



Civil Resolution Tribunal

Date Issued: December 19, 2023

File: ST-2023-000496

Type: Strata

Civil Resolution Tribunal

Indexed as: *Section 1 of the Owners, Strata Plan KAS 1738 v. Amelio,*

2023 BCCRT 1111

B E T W E E N :

SECTION 1 of THE OWNERS, STRATA PLAN KAS 1738

APPLICANT

A N D :

CHRISTINA AMELIO and LILLIAN CIANFLONE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about water damage in a strata corporation.
2. The applicant, Section 1 of the Owners, Strata Plan KAS 1738 (section 1), is the apartment section of strata corporation, The Owners, Strata Plan KAS 1738 (strata).

The respondents, Christina Amelio and Lillian Cianflone, co-own strata lot 46 (unit 308), which is located in the apartment section. The strata itself is not a party to this dispute.

3. Section 1 says unit 308's sink overflowed and caused water damage to the strata lot directly below it (unit 208). Section 1 says the respondents are responsible to reimburse section 1 for emergency call out and restoration costs under section 1's bylaws. Section 1 claims \$1,129.75 for restoration costs.
4. The respondents say unit 308's sink did not overflow, and say they did not cause the water damage in unit 208.
5. Section 1 is represented by a section member executive. The respondents are both self-represented.
6. For the reasons that follow, I dismiss section 1's claims.

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.

9. 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.
10. 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

11. The issue in this dispute is whether the respondents must reimburse section 1 for its \$1,129.75 emergency call out and restoration invoice.

EVIDENCE AND ANALYSIS

12. In a civil claim like this one, Section 1, as the applicant, must prove its claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence, but I only refer to what is necessary to explain my decision.
13. Section 1 was created in 2000. Section 1 filed its own bylaws in 2003. Section 1 has filed further bylaw amendments since that time, including in 2020 and 2022. I will address the relevant bylaws below.
14. As noted, section 1 says the respondents are responsible to indemnify section 1 for emergency call out and restoration costs under its bylaws. Section 1 claims reimbursement of a December 2, 2021 Total Restoration Services Inc. invoice totaling \$1,129.75. The invoice is for emergency call out and water damage restoration services for unit 208 and unit 308. Although the date the services were provided is not listed on the invoice, the parties do not dispute it was for services provided following a November 6, 2021 leak.

15. In *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512, the Court of Appeal found that a strata corporation must have a bylaw to charge legal fees to an owner because legal fees are not “lienable” under section 116 of the *Strata Property Act* (SPA). Many CRT decisions have extended this principle to repair and emergency investigation costs because, like legal fees, there is nothing in the SPA that authorizes a strata corporation to charge them to an owner. Without authority from the SPA, a strata corporation must either have a bylaw authorizing it to charge repair costs to an owner, or have the owner’s agreement. See, for example, *Huang v. The Owners, Strata Plan EPS1910*, 2019 BCCRT 1072. I agree with this reasoning. I find it applies equally to sections within a strata corporation, given SPA section 194(2), which says that for a matter that relates solely to the section, the section is a corporation and has the same powers and duties as the strata corporation.
16. Section 1’s submissions are consistent with the above reasoning. Section 1 says “the strata council has an indemnification bylaw that requires the owner to indemnify the strata council for costs of damage to common property or a strata unit if the cause was the owner’s responsibility to repair as well as an investigation related costs” (reproduced as written). Section 1 does not say which bylaw makes an owner responsible for emergency response costs below the insurance deductible. Although the submissions refer to the strata and strata council, I find the section executive member likely intended to refer to the section, section executive and section bylaws because the strata itself is not a party to this dispute. Rather, it is section 1 that seeks reimbursement for the emergency call out and restoration costs.
17. Section 35(2) of section 1’s bylaws says an owner will indemnify the “strata corporation” (reproduced as written) from the expense of any investigation rendered necessary to common property or a strata lot, if at the conclusion of the investigation it is determined that the cause of the problem is part of a strata lot that is the owner’s responsibility to repair.
18. I infer that section 1 intended to refer to itself rather than the strata corporation in the bylaws discussed above. However, nothing turns on this in any event. I say this because I find section 1 has not proved that unit 308’s sink caused the leak into unit

208. Therefore, the respondents are not responsible to reimburse the strata for its emergency call out and restoration costs. My further reasons follow.

