



Civil Resolution Tribunal

Date Issued: March 4, 2022

File: ST-2021-002934

Type: Strata

Civil Resolution Tribunal

Indexed as: *Simon v. The Owners, Strata Plan NW 2788*, 2022 BCCRT 240

B E T W E E N :

NICHOLAS SIMON and DANA SIMON

APPLICANT

A N D :

The Owners, Strata Plan NW 2788

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This strata property dispute is about repairs resulting from a roof leak.
2. The applicants, Nicholas Simon and Dana Simon, co-own strata lot 31 (SL31) in the respondent strata corporation, The Owners, Strata Plan NW 2788 (strata). The parties agree a strata building roof leaked on around August 5, 2020.

3. The Simons say the water damage was caused by a leak from common property, which the strata is responsible for under the bylaws and the *Strata Property Act* (SPA). They say the strata was negligent in failing to repair and maintain the roof, and in failing to properly investigate the roof leak and water damage when it occurred.
4. The Simons said they paid for repairs to SL31 and common property. The Simons say the strata initially agreed to pay for the SL31 repairs, but then revoked its decision. They ask for orders that the strata reimburse them \$4,769.16 for emergency services and \$4,215.75 in repair costs.
5. The strata acknowledges that it originally agreed to pay for SL31's repairs, but says this was based on incorrect information from its property manager. The strata also disagrees that it was negligent and denies it is responsible for pay for the any of SL31's repair costs. The strata acknowledges that it is responsible for any common property repairs, but says that the Simons have not provided an invoice for any common property repairs.
6. The Simons are self-represented. 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.

Late Evidence

11. The Simons provided late evidence in this dispute which consists of the strata council meeting minutes for July 2020. The strata did not object to this evidence and had the opportunity to review the evidence prior to providing submissions. Consistent with the CRT's mandate that includes flexibility, I find there is no actual prejudice to the parties in allowing this late evidence. I allow the late evidence as I find it relevant.

ISSUE

12. The parties reached an agreement on certain issues before this adjudication. The Dispute Notice was amended to remove those issues, and I have not addressed them in this decision.
13. The remaining issues in this dispute are:
 - a. Did the strata agree to pay for common property and SL31 repairs?
 - b. What amount, if any, must the strata reimburse the Simons?

EVIDENCE AND ANALYSIS

14. In a civil claim such as this one, the Simons as the applicants must prove their claims on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

Background

15. The strata filed consolidated bylaws in the Land Title Office (LTO) on September 7, 2017, which I find are the bylaws applicable to this dispute. There have been amendments since then, but none are relevant.

16. The parties agree to the following facts. There was water ingress into the Simons' strata lot on August 6, 2020. The Simons' strata lot was one of multiple strata lots that had water ingress following heavy rains that started on August 5, 2020. The water ingress originated from the strata building's roof. The strata asked its roofing contractor that was in the process of replacing the roof to place a temporary patch over the hole.

17. The Simons say when the roof leaked the water ran through the attic, down their sloping ceilings and exterior walls, underneath flooring, as well as into the strata lot below theirs. The Simons say they notified the strata about the leak immediately after it occurred. The Simons say the strata did not dispatch any emergency services. I find the emails in evidence between the strata and its property manager at the time of the leak confirm that the strata did not dispatch any emergency services to investigate the roof leak and water damage.

18. The evidence indicates that the strata was in the process of replacing the building's roof when the leak occurred. As noted above, the parties agree that after the roof leaked, the strata's roofing contractor placed a temporary patch over the hole in the roof. The Simons say a second small leak occurred due to the temporary patch lifting "some days later".

19. In order to find the strata responsible for SL31's repairs, the Simons must prove any of the following:

- a. The strata agreed to pay for the repairs,
- b. The strata's bylaws required the strata to pay for the repairs, or,
- c. The strata was negligent.

Did the strata agree to pay for SL31's repairs?

20. As noted above, the Simons say the strata agreed to pay for SL31's repairs, but then revoked its agreement.

21. An October 15, 2020 letter from Tribe Property Management on behalf of the strata to Dana Miller, who I infer also known as Dana Simon, advised that the strata council had agreed:

“to shoulder the costs for the repairs of your suite that was deemed Strata's Responsibility, this includes repairs to the exterior walls and the ceiling. The Council has agreed to approve the quote from On Side Restoration, attached” (reproduced as written).

The attached repair quote totalled \$3,643.50. I will address the emergency services and repair costs further below.

