



# Civil Resolution Tribunal

Date Issued: September 25, 2023

File: ST-2022-008278

Type: Strata

Civil Resolution Tribunal

Indexed as: *Kizlyk v. The Owners, Strata Plan EPS6075*, 2023 BCCRT 812

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

MAUREEN ETHEL KIZLYK and WRAY DARYL KIZLYK

**APPLICANTS**

**A N D :**

The Owners, Strata Plan EPS6075

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Nav Shukla

## **INTRODUCTION**

1. The applicants, Maureen Ethel Kizlyk and Wray Daryl Kizlyk, own strata lot 34 (SL34) in the respondent strata corporation, The Owners, Strata Plan EPS6075 (strata). The Kizlyks say a common property roof vent cracked, causing water to leak through SL34's dining room ceiling and between the dining room wall and an exterior wall. They say that in addition to damage inside SL34, the leak damaged the building

envelope and insulation in the exterior wall that is the strata's responsibility to repair. The strata has undisputedly done no repairs to the exterior wall or inside SL34. The Kizlyks seek an order for the strata to repair the damage caused by the roof vent leak. The Kizlyks are self-represented.

2. The strata says that the roof vent has already been repaired. It denies it is responsible for doing the requested repairs which it says are all for damage inside SL34 and the Kizlyks' responsibility. The strata is represented by a strata council member.

## **JURISDICTION AND PROCEDURE**

3. 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).
4. 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 and an oral hearing is not necessary in the interests of justice and fairness.
5. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court.

## **ISSUE**

6. The issue in this dispute is whether the strata is responsible for repairing any of the damage caused by the roof vent leak.

## **EVIDENCE AND ANALYSIS**

7. As the applicants in this civil proceeding, the Kizlyks must prove their claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence but refer only to the evidence and argument that I find

relevant to provide context for my decision. I note the strata did not provide any documentary evidence in this dispute, despite having the opportunity to do so.

8. The strata plan shows the strata was created in August 2019. SL34 is part of a duplex-style building, attached to strata lot 35. The Kizlyks purchased SL34 in January 2022. Emails in evidence show the Kizlyks noticed a leak in SL34's dining room ceiling on May 29, 2022. At the time, the building was undisputedly less than a year old. The Kizlyks notified the strata about the leak, who told the Kizlyks to notify the builder and Pacific Home Warranty, the new home warranty provider. The strata and the Kizlyks both say they contacted the builder to fix the leak. Based on emails in evidence, I find the builder called a contractor who fixed the roof vent by May 30, 2022.
9. It is undisputed that the leak from the roof vent caused damage inside SL34, including the dining room ceiling, a window casing, and baseboards. The Kizlyks say that the leak also damaged SL34's exterior wall, including insulation and the building envelope, which it says is common property and the strata's responsibility to repair. In the Dispute Notice, the Kizlyks say that they told the strata they would repair the inside of SL34 but would not be opening up the building envelope to access the insulation. It is unclear on the evidence before me whether the Kizlyks have repaired the dining room ceiling, window casing, and baseboards. Further, I note the Kizlyks' requested remedy does not specify that they only seek repairs for common property that was damaged by the leak. So, my decision below addresses whether the strata is responsible for repairing any damage caused by the roof vent leak to the dining room ceiling, window casing and baseboards inside SL34, in addition to any allegedly damaged common property.
10. The strata says the repairs the Kizlyks seek are for inside SL34 and wholly the Kizlyks' responsibility. Further, the strata says that SL34 is covered under a new home warranty and the Kizlyks should seek the requested repairs through the warranty program.
11. It is undisputed that the roof vent that caused the water damage is common property. Under *Strata Property Act* (SPA) section 72, the strata has a duty to repair and

maintain common property. This duty remains regardless of whether a strata lot is covered under a new home warranty. So, to the extent the strata argues it is not responsible for repairing any common property that was damaged by the roof vent leak, I disagree. What I must determine is whether the Kizlyks have proven the leak caused damage to common property that the strata has failed to repair or that the strata is otherwise responsible for repairing the damage caused by the leak inside SL34.

12. I turn first to the applicable bylaws. The strata's bylaws are the SPA's Standard Bylaws. Standard Bylaw 2(1) says an owner is responsible for repairing and maintaining their strata lot, except for repair and maintenance that is the strata's responsibility under the bylaws. Standard Bylaw 8(b) essentially reiterates SPA section 72 and says the strata must repair and maintain common property that has not been designated as limited common property. Standard Bylaw 8(d) makes a strata responsible for repairing and maintaining those parts of a strata lot that comprise the building's structure and exterior.
13. The Kizlyks say that because the damaged wall is an exterior wall, it is common property and the strata's responsibility to repair. I note the Kizlyk's argument here is similar to the argument made by the applicant in *Machinski v. The Owners, Strata Plan LMS3758*, 2023 BCCRT 616. In that dispute, water had leaked through a vent stack in the strata's roof, travelled through an exterior wall, and damaged 2 strata lots and a common property gym. The tribunal member in *Machinski* noted that the strata corporation was not necessarily responsible for water damage in the strata lots simply because it was located on an exterior wall. The tribunal member went on to consider SPA section 68 which sets out how to determine the boundaries of a strata lot in deciding whether the strata corporation was responsible for repairing the drywall, vapour barrier, and insulation in the exterior wall. While prior CRT decisions do not bind me, I agree with the tribunal member's reasoning and analysis in *Machinski* and apply it here. My analysis follows.
14. SPA section 68 says that where a strata lot is separated from common property by a wall, the boundary of the strata lot is "midway between the surface of the structural

