



Civil Resolution Tribunal

Date Issued: June 22, 2022

File: ST-2021-009048

Type: Strata

Civil Resolution Tribunal

Indexed as: *Edwards v. The Owners, Strata Plan LMS2600*, 2022 BCCRT 723

B E T W E E N :

BRAD EDWARDS and PIA EDWARDS

APPLICANTS

A N D :

The Owners, Strata Plan LMS2600

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicants, Brad Edwards and Pia Edwards, own strata lot 8 (SL8) in the respondent strata corporation, The Owners, Strata Plan LMS2600 (strata). On September 17, 2021, SL8's roof leaked, causing damage. The applicants say that the strata failed to repair and maintain the roof because it had not properly repaired it after previous leaks. They claim \$17,000 in repair costs.

2. The strata says that it reasonably responded to all of SL8's leaks, and generally met its repair and maintenance obligations. The strata asks me to dismiss the applicants' claim.
3. Brad Edwards represents the applicants. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

4. 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.
5. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
6. 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.
7. 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

8. The issue in this dispute is whether the strata failed to repair and maintain SL8's roof.

BACKGROUND

9. In a civil claim such as this, the applicants must prove their case on a balance of probabilities, meaning “more likely than not”. While I have read all the parties’ evidence and submissions, I only refer to what is necessary to explain my decision.
10. The strata consists of 55 residential strata lots in 20 buildings. SL8 (also called unit 16) is a townhouse-style 2-storey unit in a fourplex. The applicants have lived there since 2000. It is undisputed that SL8’s roof is common property that the strata must repair and maintain under section 72 of the *Strata Property Act* (SPA).

EVIDENCE AND ANALYSIS

Did the strata fail to repair and maintain SL8’s roof?

11. I will first set out the applicable law.
12. It is well established that a strata corporation is not an insurer. To fulfill its obligation to repair and maintain common property, the strata must act reasonably, not perfectly. This means that the strata is not responsible for strata lot repairs unless the applicants can prove that the strata negligently failed to repair and maintain the roof. See *John Campbell Law Corp. v. Strata Plan 1350*, 2001 BCSC 1342.
13. In *Slosar v. The Owners, Strata Plan KAS 2846*, 2021 BCSC 1174, the court noted that strata corporations are governed by strata councils, which are made up of volunteer owners who are not expected to have expertise in building maintenance or repair. It is therefore expected that a strata council will hire experts to give advice, make recommendations, and undertake repairs.
14. If the applicants prove that the strata acted unreasonably, they must also prove that the strata’s action (or inaction) caused the alleged damage to SL8. The test for causation is the “but for” test, which requires the applicants to prove that the damage would not have occurred but for the strata’s negligence. See *Clements v. Clements*, 2012 SCC 32, at paragraph 8. With that in mind, I turn to the evidence.

15. As mentioned above, SL8's roof leaked on September 17, 2021, which was undisputedly a day with heavy rainfall. The strata hired Coast Mountain Roof Ltd. to determine the leak's source and do the necessary repairs. Coast Mountain's September 30, 2021 invoice included a note that there was heavy moss build up in SL8's roof's valleys, which prevented water from flowing into the gutters. So, water backed up, flowed underneath the adjacent tiles, and leaked into SL8. Coast Mountain removed the moss. Coast Mountain did not do any other repairs.
16. It is unclear from the applicants' submissions whether they dispute that moss buildup caused the 2021 leak. Determining a leak's cause is a technical matter that generally must be proven with expert evidence. Coast Mountain's invoice does not say who determined the leak's source or state their qualifications. As such, it does not meet the criteria for expert evidence under CRT rule 8.3. However, CRT rule 1.2 allows me to waive the application of another rule. Given that Coast Mountain is a roofing contractor, I find that the person who wrote the report likely had the necessarily qualifications to determine what caused the leak and how to fix it. The applicants did not provide any expert evidence to offer an alternative explanation. With that, I find that moss buildup in SL8's roof's valleys caused the 2021 leak. I note that this conclusion is consistent with the photos Coast Mountain provided in its report, which showed obvious moss buildup along the valley.
17. The applicants argue that SL8's leak history proves that the strata was negligent. The applicants do not claim any damages from these 2 previous leaks.
18. In January 2019, there were 2 leaks, one over the laundry room and another in a bedroom. Roofix Services, Inc. attended to repair the leaks. According to its report, the vent over the laundry room was not properly installed, which caused one leak. A cracked tile over a bedroom caused the other leak. Roofix replaced the cracked tile and did a "temporary" repair of the vent. Roofix said that it would follow up with the strata to discuss a permanent vent repair. There was no suggestion in Roofix's report that there was moss building up on the roof.

