



# Civil Resolution Tribunal

Date Issued: March 7, 2022

File: ST-2021-006036

Type: Strata

Civil Resolution Tribunal

Indexed as: *Bodi v. The Owners, Strata Plan VR 2684*, 2022 BCCRT 246

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

JAMES BODI

**APPLICANT**

**A N D :**

The Owners, Strata Plan VR 2684

**RESPONDENT**

**A N D :**

JAMES BODI

**RESPONDENT BY COUNTERCLAIM**

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## **REASONS FOR DECISION**

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. This strata property dispute is about a strata corporation's chargeback of water damage repair and investigation invoices, and legal fees associated with collection of the charged back amounts.
2. The applicant and respondent by counterclaim, James Bodi<sup>1</sup>, owns and rents out strata lot 11 (#203) in the respondent strata corporation, The Owners, Strata Plan VR 2684 (strata). The strata is the applicant in the counterclaim.
3. Mr. Bodi says the strata improperly charged his strata lot for expenses related to water damage that occurred to the strata lot immediately below his strata lot (#103). He says the strata is responsible for the expenses because the water leaked from a common property (CP) pipe. Mr. Bodi seeks an order that the strata reverse its charge back of \$13,000 from #203's account. I discuss the charge back amount in greater detail below.
4. The strata disagrees with Mr. Bodi and says he is mistaken about the source of the water damage. The strata says the damage to #103 was caused by a faulty float valve in a #203 toilet causing condensation to form "on the waterline/drain" which then dripped into #103's ceiling cavity. In its counterclaim, the strata says under its bylaws, Mr. Bodi is responsible to pay it for the cost to investigate and repair the damage, as well as legal fees it incurred to collect the charged back amount. The strata seeks orders that Mr. Bodi pay it \$11,749.50 for the leak investigation and repair, and \$10,000 for legal expenses.
5. Mr. Bodi denies he owes the strata any amount. In defence against the strata's counterclaims, he says the pipe that caused the water damage was CP or that the strata has failed to prove his toilet caused all the damage to #103. Mr. Bodi also says there were other water leaks that may have contributed to the water damage, and the amount of work undertaken to #103 was excessive.
6. Mr. Bodi is represented by his property manager, Rob MacPherson<sup>1</sup>. The strata is represented by a strata council member who is also a lawyer or retired lawyer.

7. As explained below, I find in favour of Mr. Bodi and against the strata.

## **JURISDICTION AND PROCEDURE**

8. 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.
9. 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.
10. 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.
11. Under section 123 of the CRTA and the CRT rules, 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**

12. The issues in this dispute are:

- a. Is Mr. Bodi responsible for water damage caused to #103 and related investigation expenses?

b. Is Mr. Bodi responsible to pay the strata \$10,000 for legal expenses?

## **BACKGROUND, REASONS AND ANALYSIS**

13. As applicant in a civil proceeding such as this, Mr. Bodi must prove his claims on a balance of probabilities, meaning “more likely than not”. The strata must prove its claims on the same basis. I have read all the submissions and evidence provided by the parties, but refer only to information I find relevant to give context for my decision.
14. The strata was created in June 1990 and consists of a 4-storey building. It continues to exist under the *Strata Property Act* (SPA).
15. Land Title Office (LTO) documents show the strata filed a complete new set of bylaws on October 10, 2019 which repealed and replaced all previous bylaws, including the Standard Bylaws. Another bylaw amendment was filed with the LTO in July 2021, but that amendment is not relevant to this dispute. I discuss the relevant bylaws to this dispute below as necessary.

