



# Civil Resolution Tribunal

Date Issued: November 17, 2022

File: ST-2021-009271

Type: Strata

Civil Resolution Tribunal

Indexed as: *Picard v. The Owners, Strata Plan BCS3236*, 2022 BCCRT 1246

B E T W E E N :

JOHANNA PICARD and ADRIAN PICARD

**APPLICANTS**

A N D :

The Owners, Strata Plan BCS3236, ORELLIA BOWLING and JACK  
STOUGHTON

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. This dispute is about water damage repairs in a strata corporation.
2. The applicants, Johanna Picard and Adrian Picard, own strata lot 78 (SL78) in the respondent strata corporation, The Owners, Strata Plan BCS3236 (strata). The other respondents, Orellia Bowling and Jack Stoughton, own strata lot 85 (SL85) in the

strata. The strata plan shows that SL78 is located directly underneath SL85, on the floor below.

3. The Picards say that water leaked from SL85's heat pump and entered their strata lot, damaging their bathroom ceiling. The Picards say Ms. Bowling and Mr. Stoughton are responsible for the resulting water damage repair costs under strata bylaw 28(5). The Picards claim \$1,470.90 in ceiling repairs.
4. Ms. Bowling and Mr. Stoughton say that they are not responsible for the Picard's ceiling damage because they were not at fault for causing the water leak.
5. The Picards also claim that the strata failed to enforce bylaws 28(5) and 28(6) by not resolving the Picards' water leak claim against Ms. Bowling and Mr. Stoughton. The Picards request an order requiring the strata to enforce these bylaws.
6. The strata says that it has no responsibility for the water damage because the leak did not originate from common property. The strata also says that it appropriately exercised its discretion in relation to the Picards' bylaw complaints.
7. The Picards, Ms. Bowling and Mr. Stoughton are self-represented. The strata is represented by articled student Kainat Rizvi.

## **JURISDICTION AND PROCEDURE**

8. 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.
9. 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.

10. 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.
11. 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.

***Claim for relief not raised in the Dispute Notice***

12. In their submissions, the Picards added a request for “at least \$2,000” for stress, inconvenience and loss of enjoyment of their strata lot related to the water leak. The strata objected to this claim because it was not requested in the Dispute Notice. Though the CRTA and CRT rules permit applicants to request to amend the Dispute Notice to add new claims or remedies, the Picards did not do so. I find the purpose of a Dispute Notice is to define the issues and provide notice to the respondents of the claims against them. CRT rule 1.17 says that the Dispute Notice will only be amended after the dispute has entered the CRT decision process where exceptional circumstances apply. I find no exceptional circumstances here that would justify adding new claims or remedies at this late stage in the CRT process. Therefore, I decline to address the Picards' claim for compensation for stress, inconvenience and loss of enjoyment of their strata lot. Further, I note that even if this issue had been considered, the Picards did not provide the required medical evidence to support a claim for damages related to stress (see the non-binding but persuasive decision in *Eggberry v. Horn et al*, 2018 BCCRT 224).

## **ISSUES**

13. The issues in this dispute are:
  - a. Must Ms. Bowling and Mr. Stoughton pay the Picards \$1,470.90 for ceiling repairs resulting from the water leak?
  - b. Should the strata be ordered to comply with bylaws 28(5) and 28(6)?

## **EVIDENCE AND ANALYSIS**

14. In a civil proceeding like this one, as the applicants the Picards must prove their claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
15. The strata was created in 2008 and consists of a multilevel, apartment-style building. As noted above, SL85 is directly above SL78.
16. The strata filed a complete set of bylaws with the Land Title Office (LTO) on August 8, 2016, which repealed and replaced all previous bylaws. The strata has also filed further bylaw amendments at the LTO which are not relevant to this dispute. I discuss the relevant bylaws in my reasons below.

