Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

The Owners, Strata Plan BCS 3426

APPLICANT

A N D :

Xiao Yang

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kate Campbell, Vice Chair

INTRODUCTION

1. This strata property dispute is about water damage repair expenses.

2. The respondent, Xiao Yang, owns a strata lot (unit 2508) in the applicant strata corporation, The Owners, Strata Plan BCS 3426 (strata).

3. The strata says that on September 14, 2019, the respondent drilled through a sprinkler pipe which caused water damage to unit 2508, 8 other strata lots, and common property. The strata says it paid $49,886.10 for repairs. This was less than the $100,000 insurance deductible, so insurance did not pay for the repairs. The strata says after it demanded payment of $49,886.10, the respondent made a partial payment of $32,200. The strata says Xiao Yang was negligent, so is liable for the full repair costs under strata bylaw 3.3. It requests an order that the respondent pay the remaining balance of $17,686.10.

4. The respondent admits to damaging the sprinkler pipe while drilling into the wall while installing storage units in unit 2508. The respondent says they reported the leak immediately, but the building caretaker was unable to locate the shutoff valve, so the leak continued for over an hour. The respondent says the strata's inability to shut off the water quickly was negligent and contributed to the damage, so the respondent is not liable for any further repair expenses.

5. The strata is represented by a strata council member in this dispute. The respondent is self-represented.

6. For the reasons set out below, I find in favour of the strata, and order the respondent to pay $17,686.10 for leak-related repairs.

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.

ISSUE

11. Must the respondent pay the strata $17,686.10 for water damage repairs?

REASONS AND ANALYSIS

12. In a civil claim like this one, the strata, as applicant, must prove its 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.

13. The strata filed consolidated bylaws with the Land Title Office (LTO) in 2012. The strata filed some bylaw amendments after that, which are not relevant to this dispute.

14. In this dispute, the parties agree that the respondent drilled through a sprinkler pipe while installing cabinetry in unit 2508, which caused the leak and the resulting damage. The parties also agree that the strata's repair bills totalled $49,886.10, of which the respondent paid $32,200.00, leaving an unpaid balance of $17,686.10.

15. The strata says the respondent is liable to pay the outstanding balance based on bylaw 3.3. The relevant part of bylaw 3.3 states follows:

> An owner shall indemnify and save harmless the strata corporation 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 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 from…insurance...

16. In *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 519, the BC Provincial Court considered language similar to that in bylaw 3.3, and found that the words "owner's act, omissions, negligence or carelessness" must be read collectively and import a standard of negligence: see paragraph 17. This means that the respondent is only liable under bylaw 3.3 if the strata proves negligence.

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

18. Based on the evidence before me, I find the respondent was negligent. As a building occupant, the respondent owed the strata a duty of care, and the strata's property was damaged because the respondent drilled through the pipe. The respondent submits that the strata did not provide sufficient documents showing the layout of the sprinkler pipes within the walls. Even accepting that is true, I find it was unreasonable and negligent for the respondent to drill into the wall while admittedly not knowing the location of the pipes. I find the fact that the respondent asked for a diagram of the pipes before drilling proves that the risk of causing damage by blindly drilling into the wall was foreseeable.

19. The respondent does not fully deny liability, but says the strata is responsible for the outstanding repair costs because of contributory negligence and failure to mitigate. I disagree. As explained below, I find that contributory negligence and the duty to

mitigate do not apply to the strata's entitlement to collect repair costs under bylaw 3.3.

20. In the Dispute Response Form, the respondent says the sprinkler pipe was improperly tied with a metal wire to a vertical metal stud, so when the respondent drilled through the metal stud the sprinkler pipe was damaged. However, I find the respondent has not proved this assertion. There is no document or expert evidence before me in this dispute that indicates the sprinkler line was tied to the stud, or that such an installation is contrary to building codes or industry standards. I am not persuaded by the respondent's opinion on sprinkler pipe installation, as there is no evidence that the respondent is an expert in engineering, building construction, or a related field.

21. Even if the pipe was improperly installed, I find that would not make the strata liable for the claimed repair costs. There is no suggestion that the strata installed the sprinkler system. Also, I find that based on the wording of bylaw 3.3, the respondent is fully liable for all leak-related costs, as these are repair expenses "rendered necessary…by the owner's act" of drilling through the pipe. Put another way, if the respondent had not drilled into the wall, there would have been no leak, so the repair expenses were necessary because of that act.

22. The respondent provided extensive submissions arguing that the strata was contributorily negligent because it did not shut down the water quickly enough, which increased the amount of damage. For the same reason, the respondent argues that the strata failed to mitigate the amount of damage.

23. The burden of proving contributory negligence or failure to mitigate falls on the party raising that defence: *Van v. Jowlett*, 2014 BCSC 1404; *Plakholm v. Victoria (City),* 2009 BCSC 1039; *Myatt v. Holicza*, 2000 BCSC 1149. The court has also said that the burden of proof in establishing a failure to mitigate is a "heavy" one: *Lee v. Dueck*, 2012 BCSC 530 at para 39. In *Chiu v. Chiu*, 2002 BCCA 618 at para. 57, the Court of Appeal confirmed the test for proving a failure to mitigate, at paragraph 57:

> The onus is on the defendant to prove that the plaintiff could have avoided all or a portion of his loss. In a personal injury case in which the plaintiff has not

pursued a course of medical treatment recommended to him by doctors, the defendant must prove two things: (1) that the plaintiff acted unreasonably in eschewing the recommended treatment, and (2) the extent, if any, to which the plaintiff's damages would have been reduced had he acted reasonably.

