



# Civil Resolution Tribunal

Date Issued: March 10, 2023

File: ST-2022-004189

Type: Strata

Civil Resolution Tribunal

Indexed as: *Cook v. The Owners, Strata Plan KAS 1261*, 2023 BCCRT 203

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

SHIRLEY ANNE COOK

**APPLICANT**

**A N D :**

The Owners, Strata Plan KAS1261

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about who should pay for water damage to a strata lot. The applicant, Shirley Anne Cook, owns strata lot 69 (SL69) in the respondent strata corporation, The Owners, Strata Plan KAS1261 (strata). Mrs. Cook says the strata is liable for a roof water leak that damaged her drywall, insulation, and baseboards. She seeks reimbursement of \$1,156.38 for repairs.

2. The strata disagrees. It says it is not liable because it reasonably maintained the roof.
3. A strata council member represents the strata. Mrs. Cook represents herself.
4. For the reasons that follow, I dismiss Mrs. Cook'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. 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.
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 questions of the parties and witnesses 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 must reimburse Mrs. Cook \$1,156.38 for repairs in SL69.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, Mrs. Cook as the applicant must prove her claims on a balance of probabilities. This means 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.
11. The strata plan shows the following. The strata's property includes multiple buildings built in different phases. SL69 is in a high-rise residential building with 16 floors. SL69 is located on the 16<sup>th</sup> floor and parts of it are directly under the common property roof. A title search shows Mrs. Cook became the registered owner of SL69 in 2003.
12. The strata filed a complete set of bylaws in the Land Title Office in March 2016. I find these bylaws were in force at the time of this dispute. The strata filed multiple amendments over the years and a new complete set of bylaws in December 2022. I find the amendments are not relevant to this dispute. The 2022 bylaws changed the numbering of the relevant 2016 bylaws, but they are otherwise the same. I discuss them below.
13. I turn to the chronology. Mrs. Cook has a housekeeper, MAR. In a written statement, MAR says they noted a water leak in SL69 on August 9, 2021. Around that time, Mrs. Cook also informed the strata manager, RA, about the leak. In a September 17, 2021 email, RA advised Mrs. Cook that she was responsible for repairing SL69, assuming the damage was below the strata's deductible.
14. A September 1, 2021 letter shows that Mrs. Cook's insurer denied her coverage for the water damage. So, I find this is not a situation where Mrs. Cook is seeking double recovery.

15. An invoice shows On Side Restoration repaired the water damage in SL69 on October 7, 2021. Mrs. Cook's undisputed submission is that the damage affected her drywall, insulation, and baseboards. Financial documents show Mrs. Cook paid the invoiced amount of \$1,156.38, which equals her claim. According to an insurance summary for the period of June 2021 to 2022, the strata's deductible is \$25,000 for water damage. So, I find damage is well under the deductible.
16. Mrs. Cook requested a hearing that the strata held on May 11, 2022. As noted in RA's May 17, 2022 email to Mrs. Cook, the strata refused to reimburse Mrs. Cook for repairs.

***Must the strata reimburse Mrs. Cook \$1,156.38 for repairs in SL69?***

17. Mrs. Cook says the strata has a history of neglecting the roof. She says that the August 2021 leak into SL69 is one of many, and the most recent occurred on June 3, 2022. She says this caused major damage and left her unable to use "half of my home".
18. The strata disagrees. It says it acted on the recommendations of a roofing company, Flynn Canada Ltd. (Flynn), documented in 2 reports from 2020 and 2021.
19. A strata corporation is not an insurer and is only liable to pay for repairs to a strata lot where it has been negligent. See, for example, *Kayne v. LMS 2374*, 2013 BCSC 51, *John Campbell Law Corporation v. Owners, Strata Plan 1350*, 2001 BCSC 1342, and *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231. The strata may create a bylaw to take responsibility for strata lot repairs like Mrs. Cook's, but I find it has not done so here. Bylaw 2(1) of the bylaws in force at the time says that an owner must generally repair their strata lot.
20. In order to succeed in a negligence claim, Mrs. Cook must prove 1) the strata owed her a duty of care, 2) the strata breached the standard of care, 3) Mrs. Cook sustained a loss, and 4) the loss was caused by the strata's breach. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3.

21. I find the applicable standard of care is reasonableness. In *Wright v. The Owners, Strata Plan #205*, 1996 CanLII 2460 (BCSC), aff'd 1998 CanLII 5823 (BCCA) at paragraph 30, the court said a strata corporation is not responsible for damage as long as it acted reasonably in the circumstances. This means that even if a strata corporation's contractors fail to carry out work effectively, the strata is not responsible, and cannot be found negligent as long as it acted reasonably in the circumstances.
22. Under section 72 of the *Strata Property Act* (SPA) and bylaw 12, the strata is responsible for repairs to common property. So, I find the strata owes Mrs. Cook a duty of care to repair and maintain the roof as common property. I also find Mrs. Cook sustained the loss shown in the repair invoice.
23. I turn to the evidence. Mrs. Cook also relies on a July 5, 2022 roof maintenance quote from Premium Roofing Ltd. (Premium). It is labelled quote 1896. She says it shows several areas that require repairs.
24. I find the quote provides little assistance to Mrs. Cook for 3 reasons. First, the estimate is dated almost a year after the August 2021 incident Mrs. Cook claims compensation for. Second, it does not comment on whether any lack of maintenance or neglect led to water ingress into SL69. Third, the strata provided a copy of a July 29, 2022 invoice for \$7,717.59, also from Premium. It shows that the strata promptly hired Premium to complete the work recommended in quote 1896. So, I find this does not show any tendency by the strata to ignore or neglect roof repairs. I also find it consistent with the strata's submission that it follows its contractors' recommendations.
25. Mrs. Cook provided photos taken from June 3, 2022. They show water streaks on the walls and what might be water damage on the flooring. I find this evidence has limited relevance, because this water ingress event occurred well after the August 2021 incident. There is also no evidence about the cause of the water damage.
26. I find the strata's evidence strongly supports its position. The strata obtained roof condition reports from Flynn in May 2020 and May 2021. In 2020 it paid Flynn several thousand dollars spread across 4 invoices to complete Flynn's recommended work.

In 2021, it paid Flynn several thousand dollars more to complete further recommended roof work, also spread across 4 more invoices. I find this shows the strata reasonably relied on its contractor for roof maintenance and repairs.

27. Further, RA's email to Mrs. Cook shows that after the August 2021 leak occurred, it hired Flynn to examine the cause. According to the email, Flynn found the cause of the leak was a plugged rooftop drain. This caused the water to push through fasteners on the drain. Flynn removed the plug, checked for damage, found "everything was ok", and said that nothing got behind the waterproof membrane. I find this email shows the strata acted reasonably.
28. For all those reasons, I find it unproven that the strata breached the standard of care. I therefore find that she has not proven negligence. I dismiss Mrs. Cook's claim for reimbursement of repairs.

## **CRT FEES AND EXPENSES**

29. 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 in this case not to follow that general rule. I dismiss Mrs. Cook's claims for reimbursement of CRT fees. The parties did not claim for any specific dispute-related expenses.
30. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mrs. Cook.

## **ORDERS**

31. I dismiss Mrs. Cook's claims and this dispute.

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David Jiang, Tribunal Member