



Civil Resolution Tribunal

Date Issued: March 11, 2024

File: ST-2022-009304

Type: Strata

Civil Resolution Tribunal

Indexed as: *Hesse v. The Owners, Strata Plan VR1001*, 2024 BCCRT 243

B E T W E E N :

BARBARA HESSE

APPLICANT

A N D :

The Owners, Strata Plan VR1001

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

1. This dispute is about responsibility for water damage to a strata lot.
2. Barbara Hesse owns strata lot 1 in strata corporation The Owners, Strata Plan VR1001 (strata). In December 2019, December 2020, and February 2021, water entered Ms. Hesse's as the result of failed exterior chimney cladding. In September

2021, her lot again flooded when contractors making repairs to the chimney blocked a drain.

3. Ms. Hesse says the water damaged several parts of her strata lot, including the drywall, baseboard, carpet, underlay, and fireplace. She says during repairs to the water damage, contractors also damaged her mantel and a section of her fireplace tile.
4. Undisputedly, the water also damaged the strata building's internal structure. With Ms. Hesse's permission, the strata's repairs to the structure included lowering part of Ms. Hesse's ceiling by 1 foot. As a result, her cabinet would not longer fit in the space, so council agreed to pay for its modification.
5. Ms. Hesse asks for an order that the strata perform various repairs to her strata lot, including the cost of the cabinet modification. In the alternative, Ms. Hesse claims \$5,000 for the repairs. Finally, Ms. Hesse asks for an order that the strata provide documents in a "timely fashion".
6. The strata says it is willing to pay the cost of the cabinet modification and also agrees to provide the requested documents. However, it says it has already repaired Ms. Hesse's remaining damage to a reasonable standard and that any remaining deficiencies are minor. The strata asks me to dismiss Ms. Hesse's remaining claims.
7. The applicant is self-represented. The strata is represented by a strata council member.
8. For the reasons that follow, I allow Ms. Hesse's claim for \$1,400 for cabinet modification and dismiss her remaining claims.

JURISDICTION AND PROCEDURE

9. 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.

10. 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.
11. 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.
12. Strata lot 1 was flooded again in December 2023, after the parties had provided their submissions. In an email to the CRT, Ms. Hesse said the latest flood impacted areas at issue in this dispute, such as the carpet, drywall, cabinet, and mantel. In order to determine whether Ms. Hesse's claimed remedies remained at issue, I asked her to provide an updated list of her remedies sought, including their dollar value, and any evidence needed to support those claims. After reviewing Ms. Hesse's information, the strata had no further response. I have considered this updated information in my decision below.
13. 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.

Preliminary Issue – Documents

14. In the Dispute Notice, Ms. Hesse asks for an order that the strata provide requested information, documents, and records in a fulsome and timely fashion. In her submissions, she does not say there are any specific documents that she has not received.

15. Since Ms. Hesse does not identify any specific documents she was seeking, I find she is asking for a generic order that the strata comply with *Strata Property Act* (SPA), namely sections 35 and 36 about an owner's right to receive records. The provisions of the SPA are mandatory, so an order requiring the strata to comply with them would be of no useful purpose. So, I decline to make the requested order.

ISSUES

16. The issues in this dispute are:

- a. What amount, if any, is Ms. Hesse entitled to for cabinet modification?
- b. Was the strata negligent in maintaining or repairing common property, and if so, what is an appropriate remedy?

EVIDENCE AND ANALYSIS

17. In a civil proceeding like this one, Ms. Hesse, as applicant, must prove her claims on a balance of probabilities, which 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.

18. The strata was created in 1981. It consists of 27 residential strata lots in a single four-story building. Ms. Hesse owns strata lot 1 on the ground floor.

19. As noted above, strata lot 1 was flooded in December 2019 and 2020. It is undisputed these incidents were the result of failed common property chimney cladding. Ms. Hesse says water entered her unit again in February 2021, though she only says it made her carpet wet, and does not allege any damage.

