



Civil Resolution Tribunal

Date Issued: April 15, 2024

File: ST-2023-000721
and ST-CC-2023-004310

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wilkinson v. The Owners, Strata Plan LMS819*, 2024 BCCRT 356

B E T W E E N :

ROBERT WILKINSON

APPLICANT

A N D :

The Owners, Strata Plan LMS819

RESPONDENT

A N D :

ROBERT WILKINSON

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This dispute is about responsibility for the cost of bathroom repairs.
2. In 2022, Rob Wilkinson owned a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS819 (strata). That February, the strata replaced windows in all the strata lots. Certain windows, such as the one in Mr. Wilkinson's bathroom, required strata owners to remove a section of shower tile around the window frame to allow the replacement.
3. When Mr. Wilkinson removed the tile, he says he discovered rot in the wall's wood framing. He told the strata, which agreed to pay for repairs to his bathroom. After the repairs were complete, the strata charged \$5,036.50 of the \$8,232 cost to Mr. Wilkinson by way of a "chargeback" to his strata account.
4. Despite disagreeing with the chargeback, Mr. Wilkinson paid it when he sold his strata lot. He asks for the chargeback to be cancelled and for the strata to return the \$5,036.50 to him.
5. In its counterclaim, the strata claims \$4,108.98, comprised of \$3,195.50 for the balance of the initial repair cost and \$788.48 in legal fees.
6. Mr. Wilkinson is self-represented. The strata is represented by a strata council member.

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.
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. In this case, while reviewing the parties' evidence, I found that certain files provided by the strata were password protected. I requested, and received, unlocked versions of the files. Mr. Wilkinson objected to the admission of this evidence as late. However, since I gave him an opportunity to respond to the evidence, I find there is no prejudice in permitting it. I have therefore considered it in my decision below.
11. 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.

ISSUES

12. The issues in this dispute are:
 - a. Was the strata entitled to issue a chargeback to Mr. Wilkinson for part of the cost of repairs to his strata lot's bathroom?
 - b. Does Mr. Wilkinson have to pay the strata for the balance of the bathroom repairs or for its legal costs?

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, each party must prove their respective claims on a balance of probabilities, meaning more likely than not. I have read all the parties'

submissions and evidence but refer only to the evidence and argument that I find necessary to explain my decision.

14. The strata consists of 49 strata lots, 19 of which, including Mr. Wilkinson's, are 3-story townhouses.
15. In October 2021, the strata decided to replace the strata lots' windows. Notably for this dispute, the townhouse lots had 3rd floor bathrooms with a window in the shower.
16. Minutes from the February 2, 2022 strata council meeting show that individual strata lot owners were responsible for arranging for and paying for the removal of some shower wall tiles to allow the shower windows to be replaced.
17. Mr. Wilkinson decided to remove the tile himself. While doing so, he says he discovered a soft spot in the shower wall at the window frame. When he investigated, he discovered mould and rot on the underlying wood frame. Mr. Wilkinson brought the rot to the strata's attention, since he was concerned that it was significant and structural.
18. The strata obtained a quote from a contractor, Prostar Contracting (Prostar), on April 26, 2022. After visiting the site, Prostar said there was minor rot damage on a stud and a possibility of further rot damage behind the tiled wall. Prostar said it would need to remove the entire tiled shower wall and replace it to as part of replacing the rotten stud.
19. On April 27, 2022, a strata council member emailed the strata manager that council had agreed to cover the cost to repair the wall and return Mr. Wilkinson's bathroom to its original condition. The council member also said that the cost of any upgrade would be Mr. Wilkinson's responsibility.
20. On May 20, 2022, the strata wrote to Mr. Wilkinson that it had approved paying up to \$7,840 (plus tax) for Prostar "...to replace a rotten 2x4 wood stud that supports the structure of exterior and interior walls, and an interior window, to include removing the entire bathroom tiled wall for access to the stud and the restoration work thereafter to return the bathroom to its original state."

21. On June 6, 2022, the strata council ratified that decision.
22. Prostar removed the wall, repaired Mr. Wilkinson's bathroom, and invoiced the strata. The invoice, totalling \$8,232, was broken into two parts. The first part totalled \$3,043.33 plus GST for wall demolition, tile removal, window replacement, and waterproof drywall replacement. The second part totalled \$4,796.67 plus GST for removing the remainder of the tile, waterproofing the shower stall, and retiling the full shower.
23. On September 22, 2022, the strata wrote to Mr. Wilkinson, enclosing Prostar's invoice, and advised him it was charging him for the second part of the invoice for repairs to his strata lot. Including GST, the strata charged Mr. Wilkinson \$5,036.50. It did not charge Mr. Wilkinson for the first part.
24. On January 26, 2023, Mr. Wilkinson sold his strata lot. Before doing so, he paid the chargeback fee, though I am unable to determine precisely when. Since he filed this dispute the same month as he sold his strata lot, I find that Mr. Wilkinson paid the chargeback under protest and never accepted he had to pay it.

