner or tenant must allow emergency access to their strata lot to prevent significant loss or damage. Since water was leaking out of SL9 and the strata was unable to contact SM, I find that the strata was entitled to hire a locksmith under bylaw 7(1)(a).

45. However, although Bylaw 7(1)(a) allows access, this bylaw does not authorize the strata to charge back locksmith costs to Mrs. Lee's strata lot account. I have considered whether bylaws 42(1) or 43(1) authorize the locksmith chargeback. As discussed above, bylaw 42(1) requires negligence by Mrs. Lee which was not proved. So, bylaw 42(1) does not apply. Bylaw 43(1) allows the strata to recover repair costs not covered by insurance. However, the strata did not provide any evidence or submissions about showing that the locksmith expenses were not covered by the strata's insurance. So, I find that the strata has not established that bylaw 43(1) applies.

46. 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.

47. Bylaw 2(1) requires an owner to repair and maintain their strata lot and keep it in a state of good repair, other than reasonable wear and tear. Further, bylaw 23.6 allows the strata to charge owners for costs and expenses resulting from bylaw breaches. Also, SPA section 133(2), allows a strata corporation to charge an owner the reasonable costs of remedying a bylaw breach. So, if the strata proved that Mrs. Lee breached bylaw 2(1), I find that the strata could charge back the repair costs,

including the locksmith fees needed for the plumbing repairs, under bylaw 23.6 and SPA section 133(2).

48. As discussed above, the strata has not proved that the water supply line broke as a result of Mrs. Lee's inaction or a lack of reasonable maintenance. Further, I find that the strata has not proved that the disconnection was not caused by reasonable wear and tear. So, I find that the evidence does not establish that Mrs. Lee breached bylaw 2(1) and that the strata is not entitled to recover the locksmith fees under bylaw 23.6 or SPA section 133(2).

49. Further, I find that the strata did not comply with the procedural requirements set out in SPA section 135. Bylaw fines may be invalid if the procedural requirements set out in section 135 are not strictly followed (*Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449). I find that strict compliance is equally necessary when the strata requires a person to pay the costs of remedying a contravention, as the same provisions of section 135 are engaged.

50. The strata must identify the bylaw or rule contravened (*Terry* at paragraph 28). However, the strata's September 24, 2021 chargeback letter for the locksmith expenses do not refer to any bylaw violations. So, I find that this chargeback does not comply with SPA section 135 and is invalid.

51. For the above reasons, I find that the strata has failed to prove that Mrs. Lee owes reimbursement of the $210 locksmith fees. So, I dismiss this claim.

CRT FEES AND EXPENSES

52. 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. Since the strata was unsuccessful, I find that it is not entitled to reimbursement of its CRT fees. Mrs. Lee did not claim reimbursement of dispute-related expenses.

53. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mrs. Lee.

ORDER

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

Richard McAndrew, Tribunal Member