



Civil Resolution Tribunal

Date Issued: February 17, 2022

File: ST-2021–005234

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 4512 v. Watt*, 2022 BCCRT 181

B E T W E E N :

The Owners, Strata Plan LMS 4512

APPLICANT

A N D :

ANDREW GEORGE WATT

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about payment of an insurance deductible.
2. The respondent, Andrew George Watt, owns strata lot 114 (unit 228) in the applicant strata corporation, The Owners, Strata Plan 4512 (strata). The strata says water from

unit 228 leaked and caused damage to the strata lot directly below (unit 128). The strata made an insurance claim for the water damage. It says Mr. Watt is responsible for the strata's insurance deductible under the strata's bylaws and claims the \$10,000 deductible cost.

3. Mr. Watt denies responsibility for the water leak and says the strata has not shown the leaking water came from, or was caused by, his strata lot.
4. A strata council member represents the strata. Mr. Watt represents himself.
5. As explained below, I dismiss the strata's claim.

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.
10. CRT documents incorrectly show the name of the respondent as The Owners, Strata Plan 4512. Based on the strata plan and section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan LMS 4512. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to use the strata's correct legal name in these proceedings and have amended the strata's name above.
11. As a preliminary matter, I was unable to open Mr. Watt's submitted video clip showing his kitchen, where the leaking water allegedly originated. However, I decided the video would not be particularly relevant as there is better and more relevant evidence of the kitchen. Specifically, the strata submitted photos of Mr. Watt's kitchen, taken closer in time to the actual leak. So, I decided not to ask Mr. Watt to resubmit the video in another format and have not considered it here.

ISSUE

12. The issue in this dispute is whether Mr. Watt must reimburse the strata \$10,000 for its insurance deductible.

EVIDENCE AND ANALYSIS

13. In a civil dispute like this one the applicant strata must prove its claims on a balance of probabilities (meaning "more likely than not"). I have reviewed the parties' submissions and weighed the evidence submitted but only refer to that necessary to explain and give context to my decision.
14. The strata was created in 2011, with the deposit of the strata plan in the Land Title Office. The strata most recently filed amended bylaws in the Land Title Office on December 17, 2018, which I find apply to this dispute.

15. Mr. Watt does not live in unit 228, but his family members do. The strata is managed by a property management company and employs a building manager (LV). None of this is disputed.
16. Based on LV's October 19, 2021 statement, his monthly reports, and a July 18, 2019 invoice from Milani Plumbing Drainage & Heating (Milani), I find Milani was at the strata's building on July 5, 2019 to repair a pipe in the common property hallway ceiling near unit 229.
17. The building water was shut off for the repairs, between approximately 9 am and 5 pm. The residents of 228 were told to turn their taps on when the water was initially shut off. The owners or occupants of unit 128 reported water leaking from their kitchen light fixture on July 5, 2019, although the exact timing is unclear from the evidence. None of this is disputed.
18. LV says he viewed the water leaking in unit 128 on July 5, 2019. In his monthly report he noted he went with "the plumbers" who, I infer, were the Milani plumbers on site for the other pipe repairs. LV wrote that the plumbers had told the 228 residents to shut their taps off before the building water was turned back on but "apparently they forgot and spill some water coming down into unit 128". In his statement LV does not explain how he, or the plumbers, determined that the 228 residents "forgot" to turn off their taps on July 5, 2019.
19. It is undisputed that the strata made an insurance claim for the costs of repairing the water damage in unit 128. Based on an October 24, 2019 invoice from Platinum Pro Restoration Company (Platinum), I find the strata paid a \$10,000 insurance deductible toward the water damage repair costs.
20. In a December 4, 2019 letter, the strata notified Mr. Watt that it had charged the \$10,000 insurance deductible for the July 5, 2019 water damage repair claim back to his strata lot. Subsequent correspondence between the parties shows the strata relied on LV's monthly report that the unit 228 residents forgot to turn their taps off, resulting in water overflowing and leaking into unit 128 when the building water came back on.