### ***Is Mr. Bodi responsible for water damage caused to #103 and related investigation costs?***

16. I note at the outset that Mr. Bodi’s request the strata reverse a charge back amount of \$13,000.00 appears incorrect. Based on the #203 account statements in evidence and the overall submissions, I find \$11,749.50, the amount claimed by the strata, is the total amount that was charged back to #203. I find this is the amount at issue. It is made up of 2 invoices from Woodcraft Contracting & Renovations Inc. (Woodcraft) that I summarize as follows:
  - a. Invoice #926 for \$2,667.00 dated June 23, 2020 for #103 water damage investigation and repair, and
  - b. Invoice #943 for \$9,082.50 dated August 14, 2020 for #103 bathroom repairs.

17. It is undisputed that on about June 15, 2020, the resident of #103 informed the strata of a leak into the bathroom ceiling of #103. The strata retained Woodcraft to investigate the leak. In a June 19, 2020 email to the strata's property manager, Rudi Nosper of Woodcraft stated he had confirmed there was slow leak from the "above unit" which I agree is #203. Mr. Nosper also stated that there was "considerable water damage" in the bathroom of #103. He suggested an inspection of #203 be conducted to determine the cause of the leak, which the strata arranged on June 23, 2020.

18. A June 23, 2020 invoice from Ashton Mechanical Ltd. (Ashton) Ashton to the property manager (Ashton Report), confirms the property manager requested Ashton investigate the bathroom leak in #103. The work description section of the invoice states (reproduced as written):

June 23, 2020 HS - Arrived on site. Inspected where the wall was open had one guy go up to unit 203. Ran the fixtures while the other checked from below. We couldn't identify a leak from the fixtures. However we noticed that the toilet in the ensuite was constantly running and this lead to condensation on the water line / drain which was dripping down. Called landlord of unit 203 and got approval to change the fill valve. Tested and made sure fill valve was good and no leaks.

19. On June 29, 2020, Woodcraft provided an estimate to the strata's property manager that included a description of its investigation work and an estimate of repairs required to #103 (Woodcraft report). The report included Woodcraft's findings during its initial investigation of June 19, 2020 noted above, and possibly further investigation that included removal of baseboards and drywall in #103's bathroom and bedroom, discovery and treatment of mold, and the disposal of insulation. The estimate portion of the report essentially described a complete bathroom remediation, including removal and reinstallation of the bathtub, tiled shower above, and toilet for a cost of \$10,164.00 including taxes.

20. On June 30, 2020, Rob MacPherson informed the strata's property manager that Mr. Bodi's insurer was being notified. The property manager replied on July 2, 2020 stating the strata had notified the owner of #103 to "proceed with repairs through his insurance" and let #103's insurers pursue settlement with Mr. Bodi.
21. The next item of correspondence before me is a July 14, 2020 email from the #103 owner to the strata stating that they understood Mr. Bodi was denying responsibility for the damage and they would commence a CRT dispute if the issue could not be resolved. On the same date, the strata property manager forwarded #103's email to Mr. Bodi and Rob MacPherson, with the Woodcraft and Ashton reports attached.
22. On July 19, 2020, the property manager provided a confusing email to Mr. Bodi and Rob MacPherson entitled "FINAL NOTICE" which I find states that the strata would proceed with the #103 repairs and charge the repair costs to #203. The email also stated that if Mr. Bodi did not pay the charges within 21 days of receipt, legal action would be taken including filing a lien against #203. The confusion arises from the fact the strata's statements were intermingled within the July 14, 2020 email from #103, and that the strata's earlier July 2, 2020 email stated the strata would not be involved. There is no evidence of any communication between the strata and Mr. Bodi or his representative between July 2 and July 14, 2020.
23. On July 24, 2020, Woodcraft provided a progress report on the #103 repairs to the strata by email. The email stated the water damage was worse than expected and additional repairs were required. Arrangements were made for Rob MacPherson and a contractor to inspect #103. The inspection took place on August 4, 2020.
24. In an email dated August 14, 2020, the property manager advised Mr. Bodi and Rob MacPherson that the Woodcraft invoices referenced above had been charged to #203. The email stated they were payable by September 15, 2020. The Woodcraft invoices and the invoice for Ashton's investigation and fill valve replacement were attached to the email. I note the Ashton invoice was not charged to #203's account and is not part of this dispute.
25. As earlier noted, Mr. Bodi says;

- a. the pipe that caused the water damage was CP or that the strata has failed to prove his toilet caused all the damage to #103,
- b. there were prior water leaks in the building that could have contributed to the water damage, and
- c. the amount of work undertaken to #103 was excessive.

