



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan N46 v. Storch, 2022 BCCRT 585*

B E T W E E N :

The Owners, Strata Plan N46

APPLICANT

A N D :

ROBERT STORCH and INGRID STORCH

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about liability for an insurance deductible. The respondents, Robert Storch and Ingrid Storch, co-own strata lot 49 (SL49) in the applicant strata corporation, The Owners, Strata Plan N46 (strata). The strata says water from SL49 caused damage necessitating an insurance claim. The strata claims for reimbursement of the \$10,000 deductible.

2. The Storchs deny liability. They say they never acted negligently and never saw evidence of the water damage.
3. A strata council member represents the strata. Mr. Storch represents the Storchs.
4. For the reasons that follow, I find the strata has proven its claims and make the orders set out below.

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. I note that I asked the strata to provide proof that it paid the \$10,000 deductible it claims reimbursement for. The strata provided an October 15, 2020 invoice for the \$10,000 deductible from a restoration service contractor, and an October 16, 2020 receipt for the strata's payment of this amount. The respondents had the opportunity to review this evidence and provided submissions. So, I find there is no prejudice to the respondents in considering the invoice and receipt and I rely on it below.

ISSUES

10. The issue in this dispute is whether the Storchs must reimburse the strata \$10,000 for its insurance deductible.

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the strata as applicant must prove its claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
12. As noted above, the Storchs own SL49 in the strata. SL49 is directly above strata lot 43 (SL43). Some evidence refers to them as units 28 and 26, respectively, but for consistency I will refer to their strata lot numbers. Both strata lots are tenanted.
13. On July 27, 2020, SL43's tenant first noticed water damage. The parties disagree about whether there was any actual water damage and if so, what its cause was. I find the best evidence on this matter consists of an August 4, 2020 email from the strata's insurance adjuster, an August 26, 2020 email from a restoration contractor, and the invoice and receipts for the insurance deductible mentioned above. My reasons follow.
14. In the August 4, 2020, email, the adjuster wrote that the water damage in SL43 originated from a shower head in SL49. The adjuster wrote that he was advised SL49's occupant allowed water to spray onto the bathroom floor. Further, the adjuster wrote that his moisture meter showed SL49's bathroom floor was wet. Similarly, in

the August 26, 2020 email, the restoration contractor wrote that the cause of the water damage was a shower left on in SL49. This caused water to spill onto the washroom floor and travel down the wall cavity, flooding SL43.

15. I am also left with the October 2020 invoice and receipt that show the strata paid the insurance deductible to a restoration company for water damage repairs. I find it unlikely that the strata would do so if there was no damage.
16. The Storchs provided an August 2, 2021 text messages from their unnamed tenant to AT. AT lived in SL43. The tenant denied the leakage originated from their bathroom. The tenant said there was no stagnant water in their bathroom, but as noted above, the evidence shows the cause was water spraying onto the bathroom floor. The tenant did not otherwise address the adjuster's or restoration contractor's findings. So, I put little weight on the text messages and do not find them persuasive.
17. As there is no other evidence to contradict the adjuster or contractor, such as a written statement from the Storchs' tenant, I find the cause of the water damage originated from SL49.
18. In an October 2, 2020 letter, the strata's property manager requested that the Storchs pay the insurance deductible of \$10,000. The property manager referred to bylaw 31 as authority to do so. I discuss bylaw 31 below.
19. The Storchs say the deductible was only \$5,000 but relied on the strata's insurance policy for the period of November 29, 2018 to 2019. So, I find it does not apply. The October 2020 invoice and receipt also show the deductible was, in fact, \$10,000.
20. The Storchs say they were denied an opportunity to be heard. I disagree as they acknowledged requesting a hearing which the strata held on October 27, 2020. The strata decided to continue seeking payment of the deductible.
21. The Storchs also say that the strata denied their requests for documents at around this time. Section 36(1) of the *Strata Property Act* (SPA) says that if an owner requests access to any of these records, the strata must make the records available for

inspection and must provide copies. The Storchs provided no evidence that the strata ignored any such request and did not counterclaim for any documents.

22. I next consider the applicable law. Section 158(1) of the SPA says that an insurance deductible for a claim on the strata's insurance is a common expense. However, section 158(2) says subsection (1) does not limit the strata's capacity to sue an owner to recover the deductible portion if the owner "is responsible" for the loss or damage that gave rise to the claim.
23. I next consider the strata's bylaws. The strata registered a complete set of bylaws in the Land Title Office in October 2012. Of note, bylaw 31(1) says that an owner is deemed to be responsible for any loss or damage caused to the common property, limited common property, common assets or to any strata lot where the original cause of any such loss or damage originated within the owner's strata lot, to the extent that the loss or damage is not fully paid from the proceeds of an insurance policy.
24. Bylaw 31(3) says that if any loss or damage deemed to be the responsibility of an owner under bylaw 31(1) results in a claim against any insurance policy held by the strata, that owner is strictly liable to reimburse the strata for the full amount of any insurance deductible (my emphasis).
25. Given the above wording, I find that the strata is entitled to sue the Storchs for the \$10,000 deductible under SPA section 158(2). Further, I find that in order to succeed, the strata need only prove that the original cause of the water damage originated from SL49. The Storchs say they were not negligent, but I find the strata does not need to prove negligence in order to succeed. I have already found that the cause of the water damage originated from within SL49. So, I find the Storchs are strictly liable to reimburse the strata for its insurance deductible of \$10,000.

CRT FEES, EXPENSES AND INTEREST

26. 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 Storchs to reimburse the strata for CRT fees of \$225

27. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to prejudgment interest on the \$10,000 deductible from October 16, 2020, the date of the strata's request for reimbursement, to the date of this decision. This equals \$71.19.
28. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the Storchs.

ORDERS

29. I order that within 14 days of the date of this order, the Storchs pay the strata a total of \$10,296.19, broken down as follows:
 - a. \$10,000.00 for the insurance deductible,
 - b. \$71.19 in prejudgment interest, and
 - c. \$225 in CRT fees.
30. The strata is also entitled to post-judgement interest, as applicable.
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.

David Jiang, Tribunal Member