



# Civil Resolution Tribunal

Date Issued: March 8, 2022

File: ST-2021-001294

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 3284 v. Nemeth, 2022 BCCRT 251*

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

The Owners, Strata Plan NW 3284

**APPLICANT**

**A N D :**

AGNES NEMETH

**RESPONDENT**

**A N D :**

The Owners, Strata Plan NW 3284

**RESPONDENT BY COUNTERCLAIM**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Eric Regehr

## **INTRODUCTION**

1. Agnes Nemeth owns a strata lot in the strata corporation, The Owners, Strata Plan NW 3284 (strata). The strata says that on January 15, 2020, Ms. Nemeth's hot water heater leaked and damaged the strata lot below. The strata says that it spent \$5,721.77 on emergency restoration services to prevent further damage. In the primary claim, the strata asks for an order that Ms. Nemeth pay this cost.
2. Ms. Nemeth says that the strata has no legal basis to require her to pay for the emergency restoration. She also says that the strata was at least partially responsible for the loss because the common property drain underneath her hot water tank was clogged. Finally, she questions whether all of the water that leaked into the strata lot below hers was from her hot water tank. She asks that I dismiss the strata's claim. She also counterclaims for an order that the strata remove the \$5,721.77 chargeback from her strata lot account.
3. Ms. Nemeth also claims that the strata has failed to provide access to records as required by section 36 of the *Strata Property Act* (SPA). The strata says that it could not respond because Ms. Nemeth's request was "way too general". Ms. Nemeth asks for an order that the strata give her access to the requested records.
4. Ms. Nemeth is represented by her daughter, MN, who is not a lawyer. The strata is represented by a strata council member.

## **JURISDICTION AND PROCEDURE**

5. 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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.

6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to hear this dispute through written submissions.
7. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
8. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the tribunal 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**

9. The issues in this dispute are:
  - a. Do the strata's bylaws require Ms. Nemeth to pay for the emergency restoration?
  - b. Has the strata failed to provide access to records as required by section 36 of the SPA?
  - c. What remedy is appropriate?

## **BACKGROUND**

10. In a civil claim such as this, the strata as the applicant must prove its case on a balance of probabilities, which means "more likely than not". Ms. Nemeth must prove her counterclaims to the same standard. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

11. The strata consists of 109 residential strata lots in several low-rise apartment buildings. Ms. Nemeth is an owner of strata lot 69 (SL69), which is on the third floor. Strata lot 52 (SL52) is directly below SL69.

## **EVIDENCE AND ANALYSIS**

### ***Do the strata's bylaws require Ms. Nemeth to pay for the emergency restoration services?***

12. The strata filed a complete set of bylaws in the Land Title Office on June 24, 2002, which repealed and replaced all previous bylaws and the SPA's Standard Bylaws. The key bylaw in this dispute is bylaw 4.4, which says that an owner must indemnify the strata for any repair or maintenance expenses to common property, common assets, or a strata lot that are caused by the owner's "act, omission, negligence, or carelessness". I discuss what this bylaw means below.
13. I will start with the relevant undisputed facts. In the evening of January 15, 2020, the resident of SL52 called the building's caretaker to report a leak coming through their ceiling. The caretaker and strata council president went to SL69 to shut off Ms. Nemeth's water and drain her hot water tank.
14. There was another leak in SL52 the next morning, even though Ms. Nemeth's hot water tank was completely empty. A restoration contractor attended SL52 that morning. The contractor charged the strata \$5,721.77 for this emergency work. Ms. Nemeth replaced her hot water tank on January 16, 2020.
15. On April 8, 2020, the strata charged the \$5,721.77 invoice to Ms. Nemeth's strata lot account. Ms. Nemeth has not paid the chargeback. Again, none of this is disputed.
16. Ms. Nemeth argues that bylaw 4.4 requires the strata to prove negligence for the chargeback to be valid. Ms. Nemeth says that the CRT and the court have consistently held that the words "act, omission, negligence, or carelessness" collectively import the standard of negligence into a chargeback bylaw. While the strata does not specifically comment on this argument, I find that it implicitly agrees with Ms. Nemeth's interpretation because it argues that Ms. Nemeth was negligent.

In any event, I agree with Ms. Nemeth that bylaw 4.4 means that the strata must prove that Ms. Nemeth was negligent for the chargeback to be valid. See, in particular, *The Owners, Strata Plan BCS 1589 v. Nacht*, 2019 BCSC 1785.

