



Civil Resolution Tribunal

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File: ST-2023-002204

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 2386 v. Scales*, 2024 BCCRT 192

B E T W E E N :

The Owners, Strata Plan LMS 2386

APPLICANT

A N D :

GEOFFREY SCALES

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. Geoffrey Scales owns and rents out strata lot 2 (SL2) in the strata corporation, The Owners, Strata Plan LMS 2386 (strata). When a sprinkler pipe in the attic above SL2 ruptured, the strata responded to stop the leak and later repair the pipe. The strata says the pipe ruptured because Mr. Scales's tenants left the heat too low during

unusually cold temperatures, causing it to freeze. The strata claims \$3,101.57 for the emergency response and repairs, relying on its bylaws. A council member represents the strata.

2. Mr. Scales says their tenants were not negligent and the strata's investigation was flawed. They say repairing the common property sprinkler pipe is the strata's responsibility and I should dismiss the claim. Mr. Scales is self-represented.
3. As I explain below, I dismiss the strata's claim.

JURISDICTION AND PROCEDURE

4. 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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between parties that will likely continue after the CRT process has ended.
5. 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. In some respects, both parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions.
6. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.

ISSUES

7. The issues in this dispute are:
 - a. Do the strata's bylaws make Mr. Scales responsible for the strata's claimed \$3,101.57 in emergency response and repair costs?
 - b. Was the strata required to comply with section 135 of the *Strata Property Act* (SPA), and if so, did it?

EVIDENCE AND ANALYSIS

8. As the applicant in this civil proceeding, the strata must prove its claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. The strata was created in 1996 and includes 6 townhouse-style strata lots in single row building in Vancouver, BC.
10. The strata plan identifies the attic above SL2 as common property. Within this attic is a pressurized sprinkler system for SL2's primary bedroom and bathroom. Photos show that the sprinkler pipe sits under a thick bed of insulation. It is undisputed that in freezing temperatures, the system relies on heat rising through the ceiling from the strata lot below to keep the pipe from freezing.
11. The water leak happened on December 30, 2021. It was unusually cold for Vancouver at the time. The strata's unchallenged evidence is that on December 27, 2021, the temperature was around 15 below, the coldest temperature in 52 years. Water in the sprinkler pipe above SL2 froze and cracked the pipe, causing flooding and damage.
12. At the time of the leak, Mr. Scales was renting SL2 to tenants. The tenants were on vacation from December 20, 2021, to January 3, 2022. Another strata resident was alerted to the leak when a fire alarm went off. The fire department attended and shut off the water. A fire safety system company, Bartec, attended on December 31 and shut down and drained the sprinkler system. Bartec's invoice was \$231. Another

company, ActiveFire, later repaired the sprinkler pipe and restored the system to functional status for \$2,870.57. Those invoices together make up the \$3,101.57 that the strata claims in this dispute. Mr. Scales and their insurer looked after repairs within SL2.

13. The parties disagree about whether Mr. Scales and their tenants failed to keep the strata lot warm enough to prevent the pipes from freezing.
14. The parties refer to several bylaws that may apply here. In 2002, the strata repealed and replaced its bylaws with a complete new set of bylaws. There have been 4 bylaw amendments filed in the Land Title Office (LTO) since then. The strata relies on bylaws 39.2 and 39.3. Those bylaws, paraphrased, say that an owner has to repay the strata any amounts paid to assess or repair any part of a strata lot or common property in certain circumstances.
15. Bylaws 39.2 and 39.3 were approved by a $\frac{3}{4}$ vote resolution on November 3, 2021, before the December 30, 2021 water leak. However, they were not filed in the LTO until January 28, 2022. Section 128(2) of the SPA says approved bylaw amendments have no effect until they are filed in the LTO. So, I find the strata cannot rely on bylaws 39.2 and 39.3. At the time the sprinkler pipe burst, the strata had no bylaws explicitly requiring an owner to repay the strata for costs associated with the owner's or their tenant's negligence.
16. The strata also relies on bylaw 3.1 and 4.3, which have been in place since 2002. Bylaw 3.1 generally requires owners to repair and maintain their strata lot. The strata says Mr. Scales breached this bylaw by failing to monitor temperatures and failing to keep a reasonable heat level in SL2. In my view, this argument stretches the meaning of "repair and maintain" too far. Bylaw 3 is about who makes decisions about and pays for strata lot repair and maintenance. It does not require owners to monitor temperatures in their strata lots, and it does not make owners liable to the strata for costs the strata incurs responding to an emergency or repairing common property.
17. Bylaw 4.3 says an owner is responsible for "any damage caused by occupants, tenants or visitors to the owner's strata lot." Mr. Scales says this bylaw does not apply

here because the damaged sprinkler pipe was common property and not his strata lot. As I explain below, I do not agree that the bylaw only applies to strata lot damage.

