Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Coleman v. The Owners, Strata Plan LMS 2706*, 2022 BCCRT 1092

B E T W E E N :

NATHAN COLEMAN

APPLICANT

A N D :

The Owners, Strata Plan LMS 2706

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kate Campbell, Vice Chair

INTRODUCTION

1. This strata property dispute is about leak repair costs.

2. The applicant, Nathan Coleman, owns strata lot 38 (SL38) in the respondent strata corporation, The Owners, Strata Plan LMS 2706 (strata).

3. The applicant says the strata improperly imposed an $8,799.00 chargeback against SL38 for leak repair costs. The applicant says the strata failed to repair and maintain the common property plumbing, and did not provide proper documentation to support the chargeback. The applicant requests an order that the strata reverse the chargeback.

4. The strata says the leak was caused by the applicant's plumber's activities, which damaged 2 curb stops (water shutoff valves). The strata says the applicant hired the plumber to repair a leak in SL38's garage, and the plumber was unfamiliar with the type and location of the curb stops. The strata says that because the applicant hired the plumber without the strata's prior written consent, and the plumber caused the damage, the applicant is responsible for the chargeback under the strata's bylaws.

5. The applicant is self-represented in this dispute. The strata is represented by a strata council member. In this decision, I refer to the applicant as "they", as they did not provide a specific pronoun.

6. For the reasons set out below, I allow the applicant's claim, and order the strata to reverse the $8,799.00 chargeback.

JURISDICTION AND PROCEDURE

7. 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.

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 which

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. The applicant provided late evidence, after the CRT's deadline for providing evidence had passed. Since the respondent had the opportunity to review and respond to that evidence, I find it is procedurally fair to admit it, and I have done so.

ISSUE

12. Must the strata reverse the $8,799.00 plumbing repair chargeback?

BACKGROUND

13. In a civil claim like this one, the applicant must prove their claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.

14. The strata was created in 1997. The strata plan shows that SL38 is a 2-storey townhouse-style strata lot, with a basement-level garage that is part of the strata lot.

15. The strata filed consolidated bylaws at the Land Title Office (LTO) in June 2019. Also, the LTO documents show that the strata never repealed the Standard Bylaws in the *Strata Property Act* (SPA). So, I find the strata's bylaws are those filed in June 2019, plus the Standard Bylaws.

16. The parties agree that there was a water leak in SL38's garage on June 18, 2020. The applicant says the leak was on the live side (inside SL38) of the 1-inch ball valve that shuts off water to SL38. This is consistent with photos in evidence, and the strata does not dispute it.

17. Most of the parties' submissions are about what happened after the applicant discovered the leak. The applicant says they called the strata manager twice, shortly after discovering the leak, and received a callback from the strata's after hours emergency service. The applicant says that on each of these 3 calls, they were told that because the leak was inside SL38, it was not the strata's responsibility and the applicant should call a plumber.

18. Documents in evidence confirm that the applicant then contacted MVP Plumbing. MVP tried to shut off the curb stop, which controlled water flowing down the water pipe from the property line to SL38. According to a written statement from PP, MVP's owner, it was necessary to turn off the curb stop for SL38 in order to repair the leak, but it was difficult to find the correct curb stop. PP wrote that they tried to locate the correct curb stop with a curb stop water key tool, and they tried turning several curb stops, which were "spinning freely". PP wrote that none of the curb stops they tried turned off the water to SL38, so they "obviously served other units".

19. The applicant says that after working unsuccessfully for several hours, MVP left. The applicant described communicating with council members and the strata manager after that. The applicant says the leak in the garage got worse overnight. Later, the applicant hired Mr. Rooter Plumbing. Mr. Rooter's technician found the correct curb stop, which was buried in the garden, by using a metal detector. The technician shut off the water and repaired the leak in SL38.

20. The strata says that MVP damaged the curb stops for other strata lots. The strata says there was nothing wrong with the curb stops before MVP turned them, and afterwards they were damaged and required repairs. The strata says that because the applicant hired MVP, and MVP damaged the curb stops, the applicant must pay the repair charges.