17. To prove negligence, I find that the strata must prove that Ms. Nemeth breached the standard of a reasonable strata lot owner, and that this breach was a cause of the water leak that damaged SL52. For the reasons that follow, even if I assume that the hot water tank leaked and damaged SL52, which is disputed, I find that the strata has not proven negligence.
18. The strata's only argument is that Ms. Nemeth should have replaced her hot water tank because it was nearly 10 years old when it allegedly leaked. The strata relies on periodic reminders it gives to owners in annual general meeting minutes to "inspect their hot water tank and evaluate the age of the tank to consider replacement in accordance with the manufacturer's recommendations". The strata says that Ms. Nemeth's hot water tank "would have been beyond the warranty period for hot water tanks", with no supporting evidence for this assertion. So, the strata says she was negligent for failing to proactively replace it before it allegedly leaked.
19. Ms. Nemeth has several responses to that argument. First, she provided a printout from her hot water tank manufacturer's website that said if a hot water tank is over 10 years old, "it may be a good idea to start thinking about a replacement". I agree with Ms. Nemeth that this recommendation does not suggest that a reasonable owner should replace a hot water tank as soon as it is 10 years old. So, I find that the manufacturer's recommendation does not support the strata's argument that a reasonable owner must replace a 10-year old hot water tank no matter what condition it is in.
20. Second, Ms. Nemeth provided the original receipt for the hot water tank, dated April 27, 2010. The invoice said that the cost included "10 year parts and labour", which I infer is a reference to a warranty. This is important for 2 reasons. First, the hot water tank was not even 10 years old on January 15, 2020. Second, the warranty had not expired.

21. Based on that evidence, I find that the strata has not proven that Ms. Nemeth's failure to proactively replace the hot water tank was negligent. The hot water tank was still under warranty and the manufacturer's only recommendation was to "start thinking about" replacing a tank when it was 10 years old, which the tank was not. As Ms. Nemeth points out, there is no evidence that Ms. Nemeth knew, or should have known, that her hot water tank needed replacing before the alleged leak. There is no evidence that Ms. Nemeth did or failed to do anything that caused the hot water tank to leak.
22. Having failed to prove negligence, I find that bylaw 4.4 did not permit the strata to charge the cost of the emergency restoration services to Ms. Nemeth. I dismiss the strata's claim for payment and order the strata to immediately reverse the chargeback on Ms. Nemeth's strata lot account.
23. Having reached that conclusion, I do not need to address the parties' other arguments about the leak.

***Has the strata failed to provide records as required by section 36 of the SPA?***

24. Section 35 of the SPA sets out the types of records and documents the strata must prepare and retain. Relevant to this dispute, section 35(2)(k) requires the strata to retain correspondence sent or received by the strata and strata council. Under section 4.1(5) of the *Strata Property Regulation* (SPR), the strata must retain correspondence for 2 years. Section 35(2)(n.2) requires the strata to retain "reports" about the repair or maintenance of "major items" in the strata. Under section 4.1(2.1) of the SPR, the strata must retain reports until the disposal or replacement of the items to which the reports relate.
25. Section 36(1) of the SPA says that the strata must provide access to or copies of records to an owner on request. Section 36(3) gives the strata 2 weeks to do so.
26. I note that Ms. Nemeth's daughter, MN, made the requests at issue in this dispute. MN is not an owner, so she has no right to any requested documents. However, I find

that it is clear from context that MN made these requests as Ms. Nemeth's agent. The strata has never taken issue with MN acting on Ms. Nemeth's behalf.

27. MN first requested records from the strata on November 17, 2020. She asked for the strata's plumbing plans, any reports about the strata's plumbing system, and all correspondence from the previous 2 years that related "in any way to any water issue or water leak in the strata, or to the plumbing system, or connections to the plumbing system". MN eventually received the plumbing plans directly from the municipality, so that request is not at issue here.
28. MN followed up several times between November 2020 and April 2021. On April 5, 2021, she made a new request extending her initial request for correspondence up to April 5, 2021.
29. The strata's property manager wrote MN on April 29, 2021. The property manager said the strata had no reports about any problem in the "domestic water supply or drainage". The strata also said it had not received any correspondence from an owner reporting a problem with water leakage from the water supply lines or the drainage system. The strata also provided 2 letters from 2009 about a hot water tank leak.
30. MN responded that the strata had not answered her request. I agree with MN that the strata's April 29, 2021 letter responds to much more specific requests than the requests that MN had actually made.
31. In this dispute, the strata does not deny that it must provide records under section 36 of the SPA. The strata also does not argue that it fully answered MN's request in its April 29, 2021 letter. Rather, the strata says that it could not respond because the request was "way too general", based on advice from its property manager.
32. Turning to the request for correspondence first, the strata does not say what about the request is "too general" to respond to. In principle, I accept that a request under section 36 of the SPA must be clear enough for the strata to know what records the owner wants. That said, I find that MN's request for correspondence is clear and specific. As Ms. Nemeth points out, all the request requires of the strata is to search

