



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Lal v. The Owners, Strata Plan BCS 1299, 2022 BCCRT 1367*

B E T W E E N :

CHARLENE LAL

APPLICANT

A N D :

The Owners, Strata Plan BCS 1299

RESPONDENT

AMENDED¹ REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about water damage repairs to a strata lot caused from a blocked drainpipe.

2. The applicant, Charlene Lal, owns strata lot 200 (#206) in the respondent strata corporation, The Owners, Strata Plan BCS 1299 (strata). Ms. Lal is self-represented. A strata council member represents the strata.
3. On November 25, 2021, the kitchen sink in #206 backed up causing water damage to #206 and 2 other strata lots, #105 and #207. Ms. Lal says the strata was negligent in maintaining the vertical common property drainpipe connected to the #206 sink drain. She seeks \$30,400, which she says is the amount required to repair #206.
4. The strata disagrees it was negligent. It also says Ms. Lal's claim is premature as she has not suffered any financial loss because the repairs have not been completed. The strata asks that Ms. Lal's claim be dismissed.
5. As explained below, I find in favour of Ms. Lal and order the strata to pay her \$28,678.84¹.

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 10 says the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
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 section 123 of the CRTA and the CRT rules, 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.

Preliminary Matters

Amended Dispute Notice

11. The original Dispute Notice was issued on April 28, 2022. It was amended to increase the amount of the claim and related interest to \$30,400. The strata was given an opportunity to revise its Dispute Response but elected not to do so. I find the strata's decision not to revise its Dispute Response created no procedural fairness issues.

SPA Section 31 Claims

12. In submissions, Ms. Lal raises issues suggesting the strata council has a fiduciary duty to work in the best interest of the strata owners and exercise the care, diligence and skill of a reasonably prudent person, citing *Strata Property Act* (SPA) section 31. Section 31 clearly applies to each individual strata council member and not the strata council as a whole. However, the court has found that individual strata lot owners do not have standing (legal authority) to make claims for breaches of SPA section 31. See for example, *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 and *Rochette v. Bradburn*, 2021 BCSC 1752. As earlier noted, CRTA section 10(1) requires that I refuse to resolve matters that are outside the CRT's jurisdiction, which includes Ms. Lal's claims under SPA section 31.

ISSUES

13. The issues in this dispute are:
- a. Who is responsible to repair and maintain the blocked drainpipe?
 - b. If the strata, was it negligent in its repair and maintenance of the drainpipe?
 - c. If so, what is an appropriate remedy?

BACKGROUND, REASONS AND ANALYSIS

14. As the applicant in a civil proceeding such as this, Ms. Lal must prove her claims on a balance of probabilities, meaning “more likely than not”. I have considered all the submissions and evidence provided by the parties, but I refer only to information I find relevant to give context for my decision.
15. The strata plan shows the strata was created in May 2005 under the under *Strata Property Act* (SPA). It consists of 378 townhouse-style and apartment-style strata lots. There are 6 low-rise buildings that contain the townhouse-style strata lots and 2 high-rise buildings that contain the apartment-style strata lots. Ms. Lal’s #206 is an apartment-style strata lot located on the 2nd floor of a high-rise building, partially above strata lot 185 (#105).
16. The strata filed a complete set of new bylaws with the Land Title Office (LTO) on November 19, 2008 that repealed and replaced all previous bylaws and the Standard Bylaws under the SPA. Several other bylaw amendments have been filed with the LTO since November 2008, some of which amend the strata’s and individual owners’ duty to repair. I find the last bylaw amendments applicable to this dispute were filed on November 4, 2019. I summarize the applicable bylaws in place on February 27, 2022 when Ms. Lal applied for dispute resolution.
- a. Bylaw 2(1) says an owner must “service, repair and maintain” their strata lot and “equipment to ensure proper operation for the benefit of the owner”.
 - b. Bylaw 2(6) says when water backs up into a strata lot through a drainpipe, the

- strata lot owner is responsible to call a plumber. If the owner can “provide evidence by video or photo taken by the plumber where the blockage existed within the drainpipe”, the strata will reimburse the owner the cost of the service call “should the evidence show where the blockage was located in the vertical portion of the strata owned drainpipe”.
- c. Bylaw 8(1) says the strata must repair and maintain “common property and equipment (use for the benefit of two or more owner[s])”, including common assets.
 - d. Bylaw 8(3) says the strata “does not have the mandate or authority to repair damage inside any strata lot” and that all affected owners are responsible for their own repairs “if the source of the problem cannot be identified”.

