



Civil Resolution Tribunal

Date Issued: October 18, 2023

File: ST-2022-006015 and
ST-CC-2023-001942

Type: Strata

Civil Resolution Tribunal

Indexed as: *Tang v. The Owners, Strata Plan BCS 3778*, 2023 BCCRT 887

B E T W E E N :

FEI TANG

APPLICANT

A N D :

The Owners, Strata Plan BCS 3778

RESPONDENT

A N D :

FEI TANG

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute involves a claim and counterclaim about the chargeback of a plumbing invoice to a strata lot owner.
2. The applicant, Fei Tang, owns and lives in strata lot 29 (SL29 or unit 711) in the respondent strata corporation, The Owners, Strata Plan BCS 3778 (strata). Mr. Tang is the respondent in the counterclaim and is self-represented. The strata is the applicant in the counterclaim. It is represented by a strata council member.
3. Mr. Tang claims they are not responsible to pay plumbing expenses the strata charged to them to clear a backup of their kitchen sink in March 2022. They say SL29 was vacant at the time of the incident and that the plumber's report shows the cleared blockage was located in a common property pipe. Mr. Tang asks for an order that the strata "waive" the chargeback of \$2,205.00, which I infer means reverse the chargeback. Mr. Tang also asks for an order that the strata issue them a letter that states they are not responsible for the backup.
4. The strata says it responded to a report of water seeping into unit 701, a strata lot next to SL29. The strata says it gained access to SL29 through a locksmith and that its plumber observed the sink was "half full of water from a backup". The strata also says that its plumber reported a "heavy blockage of grease in the kitchen stack located within [SL29]" and reported the leak originated in SL29. The strata says Mr. Tang is entirely responsible for the damage and repair costs because the leak did not come from common property.
5. The strata repeats its position in its counterclaim and asks for an order that Mr. Tang pay it \$2,205.00. Mr. Tang disagrees and asks that the strata's counterclaim be dismissed.
6. As explained below, I find in favour of Mr. Tang.

JURISDICTION AND PROCEDURE

7. 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.
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.

ISSUES

9. The issues in this dispute are:
 - a. Must Mr. Tang pay the strata \$2,205.00 for plumbing expenses?
 - b. If not, must the strata issue a letter to Mr. Tang confirming they are not responsible for the backup?

BACKGROUND, EVIDENCE AND ANALYSIS

10. As applicant in a civil proceeding such as this, Mr. Tang must prove their claims on a balance of probabilities, meaning more likely than not. The strata must prove its counterclaim on the same standard. I have reviewed all the parties' submissions and evidence but refer only to information I find relevant to explain my decision. I note that in both the claim and counterclaim, the respective applicant did not provide reply submissions, despite being given the opportunity to do so.

11. The strata plan shows the strata was created in April 2010 under the *Strata Property Act* (SPA). It consists of 140 mixed-use strata lots. SL29 is located on the 7th floor of a 19-storey tower.
12. The strata filed a complete new set of bylaws with the Land Title Office on October 18, 2017. Subsequent bylaw amendments filed by the strata are not relevant, so I find the bylaws applicable to this dispute are the October 2017 bylaws. The strata is comprised of 2 separate sections, but based on my review of the bylaws, I find the strata is the appropriate respondent. I discuss the relevant bylaws below as necessary.
13. The undisputed background facts are as follows.
14. Between December 2021 and May 2022, Mr. Tang was out of the country and SL29 was unoccupied.
15. On March 8, 2022, the occupant of unit 701 reported water seeping into a closet in their strata lot. The strata called a plumber, IHM mechanical ltd. (IHM) to investigate the water seepage.
16. According to the IHM service report and invoice, the plumber opened up the wall in unit 701 and determined the leak was coming from the kitchen of SL29. The strata arranged for a locksmith to gain access to SL29. The plumber observed water in the sink and on the floor of SL29 and turned the water to strata lot off. IHM reported its findings to the strata manager and awaited further instructions.
17. IHM further reported that the next day, it received information that water had returned in unit 701. The plumber returned to SL29 and determined kitchen sink had overflowed. They cleared a grease blockage “in the stack” by using 40 feet of cable. They recommended cleaning the pipes more regularly or notifying the owners not to pour oil down the drains. More on the plumber’s findings below.
18. Between April 11 and May 5, 2022, the strata manager exchanged emails with Mr. Tang while Mr. Tang was out of the country. April 11, 2022 was the first time Mr. Tang became aware of the water damage in SL29. The strata manager provided Mr. Tang

with a copy of the IHN service report and advised Mr. Tang was responsible for replacement of their flooring.

19. On May 5, 2022, the strata manager wrote to Mr. Tang that he was also responsible for damage to unit 611 below SL29 because the cost of the repairs was below the strata's insurance deductible. As such, the strata's insurance policy was not triggered. The letter did not say what the strata's water damage deductible was or mention damage in unit 701.
20. On June 20, 2022, the strata manager wrote to Mr. Tang. The letter enclosed a copy of an IHM invoice dated April 27, 2022, for \$2,205.00 for the March 8 and 9, 2022 work described above, together with the IHM service report. The letter stated Mr. Tang's account would be charged the invoiced amount for the "wall damage". Finally, the letter advised Mr. Yang that they had the opportunity to dispute the chargeback within 14 days by written response or by requesting a hearing under SPA section 135. Section 135 addresses procedures a strata corporation must follow before imposing fines for bylaw contraventions or requiring a person to pay the costs of remedying a bylaw contravention. Notably, the letter did not reference any bylaw contravention or say how section 135 applied to the strata's chargeback.
21. On October 5, 2022, Mr. Tang requested a council hearing to ask the strata to waive the chargeback. It is unclear when a council hearing was held, but in a November 10, 2022 letter to Mr. Tang, the strata manager said the council had considered Mr. Tang's request and decided to uphold its original decision to hold them responsible for the chargeback.
22. The CRT issued the Dispute Notice for Mr. Tan's dispute on November 29, 2022, and the Dispute Notice for the strata's counterclaim on March 7, 2023.
23. There is evidence that 2 additional leaks occurred in SL29 from the kitchen sink backing up in October 2022 and February 2023. I find these incidents are not before me given the chargeback amount of \$2,205.00 relates entirely to the March 2022 incident.