18. The bylaw's wording is ambiguous, as I observed in another decision involving an identically-worded bylaw (*Macdonald v. Wang*, 2019 BCCRT 651). In that decision, I found that the phrase "to the owner's strata lot" modified "visitors" and not "damage". In other words, I accepted that the bylaw made owners responsible for damage, whether in the owner's strata lot or elsewhere in the strata, caused by their occupants, tenants or visitors.
19. The BC Supreme Court recently touched on an identical bylaw in *Strata Plan VR 2213 v Schappert*, 2023 BCSC 2080. In that decision, the court said that the bylaw made owners responsible for any damage that occupants, tenants and visitors caused "to the owner's own strata lot" (paragraph 48). However, the statement was *obiter dicta*, meaning incidental to the issues decided. While *obiter* statements may be persuasive, they are not binding like other parts of courts decisions.
20. Previously, the court came to a different conclusion in *Louie v. The Owners of Strata Plan VR-1323*, 2015 BCSC 1832. There, the court read an identical bylaw 4.3 in the context of a bylaw 4.2 that was functionally identical to the bylaw 4.2 in this dispute. The court found that the damage referred to in bylaw 4.3 must relate to common property, common assets or those parts of a strata lot that the strata must repair and maintain or insure as identified in bylaw 4.2 (paragraph 161). The court allowed the strata's counterclaim against the owner for fire damage repair costs where the owner's tenant started the fire. The court in *Schappert* did not refer to *Louie*.
21. *Louie* is binding on me, and I agree with the approach in *Louie* that bylaws must be read together (see also *Semmler v. The Owners, Strata Plan NES3039*, 2018 BCSC 2064, at paragraph 18). Here, bylaw 4 is titled "use of property" and prohibits residents generally from doing dangerous or illegal things. It does not explicitly say an owner will reimburse the strata for damage they cause. Rather, bylaw 4.2 prohibits residents from damaging common property (among other things). Bylaw 4.3 clarifies that when occupants, tenants or visitors to the owner's strata lot (some of which may

not be residents) cause such damage, that owner is responsible as if they had caused the damage themselves under bylaw 4.2. This allows the strata to, under SPA section 133, repair the damage and require the owner to pay the reasonable repair costs.

22. However, before doing that, the strata must comply with the procedural steps set out in SPA section 135. It is not clear whether the strata corporation in *Louie* followed those steps, and I infer that the issue was not put before the court.
23. SPA section 135(1) says that a strata corporation cannot require a person to pay the costs of remedying a bylaw contravention unless it has first:
 - Received a complaint,
 - Given the owner or tenant the details of the complaint, in writing, and
 - Given the owner or tenant a reasonable opportunity to respond to the complaint, including by holding a hearing if requested.
24. SPA section 135(1) also says if the person is a tenant, the strata must also give notice of the complaint to their landlord and to the owner.
25. These procedural requirements are strict, with no leeway (see *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, and *The Owners, Strata Plan NW 307 v. Desaulniers*, 2019 BCCA 343).
26. The parties did not originally provide submissions about whether the strata complied with SPA section 135, so I asked them to. The strata says it followed the SPA to the best of its knowledge and ability. However, the strata's numerous letters are addressed only to Mr. Scales and not to the tenants. The strata says there were other communications not documented, but it does not say it ever gave the tenants notice.
27. Was the strata required to give the tenants notice of the alleged bylaw contravention under the SPA? I find that it was. SPA section 133(2) says the strata may require that the reasonable costs of remedying a contravention be paid by "the person who may be fined for the contravention under section 130." Section 130 explains that if a tenant contravenes a bylaw, the strata must fine the tenant, not the owner. The allegedly

contravened bylaw was bylaw 4.2, which prohibits damaging common property. Bylaw 4.3 cannot be contravened – it simply makes owners responsible for their tenants and others' contraventions of bylaw 4.2. The strata alleges the tenants caused the sprinkler pipe to freeze and rupture by leaving the heat too low. The tenants were best positioned to provide evidence about that.

28. I acknowledge that section 131 says a strata corporation may collect fines or costs from the tenant's landlord and the owner. However, the strata must first comply with SPA section 135 by giving the tenants notice. In other words, the strata was required to give Mr. Scales' tenants notice of the alleged contravention of bylaw 4.2 and a reasonable opportunity to respond. The strata did not do that, so it did not comply with SPA section 135(1).
29. As a result, the strata was not permitted to require Mr. Scales to pay the ActiveFire and Bartec invoices under bylaws 4.2 and 4.3. As there were no other bylaws in force at the time making Mr. Scales responsible for the strata's emergency response and repair costs, I dismiss the strata's claim.

CRT FEES AND EXPENSES

30. Based on the CRTA and the CRT's rules, as the strata was unsuccessful, I find it is not entitled to any CRT fee reimbursement. Mr. Scales did not pay CRT fees and neither party claims dispute-related expenses.
31. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against the Mr. Scales.

ORDER

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

Micah Carmody, Tribunal Member