21. A July 31, 2020 invoice from the strata's plumber, C&C Electrical Mechanical (C&C), shows the strata paid $8,799.00 to have C&C remove a "failed" curb stop, and install a new one. The parties agree that the strata charged back the $8,799.00 to the applicant, although neither party provided a copy of the chargeback letter.

22. The parties agree the curb stops are common property, and the applicant does not specifically dispute that they became damaged when MVP turned them. However, the applicant says the curb stops were 25 years old, the strata failed to maintain them, they were "in complete disrepair", and they were part of "Poly B infrastructure" that should have been replaced. The applicant also says the curb stops should have been labelled and easier to locate.

REASONS AND ANALYSIS

23. In *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512, the BC Court of Appeal said that without a bylaw or rule giving its authority to do so, a strata corporation cannot charge an owner for costs it has incurred. See also *Rintoul et al v. The Owners, Strata Plan KAS 2428*, 2019 BCCRT 1007.

24. In this dispute, the strata has not identified which bylaw it relies on in order to support the chargeback. In its submissions, the strata refers generally to the "Use of Property" section (bylaw 3) in the SPA's Standard Bylaws. However, there is nothing in bylaw 3 that specifically allows for a chargeback. Bylaw 3(1) says an owner must not use a strata lot or common property in a way that causes a nuisance or hazard to another person, or unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot. SPA section 133(2) allows the strata corporation to charge an owner for reasonable costs of remedying a bylaw contravention. However, SPA section 135 says that before requiring an owner to pay the costs of remedying a bylaw contravention, the strata must give written notice of the particulars of the complaint and a reasonable opportunity to answer it.

25. There is no evidence before me indicating that the strata met the SPA section 135 notice requirements. There is no information before me about what specific bylaw the applicant allegedly breached, and no evidence that the applicant was given the particulars of the complaint and an opportunity to answer it before the strata imposed the chargeback.

26. For these reasons, I find the strata cannot impose any chargeback on the applicant under the Standard Bylaws or SPA section 133.

Liability Under Strata Bylaws

27. I find that bylaws 12.3 and 12.4, from the bylaws filed in June 2019, are also relevant. These bylaws state as follows:

> 12.3 If an owner is responsible for any loss or damage to…common property…that owner must indemnify and save harmless the strata corporation from the expense of any maintenance, repair or replacement rendered necessary…
>
> 12.4 For clarity and without limiting the generality of the word "responsible" as interpreted by the courts or a tribunal in connection with section 158(2) of the [SPA], an owner is, under bylaw 12.3, responsible for:
>
> > (a) any loss or damage to the common property…where the cause of such loss or damage is the result of an act, omission, negligence or carelessness of the owner, and/or the owner's tenants, occupants, and visitors (including…employees, agents, contractors, guests or invitees).

28. The wording of these 2 bylaws is somewhat ambiguous. Bylaw 12.3, on its own, makes an owner liable for loss or damage for which they are "responsible".

29. The BC Supreme Court (BCSC) has interpreted the word "responsible" in the context of SPA section 158(2), which says a strata corporation may sue an owner in order to recover an insurance deductible, if the owner is "responsible for the loss or damage that gave rise to the claim". In those cases, the BCSC has said an owner may be

liable even where they are not at fault for the loss, and not negligent. This is because the BCSC has found that "responsible" is not the same as "negligent": *Yang v. Re/Max Commercial Realty Associates (482258 BC Ltd.)*, 2016 BCSC 2147 (CanLII), relying on *Wawanesa Mutual Ins. Co. v. Keiran*, 2007 BCSC 727 (CanLII), *The Owners of Strata Plan LMS 2835 v. Mari*, 2007 BCSC 740.

