



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Dhalwani v. The Owners, Strata Plan NW 58*, 2022 BCCRT 360

B E T W E E N :

KIRAN DHALWANI and MINAZ DHALWANI

APPLICANTS

A N D :

The Owners, Strata Plan NW 58

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This strata property dispute is about a charge back.
2. The applicants, Kiran Dhalwani and Minaz Dhalwani, own strata lot 107 (SL107) in the respondent strata corporation, The Owners, Strata Plan NW 58 (strata).

3. In June 2021, the applicants reported a leak in SL107's plumbing to the strata, who dispatched a plumber to investigate. The plumber found the leak was caused by condensation on a polyethylene water line (PEX line) in the applicant's basement. The applicants say the strata wrongly charged \$537.63 to their strata lot account for this service call. They say the condensation leak was caused by a faulty water main upgrade and was a "strata issue". They seek an order that the strata reverse the charge back from their strata lot account.
4. The strata says it only charged \$370.13 to the applicants' strata lot account for the service call expense. It says the PEX line issue was the applicants' responsibility to address, but it dispatched a plumber at the applicants' insistence, the applicants authorized the expense, and the other strata lot owners should not have to pay for it.
5. The applicants are represented by Kiran Dhalwani. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
9. 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.

Preliminary Issue

10. In their reply submissions, the applicants ask for an additional remedy that the strata rectify “deficiencies” in the PEX line. The strata disagrees that its contractor’s work was deficient or that it is the strata’s responsibility to repair or maintain the PEX line. It says it focused its response on the claims and remedies in the Dispute Notice but it still submitted argument and evidence about this new claim. The strata asks the CRT to provide “guidance” to help address it going forward. I note the CRT’s role is to resolve the dispute and not to provide general guidance to parties.
11. To decide the charge back issue, I must decide the overlapping issue of who was responsible to repair and maintain SL107 and the interior PEX line in SL107 in June 2021. I find the strata had a reasonable opportunity to respond to this additional claim and recognizing the parties’ continued relationship, I find they would benefit from some finality on the issue. After reviewing the submissions, I find in favour of the strata and so, it is not prejudiced by adding this new claim late in the process. For these reasons, I have decided this new claim.

ISSUES

12. The issues in this dispute is are:
 - a. Who was responsible to maintain and repair the PEX line inside SL107, including repairing any deficiencies?
 - b. Must the strata reverse the chargeback on the applicants’ strata lot account?

EVIDENCE AND ANALYSIS

13. In a civil claim such as this one, the applicants must prove their claims on a balance of probabilities. I have reviewed all the submissions provided by both parties, but only refer to the evidence and argument necessary to explain my decision.
14. As shown in the strata plan filed in the Land Title Office (LTO), the strata was created in 1971. It consists of 190 strata lots in multiple buildings of varying configurations. The applicants' SL107 is in building 16 that has 8 side-by-side attached strata lots. SL107 has 3 floors that includes a basement that is part of the strata lot.
15. The strata says that as part of a 30-year "retrofit" project it rerouted the exterior water main for building 16. It says the water main previously ran under the building but now enters the front foundation wall of each strata lot's basement and ties into each strata lot's interior PEX lines. Based on the strata council meeting minutes and financial statements, I find the SL107 installation was completed by Xpert Mechanical (Xpert) in October 2018. The strata's unrefuted evidence is that even though it paid for the full install, each owner dealt directly with Xpert for the interior PEX line installation and the applicants were present during the SL107 "retrofit". I note the applicants say the work was done in 2020 but there are no records in evidence of any further PEX line work in SL107 after 2018.
16. Three years after the install, the applicants reported a leak in their basement to the strata property manager, "MS" on June 30, 2021 and MS called in R & M Mechanical (R&M) to attend. The applicants agree they reported a leak but deny authorizing R&M to attend to SL107.
17. MS described their account of their conversation with Mrs. Dhalwani in an October 8, 2021 statement as follows:
 - a. On June 30, 2021 at around 4:15 pm, Mrs. Dhalwani called the property management company to report the leak in her basement.
 - b. MS and Mrs. Dhalwani spoke by phone for about 10 minutes about the leak.

