



Civil Resolution Tribunal

Date Issued: September 23, 2022

File: ST-2022-000881

Type: Strata

Civil Resolution Tribunal

Indexed as: *Lemire v. The Owners, Strata Plan K 53, 2022 BCCRT 1051*

B E T W E E N :

TRAVIS LEMIRE

APPLICANT

A N D :

The Owners, Strata Plan K 53

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. The applicant, Travis Lemire, owns strata lot 69 (SL69) in the respondent strata corporation, The Owners, Strata Plan K 53 (strata).
2. Mr. Lemire says the strata has neglected, ignored and delayed common property repairs around SL69 for years. Mr. Lemire says the strata assured him that exterior

building envelope repairs would be completed by October 2021. Mr. Lemire says despite starting, the repairs have been repeatedly delayed. Mr. Lemire seeks the following remedies:

- a. An order that the strata reimburse him \$5,621.59 in temporary accommodation costs from October 2020 to February 2021 during repairs, and
 - b. An order that the strata reimburse him \$2,094.17 for SL69's attic mold remediation.
3. In his application for dispute resolution, Mr. Lemire's claim summary says he is requesting an order for the strata to complete emergency repairs. However, Mr. Lemire did not include this as a requested remedy.
 4. The strata does not dispute that there have been delays in completing common property repairs. However, the strata says the repairs are underway. The strata says it is not responsible for Mr. Lemire's temporary accommodation costs during the repairs.
 5. The strata also says it has already reimbursed Mr. Lemire for the common property portions of the mold remediation costs. It says the remaining mold remediation costs are for work within SL69 and are Mr. Lemire's responsibility.
 6. Mr. Lemire is self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

7. These are the CRT's formal written reasons. 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.

8. 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.
9. 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.
10. 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.
11. CRT documents incorrectly show the name of the respondent as The Owners, Strata Plan, KAS 53. Based on section 2 of the *Strata Property Act* (SPA), the correct legal name of the strata is The Owners, Strata Plan K 53. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the strata's name above.

ISSUES

12. The issues in this dispute are:
 - a. Should the CRT order the strata to complete emergency repairs?
 - b. Is the strata responsible for Mr. Lemire's temporary accommodation costs during repairs?
 - c. Is the strata responsible for SL69's attic mold remediation costs?

EVIDENCE AND ANALYSIS

13. In a civil proceeding such as this one Mr. Lemire, the applicant, must prove his claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence, but I only refer to what I find relevant to provide context for my decision.
14. The strata plan filed in the Land Title Office (LTO) shows that the strata complex includes townhouse-style strata lots in several buildings. Mr. Lemire's strata lot, SL69, is in a building with 5 other strata lots.
15. The strata repealed and replaced its bylaws in the LTO in April 2013. I find these are the applicable bylaws. I discuss the relevant bylaws below. The strata filed a further bylaw amendment in March 2014 that is not relevant to this dispute.

Should the CRT order the strata to complete emergency repairs?

16. In his application for dispute resolution, Mr. Lemire's only requested remedies are reimbursement of \$2,094.17 for mold remediation in SL69's attic and \$5,621.59 in temporary accommodation costs. However, as noted, Mr. Lemire's claim summary, which is taken from his dispute application, says that he is requesting a CRT order to complete emergency repairs to common property under SPA section 72(1).
17. SPA section 72(1) says the strata must repair and maintain common property and common assets, subject to certain exceptions.
18. Bylaw 9 says the strata must repair and maintain common property that is not designated as limited common property. It also says the strata has a duty to repair and maintain certain portions of a strata lot, but that limited duty is restricted to, among other things, the structure of a building, the exterior of a building, and stairs, balconies and other things attached to the exterior of a building.
19. It is undisputed that the strata is responsible for, and has started, structural and exterior building envelope repairs. Photographs and videos in evidence confirm repairs have begun around SL69 and other strata lots in the same building.

20. Mr. Lemire says there was limited progress with the repairs through the spring and summer of 2021. Mr. Lemire says after multiple promises to finish the repairs before winter, steady work finally started last fall, which I find means fall 2021. Mr. Lemire says he hoped that the repairs might finally be completed, but says no work has been done since January 2022, despite more promises that work would start again in the spring. Mr. Lemire did not say what repairs remain outstanding, but says he is looking for an end date so he can sell his strata lot and his family can move on.
21. The strata says the contractor it hired to complete the repairs started the remaining repairs on May 30, 2022. Mr. Lemire did not address this in his submissions. The strata says it is on the proper path to completion, but has not been giving completion dates from its contractor yet because there are ongoing issues with supplies, transport, and workforce capacity.
22. It is unclear at the time of writing this decision what, if any, repairs remain outstanding.
23. I acknowledge Mr. Lemire's frustration that the repairs have taken longer than anticipated. I also acknowledge that he wants the repairs completed as soon as possible. However, Mr. Lemire does not dispute that repairs are underway. He also did not explain what repairs remain outstanding or provide a deadline that he says is reasonable for the repairs to be completed. He also did not raise any specific concerns with the repairs underway. Based on the limited evidence, I am unable to determine the extent of the required repairs, or which repairs, if any, remain outstanding.
24. Given all the above, I find there no purpose in ordering the strata to complete "emergency repairs" as requested by Mr. Lemire in his claim summary. Further, as noted, Mr. Lemire did not include this as a requested remedy in this dispute. So, I make no order for the strata to complete repairs.