19. It is undisputed that the strata never followed through with a permanent vent repair. The strata says that because there were no further leaks through the vent, it “deemed” the repair to be permanent. The applicants say this was negligent. I find that I do not need to determine whether the strata’s decision to ignore Roofix’s advice was unreasonable. This is because the 2021 leak did not come through the vent. I find that the applicants have not proven that the strata’s decision not to permanently repair the vent caused the 2021 leak because the 2019 leaks were unrelated to moss buildup.
20. There was another leak in May 2020. Fehr Strata Repairs Ltd. attended on May 22, 2020, to investigate. However, the applicants did not want contractors in their home for long periods due to COVID-19 concerns, so Fehr was unable to complete its investigation. In a June 15, 2020 email, Fehr said that the applicants had reported no further leaks after recent heavy rain, so it would wait until July 2020 to continue its investigation. The applicants say that Fehr never got back in touch, which the strata does not dispute. The applicants say that the strata should have followed up to make sure that Fehr did a proper investigation.
21. Again, I find it unnecessary to determine whether the strata’s lack of action was unreasonable. In an interim report dated June 8, 2020, Fehr said that its worker had been on the roof to measure off where the leak originated based on stain patterns in the attic. Based on Coast Mountain’s photos after the 2021 leak, I find that if moss buildup had caused the 2020 leak, it would have been obvious on even a brief visual inspection. I therefore find that Fehr would have mentioned moss buildup in the interim report if it was a problem at that time. So, even if the strata acted unreasonably by not following up with Fehr for more investigation, the applicants have not proven that this failure caused the 2021 leak.
22. The applicants also argue that the strata’s records show a generally poor approach to maintenance. I disagree. The strata provided records showing that in 2017 it paid Roofix over \$42,000 for a comprehensive repair and cleaning of the strata’s roofs, including moss removal. The strata obtained a depreciation report in 2019 that said the current condition of the roofs was “satisfactory” and maintenance had been

“good”. Fehr also provided the strata with a “complex-wide building maintenance inspection” in 2020, which did not recommend any immediate maintenance for the roof. I find that these records show that the strata’s approach to roof maintenance was reasonable during this time.

23. Also, at the August 25, 2021 annual general meeting, the strata council reported that it would explore moss removal in the upcoming year. The strata provided an undated letter from Coast Mountain’s president, Brad Gordon, recommending that the strata schedule moss removal for every 5 years. Brad Gordon’s qualifications are not listed, but given their role, I find that they likely have the necessary training or experience to provide expert evidence about roof maintenance. The applicants did not provide any evidence to contradict Brad Gordon’s opinion, so I accept it. The 2021 leak occurred less than 5 years after the last time moss was cleaned. So, I find that the applicants have not established that the strata should have cleaned the moss sooner as part of its regular moss removal schedule.

24. I therefore find that the applicants have not proven that the strata was negligent because it unreasonably failed to clean moss from SL8’s roof before the 2021 leak. I dismiss the applicants’ claim for repair costs. I find it unnecessary to address the parties’ arguments about damages.

TRIBUNAL FEES AND EXPENSES

25. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The applicants were unsuccessful, so I dismiss their claim for CRT fees and dispute-related expenses. The strata did not claim any dispute-related expenses or pay any CRT fees.

26. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

DECISION AND ORDERS

27. I dismiss the applicants' claims, and this dispute.

Eric Regehr, Tribunal Member