22. The strata does not dispute that it originally agreed to pay for SL31's repairs. However, the strata says its former property manager gave the strata incorrect information. The strata says its current property manager advised the strata that it was not authorized to use strata funds to complete repairs without the consent of “all owners”. The strata did not refer me to any section of the SPA or any bylaw that requires the strata to obtain consent from all owners prior to paying for SL31's repairs. It is possible that the strata required approval under SPA sections 96 or 97, which set out the strata's obligations when making expenditures from the contingency reserve fund and operating fund. However, the strata has not relied on either SPA section 96 or 97, or provided evidence to support a finding that consent was required under either section. I find the SPA does not otherwise contain any provisions that say the strata requires approval from “all owners” to repair a strata lot. Even if the strata had

provided evidence that owner approval was required prior to paying for SL31's repairs, which it has not, I find it would be significantly unfair for the strata to promise to pay, allow the Simons to proceed with repairs in reasonable reliance on the strata's promise to pay, and then refuse to pay based on later advice from the strata's new property manager.

23. In the October 27, 2020 strata council meeting minutes in evidence, the council noted that it did not have the proper information when it decided to pay "for the damages to suites SL31 and [another strata lot]". The strata also noted that "Council committed to shoulder the costs to repair SL31 and [another strata lot] before receiving the correct information and will honor this decision at this time only".
24. Given the October 15, 2020 letter agreeing to pay for SL31's repairs, and the strata council's subsequent confirmation that it would "shoulder the costs to repair SL31", I find the strata agreed to pay SL31's repairs. I note the letter and strata council meeting minutes do not explicitly refer to the emergency services costs already incurred by the Simons in September 2020. However, I have found the strata agreed to pay for the costs to repair SL31. I find this reasonably includes the emergency services costs incurred by the Simons after the roof leak incurred. I will discuss the invoices further below.
25. Given that I have found that the strata agreed to pay for SL31's repairs, I find I do not need to address whether the strata was responsible to pay for the repairs under its bylaws, or whether the strata was negligent in maintaining and repairing the roof or investigating the roof leak.

What amount, if any, must the strata reimburse the Simons?

26. The Simons submitted two invoices in evidence. The first invoice is a September 9, 2020 On Side Restoration invoice for emergency services totalling \$4,769.16. The first invoice includes labour costs for a fire and floor technician for demolition and removal, emergency water mitigation, and a structural drying assessment between August 13 and August 31, 2020. The first invoice also includes equipment rental costs and other costs.

27. The second invoice is a July 7, 2021 On Side Restoration invoice for water damage repairs totalling \$4,215.75. The repairs listed include insulation, drywall, paint, carpentry, disposal and cleaning. Although the second invoice is higher than On Side Restoration's quote approved by the strata (\$3,643.50), I find it lists the same repairs and so I find the second invoice amount reflects the reasonable cost of repairs. The strata does not dispute the invoiced amounts in any event.
28. As noted above, the Simons say they paid for emergency services and repairs to both common property and SL31. The strata has acknowledged that it is responsible for any common property repairs, but says that the Simons did provide the strata with an invoice for the common property repairs.
29. As noted, I have already found that the strata agreed to pay for SL31's water damage repairs, including the emergency services costs already incurred by the Simons for SL31. As discussed above, to the extent that either invoice includes common property emergency services and repairs, the strata has acknowledged it is responsible for those costs. Therefore, I find the strata is responsible to reimburse the Simons \$4,769.16 for the emergency services invoice and \$4,215.75 for the repair invoice. I order the strata to reimburse the Simons a total of \$8,984.91.

CRT FEES, EXPENSES AND INTEREST

30. 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. I therefore order the strata to reimburse the Simons \$225 in CRT fees. The Simons did not claim any dispute-related expenses.
31. The *Court Order Interest Act* (COIA) applies to the CRT. The Simons are entitled to prejudgment interest on the \$8,984.91 award from July 7, 2021, the date of the second invoice, which I find is reasonable in the circumstances, to the date of this decision. This equals \$26.62.

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

ORDERS

33. Within 30 days of the date of this order, I order the strata to pay the Simons a total of \$9,236.53, broken down as follows:

- a. \$8,984.91 for emergency services and repair costs,
- b. \$26.62 in pre-judgment interest under the COIA, and
- c. \$225 in CRT fees.

34. The Simons are also entitled to post judgment interest under the COIA.

35. 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.

Leah Volkens, Tribunal Member