- c. MS informed Mrs. Dhalwani it was most likely “her responsibility to take care of and that she may want to call her personal plumber”. Also, that if the strata dispatches a plumber and discovers the leak source is within her strata lot, she may be responsible for the emergency service call out.
 - d. Mrs. Dhalwani insisted that MS call a plumber immediately.
 - e. MS called R&M and gave its staff Mrs. Dhalwani’s phone number to arrange the service. MS then called Mrs. Dhalwani back and told her R&M was on their way and she should expect a call from them shortly.
18. The applicants do not directly address MS’s statement but say MS told Mrs. Dhalwani that they would call a council member. The applicants say MS should have called in Xpert because it had done the PEX line install. However, the applicants do not specifically refute the rest of MS’s statement nor explain why they let R&M into their strata lot to investigate if they had not authorized R&M to attend. I accept MS’s account of the conversation in their October 2021 statement as it is detailed, largely unrefuted and consistent with the surrounding facts. It is also supported by an email MS sent to council that same evening partially recounting what was discussed.
19. On Balance, I find Mrs. Dhalwani authorized MS to call in a plumber on her behalf to investigate the strata lot leak on an emergency basis knowing she might have to pay for the call out if it was a strata lot issue. I also find Mrs. Dhalwani authorized R&M to attend and this why she gave its technician access to her basement.
20. According to R&M’s June 30, 2021 Mechanical Service Report, its technicians found no leaks in SL107 but found a “lot of condensation”. It found stains on the dropped ceiling where the interior PEX line was resting on the ceiling tile or metal was touching the ceiling tile. R&M recommended insulating the PEX line and invoiced the strata \$527.63 for this emergency, after hours, service call.
21. On July 30, 2021, the strata wrote the applicants enclosing the \$527.63 invoice for the leak investigation with R&M’s conclusions. It told them it intended to charge the invoiced amount to their strata lot account as the issue was the strata owner’s responsibility under the bylaws.

22. The applicants objected to the charge back on the basis that R&M found the PEX line uninsulated and resting on the ceiling. They took the position that the condensation was an alleged deficiency in Xpert's plumbing work and a "strata issue". They also asked the strata to contact Xpert to address the PEX line issue.
23. After a hearing, the strata wrote the applicants on September 8, 2021 with its decision to cover \$157.50 of the invoice "as a generous gesture" and to provide straps to hang the PEX line. It reduced the charge back on the applicants' account to \$370.13, which undisputedly remains unpaid.
24. As mentioned, the applicants seek orders that the strata reverse the charge back and remedy the PEX line "deficiency".

Who was responsible to maintain and repair the PEX line inside SL107?

25. For the reasons that follow, I find the interior PEX line was part of SL107 and the applicants' responsibility to repair and maintain under the bylaws.
26. Bylaw 3 says owners must repair and maintain their strata lot, except for repair and maintenance that is the responsibility of the strata corporation.
27. Section 72 of the *Strata Property Act* (SPA) and the strata's bylaw 10.1 say that the strata must repair and maintain the common property (CP), common assets, and some parts of limited common property and strata lot restricted to the building's structure and exterior, stairs, railings, and other things attached to the building's exterior.
28. Under SPA section 1(1) a strata lot means "a lot shown on a strata plan". Section 1(1) defines CP to include:
 - (a) that part of the land and buildings shown on a strata plan that is not part of a strata lot, and
 - (b) pipes, wires, cables, chutes, ducts and other facilities for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio,

television, garbage, heating and cooling systems, or other similar services, if they are located

(i) within a floor, wall or ceiling that forms a boundary

(A) between a strata lot and another strata lot,

(B) between a strata lot and the common property, or

(C) between a strata lot or common property and another parcel of land,
or

(ii) wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property.

29. As mentioned, the strata plan shows that SL107's basement and floors above are part of the strata lot. So, I find SL107 basement's dropped ceiling and space between the ceiling and the floor above are all part of SL107. While there are no plumbing diagrams in evidence, the photographs show the PEX line ran just above SL107's dropped ceiling and partially rested on it. So, I find the PEX line running between those spaces is fully within SL107.