Water leak

19. Unit 208's occupants reported water leaking through a ceiling light fixture on the evening of November 6, 2021, although the precise timing is unclear. A section executive member, BW, attended unit 308, located directly above unit 208, that evening to investigate. None of this is disputed.
20. Section 1 says when BW attended unit 308 on the evening of November 6, 2021, its occupant, CF, told BW that the sink had overflowed. The respondents dispute this and say the sink did not overflow or leak.
21. CF undisputedly resided in unit 308 with Christina Amelia, one of the respondents. The respondents provided an emailed statement from CF. In their statement, CF said the following:
 - a. Unit 308's sink was clogged on November 6, 2021, and draining very slowly. CF spent the entire day at home, and did not observe any issues other than a slow drain. CF did not do any dishes that day.
 - b. BW attended unit 308 with another person that evening to check unit 308's sink after reports that the apartment below was flooding.
 - c. BW checked the sink. CF said the sink was not overflowing or leaking, and the floor was dry.
 - d. BW asked CF to put a container under the sink. CF said it was dry under the sink, but they put a container underneath anyways.
 - e. BW arranged for a plumber to attend the next morning to unclog the sink.
22. There is no statement from BW or anyone else to contradict CF's statement above. So, I accept CF's statement that the sink did not overflow on November 6, 2021, and

that it was draining slowly with no leaks. I find the evidence does not show that CF ever told BW or anyone else that unit 308's sink had overflowed.

23. On November 7, 2021, a plumber attended unit 308 to clean out debris from the sink's drain pipe and reconnect the drain pipe. The respondents paid for the plumbing work. None of this is disputed. A November 7, 2021 invoice from Mr. Rooter Plumbing lists the above work, and the invoice is addressed to Lillian Cianflone, one of the respondents.
24. Section 1 says the plumber also found water dripping from below Unit 308's kitchen sink. The respondents dispute this. They say Lillian Cianflone was present when the plumber visited unit 308. The respondents say the plumber advised there were no leaks or flooding and there was no need for any restoration work. There is no statement or report from the plumber, and the plumbing invoice did not note any water dripping under unit 308's sink. It also did not identify any leak in unit 308, or say what caused the water leak into unit 208. So, I find section 1's allegation that the plumber observed water dripping under unit 308's sink unproven.
25. In this situation I find the source of the water leak into unit 208 is not obvious. For example, this is not a situation where an upper unit bathtub admittedly overflowed, and was documented. Here, I find determining the source of a water leak is technical and beyond common knowledge and so requires expert evidence to establish. See the non-binding but persuasive CRT decision *The Owners, Strata Plan BCS 1208 v. Lee*, 2021 BCCRT 1290.
26. Section 1 says both the plumber and the restoration company advised that the leak was underneath the unit 308's sink cabinet, in the gap between the kitchen cabinet and the floor. Section 1 also says Total Restoration found moisture on the subfloor underneath the respondents flooring once the ceiling was opened up with their moisture readers, and they advised drying was required.
27. As with the plumbing invoice, Total Restoration's invoice did not identify the source of the water leak into unit 208, or indicate that it found any moisture in unit 308. The invoice also did not indicate how it investigated the water leak in unit 208.

28. Section 1 submitted a preliminary report from Total Restoration dated November 7, 2021. In the report, Total Restoration's technician indicated that water entered unit 208 from the ceiling. The report listed a suspected sink overflow as the cause of loss. However, they noted a plumber had done repairs before they were able to access unit 308, and they did not observe any elevated water readings in unit 308. So, I find this suspected cause of loss does not prove that unit 308's sink overflowed.
29. Total Restoration recommended removing the kitchen cabinet toe kicks to gain access underneath and take new moisture readings, setting up drying equipment, and opening the ceiling in unit 208 to remove any wet insulation and dry the subfloor. However, section 1 did not provide any further report from Total Restoration to show whether they investigated further or identified any areas with elevated moisture in unit 308 or unit 208. I find Total Restoration's preliminary report confirmed water entered into unit 208. However, I find it does not show that the leak's source was unit 308's sink.
30. As noted, section 1 has the burden of proving its claims. Here, I find section 1 did not provide evidence to show that the water leak into unit 208 was caused by unit 308's sink overflowing or leaking, or anything else in unit 308. Therefore, I find section 1 is not entitled to any reimbursement of its emergency call out and restoration costs from the respondents under bylaw 35.

CRT fees and expenses

31. 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. As section 1 was unsuccessful in its claims, I find it is not entitled to reimbursement of its paid CRT fees. The respondents did not pay CRT fees, and neither party claimed any dispute-related expenses.
32. Section 1 must comply with SPA section 189.4, which includes not charging dispute-related expenses against the respondents.

ORDER

33. I dismiss section 1's claims and this dispute.

Leah Volkers, Tribunal Member