17. The following background is undisputed.

18. The residents of #105 noticed water dripping from their ceiling on November 25, 2021. The residents contacted the strata council president and were told to contact Milani Plumbing Heating & Air Conditioning (Milani), which they did. #206 was unoccupied when the #105 residents first discovered water leaking from their ceiling, but Ms. Lal returned home in the early evening to find water overflowing the kitchen sink. It is unknown how long the sink had been overflowing before Ms. Lal discovered it, but water was already on the #206 floors.
19. Ms. Lal contacted the strata manager’s emergency line, and Haakon Mechanical Services (“Haakon”) was dispatched to #206 on the strata’s behalf. Plumbers from both Milani and Haakon attended #206 and discussed the issue, which was recorded. The strata admits authorizing Haakon to proceed clearing the drainpipe from #306, directly above #206.
20. The total repair expenses for #206 and the 2 other strata lots affected by the water back up (#207 and #105) are well below the strata’s insurance deductible for water damage, so the strata’s insurance policy was not triggered.

Who is responsible to repair and maintain the blocked drainpipe?

21. SPA section 72 and bylaw 8(1) make the strata responsible to repair and maintain common property. Ms. Lal says the blocked drainpipe was a vertical pipe located within a wall between #206 and another strata lot that services her kitchen sink and sinks in other strata lots. She says the strata is responsible to repair and maintain the drainpipe because it is common property. Ms. Lal relies on the definition of common property under SPA section 1(1) that includes pipes located in a wall that forms a boundary between 2 strata lots. I agree the vertical drainpipe is common property as defined under the SPA. Based on the overall evidence and submissions, I find it was the vertical drainpipe that was blocked.

22. The strata also agrees the vertical drainpipe is common property, but suggests Ms. Lal did not establish the blockage occurred in the vertical portion of the drainpipe. Rather, in submissions, the strata suggests the blockage may have occurred where the #206 kitchen drain line connects to the vertical pipe, suggesting the blockage came from #206. I do not agree with strata. I say this because the strata's own plumber, Haakon stated on its invoice that it augured the main drainpipe from #306, which I find is the vertical drainpipe, and successfully broke up the blockage. This is supported by the Milani plumber who wrote on the Milani invoice that "a blockage was cleared in the drain that services the kitchen sinks in the #206, #306 ... riser" by Haakon. Also, in a December 14, 2021 email to Ms. Lal, the strata manager confirmed the strata council agreed the blockage was in the vertical pipe as reported at the December 13, 2021 strata council meeting.

23. I also do not agree with the strata that the recorded conversation of the 2 plumbers submitted in evidence suggests the blockage may have occurred where the #206 kitchen line connects to the vertical pipe. Based on my review of the audio evidence, I find the recorded conversation refers to a horizontal pipe, but it does not provide any context to or the location of the horizontal pipe. Nor does the conversation specifically reference a drainpipe in #206.

24. Further, once Haakon cleared the blockage in the main drainpipe from #306 , the #206 kitchen sink stopped flooding, which I find confirms it was not the #206 drainpipe that was blocked. Based on all of the evidence and submissions, I agree with Ms. Lal's argument and find that the blockage was most likely located in the vertical drainpipe between #206 and the strata lot below. Therefore, it follows the blockage occurred in a common property pipe that the strata is responsible to repair and maintain.

Was the strata negligent in its repair and maintenance of the drainpipe?

25. I note that one of the strata's arguments is that Ms. Lal was negligent because she did not call a plumber as required under bylaw 2(6). The strata did not file a counterclaim, but I also note it was the strata manager that called Haakon to attend #206. While it might be considered to be a bylaw breach, I find the fact that Ms. Lal did not call a plumber cannot be the cause of the plugged drainpipe. So, even if the strata did file a counterclaim to recover damages, I would not have found Ms. Lal to be negligent.