Must Mr. Tang pay the strata \$2,205.00 for plumbing expenses?

24. SPA section 72 says the strata is responsible for repair and maintenance of common property. Bylaw 15(2) says the same thing. Bylaw 7(1) says an owner must repair and maintain their strata lot, except for repair and maintenance that is the strata's responsibility under the bylaws. Other than bylaw 15(2), I find there are no bylaws relating to the strata's repair and maintenance obligations that apply to this dispute.
25. The strata also refers to bylaw 12 that permits it to gain access to strata lots without notice in times of emergency. There is no issue with the strata retaining a locksmith to gain access to SL29 in March 2022, so I find bylaw 12 is not relevant.
26. SPA section 1(1) defines common property to include pipes for the passage or provision of water and drainage if they are located:
- a. Within a floor, wall or ceiling that forms a boundary between 2 strata lots or a strata lot and common property,
 - b. Wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot.
27. The fact that water overflowed SL29's kitchen sink is not determinative of who is responsible. The key to this dispute is the pipe location where the grease blockage occurred. If in common property pipes as Mr. Tang argues, the strata is responsible for the cost to clear the blockage. If the blockage occurred in pipes located within SL29, then Mr. Tang could be responsible for the charge, as the strata argues.
28. For the reasons that follow, I find it more likely that the blockage occurred in a common property pipe, so I find Mr. Tang is not responsible to pay the chargeback amount of \$2,205.00.
29. The IHM service report and April 27, 2022 invoice provide the best evidence on the location of the grease blockage. Specifically, the documents state the blockage was in the "kitchen stack" and 40 feet of cable was needed to clear it. The strata submits the plumber reported the kitchen stack was in SL29, but that is not what the IHM service report or invoice says. Rather, there is no reference to the stack's location in the documents. Although not argued, I find the plumber's reference to "kitchen stack"

is a reference to the vertical drainpipe running up the building that connects drains from individual strata lots. Such a drainpipe would fall under the definition of common property.

30. I do not find the plumber's statement that SL29 "was definitely the culprit in the flooding issue" to mean the SL29 sink caused the backup. Taken in context with the balance of the service report, I find the plumber simply meant the water that caused the flooding came from SL29's sink.
31. Further, the strata plan shows SL29 is approximately 9 meters by 9 meters. Given 40 feet equates to about 12 meters, I find 40 feet of cable required to clear the blockage would more than likely put the blockage outside the perimeter of the SL29. This again would put the blockage in a common property pipe.
32. Also, given SL29 was unoccupied for about 3 months prior to the backup, it seems unlikely Mr. Tang caused the grease buildup or that the blockage was located in SL29's drainpipe given the kitchen sink was not used. However, a blockage in the vertical drainpipe could buildup from debris and grease from other strata lots and cause water to back up the stack and along the SL29 kitchen drain into the sink causing the sink to overflow. I find this likely what occurred.
33. The strata suggests Mr. Tang's failure to turn off the water supply to SL29 may have contributed to the flooding. I disagree. The evidence is clear the flooding was caused by a blockage in a drainpipe. It was not caused by a leaking supply pipe or fixture, so I find it irrelevant that Mr. Tang did not turn the water off before he left in December 2021.
34. Finally, I have previously found the decision reached by the BC Court of Appeal in *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512, provides guidance in situations where a strata corporation is seeking to charge an owner for costs the strata corporation has incurred. (See for example *Rintoul et al v. The Owners, Strata Plan KAS 2428*, 2019 BCCRT 1007.) In *Ward*, the BC Court of Appeal found at paragraphs 40 and 41, that a strata corporation was not entitled to charge an owner legal fees without the authority to do so under a valid and enforceable bylaw or rule that creates

the debt. I find the reasoning in *Ward* applies to other charges, such as the plumbing expense chargeback here. Given there is no bylaw authorizing the chargeback, it follows that the strata is responsible for the plumbing expense.

35. For all of these reasons, I find Mr. Tang is not responsible for the drainpipe blockage and is therefore not required to pay the \$2,205.00 chargeback. I dismiss the strata's counterclaim and order it to reverse the charge.

Must the strata issue a letter to Mr. Tang confirming he is not responsible for the backup?

36. I find Mr. Tang's request that the strata issue a letter confirming they are not responsible for the backup is unnecessary. My decision above makes it clear that the strata is responsible, and I find to make the requested order would not be helpful or productive. Therefore, I decline to do so.

CRT FEES AND EXPENSES

37. Under CRTA section 49 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. Here, Mr. Tang was the successful party. They paid CRT fees of \$225.00, and I order the strata to pay them that amount.
38. Neither party claimed dispute-related expenses, so I order none.
39. Under section 189.4 of the SPA, the strata may not charge any dispute-related expenses against Mr. Tang.

DECISION AND ORDER

40. I order the strata to:
- a. Immediately reverse the plumbing amount of \$2,205.00 charged to Mr. Tang, and
 - b. Within 15 days of the date of this decision, pay Mr. Tang \$225.00 for CRT fees.

41. Mr. Tang is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.
42. I dismiss Mr. Tang's remaining claims and the strata's counterclaims.
43. 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