



Civil Resolution Tribunal

Date Issued: November 22, 2022

File: ST-2022-001376

Type: Strata

Civil Resolution Tribunal

Indexed as: *Perri v. The Owners, Strata Plan KAS 3313*, 2022 BCCRT 1257

B E T W E E N :

ELIZABETH PERRI

APPLICANT

A N D :

The Owners, Strata Plan KAS 3313

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about expenses arising from a water leak.
2. The applicant, Elizabeth Perri, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan KAS 3313. Water leaked from a toilet in Ms. Perri's strata

lot and caused damage to the strata lot below. Ms. Perri's plumber identified the leak's cause as an incorrectly-sloped drainpipe beneath or behind the toilet. The strata repaired the pipe and covered some, but not all, of Ms. Perri's claimed expenses related to the leak. Ms. Perri claims \$4,034.96 plus CRT fees. Her claims relate to plumbing costs, toilet replacement costs, lost work time, and accommodation costs that the occupants of the strata lot below asked her to pay.

3. The strata says Ms. Perri's claimed expenses are outside the scope of the strata's responsibilities.
4. Ms. Perri represents herself. A strata council member represents the strata. As I explain below, I dismiss Ms. Perri's claims.

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. Based on the evidence and submissions provided, I am satisfied that I can fairly decide this dispute without an oral hearing.
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 the parties and witnesses questions of 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 was negligent or breached its statutory duty to repair and maintain common property.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Ms. Perri must prove her claims 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.
11. The strata was created in 2007. It includes 176 residential strata lots. Ms. Perri owns strata lot 103 (unit 409), which is an apartment-style strata lot on the 4th floor of a building.
12. The facts related to the leaks are largely undisputed. On July 27, 2020, the toilet in Ms. Perri's ensuite bathroom was not flushing properly and began leaking. Ms. Perri does not say from where the toilet was leaking, or if any damage occurred. She called Border Mechanical Services Ltd. (Border), which dispatched a plumber. According to Border's invoice, the plumber pulled and reset the toilet, provided a higher wax ring and "wobble wedges", and tested for leaks before applying silicone to the toilet's base. Ms. Perri says the plumber also "cleared the pipe," but this is not noted on the invoice.
13. On September 16, 2021, Ms. Perri says a "similar problem" occurred, resulting in the same toilet leaking and not flushing. She says at the same time, the shower in the same bathroom began to drain very slowly. Ms. Perri shut the water off and contacted the building caretaker, Z. She says Z attended 4 times over the next few days but was unable to determine the cause of the problem. Ms. Perri was away from her

strata lot for a few days. When she returned on September 20, she was informed of water damage in unit 301 below.

14. At Ms. Perri's request, a Border plumber attended on September 21 but could not properly investigate the issue until September 27. On September 27, the plumber removed the toilet to access the drainpipe. Ms. Perri says the plumber required 3 different pieces of equipment to unblock the pipe, each longer than the last.
15. According to the September 27 invoice, the plumber ran a camera down the drain and found standing water "in the first few feet of piping," where he removed accumulated hair. The plumber wrote that the pipe seemed to be installed incorrectly as it was "sloped the wrong way," causing blockages and standing water. The plumber said the "only way to fix the standing water" was to "get the proper downward slope on the piping."
16. The strata accepted that the drainpipe was installed incorrectly and that it was the strata's responsibility to repair it. Given that the leak has not recurred since and the strata does not challenge Border's evidence, I find the incorrectly sloped pipe was the cause of the leak.
17. As noted, Ms. Perri claims \$4,034.96 in damages. She claims the following expenses:
 - a. \$373.73 for the July 27, 2020 Border invoice for the toilet reset.
 - b. \$1,268.40 for the September 27, 2021 Border invoice for removing a toilet, installing a new toilet, snaking the drain, and removing hair and debris.
 - c. \$103.95 for a November 22, 2021 estimate from Border that Ms. Perri says was incurred when the new toilet flapper became stuck and was constantly flushing (there is no invoice in evidence).
 - d. \$704.88 for accommodation costs that the occupants of unit 301 undisputedly asked Ms. Perri to pay while unit 301 was repaired.
 - e. \$1,584 for missing a day of work as a physician.