Was the strata entitled to impose the chargeback?

25. In *The Owners, Strata Plan K 407 v. Kelly*, 2019 BCCRT 789, a CRT vice chair found that to hold an owner responsible for repair costs incurred by the strata, the owner must:
 - a. Have agreed to pay them,
 - b. Be responsible under the *Strata Property Act* (SPA) or the strata's bylaws, or,
 - c. Have acted negligently.
26. Here, the strata provided no evidence that Mr. Wilkinson ever agreed to pay for the cost of the repairs to his strata lot. To the contrary, the evidence shows he has been adamant throughout that he did not agree to the chargeback.

27. While it does not use the word negligence specifically, I infer from the strata's submissions that it alleges that Mr. Wilkinson damaged the waterproof membrane underlying the tile when he removed tile from around his shower. However, as noted above, the strata agreed to return the bathroom to the original state after removing the "entire bathroom tiled wall for access". So, I find that any damage Mr. Wilkinson may have caused to the membrane is irrelevant, since the scope of repair required the removal of the entire tiled wall in any event. In other words, any damage Mr. Wilkinson's negligence may have caused to the membrane would have been irrelevant once the entire wall was removed.
28. So, does the strata have authority under the SPA or a bylaw?
29. In *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512, the BC Court of Appeal said that without a bylaw or rule giving it authority to do so, a strata corporation cannot charge an owner for costs it has incurred. In *Ward*, the charge in question was for legal fees. However, in *Rintoul et al v. The Owners, Strata Plan KAS 2428*, 2019 BCCRT 1007, a CRT vice chair applied the reasoning in *Ward* where the strata had charged strata lot owners for a damaged hydroelectric line. The vice chair concluded that because the strata had no bylaw allowing it to charge back the repair costs, the owners did not have to pay. He found the reasoning in *Ward* applied to repair charges, and not just to legal fees. Although *Rintoul* is not a binding precedent, I find its reasoning persuasive and I rely on it.
30. The strata did not cite any specific sections of the SPA or its bylaws in either the chargeback letter or its submissions. However, in an October 21, 2022 letter from the strata manager to Mr. Wilkison, it cites bylaw 4 and a number of SPA sections that it alleges grant the authority to issue a chargeback.
31. Strata bylaw 4 is about maintenance and repair. While bylaw 4.1 says an owner shall repair and maintain their lot, except for repair and maintenance that is the responsibility of the strata corporation under the act, it does not provide any authority for the strata to charge expenses it incurs repairing a strata lot to the owner. No part

of bylaw 4 and its subsections requires an owner to indemnify or reimburse a strata corporation for repairs or other work it does in a strata lot.¹

32. I also reviewed SPA sections 1, 3, 4, 26, 31, 33, 38, 68, 72, 77, 91, 97, and 133, all of which the strata manager referred to in its October 21, 2022 letter. Again, I find none of those provide the strata authority to issue a chargeback for repair work to an owner.
33. In summary, since Mr. Wilkinson was not responsible under the SPA or the strata bylaws, did not agree to pay, and did not cause any expense through his negligence, I find the strata had no legal basis to impose the \$5,036.50 charge on the owner's strata lot account. I therefore order the strata to refund the chargeback Mr. Wilkinson paid.
34. Similarly, I find the strata does not have any claim to the balance of P's invoice. Mr. Wilkinson never agreed to pay for the cost of the repairs and the strata explicitly said it would be responsible for them. I dismiss the strata's counterclaim for P's invoice.

Legal Fees

35. The strata provided an invoice for legal fees. On September 26, 2022, the strata paid a lawyer to attend the strata's annual general meeting, answer owner questions, and provided legal information. As Mr. Wilkinson notes, this is after the strata decided to issue the chargeback to Mr. Wilkinson.
36. While the strata was entitled to seek legal advice, and to have a lawyer attend its AGM, the strata provided no explanation as to why Mr. Wilkinson should be responsible for those costs. I dismiss this part of the strata's counterclaim.

CRT FEES, EXPENSES AND INTEREST

37. 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

¹ For an example of a bylaw that imposing that obligation, see: *Zhang v. The Owners, Strata Plan EPS4634*, 2023 BCCRT 1109 at paragraph 16.

dispute-related expenses. I see no reason in this case not to follow that general rule. I therefore order the strata to reimburse Mr. Wilkinson \$225 for paid CRT fees. He did not claim any dispute-related expenses. I dismiss the strata's claim for CRT fees and dispute-related expenses.

38. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Wilkinson is entitled to prejudgment interest on the \$5,036.50 chargeback from January 26, 2023, the date on which he sold his strata lot, to the date of this decision. This equals \$297.53.

ORDERS

39. Within 14 days of the date of this order, I order the strata to pay Mr. Wilkinson a total of \$5,559.03, broken down as follows:

- a. \$5,036.50 in debt,
- b. \$297.53 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$225 in CRT fees.

40. I dismiss the strata's counterclaim.

41. Mr. Wilkinson is entitled to post-judgment interest, as applicable.

42. 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