



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan KAS 3476 v. Larkin, 2022 BCCRT 1353*

B E T W E E N :

The Owners, Strata Plan KAS 3476

APPLICANT

A N D :

ROBERT LARKIN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about payment for mould remediation.
2. The respondent, Robert Larkin, co-owns a strata lot (SL5) in the applicant strata corporation, The Owners, Strata Plan KAS 3476 (strata). During renovations to his bathroom, Mr. Larkin discovered a leaking pipe and mould in an interior wall shared

with another strata lot (SL6). The strata arranged and paid for the pipe's repair and mould remediation. The strata then sought to recover 70% of the \$6,615 mould remediation fee from Mr. Larkin because it said 70% of the remediation work was done to fix his strata lot for which he is responsible. Mr. Larkin refused to pay. The strata asks that I order Mr. Larkin to reimburse it \$4,620 for mould remediation.

3. Mr. Larkin disagrees that he owes the strata any amount for the mould remediation paid for by the strata. He says the mould grew as result of the leaking pipe which the strata does not dispute. Mr. Larkin says the pipe was the strata's responsibility to repair and maintain, and so it must bear the whole expense of the mould remediation. Alternatively, he says if the mould remediation was not the strata's responsibility, it should have involved him in the remediation process so that he could have mitigated the expense. Mr. Larkin also says if mould remediation was not the strata's responsibility, the strata should also seek reimbursement of the fee from SL6 in proportion with each strata lot's responsibility for the wall.
4. Mr. Larkin is self-represented. The strata is represented by a strata council member.
5. For the following reasons, I find in favour of Mr. Larkin in this dispute.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
9. 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

10. The issue in this dispute is whether Mr. Larkin must reimburse the strata \$4,620 or some other amount for mould remediation.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant strata must prove its claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
12. The strata was created in 2008 under the *Strata Property Act* (SPA). It consists of 16 strata lots in 2 low-rise buildings. The strata plan shows SL5 is located on the main and upper floors of Building B.
13. In March 2021, the strata filed a complete new set of bylaws with the Land Title Office (LTO) that replaced all previously filed bylaws, and which I find are the bylaws applicable to this dispute. I discuss the bylaws relevant to this dispute below.
14. A title search shows Mr. Larkin became a registered co-owner of SL5 in September 2021. Around December 2021, he began renovating his bathroom. As noted above,

during the renovations, he discovered a leaking pipe in the wall between SL5 and SL6 and reported it to the strata. It is undisputed that the pipe is common property.

15. A strata corporation's repair and maintenance obligations are set out in SPA section 72. Subsection (1) says a strata must repair and maintain common property and common assets. The strata's Bylaw 12 repeats that obligation and creates strata repair and maintenance responsibilities for certain limited common property and parts of a strata lot that are not relevant here.
16. Bylaw 3(1) says an owner is responsible to repair and maintain their strata lot except where such repair and maintenance is the strata's responsibility.
17. The strata's December 13, 2021 Annual General Meeting minutes in evidence record that the strata hired a plumber to repair the leaking pipe. They also record a discussion about "(possible) mould from a water pipe leak in the wall." Emails from the strata manager to strata council members around December 17, 2021 show the strata manager reported speaking to a Condominium Home Owner's Association (CHOA) representative who told him the mould was the strata's responsibility. I infer from the evidence Mr. Larkin was one of the council members who received the strata manager's email. The strata consulted a mould remediation contractor, Armada Group (AG), around December 23, 2021, and then hired AG to do the mould remediation. AG's invoice showed it completed this work on January 11, 2022.
18. On December 30, 2021 strata council met with a lawyer to discuss the strata's repair and maintenance obligations. The minutes of that meeting record that the lawyer advised the strata it was responsible for fixing the leaking pipe but not for any mould remediation or repairs to SL5.
19. Courts have said the strata is not an insurer and the strata is not responsible for repairs to the interior of a strata lot unless it has been negligent (see *Kayne v. The Owners, Strata Plan LMS 2374*, 2013 BCSC 51 and *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231). This is the case even where the strata lot damage was caused by a common property failure (see *Wawanesa Mutual Ins. Co. v. Keiran*, 2007 BCSC 727).

