



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Hayes v. The Owners, Strata Plan BCS 4278*, 2022 BCCRT 179

B E T W E E N :

GEORGE HAYES

APPLICANT

A N D :

The Owners, Strata Plan BCS 4278

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This strata property dispute is about leak repair charges.
2. The applicant, George Hayes, owns strata lot 14 (SL14) in the respondent strata corporation, The Owners, Strata Plan BCS 4278 (strata).

3. Mr. Hayes says the strata wrongfully charged \$1,864.62 to his strata lot account for emergency restoration costs following a water leak originating from above SL14. He says the restoration services were unnecessary and he did not authorize them, so he is not responsible to pay. Mr. Hayes also says the strata's contractor cut holes in the drywall ceiling of SL14. Mr. Hayes says the strata should pay to repair his ceiling, as the holes were either cut for unnecessary investigations, or were used to access and repair common property (CP).
4. Mr. Hayes requests an order that the strata reverse the \$1,864.62 chargeback. He also requests an order that the strata reimburse him \$6,250.86 for the cost of repairing the SL14 ceiling.
5. The strata says the cause of the leak remains unknown, and there is no evidence that it came from CP. The strata also says Mr. Hayes was negligent, because he had not provided the strata with current tenant information and he did not respond to the strata's messages after the leak was discovered. The strata says the work performed in SL14 was necessary, and that Mr. Hayes is responsible to pay for it under strata bylaw 33.1.3.
6. Mr. Park is self-represented in this dispute. 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.

ISSUES

11. The issues in this dispute are:
 - a. Must the strata reverse the \$1,864.62 chargeback?
 - b. Must the strata reimburse Mr. Hayes \$6,250.86 for SL14 repairs?

BACKGROUND

12. In a civil claim like this one, Mr. Hayes, as applicant, must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision. I note that the strata did not provide evidence in this dispute, although invited to do so.
13. The strata was created in 2011, under the *Strata Property Act* (SPA). It consists of 72 strata lots in a 4-storey building. The applicant's SL14 is on the ground floor.
14. The strata filed consolidated bylaws with the Land Title Office (LTO) in May 2017, which I find are applicable to this dispute. After 2017, the strata filed further bylaw

amendments, which I find are not relevant to this dispute. I discuss the specific bylaw applicable to this dispute, bylaw 33.1.2, in my reasons below.

15. The parties agree, and the documents in evidence confirm, that a water leak was discovered in the strata building on November 6, 2020. They also agree that at the time of the leak, SL14 was rented to a tenant.
16. On the day of the leak, the strata gained access to the strata lot by having a locksmith open the door. Mr. Hayes does not dispute this, and it is confirmed by the locksmith's and plumber's invoices in evidence. The strata's restoration contractor, Phoenix Restorations Ltd. (Phoenix) attended the building. Phoenix's November 9, 2020 report states that its employees entered units 321 and 215 on the second and third floors, as well as SL14.
17. The parties agree, and Phoenix's report confirms, that Phoenix cut access holes in the SL14 ceiling. Mr. Hayes also says Phoenix later expanded some of these holes, and he provided photographs documenting the enlarged holes. The strata does not specifically dispute this. Phoenix also left drying equipment and fans in SL14.
18. On March 10, 2021, the strata sent Mr. Hayes a letter saying it was charging back \$2,264.83 in emergency restoration service fees to Mr. Hayes' strata lot account. On April 1, 2021, after correspondence between the parties, the strata issued a new letter saying the chargeback would be reduced to \$1,864.62, as Phoenix had adjusted its bill.

REASONS AND ANALYSIS

Must the strata reverse the \$1,864.62 chargeback?

19. For the following reasons, I find the strata must reverse the \$1,864.62 chargeback.
20. As set out prior CRT decisions such as *The Owners, Strata Plan K 407 v. Kelly*, 2019 BCCRT 789 and *Chen v. The Owners, Strata Plan NW 308*, 2021 BCCRT 495, a strata lot owner is not responsible for the cost of leak repairs and related restoration services unless they:

- a. agreed to pay them,
- b. are responsible under the SPA or bylaws, or
- c. were negligent.

