



Civil Resolution Tribunal

Date Issued: March 11, 2022

File: ST-2021-005439

Type: Strata

Civil Resolution Tribunal

Indexed as: *Borchert v. The Owners, Strata Plan NW 2212*, 2022 BCCRT 274

B E T W E E N :

BALJIT BORCHERT

APPLICANT

A N D :

The Owners, Strata Plan NW 2212

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about plumbing expenses in a strata corporation.
2. The applicant, Baljit Borchert, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 2212 (strata). Ms. Borchert says the strata is

responsible for repairing and maintaining the water pipes under her townhome style strata lot, because the pipes are common property. She claims \$971.25 in pipe repair costs she says she paid.

3. The strata says the leaking water pipe is part of Ms. Borchert's individual heating system and so is not common property. It says Ms. Borchert is responsible for the repair costs under the strata's bylaws and so the strata is not responsible for the repair costs.
4. Ms. Borchert represents herself. The strata is represented by a 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). 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.
6. 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.
7. 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.

8. 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.
9. Ms. Borchert asked the CRT to allow disclosure of the parties' "facilitation discussions" to the tribunal member deciding this dispute. The strata consented to the disclosure as required under CRT rule 1.11. However, neither party submitted any facilitation discussion evidence. Although Ms. Borchert referred to these discussions in her submissions, I find nothing turns on whether or not the strata incorrectly believed a different strata plan existed. I am satisfied from reviewing the Land Title Office (LTO) documents that the strata plan in evidence is the only strata plan that exists.

ISSUES

10. The issues in this dispute are:
 - a. Is the strata required to repair and maintain the leaking pipe?
 - b. If so, must the strata reimburse Ms. Borchert \$971.25 in repair costs.

EVIDENCE AND ANALYSIS

11. In a civil dispute like this one the applicant, Ms. Borchert, must prove her claims on a balance of probabilities (meaning "more likely than not"). I have reviewed the parties' submissions and weighed the evidence submitted but only refer to that necessary to explain and give context to my decision.
12. The strata was created in 1984 with the deposit of the strata plan in the LTO and consists of 40 residential strata lots. Ms. Borchert purchased strata lot 15 (SL 15) in 2011. She does not reside in the strata lot but rents it out. None of this is disputed.
13. The strata plan shows that each strata lot is a separate building, with an attached patio and carport both designated as limited common property (LCP). Each strata lot building has a defined yard area surrounding it, also designated as LCP.

14. On October 20, 2020 Ms. Borchert's tenants discovered water seeping through SL 15's kitchen floor. Ms. Borchert contacted Blue Planet Plumbing and Heating Ltd. (Blue Planet), whose plumber, Tolga Aggul, investigated the source of the water leak. None of this is disputed.
15. According to Blue Planet's November 25, 2020 invoice, and Tolga Aggul's April 1, 2021 email, the water source was identified as a leaking pipe underneath SL 15's kitchen. Photos embedded in the invoice show the leaking pipe was buried in the ground, underneath SL 15's concrete slab foundation. The location of the pipe is confirmed in Tolga Aggul's email.
16. The strata says the water pipe is part of SL 15's heating system, which I find is supported by the evidence. In their April 1, 2021 email, Tolga Aggul says they jackhammered SL 15's concrete slab to locate the "heating line", having found that area "suspiciously warm". Based on this, I infer the underground pipe contained hot water and so was likely part of a heating or hot water system. Blue Planet's invoice discusses testing and flushing "zones" in Ms. Borchert's home, which I infer likely refers to heating zones. So, I find the underground pipe was not a main water supply line to SL 15, as argued by Ms. Borchert.
17. It is undisputed that Ms. Borchert asked the strata to pay the repair costs, but the strata refused.
18. Ms. Borchert attended a strata council hearing on March 29, 2021 and again requested reimbursement. In its April 5, 2021 response, the strata again declined to pay the repair costs, finding the responsibility was Ms. Borchert's. The strata said it was only responsible for the structure or exterior of the strata lot, relying on bylaw 11.1, which I will explain in detail below.