26. I will first address Mr. Bodi's allegations that prior water leaks could have contributed to #103's damage. Mr. Bodi specifically refers to a July 2018 leak from #303 (above #203) that damaged #203, #103 and other strata lots. The strata does not dispute the leak occurred, but I agree with the strata that is unlikely a leak 2 years' prior would be the cause of the 2020 damage.

27. As for Mr. Bodi's allegation that the work completed in #103 was excessive, he did not provide any submissions or evidence to support his position. Therefore, I find Mr. Bodi's allegation unproven.

28. The strata's position is that the faulty fill valve in #203 caused the water damage in #103 and that bylaw 39 requires Mr. Bodi to pay for the water damage repairs and related investigation. For the reasons that follow, I agree with Mr. Bodi that the strata has failed to prove his toilet caused the damage in #103.

*Did the faulty fill valve in #203's toilet cause water to enter #103?*

29. The strata says that the Ashton and Woodcraft reports are expert evidence. I disagree because the reports do not meet the requirements of expert evidence under CRT rule 8.3. In particular, rule 8.3(2) says an expert must state their qualifications in their evidence. Neither report included this information. In fact, the Ashton report does not state who wrote it, and I find it is actually an invoice with a description of the work performed. The qualifications of Mr. Nosper from a screenshot of Woodcraft's website, says he is a "Red Seal journeyman carpenter" with experience as a painter. I do not find Mr. Nosper's experience in carpentry and painting qualify him as an expert in determining water damage. Even though I find there is no expert evidence, I accept

the Ashton and Woodcraft reports as being prepared by individuals experienced in the respective lines of work.

30. It is undisputed that the slow drip into #103's bathroom ceiling stopped when the faulty fill valve in #203's toilet was replaced. It is also undisputed that before the fill valve was replaced, the "constantly running toilet" caused condensation to form on "the water line / drain which was dripping down" as noted in the Ashton report. I interpret Ashton's report to mean that condensation was forming on the water supply line to the toilet and on the toilet's drainpipe located in #103's bathroom ceiling space. Based on the definition of CP under SPA section 1(1), I find the water supply line to the toilet is not CP because it is located in #203 and only services #203. I find the toilet's drainpipe is CP because it is located within a floor or ceiling that forms a boundary between #203 and #103. This appears to align with Mr. Bodi's position that the leak originated from a CP pipe, which he did not explain in any detail.
31. There is also no evidence, such as a video recording, that shows the slow drip identified by Mr. Nosper. However, based on the Ashton report, I conclude it was coming from 2 possible sources. First, from around the toilet drainpipe, because of condensation forming on the water supply line dripping onto #203's bathroom floor and entering the ceiling space from around the drainpipe. Second, directly from condensation forming on drainpipe, or from both locations.
32. Based on these facts, I find it likely that water did enter #103 as a result of the faulty fill valve in #203's toilet. The next question is whether the faulty fill valve caused the water damage to #103.

*Did the faulty fill valve in #203's toilet cause the water damage to #103?*

33. I find it is impossible to determine what amount of water entered #103 as a result of the faulty fill valve. This is because there is no evidence to show how fast the "slow drip" was occurring nor any evidence to show how long the fill valve was faulty.



