



Civil Resolution Tribunal

Date Issued: August 26, 2022

File: ST-2021-009250

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 1880 v. Harper, 2022 BCCRT 956*

B E T W E E N :

The Owners, Strata Plan LMS 1880

APPLICANT

A N D :

CYNTHIA HARPER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This strata property dispute is about a water leak.
2. The respondent, Cynthia Harper, owns a strata lot in the applicant strata corporation, The Owners, Strata Plan LMS 1880 (strata). The strata says that on January 13, 2020, the shut-off valve under Ms. Harper's bathroom sink leaked and damaged Ms.

Harper's strata lot and the strata lot below. The strata says that it spent \$4,148.21 on emergency restoration services to prevent further damage. The strata asks for an order that Ms. Harper pay that cost.

3. In her Dispute Response filed at the outset of this proceeding, Ms. Harper said that the leak was caused by "a problem in the building", and that the restoration costs should be covered by the strata's insurance. Ms. Harper later chose not to provide any evidence or submissions for this proceeding.
4. Ms. Harper is self-represented. 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). 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.

ISSUE

9. The issue in this dispute is whether the strata's bylaws require Ms. Harper to pay for the emergency restoration.

BACKGROUND

10. In a civil proceeding like this one, the applicant strata must prove its claims on a balance of probabilities (meaning "more likely than not").
11. I have read all of the parties' submitted evidence and arguments, but I refer only to what I find is necessary to explain my decision. As noted, Ms. Harper did not provide any evidence or submissions, despite having the opportunity to do so.
12. The strata consists of 90 strata lots in a single low-rise building. Ms. Harper owns strata lot 75 (unit 303), which is on the third floor. Strata lot 49 (unit 203) is directly below unit 303.
13. The strata filed a complete set of bylaws in the Land Title Office on September 10, 2014, which repealed and replaced all previous bylaws and the Standard Bylaws in the *Strata Property Act* (SPA). The strata also filed subsequent amendments that I find are not relevant to this dispute.
14. The key bylaw in this dispute is bylaw 1.10.2 (b), which says owners are strictly liable for any expense the strata incurs related to maintenance or repair of common property or a strata lot, if the expense results from plumbing pipes and fixtures that are part of the owner's strata lot, to the extent that the expense is not covered by the strata's insurance.

EVIDENCE AND ANALYSIS

15. It is undisputed that on the evening of January 13, 2020, the strata management company, HPM, received an emergency telephone call from the residents in unit 203 reporting water actively leaking through their ceiling. Ms. Harper was not then living in unit 303, so HPM contacted her to request that she investigate where the leak was coming from and how to stop it.
16. The strata says Ms. Harper later reported that the leak was coming from the shut-off valve under her bathroom sink, and that she immediately shut the valve off to stop the leak. In her Dispute Response, Ms. Harper said when she arrived at unit 303, she discovered the shut-off valve under the bathroom sink was already turned off, and she actually switched off the main water line. However, I find nothing turns on what valve Ms. Harper turned off because she does not dispute that the source of the leak was the shut-off valve under the bathroom sink.
17. The evidence shows that HPM called a restoration contractor to attend units 203 and 303 on January 14, 2020. The contractor charged the strata the claimed \$4,148.21 for emergency restoration work. In a January 20, 2021 letter, HPM advised Ms. Harper that she was responsible for reimbursing the strata's restoration costs under the bylaws. Ms. Harper has not paid the \$4,148.21.
18. As noted, Ms. Harper said in her Dispute Response that the leak was caused by some problem in the building. While she did not provide any evidence or submissions to further explain this, I infer that she meant it was not her negligence that caused the leak and so she should not be held responsible. However, bylaw 1.10.2 (b) holds owners strictly liable for certain expenses, which means it is unnecessary to find that the owner was negligent.
19. I find the emergency restoration expenses the strata incurred were to prevent further damage from the water leak, and so they were related to maintenance and repair of units 203 and 303. Given bylaw 1.10.2 (b), I find that Ms. Harper is liable for the strata's emergency restoration expenses if the leak was from plumbing pipes or fixtures that are part of her strata lot, and not common property.

20. “Common property” is defined in the SPA as including pipes and other facilities for the passage or provision of water, if they are located within a floor, wall, or ceiling that forms a boundary between 2 strata lots or between a strata lot and the common property, or if they are located “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”.
21. The parties provided limited evidence about the leaky valve’s location, other than saying it was under the bathroom sink. There is no indication that it was located within a floor, wall, or ceiling, so I find it was located wholly within Ms. Harper’s strata lot. I also find it is very unlikely the valve was used in connection with another strata lot or the common property. The restoration company’s incident report referred to it as the “bathroom sink shut-off valve”. So, I find the leaky valve was likely used solely as a shut-off for the water servicing Ms. Harper’s bathroom sink. Therefore, I find the leaky valve that caused the strata’s restoration expenses was a plumbing fixture that was part of Ms. Harper’s strata lot.
22. The strata provided evidence showing its insurance deductible for water damage at the time was \$10,000. Given the restoration costs were below the strata’s insurance deductible, I accept that the strata did not make an insurance claim for the emergency restoration expense.
23. For these reasons, I find the strata has proven Ms. Harper is strictly liable for its emergency restoration costs under bylaw 1.10.2 (b). I order Ms. Harper to pay the strata \$4,148.21.
24. I also find the strata is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA). I find this interest is owed from the date the strata first requested Ms. Harper pay the expense, which was January 20, 2021. This interest equals \$37.96.

CRT FEES AND EXPENSES

25. 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 Ms. Harper to reimburse the strata \$225 for CRT fees. The strata did not claim any dispute-related expenses.

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

ORDERS

27. I order that within 30 days of this decision, Ms. Harper pay the strata a total of \$4,411.17, broken down as follows:

- a. \$4,148.21 for emergency restoration services,
- b. \$37.96 in pre-judgment interest under the COIA, and
- c. \$225 as reimbursement of CRT fees.

28. The strata is also entitled to post-judgment interest under the COIA, as applicable.

29. 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.

Kristin Gardner, Tribunal Member