18. The strata's submissions are brief. It says it has taken responsibility for the plumbing issue and reimbursed Ms. Perri for "all her Border plumbing expenses, except for the toilet". The strata says the toilet did not need to be replaced. Ms. Perri says following a hearing, the strata agreed to reimburse her \$553 plus GST. I find this is Borden's September 27, 2021 invoice less \$655 plus GST for the toilet and installation.
19. I turn to the applicable law. Section 72 of the *Strata Property Act* (SPA) requires strata corporations to repair and maintain common property and common assets. The strata's bylaw 11 also says the strata must repair and maintain common assets and common property.
20. SPA section 1 defines common property to include "that part of the land and buildings shown on a strata plan that is not part of a strata lot." It also defines common property to include pipes and other facilities for the passage or provision of water, sewage, and drainage, among other similar services, if they are located within a floor, wall or ceiling that forms a boundary between a strata lot and another strata lot or common property. Pipes entirely within a strata lot are common property only if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or common property.
21. The exact location of the incorrectly sloped pipe is not clear from the evidence. However, I find it is not necessary to determine the pipe's precise location. Case law indicates that similar pipes are considered to form part of an integrated system servicing the strata corporation and therefore fall within the definition of common property that the strata must repair and maintain (see *Taychuk v. Owners, Strata Plan LMS 744*, 2002 BCSC 1638, and *Fudge v. Owners, Strata Plan NW2636*, 2012 BCPC 409). The strata does not argue that it was not responsible to repair the incorrectly sloped pipe, and appears to have accepted this when it paid for those repairs. So, I find the incorrectly sloped pipe that caused the leak was the strata's responsibility to repair and maintain.
22. That said, a strata corporation is not an insurer. Absent a bylaw that says otherwise, which I find does not exist here, a strata corporation is only liable to pay for repairs to

a strata lot, and other damages, where it has been negligent or breached its statutory duty to repair and maintain common property (see, for example, *Kayne v. LMS 2374*, 2013 BCSC 51, and *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231).

23. The standard that a strata corporation must meet in performing its duty to repair and maintain common property is reasonableness, not perfection (see *Weir v. Strata Plan NW 17*, 2010 BCSC 784). So, a strata corporation will not be found negligent unless it has been unreasonable in its approach to repairing and maintaining common property.
24. Ms. Perri argues that the strata is responsible for her expenses because they arose from incorrect installation of the sloped drainpipe. However, there is no evidence or suggestion that the strata installed the drainpipe.
25. There is also no evidence of previous occurrences of similar plumbing issues in the strata buildings. Although Ms. Perri says when her toilet first leaked in July 2020 Borden unclogged the drain, she does not say that she advised the strata of the pipe blockage. I find Ms. Perri has not proven that the strata was or should have been aware of incorrectly sloped pipes and failed to take appropriate preventative measures to prevent leaks.
26. Ms. Perri argues that the strata took too long to identify the source of the leak. She undisputedly noticed the leak on September 16, 2021, and Border identified the leak's cause as the incorrectly-sloped pipe on September 27. The unit 301 occupants reported damage no later than September 20. However, Ms. Perri said she shut the water off on September 16, so I find the damage was already done. There is insufficient evidence to conclude that if the strata had hired a plumber before Ms. Perri did, any damage would have been prevented or reduced. As noted above, the strata reimbursed Ms. Perri for her 2021 plumbing expenses, less the cost of the new toilet. I find the strata was not required to pay for the new toilet as Ms. Perri has not adequately explained why Borden could not reinstall her old toilet.
27. I acknowledge Ms. Perri's submission that the strata paid for repairs in unit 301, which the strata confirmed. However, I find that has no bearing on the strata's liability to Ms.

Perri. As noted, the strata is not an insurer, and in any event there is no evidence that unit 409 required repairs.

28. I also acknowledge Ms. Perri's submission that an insurance adjuster and 2 plumbers told her that the strata should pay some or all of her expenses. However, opinions about the ultimate issue in a dispute are for the CRT alone to decide. As such, I give these opinions little weight (see *Brough v. Richmond*, 2003 BCSC 512). As outlined above, it is the SPA, the bylaws, and the common law that govern whether the strata is liable to Ms. Perri.
29. I find that by having the pipe repaired promptly when made aware of the issue, the strata acted reasonably in fulfilling its duty to repair and maintain common property under the SPA and its bylaws. It follows that I find the strata is not responsible for any of Ms. Perri's claimed damages. I dismiss Ms. Perri's claim.

CRT FEES AND EXPENSES

30. Based on section 49 of the CRTA and the CRT rules, as Ms. Perri was unsuccessful, I find she is not entitled to reimbursement of CRT fees. Neither party claimed any dispute-related expenses.
31. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Perri.

ORDER

32. I dismiss Ms. Perri's claims and this dispute.

Micah Carmody, Tribunal Member