21. Prior CRT decisions are not binding, but I find the reasoning in these decisions persuasive, and rely on it here.
22. Mr. Hayes says he did not agree to pay for Phoenix's services, and this is not specifically disputed by the strata. The strata provided no evidence establishing that Mr. Hayes agreed to pay. I therefore find Mr. Hayes never agreed to pay for Phoenix's services, and is not liable on that basis.
23. I also find Mr. Hayes is not responsible to pay Phoenix based on the SPA or bylaws. In *Ward v. Strata Plan VIS #6115, 2011 BCCA 512*, the BC Court of Appeal said that in the absence of a bylaw or rule giving its authority to do so, a strata corporation cannot charge an owner for costs it has incurred. In *Ward*, the charge in question was for legal fees. However, in *Rintoul et al v. The Owners, Strata Plan KAS 2428, 2019 BCCRT 1007*, a CRT vice chair applied the reasoning in *Ward* in a dispute where the strata had charged strata lot owners for a damaged hydroelectric line. The vice chair concluded that since the strata had no bylaw allowing it to charge back the repair costs, the owners were not obligated to pay. He found the reasoning in *Ward* applied to repair charges, and not just to legal fees. Although *Rintoul* is not a binding precedent, I find its reasoning persuasive and rely on it.
24. In this case, the strata says it was permitted to impose the chargeback under bylaw 33.1.2. The relevant portion of bylaw 33.1.2 states as follows:

An owner shall indemnify and save the harmless the [strata] from the expense of any maintenance, repair or replacement rendered necessary to the common property, limited common property, common assets or to any strata lot by the owner's act, omission, negligence, responsibility or carelessness or by that of an owner's visitors, occupants, guests, employees, agents, tenants or a

member of the owner's family, but only to the extent that such expense is not reimbursed [by insurance].

25. I find Mr. Hayes is not liable for Phoenix's bill under bylaw 33.1.2. First, there is no evidence before me establishing that Phoenix's work was "necessary", which is a required condition under the bylaw. Mr. Hayes says it was not necessary, and there is no evidence before me establishing otherwise. Phoenix's November 9, 2020 report says there was water damage to the kitchens in units 321 and 215, but does not say there was water damage to SL14. The report says moisture was "mapped" in all 3 strata lots, but does not say whether or if moisture was detected in SL14. Similarly, the plumber's report in evidence does not establish water damage or moisture in SL14.
26. The strata's Dispute Response Form says the property manager saw water in the SL14 kitchen and that the ceiling was saturated. However, that is hearsay, and there is no statement from the property manager in evidence to confirm that assertion. Also, the photos in evidence do not show evidence of water or moisture. For these reasons, I find the strata has not proven there was leaking water or moisture in SL14.
27. Mr. Hayes, as applicant, generally has the burden of proof in this dispute. However, since the strata seeks to rely on bylaw 33.2.1, I find it must establish that Phoenix's work was necessary. I find the strata has not proven that fact.
28. Second, even if Phoenix's work was necessary, I would find Mr. Hayes was not liable for its cost under bylaw 33.1.2. Mr. Hayes can only be liable if Phoenix's work in SL14 was rendered necessary by his own "act, omission, negligence, responsibility or carelessness", or that of his tenant or a similar person.
29. The strata says Mr. Hayes was negligent, because he did not file an updated Form K Notice of Tenant's Responsibilities", providing his tenant's contact information. The strata also says it was unable to contact Mr. Hayes at the time the leak was discovered, so the property manager had to engage Phoenix immediately in order to mitigate the water damage.

30. Mr. Hayes disagrees. He says he provided an updated Form K, but the property manager misplaced it. He also says he spoke with the property manager on the telephone shortly after the property manager first called him about the leak, and several times after that.
31. I note that the strata has provided no evidence to support its assertions about the Form K and its alleged inability to contact Mr. Hayes. For example, the strata did not provide a statement from the property manager. However, I find that even if the strata's assertions are true, that would not prove Phoenix's work was rendered necessary because Mr. Hayes did not file a Form K or respond to calls about the leak. The plumber's invoice shows that the strata's plumber gained entry to SL14 after the locksmith picked the lock. The strata has not said how much delay occurred while trying to contact Mr. Hayes or his tenant, or how the delay in contact made Phoenix's work necessary. I also note that while the locksmith's invoice was charged back to SL14, it is not part of this dispute. In the absence of any evidence to the contrary, I find any delay was trivial, since the locksmith was able to provide access. To put it another way, since the locksmith opened the door anyway, I find the strata has not proven that Phoenix's work would not have been necessary if Mr. Hayes or his tenant had been immediately available.
32. Also, I find that the strata's statements about the source of the leak are contradictory. While the Dispute Response Form says the leak's cause was unknown, its April 21, 2021 hearing decision letter to Mr. Hayes says the strata believes the source of the leak originated on CP. This latter statement is consistent with the property manager's November 24, 2020 email to Mr. Hayes, which says, "the plumbing contractor, Vancouver Fire, and Phoenix Restorations have all conducted investigations to determine the possible cause of the leak, and it is believed to have come from a sprinkler head while the system was being repressurized." I find the sprinkler head is likely CP, which the parties do not dispute.
33. I place significant weight on the report of the strata's plumber, who attended the site on the day the leak was discovered. The report says the plumber searched "in multiple units for the water leak", and "found it to be on the sprinkler system". The

plumber reported that they advised the strata to call a sprinkler company to come and repair the leak.