34. From the Ashton report, I have found condensation may have come from around or on the #203 toilet drainpipe in the ceiling space of #103. However, the July 24, 2020 email and photographs from Woodcraft reporting on the repair progress, and the video provided in evidence, clearly show the main area of damage and mold was located behind #103's bathtub and shower at the floor level. This raises the question of whether #103's shower or bathtub could have been the cause of the water damage and mold. This question was not considered by the strata. It was also not expressly considered by Mr. Bodi, but his unsupported submissions were that the extent of the #103 damage was greater than what could have been caused by condensation.
35. The contractors did not provide evidence specifically about what caused the damage to #103, so I find the strata's conclusion the leak came from #203 is based on speculation. The reports identified a slow drip from condensation, but as earlier mentioned, it is not known how long the condensation issue was occurring or how much condensation was entering #103 before the fill valve was replaced. Bearing this in mind, and that the main area of damage in #103 was behind the bathtub below the shower, I cannot conclude the #203 toilet caused the damage to #103. Therefore, I find the strata has not proved the source of the leak was #203.

#### Bylaw 39

36. I have also considered the strata's application of bylaw 39 and I reach the same conclusion.
37. SPA section 26 says that the strata council has a duty to enforce bylaws. In *Chorney v. The Owners, Strata Plan VIS770*, 2016 BCSC 148, at paragraph 52, the BC Supreme Court said the SPA allows strata corporations to deal with bylaw violation complaints "as it sees fit, as long as it complies with the principles of procedural fairness and not be significantly unfair to any person who appears before it". According to *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74 at paragraph 61, the strata council must take "reasonable action and fair regard for the interests of all concerned". The strata is not held to a standard of perfection. Thus, the strata will meet

its bylaw enforcement obligations under SPA section 26 if it acts reasonably. For the reasons that follow, I find it has not.

38. The strata relies on bylaws 39(1) and (3), which state in full (my emphasis):

(1) In the event that losses or damages occurs to a Strata Lot, common property or limited common property that may be considered a claim under the Strata Corporation's insurance policy, whether a claim is made or not, it is agreed and understood that if the **losses** originated from within an individual Strata Lot, the cost of remedying the **damages**, including any deductible amount of the Strata Corporation's policy relative to the loss, shall be paid by the individual Strata owner in whose lot the cause of the damage originated. In the event that the owner caused the damage to common property, or other strata lots and the damage so caused is not covered by insurance, the owner shall be responsible for such loss and promptly reimburse the Strata Corporation for the full cost of the repair or replacement of the damage done.

(3) The Strata Council shall determine the cause of the damage on the basis of written evidence submitted by any two of the following:

- a. The strata insurance adjuster present to investigate the cause
- b. The restoration company representative present to remedy or investigate the cause
- c. The service contractor present to remedy or investigate the cause
- d. The strata manager present to investigate the cause.

39. In order for bylaw 39(1) to apply, the cause of the damage must have originated in an owner's strata lot, which I have found has not been proved.

40. Further, bylaw 39(3) gives the strata, through its strata council, sole discretion to determine the cause of the damage based on the criteria listed. However, I find the strata must maintain its standard of reasonableness when applying its bylaws. I find the strata did not act reasonably when it relied on the Ashton and Woodcraft reports to determine the cause of the source of the leak was #203 for the reasons I have stated above. Namely, those reports do not reasonably establish the cause of the damage originated in #203.
41. For these reasons, I find Mr. Bodi is not responsible for the water damage caused to #103 and related investigation costs. It follows that Mr. Bodi is not responsible to reimburse the strata \$11,749.50 for the Woodcraft invoices, so I order the strata to reverse this amount from the account of #203 and I dismiss the strata's counterclaim.

