



# Civil Resolution Tribunal

Date Issued: February 28, 2023

File: ST-2022-004388

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 958 v. Taylor*, 2023 BCCRT 168

**B E T W E E N :**

The Owners, Strata Plan NW 958

**APPLICANT**

**A N D :**

Alexandra Taylor

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This is a final decision dismissing this claim as out of time under the *Limitation Act* (LA).
2. The respondent, Alexandra Taylor, owns a strata lot in the applicant strata corporation, The Owners, Strata Plan NW 958 (strata). The strata says water entered

the strata lot below Ms. Taylor's in May 2019, causing damage. It says the water must have come from Ms. Taylor's strata lot, so she is responsible for reimbursing the strata the money it paid to remediate and repair the other strata lot's water damage. The strata claims reimbursement of \$9,995.62.

3. Ms. Taylor denies the water came from her strata lot, or that she is responsible for any water damage. She further says the strata had no authority to remediate or repair water damage to another strata lot. Finally, Ms. Taylor says the strata's claim is out of time.
4. The strata is represented by a strata council member. Ms. Taylor is represented by an employee of her insurer (W).

## **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. 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.

## **ISSUE**

7. The issue here is whether the CRT should dismiss the strata's claim as out of time under the LA.

## EVIDENCE AND ANALYSIS

8. Both parties were invited to make submissions and provide supporting evidence on whether the strata is out of time to bring this claim. I have considered those submissions and that evidence, along with the Dispute Notice and Dispute Response, in making this decision.
9. Section 13 of the CRTA confirms that the LA applies to CRT claims. Section 6 of the LA says that the basic limitation period to file a claim is 2 years after the claim is “discovered”. At the end of the 2-year limitation period, the right to bring a claim disappears.
10. Section 8 of the LA says a claim is “discovered” on the first day the person knew, or reasonably ought to have known, that the loss or damage occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate way to remedy the damage.
11. As noted above, Ms. Taylor says the leak occurred on May 24, 2019, which the strata does not dispute. The strata argues that the water must have come from Ms. Taylor’s strata lot, as it came from above. I find the strata likely had that information when the leak occurred and so reasonably could have discovered its claim against Ms. Taylor on the May 24, 2019 leak date.
12. In any event, I find the strata had discovered its claim against Ms. Taylor by June 10, 2019 at the very latest. This is because that is the date the strata charged back to Ms. Taylor’s strata lot account the \$9,995.60 it claims in this dispute. I find the strata must have concluded Ms. Taylor was responsible for the water repair costs in order to charge the costs back to her strata lot account.
13. The strata does not dispute that it first discovered its claim against Ms. Taylor in 2019. However, it did not apply for dispute resolution until July 1, 2022, which I find is more than 2 years after the strata discovered its claim.

14. The strata says the 2-year limitation period started anew on April 28, 2021, because Ms. Taylor acknowledged the debt in an email chain starting on that date.
15. Section 24 of the LA says that the limitation period starts anew if a person acknowledges liability before the limitation period expires. Section 24(6) of says an acknowledgement of liability must be:
  - a. in writing,
  - b. signed by hand or by electronic signature as defined in the *Electronic Transactions Act*,
  - c. made by the person making the acknowledgement, and
  - d. made to the person with the claim.
16. The strata submitted a copy of an April 28, 2021 email chain between Ms. Taylor, W, and someone I find is likely the strata manager. The strata does not specifically say where, in the multi-page email chain, Ms. Taylor acknowledges liability for the 2019 water damage. However, having reviewed the email in detail, I find it does not contain any acknowledgment of liability by Ms. Taylor.
17. At 3:28 pm on April 28, 2021, Ms. Taylor wrote “As you will see the source of the water at that time was also not established but in order to put the whole issue to rest **I took the claim on my insurance at the time**” (my emphasis added). I infer this is the “acknowledgment” the strata refers to. However, I do not find that constitutes Ms. Taylor’s acknowledgement of liability for the 2019 remediation and repair costs, because I find that statement relates to a prior insurance claim for water damage in 2017, as explained below.
18. In an earlier email, at 11:08 am on April 28, 2021, W referenced a previous similar loss in 2017, paid by Ms. Taylor’s insurance at the time. W asked for supporting documents. At 2:58 pm Ms. Taylor sent an image she described as a photo of the damage from March 25, 2017 and said she would check to see if she had anything else. The next email in the chain is Ms. Taylor’s 3:28 pm email, described above. So,

I find it likely that Ms. Taylor was referring to that 2017 water damage when she said that she “took the claim” on her insurance.

19. I also note that in the email chain W specifically denies, on Ms. Taylor’s behalf, that Ms. Taylor’s unit was the source of the water which caused the 2019 damage. Further, Ms. Taylor specifically denies responsibility for the \$9,995.60 charge back in her Dispute Response and in the submissions on this preliminary issue.
20. I acknowledge the strata’s argument that it was advised by its lawyer that the email chain starting April 28, 2021 was an acknowledgment of liability that started the 2-year limitation period anew. However, the strata has not explained what, exactly, in the email chain constitutes an acknowledgment. A lawyer’s opinion about whether or not the email contains an acknowledgment is not determinative and carries no evidentiary weight in this dispute. Having reviewed the email chain, I find it contains no acknowledgment of liability for the 2019 water leak or resulting damage.
21. On balance, I find the strata has not shown that Ms. Taylor acknowledged liability for the \$9,995.60 repair cost charge back on April 28, 2021, or at any time before the limitation period expired. So, I find the 2-year limitation period did not start anew in April 2021.
22. As noted above, I find the strata discovered its claim by June 10, 2019 at the very latest. So, I find the 2-year limitation period for this claim had expired well before the strata applied for dispute resolution on July 1, 2022.
23. 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 strata was not successful in this dispute, it is not entitled to reimbursement of its paid CRT fees. As the successful respondent, Ms. Taylor did not claim any dispute-related expenses.
24. The strata must comply with section 189.4 of the SPA, which includes not charging any expenses related to this dispute against Ms. Taylor.

## **ORDER**

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

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Sherelle Goodwin, Tribunal Member