Is the strata required to repair the leaking pipe?

19. Section 72 of the SPA requires a strata to maintain and repair all common property (CP), apart from any LCP repair and maintenance obligations of the owners set out in the strata's bylaws. Bylaw 11.1 sets out the strata's repair and maintenance

obligations. Subsection (b) requires the strata to repair and maintain all CP that is not designated as LCP. Subsection (c) says the strata must maintain and repair LCP if the repair or maintenance occurs less than once per year or if it involves certain parts of the LCP which, I find, does not include pipes. Subsection (d) requires the strata to repair certain parts of a strata lot which I also find does not include pipes.

20. Ms. Borchert says the pipe is CP and so the strata is obliged to repair it under bylaw 11.1(b). It is unclear from the strata's submissions why it believes it is not obliged to repair the pipe under bylaw 11.1. However, from the strata's decision following Ms. Borchert's hearing, I infer the strata argues the pipe is part of SL 15 and so is Ms. Borchert's responsibility to repair. For the below reasons, I find this incorrect.
21. The strata plan shows SL 15 from a side elevation and shows that the boundary of SL 15 is at ground level. Section 68 of the SPA defines the boundary of a strata lot as the midway point in the floor or wall that separates the strata lot from another strata lot or common property, including LCP. As the pipe was located below SL 15's foundation, I find it is outside the strata lot boundaries and is not part of the strata lot. So, I find bylaw 11.1(d) does not apply to the pipe and therefore does not require Ms. Borchert to repair and maintain the pipe.
22. Under bylaw 11.1(b) if the pipe is CP, the strata must repair it. Under bylaw 11.1(c) if the pipe is LCP the strata must still repair it because it is undisputed the repair was required less than once per year. So, I find the pipe repair is the strata's obligation under bylaw 11.1, regardless of whether the pipe is CP or LCP.

Must the strata reimburse Ms. Borchert the repair costs?

23. The strata's obligation to repair and maintain is measured by the test of what is reasonable in all circumstances. The standard is not one of perfection (see *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363).
24. According to Blue Planet's November 25, 2020 invoice, it spent 8 hours of labour, at \$100 per hour, plus \$125 in materials, to jackhammer SL 15's foundation, locate the leak, repair the pipe, and flush the pipe to ensure no further leaks. Blue Planet

invoiced \$971.25 for the repair work. There is no indication that the amount of time spent, or the work completed, was not reasonable or necessary in the circumstances. Nor is there any indication that a less expensive, or any other repair option was available to Ms. Borchert. Further, it is undisputed that the leaking pipe was causing water to enter SL 15's ground floor level and so I find it was reasonable to immediately investigate the leak and repair the pipe to avoid any further damage.

25. On balance, and in the absence of any evidence to the contrary, I find the repair work and resulting costs were reasonable and necessary in the circumstances. As I found the pipe repair and maintenance is the strata's obligation under bylaw 11.1, I find the strata must reimburse Ms. Borchert \$971.25 for the pipe repair costs.

CRT FEES, EXPENSES AND INTEREST

26. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Borchert is entitled to prejudgment interest on the \$971.25 from the November 25, 2020 invoice to the date of this decision. This equals \$5.65.
27. 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 Ms. Borchert is entitled to reimbursement of \$225 she paid in CRT fees. She claims no dispute-related expenses.
28. The strata must comply with section 189.4 of the SPA, which includes not charging any portion of its costs for this dispute to Ms. Borchert.

ORDERS

29. Within 14 days of this decision, I order the strata to pay Ms. Borchert a total of \$1,201.90, broken down as follows:
- a. \$971.25 as reimbursement for repair costs,
 - b. \$5.75 in pre-judgment interest, and

c. \$225 as reimbursement for CRT fees.

30. Ms. Borchert is also entitled to post judgment interest under the COIA.

31. 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.

Sherelle Goodwin, Tribunal Member