30. The next question is whether the PEX line falls within the definition of CP under 1(1)(b)(ii). The strata says the PEX lines service only the strata lot that they are in and the "plumbing" does not travel to other strata lots from within a strata lot and exits to the outside. The applicants, who carry the burden of proof, did not provide any contrary evidence about the PEX line configuration. The applicants also did not provide any evidence that establishes the PEX lines are capable of being or intended to be used in connection with the enjoyment of another strata lot or CP and so I find they are not. Based on the strata's unrefuted submissions, I find the interior PEX line in SL107's basement does not fall under the definition of CP in SPA section 1(1)(b)(i) or (ii). Instead, I find the PEX line forms part of their strata lot. So, I find the PEX line is the applicants' responsibility to repair and maintain under bylaw 3.

31. The applicants argue the PEX line essentially became a "strata issue" because they were installed by the strata's contractor, Xpert as part of the "upgrade" 1 year prior.

There is no evidence showing the strata ever assumed responsibility to maintain or repair the interior PEX lines after the installation was completed in 2018. I find the strata is not responsible for insulating or addressing any deficiencies in the interior PEX line insulation simply because it paid for its installation in 2018. I find the PEX line is the applicants' responsibility to repair and maintain under the bylaws. I dismiss the applicants' new claim that the strata repair the alleged PEX line deficiencies.

Must the strata reverse the chargeback on the applicants' strata lot account?

32. As part of their duty under bylaw 3, I find the applicants were responsible to investigate the condensation issue in SL107 and to hire their own plumber in June 2021 to address it. However, Mrs. Dhalwani called the strata property manager instead, who engaged R&M to attend to the reported leak on her behalf. The issue then is whether the strata, having hired R&M, was entitled to charge R&M's service call expense to the applicants' strata lot account
33. There is nothing in the SPA that explicitly authorizes the strata to charge an expense the strata incurred back to an owner's strata lot account. Several CRT decisions, including my own, have concluded that the strata can only apply a charge to an owner's strata lot account if it has a bylaw or enforceable rule that authorizes a charge back or an agreement that creates the debt: see *Rintoul et al v. The Owners, Strata Plan KAS 2428*, 2019 BCCRT 1007, *The Owners, Strata Plan LMS1092 v. Souki*, 2021 BCCRT 55, and *Morawski v. The Owners, Strata Plan LMS 3818*, 2022 BCCRT 111. Although CRT decisions are not binding on me, I find their reasoning persuasive and I agree with it.
34. Bylaw 38 "Responsibility of Owners" requires an owner to indemnify the strata from any strata lot maintenance or repair expense if the owner was "responsible" for it and the expense is not reimbursed by the strata's insurance policy. The strata did not make an insurance claim for this minor expense and so, it was not covered by the strata's insurance. Since the R&M expense was to investigate a reported leak in SL107 that turned out to be condensation and I already found the investigation was

the applicants' responsibility under bylaw 3, I find applicants are responsible to reimburse the expense under bylaw 38.

35. I also find the strata was permitted to charge the applicants by agreement. I find the strata incurred the disputed plumbing expense because the applicants insisted it call in a plumber on their behalf to attend to a strata lot issue that was the applicants' sole responsibility to address under bylaw 3. I find Mrs. Dhalwani implicitly, if not explicitly, agreed to be responsible for the service call, including the associated expense.
36. The applicants argue that strata should have called Xpert to attend instead of R&M because the condensation was from the alleged deficiency in Xpert's work. They say calling in R&M "resulted in the charge of \$527.63". To the extent the applicants are arguing the strata would have not incurred any charge if it had called in Xpert, I find they have not proven this fact. There is no evidence that Xpert's service call would have been free. I also find no reason the applicants could not have contacted Xpert directly to attend to the issue and the applicants authorized R&M to inspect the PEX line. So, I find nothing turns on the strata's property manager calling in R&M rather than Xpert to attend to the reported "leak".
37. For the reasons above, I find the applicants have not proven a basis to order the strata to remove the expense for R&M's service call from their strata lot account. I dismiss the applicants' claims.

CRT FEES AND EXPENSES

38. 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. As the applicants were unsuccessful, I find they are not entitled to any reimbursement.
39. The strata paid no CRT fees and claimed no dispute related expenses.
40. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDER

41. I dismiss the applicants' claims and this dispute.

Trisha Apland, Tribunal Member