***Is Mr. Bodi responsible to pay the strata \$10,000 for legal expenses?***

42. I acknowledge the strata's claim of \$10,000 is an estimate of its legal expenses and the strata said its actual legal expenses would be provided after the adjudication process. However, the CRT does not have a 2-stage process for claiming legal fees, so the claim must fail based on the lack of evidence. Even so, I have briefly considered the strata's claim based on the CRT's mandate to recognize future relationships between the parties.
43. Dispute-related expenses are expenses incurred during the course of a dispute. The strata did not expressly argue its legal fees are dispute-related, but if it did, I would not have ordered reimbursement for the following reason.
44. CRT rule 9.5(3) that says the CRT will not order reimbursement of lawyer's fees in a strata dispute unless there are extraordinary circumstances. CRT rule 9.5(4) says the CRT may consider the complexity of the dispute, the degree of the lawyer's involvement, whether the conduct of a party or their representative has caused unnecessary delay or expense, and any other factors the CRT finds appropriate. Applying the CRT rules to this dispute, I find there were no extraordinary circumstances.

45. The strata argues it is entitled to reimbursement of its legal fees for other reasons, which I also dismiss.
46. First, SPA section 133 permits a strata corporation to do what is reasonably necessary to remedy a bylaw contravention. The strata says it incurred reasonably necessary legal fees to collect the Woodcraft invoice amounts under bylaw 39(3). Mr. Bodi did not provide submissions on this claim. However, given I have found Mr. Bodi did not owe the invoice amounts under bylaw 39(3), the strata is not entitled to collect them.
47. Further, section 133 requires the strata to strictly follow the procedural requirements of section 135 before requiring a person to pay costs of remedying a bylaw contravention. The evidence here is that the costs were imposed before Mr. Bodi was given an opportunity to respond. So even if Mr. Bodi was responsible under bylaw 39(3), the claim would fail. See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.
48. Second, the strata relies on bylaw 34(3) and says that bylaw authorizes it to recover legal fees involved in the collection of the Woodcraft invoices from Mr. Bodi. Bylaw 34(3) states in full:
- Strata members who cause small claims or CRT actions shall reimburse the Strata Corporation and save it harmless against any and all costs and expenses required to collect moneys owing to the Corporation, including legal fees, taxes, disbursements and other related expenses.
49. I accept that, on its face, bylaw 34(3) authorizes the strata to recover legal fees for this dispute. However it is unclear if the bylaw is enforceable under SPA section 121 for reasons that it contravenes the SPA. I say this because SPA section 171(6)(a) says that an owner who is being sued by their strata is not required to contribute to the expense of the lawsuit. SPA section 167(2) says an owner who sues their strata is not required to contribute to the expense of defending the suit. Section 189.4 says these sections also apply to CRT disputes. I find I do not need to determine if bylaw 34(3) is enforceable given I have already dismissed the strata's claim for other reasons.

50. For these reasons, I find Mr. Bodi is not responsible pay the strata \$10,000 for legal expenses and I dismiss the strata's claim.

## **CRT FEES AND EXPENSES**

51. 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 find Mr. Bodi was the successful party, so I find the strata must reimburse Mr. Bodi \$225.00 for CRT fees.

52. Other than the strata's claim for legal fees discussed above, no party claimed disputed-related expenses, so I order none.

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

## **ORDERS**

54. Within 14 days of this decision, I order the strata to:

- a. Reverse the Woodcraft invoices totalling \$11,749.50 from the account of #203, and
- b. Pay Mr. Bodi \$225.00 for CRT fees.

55. Mr. Bodi is entitled to post-judgement interest under the *Court Order Interest Act*, for CRT fees as applicable.

56. I dismiss the strata's counterclaims.

57. 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.

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J. Garth Cambrey, Vice Chair

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<sup>1</sup> The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. As part of that commitment, the CRT asks all parties to identify their pronouns and titles to ensure that the CRT respectfully addresses them throughout its process. James Bodi and Rob MacPherson did not provide their titles or pronouns to CRT staff, but submissions made by Rob MacPherson refer to Mr. Bodi and use the pronouns he, him, his. Based on these submissions, I have used the same title and pronouns for James Bodi in this decision. For Rob MacPherson, I have used the pronouns they, their, them or their full name.