Is the strata responsible for Mr. Lemire's temporary accommodation costs?

25. As noted, Mr. Lemire says he had to move out of his strata lot for over two months during some structural and building envelope repairs. Mr. Lemire asks for an order

that the strata reimburse him \$5,621.59 for temporary accommodation costs during the repairs.

26. For the following reasons, I find the strata has no duty in the circumstances to pay for Mr. Lemire's alternative living accommodations.
27. I find that neither the bylaws, nor the SPA require the strata to pay an owner's temporary living accommodations during repairs. In *Wright v. The Owners, Strata Plan #205*, 996 CanLII 2460 (S.C.), affirmed (1998), 43 B.C.L.R. (3d) 1, 1998 CanLII 5823 (C.A.), the court said that a strata corporation is not responsible for insuring strata lot owners against their own strata lot losses. I find the strata is not required to pay for Mr. Lemire's expenses and loss, so long as it was not negligent. Based on the evidence before me and for the following reasons, I find that the strata was not negligent.
28. To be successful in an action for negligence, Mr. Lemire must demonstrate that the strata owed him a duty of care, that the strata breached the standard of care, that Mr. Lemire sustained damage, and that the damage was caused by the strata's breach: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
29. The standard of care that applies to a strata corporation with respect to common property maintenance is reasonableness: see *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784.
30. There are undisputedly structural and building envelope issues that require, or required, repair. As noted above, it is unclear at the time of writing this decision whether the repairs have been completed. Mr. Lemire says the strata has unreasonably delayed investigating and completing the repairs. Mr. Lemire says the timeline for the repairs has dragged out and is not reasonable. He says it should not take the strata 8 months to begin investigating building envelope issues.
31. The strata does not dispute that it is responsible for the structural and exterior building envelope repairs, or that there have been delays in investigating and completing the repairs. However, the strata says various issues, including its difficulty getting owners

to participate in strata business, strata manager changes, funding difficulties, the COVID-19 pandemic's effect on interactions and daily activities, and difficulties accessing contractors, labour and supplies have all contributed to the delays. I infer the strata argues that it did not unreasonably delay the repairs.

32. Mr. Lemire says that he sent a letter to the strata requesting the strata investigate cracked stucco, mold, and other issues in May 2017. However, Mr. Lemire also says that over the next two years, the strata obtained several estimates for stucco repairs. Based on this, I find the strata began investigating the cracked stucco in 2017. None of the estimates allegedly obtained between 2017 and 2019 are in evidence. Mr. Lemire says another contractor attended to provide another stucco repair quote in 2019, and advised a strata council member that there was a bigger problem causing the stucco damage. Mr. Lemire says a restoration company then completed a walk through of SL69 and recommended a structural engineer to "figure out the problem". There is no statement or other documentary evidence from the contractor or the restoration company. However, the strata does not dispute this. Further, following these alleged events, Mr. Lemire sent a letter to the strata in September 2019, asking the strata to further investigate the structural issues. Given this, I accept that the strata and Mr. Lemire likely became aware of potential structural and building envelope issues in the fall of 2019.
33. I find the evidence shows that after Mr. Lemire's September 2019 letter, the strata took steps to investigate the potential structural and building envelope issues and start repairs. The evidence shows that in May 2020 the strata retained Alliance Response Building Solutions (Alliance) to investigate SL69's building's exterior for wall damage and mold. I find the evidence also shows that the strata actively took further steps to investigate and begin repairing the damage. This included, among other things, obtaining a structural engineer's assessment of the moisture damage to the exterior cladding around SL69 in November 2020, on Alliance's recommendation.
34. It undisputed that some repairs occurred around SL69 between October 2020 and February 2021. This is the timeframe that Mr. Lemire claims reimbursement for

temporary accommodations during the repairs. Photographs, videos, and the structural engineering report in evidence confirm this.