***Must Ms. Bowling and Mr. Stoughton pay the Picards \$1,470.90 for ceiling repairs related to the water leak?***

17. Bylaw 28(5) says that strata lot owners must pay another owner the reasonable costs to repair any damage to that other owner's strata lot for which the owner is responsible or the source of which originated in the owner's strata lot, other than from common property.
18. In an agreed statement of facts, the parties all agreed that water leaked from a heat pump located in SL85, damaging SL78. The parties further agreed that the water leak was caused by a mechanical issue or melting ice from the heat pump. Further, the parties agreed that the heat pump was not common property. Based on this agreement, I find that the heat pump was part of SL85 and not common property.
19. The leak's source was also confirmed by a plumbing inspection by RJ, a project manager from National Hydronics Ltd. As a plumbing contractor, I find that RJ had sufficient expertise, as required by CRT Rule 8.3, to provide an expert opinion about the water leak. RJ sent the strata manager a July 6, 2021 email saying that they opened an access hole in SL78's bathroom ceiling and found a steady flow of water leaking from above. The email says that RJ determined that the leak originated from SL85's heat pump. RJ says the heat pump had frozen and water was dripping as it thawed. Based on the parties agreement, and RJ's undisputed observations, I find that that SL85's heat pump was the source of the water leak.
20. Ms. Bowling and Mr. Stoughton argue that they are not responsible for the water damage to SL78 because the leak was not their fault. However, I find that the Picards do not need to prove that Ms. Bowling and Mr. Stoughton were at fault under bylaw 28(5). Bylaw 28(5) says that a strata lot owner must pay for damage that either they are responsible or for damage originating from their strata lot. So, I find that bylaw 28(5) this does not require proof of Ms. Bowling's and Mr. Stoughton's negligence or fault if the Picards prove that the leak originated from SL85. Based on my finding above that the water leak originated from SL85's heat pump, I find that the owners of SL85 are responsible for the reasonable costs to repair the resulting water damage to SL78 under bylaw 28(5).

21. So, how much do Ms. Bowling and Mr. Stoughton owe?
22. Woodrich Installations (Woodrich) sent the Picards an August 27, 2021 quote to repair SL78's bathroom ceiling in the amount of \$1,470. GR, an Woodrich employee or principal, wrote on the quote that the ceiling drywall was saturated beyond repair and must be replaced. Woodrich's quoted covered the cost of replacing damaged drywall, debris removal and painting. As a contractor, I find that GR had sufficient expertise, as required by CRT Rule 8.3, to provide an expert opinion about the ceiling repairs. Based on GR's undisputed opinion that the ceiling drywall needed to be replaced, I find that Woodrich's quoted work was required as a result of the leak.
23. On September 30, 2021, the Picards emailed Ms. Bowling and Mr. Stoughton Woodrich's September 20, 2021 invoice in the amount of \$1,470 for the ceiling repair work. The Picards provided an e-transfer receipt showing that the Picard paid Woodrich's invoice, plus a \$0.90 e-transfer fee, on September 30, 2021.
24. Ms. Bowling and Mr. Stoughton did not dispute the amount of the repairs listed on Woodrich's invoice and there is no indication that these charges are unreasonable. So, I find that Ms. Bowling and Mr. Stoughton are responsible to pay \$1,470 for the repair costs under bylaw 28(5). Further, I find that the Picards incurred the \$0.90 e-transfer fee as a result of the water leak. So, I find that Ms. Bowling and Mr. Stoughton are also responsible for that expense.
25. For the above reasons, I find that Ms. Bowling and Mr. Stoughton must pay the Picards \$1,470.90.

***Should the strata be ordered to comply with bylaws 28(5) and 28(6)?***

26. The Picards also request an order requiring the strata to comply with bylaws 28(5) and 28(6). As discussed above, bylaw 28(5) says that strata lot owners must pay for damage to other strata lots. Bylaw 28(6) says the strata council, acting reasonably, will determine an owner is responsible for damage under this this bylaw. The Picards claim that the strata has failed to enforce these bylaws relating to the water leak from SL85.

27. As discussed above, I find Ms. Bowling and Mr. Stoughton are responsible for the Picards' \$1,470.90 repair costs. Since this issue has now been determined, I find it unnecessary to order the strata to also determine Ms. Bowling's and Mr. Stoughton's responsibility for the water leak repairs under bylaws 28(5) and 28(6). Rather, I find the Picards' claim against the strata requesting enforcement of bylaws is now moot, meaning it is no longer legally relevant. So, I dismiss the Picards' claim against the strata.

## **CRT FEES, EXPENSES AND INTEREST**

28. 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. The strata was successful in its claim. I therefore order Ms. Bowling and Mr. Stoughton to reimburse the Picards \$225 in CRT fees. None of the parties claimed any dispute-related expenses and so I award none.

29. The *Court Order Interest Act* (COIA) applies to the CRT. The Picards are entitled to prejudgment interest on the \$1,470.90 owed for reimbursement of Woodrich's repair costs from September 30, 2021, the date the Picards requested reimbursement of Woodrich's invoice to the date of this decision. This totals \$12.02.

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

## **ORDERS**

31. Within 30 days of the date of this order, I order Ms. Bowling and Mr. Stoughton to pay the Picards a total of \$1,707.92, broken down as follows:

- a. \$1,470.90 for repairs,
- b. \$12.02 in COIA prejudgment interest, and
- c. \$225.00 in CRT fees.

32. The Picards are also entitled to postjudgment interest from Ms. Bowling and Mr. Stoughton under the COIA. 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.

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Richard McAndrew, Tribunal Member