portion of the wall...that faces the strata lot and the surface of the structural portion of the wall...that faces...the common property”. In other words, the boundary of SL34 extends to the middle of the structural portion of the exterior wall.

15. As noted above, owners are generally responsible for the repair and maintenance of their strata lots. However, bylaw 8(d) makes the strata responsible for repairing and maintaining those parts of a strata lot that comprise the building’s structure. So, even though the strata lot boundary is at the mid-point of the structural portion of the exterior wall, I find the strata is responsible for the repair and maintenance of the entirety of the structural portion of the exterior wall under bylaw 8(d).
16. As was the case in *Machinski*, here there is no evidence before me explaining how the building’s exterior wall is constructed. However, since there is no suggestion that SL34 is in a concrete building, and given the building’s size, I infer that it is wood-framed. So, I find the strata is responsible for everything from the portion of the wooden structural wall that faces SL34 to the building’s exterior, and the Kizlyks are responsible for everything from the interior of SL34 to the wooden structural wall.
17. The difficulty for the Kizlyks is that aside from their assertions, there is limited evidence before me about the damage to the exterior wall. The Kizlyks’ main piece of documentary evidence is a June 22, 2022 “emergency scope” prepared by JD, a property manager with First On-site Property Restoration. This emergency scope document contains a list of repairs that I infer JD proposed to do as a result of the water leak. The document listed the following:
  - a. Remove and dispose affected window casing,
  - b. Remove and dispose affected 5” mdf flat stock baseboards,
  - c. Remove and dispose exterior wall and ceiling drywall,
  - d. Remove and dispose exterior wall insulation and “vb” (which I infer refers to vapour barrier),
  - e. “Anti mic” (which I infer refers to antimicrobial treatment to prevent or remove mould),

- f. Install drying equipment, and
  - g. Remove and dispose debris.
18. The document does not set out what investigations JD did in preparing the emergency scope, or what the estimated cost would be for the work. Most notably, there is no mention in this document about any damage to the building's structure or exterior.
19. As noted above, the burden is on the Kizlyks to prove their claims. Here, other than the Kizlyks assertions, there is no evidence before me that the roof vent leak caused damage to any common property, such as the building's structure or exterior. To the extent there is damage to the insulation inside the exterior wall and to the vapour barrier, there is no evidence before me (such as photographs) showing where in the wall the insulation and vapour barrier are located. So, I find it unproven that the insulation and vapour barrier comprise a part of the structural portion of the exterior wall. As a result, I find the insulation and vapour barrier are a part of SL34 and are the Kizlyks responsibility to repair under bylaw 2(1), along with the damaged dining room ceiling, window casing, baseboards, and any damaged drywall.
20. While bylaw 2(1) makes the Kizlyks responsible for these repairs, I note a strata corporation may be liable to repair a strata lot if it negligently breached its duties under the SPA, including its common property repair and maintenance duties (see, for example, *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231). As noted above, the cracked roof vent was repaired within a day of the Kizlyks noticing the leak and informing the strata about it, albeit by the builder. While it appears the strata incorrectly assumed its section 72 duty did not apply to the roof vent because it was allegedly the builder's responsibility to repair, there is no evidence or suggestion before me that the roof vent leak occurred due to a breach of the strata's section 72 duties. For example, there is no evidence that the strata knew about any issues with the roof vent and failed to take steps to repair or maintain it before the Kizlyks notified it about the leak. So, I find the leak did not occur due to the strata's negligence. Accordingly, I find the Kizlyks are responsible for repairing SL34, including the damaged dining room ceiling, window casing, baseboards, and any damaged drywall, vapour barrier or insulation.

21. The Kizlyks say they are now concerned about mould in SL34, but they provided no supporting evidence of any mould or that the water damage has spread to the building's structure. If the Kizlyks are concerned about mould inside SL34, I find it is open to them to carry out their own investigation as this is part of their obligation to maintain their strata lot under bylaw 2(1).

22. In conclusion, I find the Kizlyks have failed to prove the strata is responsible for any repairs inside SL34. So, I dismiss their claims and this dispute.

### **CRT FEES AND EXPENSES**

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. Since the Kizlyks were unsuccessful, I find they are not entitled to reimbursement of their paid CRT fees. The strata did not pay any fees and neither party claims any dispute-related expenses, so I order no reimbursement.

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

### **ORDER**

25. I dismiss the Kizlyks' claims and this dispute.

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Nav Shukla, Tribunal Member