35. November 10, 2021 strata council meeting minutes also indicate that Alliance was working on further building envelope repairs in November 2021. The minutes noted that the strata council planned to award the full repair contract to Alliance because repairs had been outstanding for a year and other general contractors had “not been too fast to quote”. Finally, the minutes noted that the strata would continue to get quotes from other contractors based on the scope of work for the repairs to ensure multiple proposals for future repairs to other buildings.
36. The evidence also shows that the strata obtained an expanded project scope to repair the building envelopes for all the strata’s buildings in January 2022. At the March 22, 2022 AGM, the strata approved a $\frac{3}{4}$ vote resolution to conduct specific building remediation projects as well as any necessary repairs discovered during the work, and to obtain loan approval of up to \$1,625,000 to fund the repair work. I find this shows that the strata continued to take steps to fund and address the required building envelope repairs.
37. I find the above evidence shows that the scope and extent of the building envelope repairs are significant and required extensive and intrusive investigations to determine the extent of the damage. I find the evidence shows that the strata has taken steps to identify, investigate and plan for the building envelope repairs to be completed on all the strata lot buildings, including the building that contains SL69.
38. I note the strata discussed structural repairs “to a few buildings” at a March 2011 annual general meeting, without further detail. The limited evidence before me does not indicate whether the structural repairs discussed were related, or for the building containing SL69. Without more, I am unable to conclude that the strata negligently failed to maintain common property simply because structural repairs were discussed in 2011.
39. Further, the evidence does not include any recommendations for structural or building envelope repairs before 2020, and the strata undisputedly started repairs in 2020. As

noted, Mr. Lemire's own submissions indicate that the strata took steps to investigate the cracked stucco in 2017 and obtain quotes for the stucco repair, and it was only after the further investigations that the potential structural and building envelope issues were identified in 2019 and 2020.

40. In *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74, the court considered a case of water ingress into a strata lot. The court said that although the strata could perhaps have hastened its investigations of the problem, there was no evidence of deliberate foot-dragging, so the delay did not constitute negligence. The court said a strata council is not required to be perfect, only to act reasonably with fair regard for the interests of all concerned (paragraph 61).
41. It is undisputed that the strata's structural and building envelope repairs were delayed. However, the evidence before me does not show that the strata negligently delayed the repairs. After retaining Alliance to investigate repairs in May 2020, I find the strata acted reasonably by starting the repairs in October 2020, conducting further investigations as recommended, obtaining an expanded scope of work for other strata areas, and determining a funding method for further repairs identified. Although the repairs may not be entirely complete, I find there is no evidence of deliberate foot-dragging in this dispute. Overall, I find the evidence does not show that the strata fell below a reasonable standard in investigating and conducting the repairs. I find the strata acted reasonably in the circumstances of the exterior building envelope repairs. So, I find the strata was not negligent.
42. Even if the strata was negligent, the evidence does not show that Mr. Lemire would have incurred less temporary accommodation costs had the repairs been started earlier. Therefore, I find Mr. Lemire has not proved that any delay in identifying and starting the repairs caused his loss. Therefore, I dismiss Mr. Lemire's claim for reimbursement of \$5,621.59 in temporary accommodation costs during the repairs.

Is the strata responsible for Mr. Lemire's mold remediation costs?

43. As noted, Mr. Lemire asks for an order that the strata reimburse him \$2,094.17 for mold remediation in SL69's attic.

44. On October 2, 2020, Alliance quoted \$3,875.45 plus GST to remediate mold in SL69's attic, which also included removing and reinstalling the exterior soffits. It is undisputed that the strata has already reimbursed Mr. Lemire for the common property portions of the mold remediation. Mr. Lemire claims \$2,094.17 for the balance of Alliance's quote for mold remediation work within SL69.
45. Mr. Lemire says he wants reimbursement for SL69's attic mold remediation costs because the strata has still not repaired all the "contributing factors" that it is responsible for, including an alleged roof leak. The strata says it is not responsible for SL69's mold remediation costs.
46. Bylaw 2(1) says an owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the responsibility of the strata under the bylaws. Bylaw 2(3) says the attic space is noted as part of the strata lot area in the strata plan, and is therefore the owner's responsibility. I find the strata plan shows the attic space forms part of SL69. Therefore, I find that the bylaws require Mr. Lemire to pay for SL69's mold remediation costs, not the strata. There is also no SPA provision that requires the strata to pay those costs.
47. As with the temporary accommodation costs, I find the strata is not responsible for SL69's mold remediation unless the strata was negligent, and its negligence caused the mold. This is so even if a common property failure caused the mold (*Basic v. Strata Plan LMS 0304*, 2011 BCCA 231). As discussed above, I find the strata was not negligent. I also find that Mr. Lemire has not proved that there was an unrepaired roof leak that caused or contributed to the attic mold.
48. Even if the strata was negligent in failing to complete structural and building envelope repairs sooner, I find Mr. Lemire has not proved that SL69's attic mold would have been less had the surrounding building envelope repairs been undertaken earlier. So, I find Mr. Lemire has not proved that the strata's alleged negligence caused the mold. I find the strata is not responsible for SL69's attic mold remediation. Therefore, I dismiss Mr. Lemire's claim for reimbursement of \$2,094.17 in mold remediation costs in SL69's attic.

CRT FEES AND EXPENSES

49. 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. Mr. Lemire was unsuccessful, so I dismiss his fee claim. The strata did not pay any CRT fees and neither party claimed any dispute related expenses, so I award none.
50. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Lemire.

ORDER

51. I dismiss Mr. Lemire's claims and this dispute.

Leah Volkens, Tribunal Member