20. Strata lot 1 was flood again on September 4, 2021. Ms. Hesse says water entered her unit in the same places as before, this time because of a drain blocked by scaffolding contractors had erected to allow them to repair the cladding.

21. Ms. Hesse says the water damaged her walls, carpet, and fireplace.

22. There is no dispute that the strata has paid for the cost of certain repairs to strata lot 1 following the flooding. Specifically, between November 2, 2021 and December 10, 2021, invoices show the strata paid \$7,215 in labour costs for painting and drywalling in strata lot 1. Photographs show that after repairs, there were some outstanding cosmetic issues. These included a bow in the ceiling over the fireplace, a visible bulge from mudding/taping on the fireplace wall, a crack on the fireplace wall, and some bumps and ridges. Ms. Hesse says during the repairs, the strata's contractors also scratched her fireplace mantel and broke one of her fireplace tiles. Finally, she says her fireplace has rust, and its tile is starting to separate (pull away) from the wall.
23. The parties agree that strata lot 1 was flooded again in December 2023. In an email, Ms. Hesse says the latest flood caused further damage, including to the drywall and carpet. Ms. Hesse says she moved out of her strata lot for 2.5 months after the flood. While she was living elsewhere, strata lot 1 was subject to restoration work.
24. Ms. Hesse says she has lost use and enjoyment of her home due to the repeated water incidents but limits her claim to the cost of specified repairs.
25. I note that responsibility for the damage from the December 2023 flood, including the cost of the recent restoration work, is not before me. That said, Ms. Hesse acknowledges the restoration work addressed some of the pre-existing issues, such as drywall damage on her fireplace wall. This is relevant, since it I find it makes some of requested remedies moot.
26. So, I asked Ms. Hesse to explain what damage remained and what remedies she sought. Ms. Hesse maintained her \$1,400 claim for cabinet modification and provided a quote for \$3,500 to repair drywall on her fireplace wall and reinstall her baseboard. She said she had already incurred costs for painting, and expected to incur other costs, but she did not provide any detail.
27. Since Ms. Hesse claimed a total \$5,000 in her application, and allocated \$1,400 for the cabinet repair, I find her claims is for \$3,600 for non-cabinet repairs.
28. I turn first to the cabinet, and then address the balance of the repairs below.

Cabinet

29. While performing repairs to the building's structure, with Ms. Hesse's permission, the strata's contractor lowered the height of a ceiling in part of her strata lot. Emails between Ms. Hesse and the strata show they took this approach to save the strata a large amount of money. Notably, the lowered ceiling meant Ms. Hesse's cabinet would now be too tall.
30. In an October 20, 2021 strata council meeting, the strata agreed to pay up to \$1,300 to Ms. Hesse for the cost of modifying her cabinet.
31. In an October 25, 2021 email, a strata council member promised Ms. Hesse the strata will cover everything she needs to get her place back to normal.
32. In submissions, the strata says it remains willing to pay cabinet modification costs but says the work has not been completed. Ms. Hesse specifically claims \$1,400 for modifying and reinstalling the cabinet, as set out in an August 11, 2023 quote.
33. I find the \$1,400 quote is generally consistent with the strata's expectations, as authorized by the strata council. Given the evidence, and the strata's position in this dispute, I order the strata to pay Ms. Hesse \$1,400 for the cabinet.

Other Repairs

34. I turn now to whether Ms. Hesse is entitled to compensation for the remaining damage to her strata lot.
35. Numerous British Columbia Supreme Court decisions have said a strata corporation is not an insurer, and unless required under strata bylaws, is only liable to pay for repairs to a strata lot where it has been negligent: see *Kayne v. The Owners, Strata Plan LMS 2374*, 2013 BCSC 51; *John Campbell Law Corporation v. Owners, Strata Plan 1350*, 2001 BCSC 1342; *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231; *Wright v. The Owners, Strata Plan #205*, 1996 CanLII 2460 (BC SC). This is the case even where the strata lot damage was caused by a common property failure: see *Wawanesa Mutual Ins. Co. v. Keiran*, 2007 BCSC 727.