26. Subject to its bylaws, a strata corporation is not responsible for repairs to the interior of a strata lot unless it has been negligent: see *Kayne v. 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.

27. In this dispute, I have found that the blockage occurred in a common property drainpipe. On my review of the strata's bylaws, I find there are no bylaws making the strata responsible for interior repairs to a strata lot. Therefore, in order for Ms. Lal to be successful, she must prove the strata was negligent. To prove negligence, she must show that the strata owed her a duty of care, the strata breached the standard of care, she sustained damage, and the damage was caused by the strata's breach: see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at paragraph 3.

28. The courts have clearly established a strata corporation's standard of care for repair and maintenance of common property under SPA section 72, such as the vertical drainpipe here, is reasonableness. See for example, the recent BC Supreme Court decision in *Slosar v The Owners, Strata Plan KAS 2846*, 2021 BCSC 1174, at

paragraph 66. This means that Ms. Lal must prove the strata breached its standard of care by acting unreasonably when it completed its repair and maintenance of the vertical drainpipe. I find that she has.

29. The strata's caretaker's written statement says they have been employed as caretaker for the past 12 years. The caretaker says that if a sink backup occurs during their working hours, the occupant can call them to report the problem and to help the occupant "assess what to do next". The caretaker also says they recall "a handful" of kitchen sink backups occurred during their 12-year employment but that none were as severe as the backup that is the subject of this dispute. I take it from the caretaker's statement that kitchen sink backups occurred in the building, so I find the strata was aware that by not regularly cleaning vertical drainpipes, there was a risk of damage occurring.
30. The strata says it acted reasonably because it regularly has the drainpipes flushed every 2 years even though its contractor recommends flushing the drainpipes every 3 to 5 years. The strata provided a written statement from its caretaker attesting the contractor recommendation of 3 - 5 years was received in 2014 or 2015. The strata did not provide a written statement directly from its contractor confirming what cleaning frequency is sufficient, but I put some weight on the caretaker's confirmation of the 3 - 5 year recommendation. Conversely, Ms. Lal obtained an opinion from Haakon on August 30, 2022 that recommends kitchen stack (drainpipe) cleaning within 1 - 2 years, which Haakon says is "annual". Ms. Lal also provided printouts of website articles from what appears to be 2 other plumbing contractors that also recommend annual drainpipe cleaning.
31. I have reviewed the drain cleaning invoices submitted by the strata and find the evidence does not support the strata's assertion the vertical drainpipes are cleaned every 1 - 2 years. The strata submitted invoices from its previous contractor, Xpert Mechanical, (Xpert) relating to drainpipe cleaning for the high-rise building containing #206. I summarize the invoices as follows:

- a. A January 16, 2014 invoice states "... pressure washed the drain lines ... as per quotation Q60626". Quotation Q60626 was not provided.
 - b. A March 25 2015 invoice states "... cleaned the drain lines... as per quotation". Again a copy of the quotation was not provided, so I cannot determine exactly which drain lines were cleaned.
 - c. A January 2017 invoice states "... cleaned the kitchen sink drain lines for the upper floors as per quotation Q80266". The quotation was not provided.
 - d. An April 2019 invoice states "Snaked and pressure washed the kitchen sink drain lines from the 2nd floor suites".
32. The next drain cleaning invoice submitted was dated February 28, 2022 from Haakon. However, the invoice states only the parkade storm drains and perimeter storm drains were cleaned. It does not state any vertical drainpipes were cleaned. Despite this, the parties agree the vertical drainpipes were cleaned in February 2022.
33. The evidence shows that, prior to the November 2021 backup, the kitchen drainpipes below #206 were cleaned in April 2019, about 2 ½ years before the pipe backup. Without seeing the quotations referenced in the earlier invoices, I cannot determine which drainpipes were cleaned as some of the drainpipes mentioned on the invoices could be horizontal or perimeter storm drainpipes, like those shown as being cleaned on the February 2022 Haakon invoice. I take from this evidence that the strata did not have a maintenance plan in place to regularly clear the vertical drainpipes, even though it essentially admits that regularly cleaning of the drainpipes is required to prevent backups. But that does not mean the strata is negligent.
34. The evidence before me indicates the drainpipe cleaning should be between 2 and 5 years. Based on the overall evidence, I find the required frequency for cleaning the drainpipe is closer to 2 years than to 5 years. While the timeframe from the last cleaning in April 2019 to the leak was 2 ½ years, there is no evidence the strata had made arrangements to have the vertical drainpipes cleaned, or even intended to have the drainpipes cleaned, before the November 25, 2021 back up occurred. Put another

