



# Civil Resolution Tribunal

Date Issued: December 14, 2021

File: ST-2021-000676

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW1990 v. Au*, 2021 BCCRT 1303

**B E T W E E N :**

The Owners, Strata Plan NW1990

**APPLICANT**

**A N D :**

GRACE KA YI AU and DORIS AU

**RESPONDENTS**

---

## REASONS FOR DECISION

---

Tribunal Member:

Micah Carmody

## INTRODUCTION

1. This dispute is about responsibility for emergency repair costs in a strata corporation.

2. The applicant, The Owners, Strata Plan NW1990 (strata) is a strata corporation existing under the *Strata Property Act* (SPA). The respondents, Grace Ka Yi Au and Doris Au, own strata lot 149 (unit 1704) in the strata.
3. In March 2020, water leaked from the respondents' bathtub. The strata says the water damaged common property and adjacent strata lots. The strata seeks \$20,803.49 for its contractor's emergency response invoice. The respondents contest the expense. They say the leak did not affect common property and they fixed some of the damage.
4. The strata is represented by a strata council member. Doris Au is represented by a non-lawyer family member. Grace Au did not submit a Dispute Response despite her helper acknowledging receipt of the Dispute Notice. This means she is technically in default. However, I find from Doris Au's submissions that they apply to Grace Au as well. Given the CRT's informal and flexible mandate, I find Grace Au is not in default and that Doris Au's submissions apply to Grace Au.
5. For the reasons that follow, I find the respondents must reimburse the strata for the \$20,803.49 emergency response invoice.

## **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.

## **ISSUE**

10. The issue in this dispute is whether the respondents must reimburse the strata for its \$20,803.49 emergency response costs.

## **EVIDENCE AND ANALYSIS**

11. As the applicant in this civil proceeding, the strata must prove its claim on a balance of probabilities, meaning more likely than not. While I have read all the evidence and submissions, I only refer to what is necessary to explain my decision. The respondents did not submit any evidence despite having the opportunity to do so.
12. The strata was created in 1983 and includes 211 strata lots in a 25-storey residential tower.
13. The strata filed a complete set of bylaws at the Land Title Office in December 2018, which repealed and replaced all previous bylaws. There have been recent amendments but it is undisputed that the December 2018 bylaws are applicable. I discuss the relevant bylaws below.
14. On or about March 18, 2020, a bathtub in unit 1704 overflowed and damaged unit 1704 and adjacent strata lots and common property. When the respondents discovered the tub overflow they contacted the strata for assistance. The strata called

an emergency plumbing and restoration contractor to contain the damage. None of this is disputed.

15. An April 29, 2020 invoice from Platinum Professional Claims Services Ltd. (Platinum) shows that Platinum provided emergency services such as water extraction, dehumidifying, sanitization, contamination testing, asbestos abatement and debris disposal. Platinum was at the strata building periodically throughout March and April 2020, drying at least 4 strata lots. Platinum invoiced the strata \$20,803.49. Platinum's invoice confirms the "cause of loss" was a tub overflow in unit 1704.
16. The respondents' submissions are brief. They say they have been charged for damage that "did not happen." The respondents say the bathtub leak did not affect common property, and that they fixed the damage to "the property below". I infer that they mean they addressed repairs to other owners' strata lots directly with those owners, although there is no supporting evidence.
17. Based on Platinum's invoice, I find the strata claims only for the emergency response costs, not any restoration or repair of strata lots. I agree with the strata that its responsibility for common property and the building's structure such as floor joists and wall framing required the strata to take action. Platinum's invoice is unclear about whether any common property spaces like corridors were affected. There are no photos of the damage in evidence. However, I find that even if there was no direct damage to common property the strata still had a responsibility to act to prevent damage. Arranging to stop the leak, investigate the leak's source, dry the building structures and prevent the spread of mould and other contaminants fall under this responsibility. Repairs to strata lots are their respective owners' responsibility.
18. The strata's bylaws govern responsibility for repair costs in these circumstances. Bylaw 4.4 says in part that if an owner is responsible for any loss or damage to a strata lot or common property, the owner must indemnify and save harmless the strata from "the expense of any maintenance, repair or replacement" made necessary to the strata lot or common property, but only to the extent that such expense is not

reimbursed by the strata's insurer. It is undisputed that the damage here was below the strata's insurance deductible so the strata did not make an insurance claim.

19. Bylaw 4.5 says in part that without limiting the generality of the word "responsible", an owner under bylaw 4.4 is responsible for ... (b) any loss or damage caused to a strata lot or common property were the loss or damage originated within the owner's strata lot, including anything arising from any of the following: ... (v) toilets, sinks, bathtubs.
20. Although the respondents did not specifically raise it, I have considered whether bylaw 4.4 and 4.5's wording is broad enough to capture emergency mitigation expenses. I find that the "expense of any maintenance, repair or replacement rendered necessary" includes the reasonable expenses of investigating the source of a leak, stopping it, preventing further damage, determining the extent of damage and assessing the need for repair. I say this because, as noted above, the strata is responsible for these things. This interpretation is also supported by *Louie v. The Owners of Strata Plan VR-1323*, 2015 BCSC 1832, where the strata corporation successfully counterclaimed for the costs incurred to investigate and remedy damage caused by a fire in the owner's strata lot. Under those bylaws, the owners similarly indemnified the strata corporation for "any maintenance, repair or replacement" rendered necessary to common property or any strata lot.
21. Based on the evidence before me, I find the \$20,803.49 Platinum invoice is for "loss or damage" that originated from the respondents' bathtub in unit 1704. I note the wording of bylaw 4.5 does not require the strata to prove any omission, omission, negligence or carelessness giving rise to the damage.
22. The respondents say they generally contest the cost of Platinum's invoice, but they provided no evidence that any steps were unnecessary or should have been done at lower cost. The respondents also ask for a breakdown of the work done. Platinum's invoice breaks down the scope of work, the materials and equipment used, the subtrade invoices, and even the hours each employee worked. I find the strata has provided a sufficient breakdown of the work done and associated costs.

23. The only other submission from the respondents is that they deny that Grace Au accepted responsibility for the damage. They say she was not aware of what she was signing. They do not say what document she signed, and there are no documents in the evidence acknowledging responsibility for the damage or bearing a signature from either respondent. In reaching my conclusion on liability I have not relied on any acceptance of responsibility other than that arising under the strata's bylaws.
24. In summary, I find the strata's bylaws make the respondents liable for the \$20,803.49 Platinum invoice, and I order the respondents to pay it.

## **CRT FEES, EXPENSES AND INTEREST**

25. 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. The strata was successful, so I order the respondents to reimburse the strata \$225 for CRT fees. The strata did not claim any dispute related expenses.
26. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to prejudgment interest on the \$20,803.49. The first evidence of the strata's request for payment is in a May 22, 2020 letter giving 30 days to pay. I therefore find interest owing from June 22, 2020 to the date of this decision. This equals \$138.76.
27. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the respondents.

## **ORDERS**

28. I order that within 30 days of this decision, the respondents must pay the strata a total of \$21,167.25, broken down as follows:
- a. \$20,803.49 for the emergency response invoice,
  - b. \$138.76 in prejudgment interest under the COIA, and

c. \$225.00 in CRT fees.

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

30. 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.

---

Micah Carmody, Tribunal Member