36. The strata repealed and replaced its bylaws by filing new bylaws at the Land Title Office in July 2012. While it has made amendments to the bylaws since that time, none of those amendments apply in this dispute.
37. The strata's duty to repair and maintain common property is set out in SPA section 72, and strata bylaw 8. Section 72 and bylaw 8 both require the strata to repair and maintain all common property. While there are some exceptions about limited common property, they do not apply in this dispute.
38. Bylaw 2 sets out an owner's duty to repair their strata lot. Generally, the owner is responsible for repairing and maintaining their strata lot. Bylaw 8 sets out the strata's limited duty to repair a strata lot, which is restricted to the structure of the building. None of Ms. Hesse's remaining repairs are about the structure of the building.
39. So, Ms. Hesse must prove the strata was negligent. To prove negligence, Ms. Hesse must establish that the strata breached its duty to reasonably fulfill its repair and maintenance duties, that strata lot 1 was damaged, and that the strata's breach caused the damage: see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
40. 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 unless it acted unreasonably in selecting or instructing the contractors.
41. Here, given the strata's obligation to repair and maintain common property, including the chimney and its cladding, I accept the strata owes Ms. Hesse a duty of care. The strata admits the damage to Ms. Hesse's strata lot was the result of the failed chimney cladding. However, I find the strata acted reasonably in fulfilling its repair and maintenance duties, so Ms. Hesse is not entitled to damages. I explain below.

42. The damages Ms. Hesse claims all apparently arise after the September 2021 flood. She said the baseboard has not been on the wall since the September flood, and says the mantel was scratched during the strata's attempted repairs.
43. Ms. Hesse says, and I accept, that the strata's contractors caused the flood by blocking a drain while repairing the exterior chimney cladding.
44. While it is no doubt unfortunate that the contractors blocked the drain, I do not find it was unreasonable for the strata to hire them. There is no suggestion that the contractors were somehow unqualified to perform the chimney cladding repair.
45. I also note Ms. Hesse acknowledged the recent restoration work fixed the cracks in her fireplace wall. So, to the extent she seeks a remedy for repairs to the fireplace wall's drywall, I find her claim is moot in any event.
46. Even if I had found the strata negligent, I note Ms. Hesse would still not have proven her damages. None of her quotes specify the cost to repair or replace the baseboard separate from the drywall work. Her quote for cabinet modification initially included repairs to the mantel, but she also provided an amended quote that scratched out references to the mantel.
47. While Ms. Hesse also said she was unable to get a new quote for drywall repair in the time since she moved back into strata lot 1, she admits the fireplace wall has been repaired, and the quote did not address any other drywall damage. Similarly, Ms. Hesse said there was damage to her front entrance and provided a photo of a minor bump in the drywall. However, she did not provide any evidence about the cost to repair it.

CRT FEES, EXPENSES AND INTEREST

48. 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. I see no reason in this case not to follow that general rule.

Here, I find Ms. Hesse had divided success. I therefore order the strata to reimburse Ms. Hesse \$112.50 which is half of her paid CRT fees.

49. Ms. Hesse also claimed \$601 in legal fees. CRT Rule 9.5(3) says the CRT will not order reimbursement of a lawyer's fees for strata disputes unless there are extraordinary circumstances, which I find are not present here. So I dismiss this claim.
50. The *Court Order Interest Act* (COIA) applies to the CRT. In this case, there is no evidence Ms. Hesse has paid to modify her cabinet. So, I find she is not entitled to interest on a damages award, since she has not yet suffered any pecuniary (monetary) loss. So, under COIA section 2(a), I decline to order any pre-judgment interest on the \$1,400 award for the cabinet.
51. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

ORDERS

52. I order that, within 14 days of the date of this order, the strata pay Ms. Hesse a total of \$1,512.50, broken down as follows:
 - a. \$1,400 in debt, and
 - b. \$112.50 in CRT fees.
53. Ms. Hesse is entitled to post-judgment interest under the COIA.
54. I dismiss Ms. Hesse's remaining claims.

55. This is a validated decision and order. 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.

Christopher C. Rivers, Tribunal Member