21. Mr. Watt denies this and says his family members specifically recall turning the taps off before leaving unit 228 on July 5, 2019 and did not see any leaking, water running, or evidence of water overflow upon their return. He provided no supporting evidence such as witness statements. However, as the applicant in this dispute it is up to the strata to prove Mr. Watt is responsible for the water damage repair costs, it is not up to Mr. Watt to disprove it.
22. Section 158(2) of the *Strata Property Act* (SPA) allows a strata to sue an owner for recovery of an insurance deductible if the owner is responsible for the loss or damage giving rise to the claim. Strata bylaws 46.2 and 46.3 hold an owner responsible for any damage caused by the owner or their occupants to common property or parts of a strata lot the strata is required to repair. Bylaw 46.4 holds an owner responsible for any investigation, maintenance, or repair expenses arising from damage or any incident that the owner is responsible for or that occurred or originated in that owner's strata lot. The bylaw specifically says the owner need not be negligent to be responsible. It also says the owner is only responsible for those expenses not covered by any insurance claim the strata may make.
23. As noted in *Yang v. Re/Max Commercial Realty Associates (482258 BC Ltd.)*, 2016 BCSC 2147 at paragraph 139, the term "responsible" is not the same as being liable in negligence. So, I find the strata need not prove Mr. Watt or his family members were negligent in allowing water to leak from unit 228 into unit 128. Given the wording of the bylaws noted above, I find the strata need only show that the leaking water originated from unit 228 to prove that Mr. Watt is responsible for any water damage the strata was required to repair.
24. In its dispute application the strata said water overflowed from unit 228 into unit 128 and caused the water damage. To the extent the strata argues Mr. Watt's family members forgot to turn off the taps and caused water to overflow, I find this unproven. I give little weight to LV's statement in his monthly report because he does not explain how he reached the conclusion that "apparently" the 228 residents forgot to turn off the taps. For example, LV does not say the 228 residents told him that, or that he observed water overflow in unit 228. In fact, LV does not indicate he went into unit

228 on July 5, 2019 to determine the source of the leak into unit 128. There is no other evidence indicating that Mr. Watt's family members forgot to turn off their taps, or that this was the source of the water leaking into unit 128.

25. In its submissions the strata says a kitchen faucet leak in unit 228 was the cause of water leaking into unit 128 on July 5, 2019. It says that is the only reasonable explanation for the water leak in unit 128. Mr. Watt says the water could have originated from Milani's work on the pipe outside unit 229 the same day, or from a repressurization issue when the building's water was turned back on.
26. In this situation I find the source of the leaking water is not obvious. For example, this is not a situation where an upper unit bathtub overflow is admitted or photographed. I find determining the source of a water leak is technical and beyond common knowledge and so requires expert evidence to establish, if the source is not obvious (see the non-binding but persuasive CRT decision *The Owners, Strata Plan BCS 1208 v. Lee*, 2021 BCCRT 1290).
27. The strata submitted a July 10, 2019 email from Damon Pinter, a water damage technician with Phoenix Restoration (Phoenix). It is undisputed that Phoenix was the first restoration company to view the water damage and provide emergency abatement measures on July 10, 2019.
28. In his email, Mr. Pinter wrote that he observed unit 128's dining room hardwood floor was saturated with water, the kitchen ceiling was water stained and there was a small area of water in the master closet. Mr. Pinter also observed a small leak on 228's faucet and on the compression nut shut off. He noted a small "almost nothing" moisture reading in 228's floor. The cabinet base was swollen, with no moisture readings. Mr. Pinter wrote that the plumbing leak he observed did not appear to be large enough to cause the amount of water that leaked into unit 128, based on the photos unit 128 showed him of the leak on July 5, 2019.
29. I find the email does not qualify as expert evidence under the CRT rules, because it does not contain Mr. Pinter's qualifications. Even if it did, I would find the email does

not support the strata's position as Mr. Pinter says the water in unit 128 likely did not originate from the leaking faucet in unit 228.

30. The strata also submitted Milani's October 3, 2019 invoice about a "leak investigation" it conducted on September 13, 2019. I find the invoice is not expert evidence because it does not indicate who conducted the investigation or what their qualifications were. In any event, the invoice notes that Milani ran the dishwasher and water taps in unit 228 on September 13, 2019 but found no leaks. So, I find it also does not support the strata's position.
31. It is undisputed that Mr. Watt hired another plumber to replace 228's leaky kitchen faucet on July 12, 2019. He says the Phoenix technician verbally recommended it, which is confirmed in Mr. Pinter's July 10, 2019 email. So, I find Milani's later investigation would not have shown the state of the faucet leak as of July 5, 2019 in any event.
32. On balance, I find the strata has failed to prove the water leaking into unit 128 on July 5, 2019 originated in unit 228 or that Mr. Watt or his family members were responsible for the leak into unit 128. So, I find Mr. Watt is not responsible to reimburse the strata its \$10,000 insurance deductible.

CRT FEES, EXPENSES AND INTEREST

33. 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. As the strata was unsuccessful, I find it is not entitled to any reimbursement. As the successful party, Mr. Watt has paid no CRT fees or claimed any dispute-related expenses.
34. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Watt.

ORDERS

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

Sherelle Goodwin, Tribunal Member