way, I find it likely the strata arranged for appropriate drainpipe cleaning only as a result of the November 25, 2021 back up, which the parties agree occurred in February 2022. Had the backup not occurred, it is unclear when the drainpipes would have been cleaned.

35. I summarize the facts as follows:

- a. The strata knew regular drainpipe cleaning was required since at least 2014.
- b. The strata agrees that 2 years was a reasonable time between cleanings given it says that was the frequency the cleanings were completed.
- c. The strata did not have a scheduled maintenance program in place for the drainpipe cleaning.
- d. The strata has failed to prove the cleaning was completed every 2 years.
- e. There is evidence that kitchen sinks had backed up before November 2021, although not to the same extent.

36. On this evidence, I find on a balance of probabilities, the strata did not clean the vertical drainpipes in the building where #206 is located on a reasonable basis.

37. Rather, I find the strata acted unreasonably in attending to the repair and maintenance of the drainpipes and breached its standard of care. Therefore, I find the strata was negligent.

What is an appropriate remedy?

38. The strata says that Ms. Lal's claim for damages is premature as she has not paid for any repair expenses. I disagree, although I do not award Ms. Lal the total amount claimed for the reasons that follow.

39. Ms. Lal submitted an undated invoice from Transparent Contracting Ltd. (Transparent) in the amount of \$22,589.42 and a quotation from Transparent to supply and install new backsplash totalling at \$5,670.00, for a total of \$28,259.42. The invoice states the services were provided, indicating the work was completed. Further, the work details

listed on the invoice are consistent with estimated scope of work obtained by Ms. Lal's insurer when the backup occurred, except for backsplash repairs. In particular, the Transparent invoice does not describe any backsplash repairs were completed. Given the insurer's scope of work was completed near the time the water damage occurred included backsplash repairs, I find it reasonable to accept that backsplash repairs or replacement was required. I accept the backsplash quotation on this basis.

40. There are no other repair invoices or quotations for #206 in evidence, so it is unclear how Ms. Lal arrived at her claimed amount of \$30,400.
41. The strata did not argue Ms. Lal's claimed expenses were unreasonable, so I find they are not.
42. For these reasons, I find the strata must pay Ms. Lal \$28,259.42 for damages to #206 resulting from its negligence.

CRT FEES, EXPENSES AND INTEREST

43. 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 not to follow this general rule in this dispute. Ms. Lal was the successful party and paid \$225 in CRT fees, so I order the strata to pay Ms. Lal this amount.
44. Neither party claimed dispute-related expenses, so I make no order for reimbursement.
45. The *Court Order Interest Act* (COIA) applies to the CRT. However, it is unclear when Ms. Lal paid for the repairs to #206 completed by Transparent and she has not paid for the backsplash replacement. I find it reasonable that the repairs were completed to #206 by Transparent within 6 months of the loss. Therefore, on a judgement basis, I allow pre-judgment interest on the Transparent invoice from May 25, 2022, 6 months after the damage occurred to the date of this decision and no interest on the backsplash quotation. This totals \$194.42.

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

ORDERS

47. I refuse to resolve Ms. Lal's claims under CRTA section 10(1) to the extent they involve SPA section 31.

48. Within 30 days of the date of this decision, I order the strata to pay Ms. Lal a total of \$28,678.84¹, broken down as follows:

- a. \$28,259.42¹ for damages,
- b. \$225.00 for CRT fees, and
- c. \$194.42 for pre-judgment interest under the COIA.

49. Ms. Lal is entitled to post-judgment interest under the COIA, as applicable.

50. 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.

J. Garth Cambrey, Vice Chair

¹ Amendment Note: Paragraphs 5 and 48 have been amended to correct an inadvertent error under authority of section 64 of the *Civil Resolution Tribunal Act*.