20. However, I find I do not need to decide whether the strata was negligent in maintaining or repairing the common property leaking pipe that caused the mould growth in the bathroom wall. I also find I do not need to decide the boundary of the bathroom wall and whether the strata should have sought reimbursement for part of the mould remediation expense from SL6. I say this because even if the strata was not negligent and even if the mould was wholly within SL5, the strata still must have legal authority to charge the repair expenses back to Mr. Larkin.
21. In *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512, the Court of Appeal found that a strata must have a bylaw to charge an owner legal fees because legal fees are not “lienable” under section 116 of the SPA. Although prior CRT decisions are not binding on me, I am persuaded by the reasoning in *The Owners, Strata Plan LMS1092 v. Souki*, 2021 BCCRT 55. In that decision, the tribunal member noted that many CRT cases have extended the principle in *Ward* to repair costs because, like legal fees, there is nothing in the SPA that authorizes a strata corporation to charge them to an owner. A bylaw that makes owners responsible for repair of their own strata lot does not give the strata a right, after having repaired an owner’s strata lot without addressing responsibility for costs, to recover those costs from the owner. Without authority from the SPA, a strata corporation must either have a bylaw authorizing it to charge repair costs to an owner, or have the owner’s agreement (see for example *Tam v. The Owners, Strata Plan BCS 282*, 2017 BCCRT 93, *Boothroyd et al v. The Owners, Strata Plan VR 2402*, 2019 BCCRT and *Huang v. The Owners, Strata Plan EPS1910*, 2019 BCCRT 1072).
22. Here, I find there is no bylaw authorizing the strata to charge Mr. Larkin for the mould remediation expenses it incurred. The strata says there was an explicit understanding Mr. Larkin would contribute to the cost of mould remediation, but I find there is no evidence Mr. Larkin agreed to pay for any such expenses. Although there was correspondence between the strata manager and Mr. Larkin about the strata’s reimbursement expectation, I find that the first time the strata stated its position to Mr. Larkin was in a January 25, 2022 letter. That letter came well after AG’s January 11, 2022 invoice for the completed mould remediation work. So, I find the strata did not seek or secure Mr. Larkin’s agreement to reimburse it before undertaking any of the

mould remediation work. The evidence shows that after he received the January 25, 2022 letter, Mr. Larkin explicitly denied he had agreed to reimburse the strata and refused to pay the requested \$4,620.

23. Mr. Larkin also argued that the strata incurred expenses he could have mitigated or avoided by doing work himself and that for the strata to charge him these expenses after the work had been completed was unreasonable and unjust. I agree. Where a strata proceeds to repair a strata lot without the owner's agreement to pay for those repairs, it deprives the owner of several choices. These include the choice to complete the repairs or to complete the repairs in stages, the choice of contractors, and the choice to complete some or all the repairs himself. While in many cases it may be convenient and cost-effective to have the strata's contractors complete all the repairs, this does not excuse the strata's failure to seek an owner's consent (see *Boothroyd*). Here, even if the strata had no responsibility under the bylaws for remediating the mould in the bathroom wall, it has no authority to require Mr. Larkin to reimburse it without his express agreement in advance of the repair work.
24. For the reasons above, I dismiss the strata's claim for reimbursement of the \$4,620 mould remediation expense.
25. Mr. Larkin said he incurred costs to retile his bathtub, replace drywalling and mud and paint the bathroom because of AG's mould remediation work. However, Mr. Larkin did not file a counterclaim against the strata so I make no findings about these allegations.

CRT FEES AND EXPENSES

26. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The strata was unsuccessful so I dismiss its claim for CRT fees and dispute-related expenses. Mr. Larkin did not pay any fees or claim any dispute-related expenses.

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

ORDERS

28. I dismiss the strata's claims and this dispute.

Megan Stewart, Tribunal Member