30. For example, in *Mari*, the BCSC considered an appeal of a provincial court decision. The provincial court ordered the owners to reimburse the strata corporation its insurance deductible, for water damage caused by a faulty switch in the owners' washing machine. The BCSC said in paragraph 12 that the use of the term "responsible for" in section 158(2), rather than terms such as "liable" or "negligent", meant that no finding of negligence was required for to make the owner liable for the deductible.

31. Some strata corporations pass bylaws that state a strata lot owner whose act or omission due to carelessness, recklessness, or negligence causes damage that is the subject of insurance will be responsible for payment of an insurance deductible. In *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 519, the BC Provincial Court said that such a bylaw was more restrictive than SPA section 158(2). That meant the strata corporation could not recover the deductible if the owner were merely "responsible". Instead, the wording of the bylaw meant the strata corporation had to prove the owner negligent. This approach was upheld by the BC Supreme Court on an appeal of a CRT decision: *Strata Plan BCS 1589 v. Nacht*, 2017 BCCRT 88, affirmed 2019 BCSC 1785 (Chambers).

32. In *Nacht,* a CRT member considered a dispute where a strata corporation sought to recover an insurance deductible from an owner following a leak caused by a failed toilet water supply line in the owner's strata lot. Strata bylaw 4.4(a) said, in part (emphasis added):

> 4.4(a) An owner must indemnify and save harmless the strata corporation from the expense of any maintenance, repair or replacement rendered necessary to the common property, limited common property, common

> assets or to any strata lot by the **owner's act, omission, negligence or carelessness** or by that of an owner's visitors, occupants, guests, employees, agents, tenants or a member of the owner's family…

33. In *Nacht,* the strata also had bylaw 4.4(b), which said that bylaw 4.4(a) does not limit, in any way, "the ability of the strata corporation to sue an owner pursuant to section 158(2)." The CRT member said that if 4.4(b) was not present, he would have no difficulty concluding that, as in *Morrison*, bylaw 4.4(a) meant that the owners must be negligent in order to be liable for the deductible. The CRT member then considered whether bylaw 4.4(b) changed the standard for liability, and concluded that it did not. He reasoned that that the plain reading of bylaw 4.4(b) indicated that the strata could sue to collect the deductible, and did not change the liability standard. He concluded that the strata had not proved negligence by the owners, and dismissed the strata's claim for the deductible.

34. As noted above, the CRT's decision in *Nacht* was confirmed by the BC Supreme Court.

35. Turning to the dispute before me, section 158(2) does not apply, as there was no insurance deductible. However, I find the reasoning about the meaning of the words "responsible" and "act, omission, negligence or carelessness" in the strata's bylaws is relevant, and I have applied it here. Also, as in *Nacht,* I find the question here is whether bylaw 12.4 changes the liability standard referred to in bylaw 12.3.

36. As summarized above, bylaw 12.3 makes an owner liable for any loss or damage to common property for which they are "responsible". The evidence before me shows that the curb stop was working effectively before the applicant's plumber turned it, and not afterward. So, I would likely find the applicant was responsible for the damage, and liable for the repair cost.

37. However, the question is, does bylaw 12.4 change the liability standard from "responsible" to "negligent"? I find it does, for the following reasons.

38. It is a common law rule of statutory interpretation that provisions (such as bylaws) should not be interpreted in a way that makes one provision redundant or unnecessary. This means bylaw 12.4 must mean something different from bylaw 12.3.

39. As explained above, prior case law, including *Mari* and *Nacht,* has interpreted the phrase "act, omission, negligence or carelessness" to mean "negligence". Since bylaw 12.4 specifically incorporates this language, and generically refers to prior case law, I find the applicable standard in this case is negligence. That is, the applicant is only responsible to pay to fix the curb stop if his negligence, or that of his contractor, caused it to break.

Was the applicant or his plumber negligent?

40. For the following reasons, I find the evidence before me does not prove that the curb stop damage was caused by negligence of the applicant or his plumber.

41. For the applicant to be found negligent, the evidence must show that the applicant owed the strata a duty of care, that the applicants' behaviour breached the standard of care, that the strata sustained damage, and that the damage was caused by the applicants' breach: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.

