



Civil Resolution Tribunal

Date Issued: February 15, 2023

File: ST-2022-003961

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 1108 v. Sterling Enterprises Ltd.*,
2023 BCCRT 144

B E T W E E N :

The Owners, Strata Plan LMS 1108

APPLICANT

A N D :

STERLING ENTERPRISES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about emergency water leak repair expenses in a strata corporation. The respondent, Sterling Enterprises Ltd. (Sterling), owns a strata lot in the applicant strata corporation, The Owners, Strata Plan LMS 1108 (strata). The strata says there was a water leak that originated in Sterling's strata lot, which damaged the strata lot

directly below Sterling's. The strata says it paid for emergency repairs and restoration and that Sterling is required to reimburse those costs under the strata's bylaws. The strata claims \$2,805.04.

2. Sterling says the strata has not shown the water damage came from its strata lot. Nevertheless, Sterling says it is prepared to pay the claimed \$2,805.04 so long as the strata signs a release that there will be no further damages claims made about the water leak. Sterling did not file a counterclaim.
3. The strata is represented by a strata council member. Sterling is represented by its owner, Selena La Brooy.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.

7. 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

8. The issue in this dispute is whether Sterling must pay the strata \$2,805.04 for emergency repairs and restoration.

BACKGROUND, EVIDENCE, AND ANALYSIS

9. In a civil proceeding like this one, as the applicant, the strata must prove its claims on a balance of probabilities (meaning “more likely than not”). I have read all of the parties’ evidence and submissions, but I refer only to what I find is necessary to explain my decision.
10. The strata consists of 147 strata lots in a high-rise building. Sterling owns strata lot 41 (also known as unit 703), which is on the seventh floor. Unit 703 was occupied by a tenant at the relevant time. It is undisputed that unit 604 is directly below unit 703.
11. The strata filed a complete set of bylaws with the Land Title Office on July 9, 2019, which repealed and replaced all previous bylaws. I find these are the bylaws applicable to this dispute. I discuss the relevant bylaws below.
12. The strata says that on June 15, 2020, residents in unit 604 reported water leaking through light fixtures in their ceiling. The strata provided email evidence from the building manager, B, who investigated the leak. On June 16, 2020, B advised the strata that water was “pouring” out of the 8 to 10 pot lights in unit 604’s kitchen bulkhead. B stated he and the building caretaker put buckets under the lights, drained the water from each fixture, and called Premium Restoration to perform emergency repairs.
13. B’s email evidence also stated that when he went upstairs, unit 703’s tenant, K, advised him she had a “very minor” water leak, but she did not allow B to enter the

suite to investigate the water leak's source. B stated that the building caretaker was later permitted inside unit 703, and K advised them that the toilet had overflowed. The caretaker apparently told B that they had observed a pile of wet towels, but that there was no longer any water on unit 703's bathroom floor.

14. There is no statement directly from the building caretaker or from K. However, the strata provided an email exchange between K and Ms. La Brooy, Sterling's owner. In a June 15, 2020 email, K reported to Ms. La Brooy that the bathroom had flooded that morning when the toilet overflowed. K stated that there was an inch of water on the floor, which leaked into the unit below, but that she had cleaned everything up entirely in unit 703.
15. As noted, Sterling says the strata provided insufficient evidence that the water leak originated in unit 703. However, Sterling does not specifically dispute that unit 703's bathroom had at least a minor flood on June 15, 2020, or that water leaked into unit 604 below as a result. Even though K's email to Ms. La Brooy is hearsay, I find it is likely reliable because K's comments that she caused the flood were an admission against her own interest and she would have no reason to lie about it. Further, Premium Restoration's July 29, 2020 invoice indicated that unit 703 was the source of the June 15, 2020 water damage in unit 604. On the evidence before me, I am satisfied that the strata has established water escaped from unit 703 and leaked into unit 604.
16. I also find that Premium Restoration provided emergency repairs and restoration services related to that water escape. Its invoice, totalling the claimed \$2,805.04, included installing blower fans and dehumidifiers for 4 days, as well as "flood labour", transporting debris to the dump, and applying anti-bacterial microbial in unit 604. It is undisputed that the strata paid this invoice.
17. In a June 17, 2020 letter to Sterling, the strata advised that because the total damage would be less than its insurance deductible, it would not be making an insurance claim. The letter also advised that the cost of the emergency repairs would be charged against Sterling's strata lot.

18. It is undisputed that the strata proceeded to charge the \$2,805.04 in repair costs against Sterling's strata lot account. Sterling has not paid the chargeback.

Must Sterling reimburse the strata?

19. For the strata to charge back expenses it has incurred to a strata lot account, it must have the authority to do so under a valid and enforceable bylaw. See *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512 and the non-binding but persuasive reasoning in *Rintoul et al v. The Owners, Strata Plan KAS 2428*, 2019 BCCRT 1007.

20. The strata relies on bylaw 9, which deals with owners' responsibility and indemnity for damage to common property and strata lots. Bylaw 9(3) says an owner must indemnify the strata for necessary maintenance or repairs to common property or a strata lot arising from any damage or incident originating in the owner's strata lot. It says this indemnity obligation applies whether or not the incident is caused by the owner's or another person's act, omission, negligence or carelessness, but only to the extent that the expense that is not covered by the strata's insurance.

21. I find that bylaw 9(3) gives the strata the required authority to charge back expenses it incurs for necessary costs to repair common property or strata lot damage caused by an incident originating in the owner's strata lot, to the extent the repairs are not covered by the strata's insurance. It is undisputed that the strata did not make an insurance claim for the June 15, 2020 water damage.

22. The bylaw is clear that the strata is not required to prove that the owner or its tenant was negligent. Rather, the strata must only establish that the water leak originated in the owner's strata lot.

23. As noted above, I find that the strata has established there was a water escape incident on June 15, 2020 that originated in unit 703. I am also satisfied that it was necessary for the strata to hire Premium Restoration to conduct emergency repairs and restoration to remedy the damage from the water leak. Therefore, I find the strata had authority to impose the chargeback on Sterling's strata lot account under bylaw 9(3), and I order Sterling to pay the strata the claimed \$2,805.04.

24. I note that Sterling essentially agreed to pay the claimed amount, but only if the strata signed a release that it there would be no further claims brought against Sterling relating to the water leak. The strata says that while it could sign such a release on its own behalf, it cannot sign a release on behalf of third parties, such as unit 604's owners. I agree. In any event, Sterling did not file a counterclaim, and there is nothing in the SPA or the bylaws that requires the strata to sign a release in order to recover its costs under bylaw 9(3). So, I make no order for the strata to sign a release.

CRT FEES, EXPENSES AND INTEREST

25. 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. As the successful party, I find the strata is entitled to reimbursement of \$225 in CRT fees. Neither party claimed dispute-related expenses.

26. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to pre-judgment interest on the \$2,805.04 owed for reimbursement of its emergency repair costs from September 28, 2020, the date of the strata requested payment of Premium Restoration's invoice, to the date of this decision. This equals \$61.94.

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

ORDERS

28. Within 30 days of the date of this decision, I order Sterling to pay the strata a total of \$3,091.94, broken down as follows:

- a. \$2,805.04 for emergency repairs,
- b. \$61.94 in COIA pre-judgment interest, and
- c. \$225 in CRT fees.

29. The strata is also entitled to post-judgment interest under the COIA.

30. 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.

Kristin Gardner, Tribunal Member