24. For the following reasons, I find the respondent has not met the burden of proving that their damages should be reduced due to the strata's alleged contributory negligence or failure to mitigate. Specifically, I find that the respondent has not proved that the strata acted unreasonably in responding to the leak, and has not proved the extent to which the damages would have been reduced if the strata had shut off the water faster.

25. The parties disagree about exactly when the respondent reported the leak, how quickly the strata responded, and whether the strata's plumber or the respondent's wife MC ultimately shut off the water. The respondent says they called the strata's emergency line to report the leak to the strata at 3:32 pm, immediately after they saw water coming out of the wall. There is no evidence confirming exactly when the respondent drilled into the pipe, although based on the statements from the respondent and MC I accept that it was immediately before 3:32 pm. The respondent says the strata's building operator attended unit 2508 approximately 5 minutes later, and the strata's plumber arrived 5 minutes after that. Therefore, the respondent's evidence is that the strata employee and its contractor responded within 10 minutes of the initial report.

26. The respondent argues that the building operator and plumber could not determine how to shut off the water, so MC called 911 twice and got instructions from the fire department, and shut down the water "at some time prior to 4:35 pm". The respondent says that if MC had not shut down the water, the strata would not have shut down the water its fire protection contractor arrived around 5:45 pm.

27. The strata disputes some of this evidence. In particularly, it relies on its plumber's invoice that says the plumber shut off the zone's water.

28. Even accepting the respondent's version of events, I find the respondent has not proved that the strata's actions were unreasonable. The respondent argues that the strata failed to ensure that its agents and employees knew how to shut down the water. However, I find there is nothing in the *Strata Property Act* (SPA) or bylaws that requires a strata to have someone onsite who can respond to unusual events such as a sprinkler pipe puncture. Rather, I find the strata acted reasonably by having a plumber at the leak site within 10 minutes of the reported leak. Also, even if the plumbing contractor did not know how to shut off the water, as the respondent asserts, the BCSC has said that a strata corporation will not be found negligent where it has acted reasonably in the circumstances, even if its contractors fail to carry out work effectively: *Wright v. The Owners, Strata Plan #205*, 996 CanLII 2460 (S.C.), affirmed (1998), 43 B.C.L.R. (3d) 1, 1998 CanLII 5823 (C.A.).

29. I find the strata acted reasonably and promptly in dispatching the plumber, and subsequently the restoration company and fire protection contractor. So, based on the reasoning in *Wright,* I find the strata was not negligent, and did not fail to mitigate its damages. And even if it had, I find the respondent has not proved the extent to which the damages would have been reduced if the strata had acted differently: see *Chui,* at paragraph 57.

30. The respondent relies in part on a statement from MC, who says she is a senior engineer consultant with a risk engineering consultant firm. MC says she has 10 years of experience in fire protection equipment assessment and inspection, and as a master's degree in civil engineering and training in fire safety and science, sprinkler system design, and NFPA. I will not summarize MC's statement in detail, but she explained various systems, including valves, sprinklers, security system, trouble lights, and alarms work. She explained numerous NFPA standards. MC also says:

    - The water flow switches should have activated but did not, so were not working correctly.

- The strata failed to meet various NFPA standards. For example, the strata failed to inspect the sprinkler system valves monthly, train its staff, or have an adequate emergency response plan.

- Shutting down a sprinkler system does not create safety risk.

31. I accept MC's qualifications for the purpose of this decision. However, I find MC cannot be an expert witness in this proceeding. CRT rule 8.3(7) says the role of an expert is to assist the CRT and not to advocate for any side or party in a dispute. Since MC is the respondent's wife, I find she is not neutral, and her statement is advocacy on behalf of the respondent. So, to the extent that MC's evidence is about matters outside the knowledge of ordinary persons such as NFPA standards, and the operation of sprinkler systems, alarms, and other equipment, I place no weight on it.

32. Also, MC's evidence would not change the outcome of this decision in any event. Even accepting everything MC says as true, the respondent has still not proved the extent to which the damages would have been reduced if the strata had acted differently.

33. For all of these reasons, I find in favour of the strata. I conclude that the respondent must pay the remaining $17,686.10 in repair expenses, based on bylaw 3.3. I find the strata is also entitled to prejudgment interest on this amount, under the *Court Order Interest Act* (COIA), from the date of its December 7, 2020 demand letter. This equals $98.78.

CRT FEES AND EXPENSES

34. As the strata was successful in this dispute, in accordance with the CRTA and the CRT's rules I find it is entitled to reimbursement of $225.00 in CRT fees.

35. The respondent requested reimbursement of legal fees as dispute-related expenses. rule 9.5(1) says the CRT will usually order the unsuccessful party to pay the successful party's CRT fees and reasonable dispute-related expenses. Rule 9.5(3) says the CRT will not order a party to pay another party's legal fees in a strata

property dispute unless there are extraordinary circumstances that make it appropriate to do so.

36. The respondent was not successful in this dispute, and based on the factors in rule 9.4(4), I find this dispute is not extraordinary. So, I order no reimbursement of legal fees.

37. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the respondent.

ORDERS

38. I order that within 30 days of this decision, the respondent must pay the strata a total of $18,009.88, broken down as:

    a. $17,686.10 in repair expenses,

    b. $225 in CRT fees, and

    c. $98.78 in prejudgment interest under the COIA.

39. The strata is entitled to postjudgment interest under the COIA, as applicable.

40. 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