42. For the purposes of this decision, I accept that since the applicant hired MVP to do plumbing work, the applicant is vicariously liable for MVP's actions. In making this finding, I rely on bylaw 12.4, which says the owner will be liable for negligence by the owner's employees, agents, and contractors.

43. However, I find the evidence before me does not establish that the curb stop damage was caused by negligence.

44. In finding the applicant and MVP were not negligent, I place significant weight on a September 2, 2020 email from the strata's plumbing contractor C&C. The email was written by DG, whom I inter is an employee or principal of C&C. DG's credentials are not in evidence, so I find their email is not expert evidence as contemplated in the

CRT rules. However, since the strata hired C&C, and since C&C ultimately repaired the curb stop, I place significant weight on C&C's email.

45. In the email, DG wrote that after speaking to C&C's staff who attended the site, it is "very likely that the valve would have broken regardless of who tried to turn it". DG wrote that the valves were plastic, which was not recommended since they are "easier to break". DG also said there was substantial and unusual corrosion on one of the shafts, "some of the worst we've seen". DG also wrote:

> The valve that was broken was either jammed and a lot of force was used to open it, or the tech wasn't aware that this was a quarter-turn valve and forced it to continue turning, even after it's quarter-turn stop. In either case, the unfortunate reality is that this would be tough to blame on the plumber. In-ground valves are often very difficult to operate as they generally sit for years not moving, and in many cases, they seize up.
>
> While I can appreciate that you didn't like the communication you had with the other company, we can't say with certainty that they did anything wrong or intentionally.
>
> These are difficult situations, and in some cases blame is virtually impossible to nail down.

46. I find this evidence does not support the conclusion that negligence by the applicant or MVP caused the curb stop to break.

47. The strata says the applicant and MVP should not have turned the curb stop at all, since it did not serve SL38. The strata says it mobilized as quickly as it could by getting a company out to provide a quote and estimated time of repair, within 4 hours of when council was notified of the issue. I find the strata has not provided evidence to support that assertion, such as a copy of the estimate. Also, the strata makes a distinction between when the strata council was notified about the problem, and when the strata management firm was notified. The evidence indicates that the council was notified many hours after the strata manager was notified. The strata submits it is not

responsible for the strata management firm's response to emails and phone calls. I do not agree. Rather, the strata manager acts on behalf of the strata as its agent, and the strata is responsible for those actions.

48. The applicant says that after discovering the leak, they contacted the strata management firm and emergency line several times before MVP starting trying to turn off the curb stop. The applicant says they were informed repeatedly that the problem was the applicant's to solve, and the strata would not take action to turn off the water or fix the leak. I find the strata has not proved otherwise, and I find the emails and other evidence support the applicant's position.

49. The applicant also says the curb stops were buried and not labelled or marked, so it was difficult to identify which curb stop served SL38. The strata did not specifically dispute this, or provide contrary evidence, so I accept it.

50. The strata says the leak in the SL38 was not serious enough to require urgent action, but provided no evidence, such as a witness statement or plumber's opinion, to confirm that assertion. Rather, I accept the applicants' evidence, including the written timeline and photos of the leak, show that the leak required prompt action.

51. For these reasons, I find the evidence before me shows that the curb stop did not break due to negligence by the applicant or MVP. So, I allow the applicants' claim, and order the strata to reverse the $8,799.00 chargeback.

CRT FEES AND EXPENSES

52. As the applicant was successful in this dispute, under the CRTA and the CRT's rules I find they are entitled to reimbursement of $225.00 in CRT fees. Neither party claimed dispute-related expenses, so I order none.

53. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the applicant.

ORDERS

54. I order that:

    a. The strata must immediately reverse the $8,799.00 chargeback.

    b. Within 30 days of this decision, the strata must reimburse the applicant $225.00 for CRT fees.

55. The applicant is entitled to postjudgment interest under the *Court Order Interest Act*, as applicable.

56. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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.

Kate Campbell, Vice Chair