34. I find the plumber's report to be the best evidence before me about the source of the leak. The report's information was documented on the day the leak was discovered, and the plumber was specifically called in to determine the source of the leak. The strata's representative made submissions about why the sprinkler system could not have been the leak's source, but I find those submissions unpersuasive because there is no suggestion that the representative has professional expertise in plumbing, and there is no expert report or contractor's records to confirm the representative's opinion.
35. For these reasons, I find the evidence before me establishes that the leak's source was the sprinkler system, which is CP. There is no suggestion in the evidence before me that Mr. Hayes, or a tenant, occupant, or guest, damaged the sprinkler system. Therefore, I find that the leak, and Phoenix's resulting work, did not occur due to an "omission, negligence, responsibility or carelessness" by Mr. Hayes, his tenant, or a similar person. This would be necessary for bylaw 33.1.2 to apply.
36. For these reasons, I allow Mr. Hayes' claim, and order the strata to immediately reverse the \$1,864.62 chargeback.

Must the strata reimburse Mr. Hayes \$6,250.86 for SL14 repairs?

37. Mr. Hayes claims \$6,250.86 for repairs to SL14. He says Phoenix cut holes in the ceiling drywall to inspect for the leak's source, and later enlarged the holes, possibly to assess or perform repairs to CP. As noted above, the holes are confirmed by photographs in evidence, and Phoenix's report. The strata's Dispute Response Form says Phoenix cut the holes to see if the water leak was coming from pipes in the ceiling.
38. The strata says Mr. Hayes is responsible for the costs of repair the holes because they are within his strata lot. Under strata bylaws 2(1) and 8(d), owners are generally

responsible for repairing their own strata lots, subject to some exceptions such as structural repairs which are not relevant here.

39. However, some previous CRT cases have found that strata corporations are responsible for the cost of repairing investigation and access holes it creates to perform CP repairs. For example, in *Lorenz v. Strata Plan NW 2001*, 2017 BCCRT 65, a CP shower diverter, and the strata's contractor cut open the applicant's bathroom wall to investigate and repair the CP. The CRT Vice Chair ordered the strata to return the owner's bathroom to paint-ready condition.
40. Similarly, in *Thompson v. The Owners, Strata Plan LMS 2349*, 2018 BCCRT 759, the strata's contractor cut holes in the applicant's strata lot ceiling to inspect and repair a leaking CP pipe. The CRT member found that the strata intentionally caused the ceiling damage in order to carry out its duty to repair and maintain CP. So, the member ordered the strata to repair the damage at its own expense.
41. I find that Phoenix, the strata's contractor, cut holes in SL14 in order to inspect for leaks in the CP pipes, and possibly to perform repairs. For that reason, and following the non-binding but persuasive reasoning in *Lorenz* and *Thompson*, I find the strata must reimburse Mr. Hayes for the cost of those repairs.
42. On November 30, 2020, the strata's property manager provided Mr. Hayes with a quote from Phoenix for the SL14 repairs. This quote gives a total cost of \$6,250.86 including tax. Since this quote was provided to Mr. Hayes by the strata, and since the strata did not provide contrary evidence about the extent or cost of the necessary repairs, I find it is accurate and reasonable. I therefore order the strata to reimburse Mr. Hayes \$6,250.86 for SL14 repairs.
43. I find Mr. Hayes is not entitled to prejudgment interest under the *Court Order Interest Act* (COIA) on the \$6,250.86 award, as there is no evidence he has paid for repairs yet.

CRT FEES AND EXPENSES

44. As Mr. Hayes was successful in this dispute, in accordance with the CRTA and the CRT's rules I find he is entitled to reimbursement of \$225.00 in CRT fees. Mr. Hayes did not specifically claim or provide evidence of dispute-related expenses, so I order no reimbursement of such expenses.
45. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Mr. Hayes.

ORDERS

46. I order that:
- a. The strata must immediately reverse the \$1,864.62 chargeback to Mr. Hayes' strata lot account.
 - b. Within 60 days of this order, the strata must reimburse Mr. Hayes \$6,250.86 for SL14 repairs, and \$225 for CRT fees.
47. Mr. Hayes is also entitled to postjudgment interest under the COIA, as applicable.
48. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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.

Kate Campbell, Vice Chair