its correspondence for obvious keywords, such as water, leak, pipe, and plumbing. In other words, I find that the strata can fulfill the request by exercising some common sense and reasonable diligence. I find that the strata breached section 36 of the SPA by failing to provide access to the requested correspondence.

33. Turning to the request for reports, the strata does not dispute that the plumbing system is a “major item” under section 35(2)(n.2) of the SPA. However, the parties dispute what records are “reports”. Ms. Nemeth points out that there have been many repairs of the plumbing system over the past several years. She says that at least some of them must have led to the strata receiving a report. For its part, the strata questions whether all of its records about the repair and maintenance of plumbing issues are “reports”, such as invoices.
34. It is somewhat difficult to resolve this part of the dispute because there are no documents before me to consider. In general, I find that a report is a document that includes a description of repair and maintenance work that was either performed, anticipated, or recommended. As for invoices and receipts, they are not included in the list of records the strata must keep under section 35 of the SPA, so they are not producible under section 36. See *The Owners, Strata Plan NWS 1018 v. Hamilton*, 2019 BCSC 863. That said, some contractors provide descriptions of work done and other information in their invoices, which may make the invoice a “report” that the strata must keep. With that general description, the strata must use its judgment determine whether it has any reports in its possession about its plumbing system.
35. I also do not agree that the request for plumbing reports is too general. I accept that Ms. Nemeth’s request is broad in scope, and may be somewhat onerous for the strata to fulfill. However, I find that it is sufficiently clear and specific for the strata to reasonably know what Ms. Nemeth wants access to. I find that the strata breached section 36 of the SPA by failing to provide access to the requested reports.
36. I turn then to the remedy. In her submissions, Ms. Nemeth asks to extend her request for correspondence to December 6, 2021, when she made her submissions. The strata does not specifically object to this. Ms. Nemeth has a right to request those



documents at any time. Also, I find that it would not be onerous or unfair to the strata to extend the request since it will already have to search its records for similar correspondence. The CRT's mandate is to provide flexible and informal dispute resolution. With that in mind, and in the hopes of providing the parties with finality, I find it appropriate to incorporate this extended request into my order.

37. I also agree with Ms. Nemeth that the strata's property manager acts as its agent when communicating with contractors, owners, and other third parties, so she is entitled to the property manager's correspondence about plumbing issues. I also agree with her concession that the strata does not need to provide correspondence between strata council members. See *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610.
38. I therefore order the strata to provide Ms. Nemeth, or a designated agent, access to the requested records as set out in my more detailed order below.

## **TRIBUNAL FEES AND EXPENSES**

39. 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. Ms. Nemeth was the successful party in the strata's claim and her counterclaim. I therefore order the strata to reimburse Ms. Nemeth \$125 for CRT fees. Ms. Nemeth did not claim any dispute-related expenses. I dismiss the strata's claim for reimbursement of its CRT fees.
40. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Nemeth.

## **DECISION AND ORDERS**

41. I order that:
- a. The strata immediately reverse the \$5,721.77 chargeback on Ms. Nemeth's strata lot account.

- b. Within 2 weeks of this order, the strata provide Ms. Nemeth or her designated agent access to the following records:
    - i. Correspondence sent or received by the strata, the strata council, and the property manager about any water issue, water leak, the plumbing system, or connections to the plumbing system, from November 17, 2018, to December 6, 2021.
    - ii. Any report that the strata has obtained respecting any part of the strata's plumbing system.
  - c. Within 30 days of this order, pay Ms. Nemeth \$125 for CRT fees.
42. Ms. Nemeth is also entitled to post judgement interest under the *Court Order Interest Act*.
43. I dismiss the strata's claims.
44. 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.

---

Eric Regehr, Tribunal Member