



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS 2759 v. Choi*, 2024 BCCRT 446

B E T W E E N :

The Owners, Strata Plan BCS 2759

APPLICANT

A N D :

HO SUN CHOI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. The respondent, Ho Sun Choi, owns a strata lot on the 10th floor of a building in the applicant strata corporation, The Owners, Strata Plan BCS 2759. The strata says that a leak originating in the respondent's strata lot damaged other strata lots and the strata's common property. The strata says that the respondent caused the leak by failing to properly monitor a toilet. The strata claims \$25,718.20 for a \$25,000

deductible and a \$718.20 plumber's invoice. A strata council member represents the strata.

2. The respondent denies liability. They say that they were unaware of any issue with the toilet because they had very recently bought the strata lot. The respondent is self-represented.

JURISDICTION AND PROCEDURE

3. 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 dispute parties that will likely continue after the CRT's process has ended.
4. 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. I have considered the potential benefits of an oral hearing. There are no credibility issues and, as noted below, the respondent chose not to participate in the tribunal decision process. I am properly able to assess and weigh the documentary evidence and submissions before me. So, the CRT's mandate to provide proportional and speedy dispute resolution outweighs any potential benefit of an oral hearing. I therefore decided to hear this dispute through written submissions.
5. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.
6. Under CRTA section 123 and the CRT rules, 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

7. The issue in this dispute is whether the respondent must pay the deductible and plumber's invoice.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the strata as the applicant must prove its claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision. The respondent did not provide any evidence or submissions during the tribunal decision process, even though the CRT tried to contact them multiple times both by email and telephone. I have considered the respondent's Dispute Response in reaching this decision.
9. The strata consists of a 26-storey tower of residential strata lots. As noted, the respondent's strata lot is on the 10th floor. According to a title search, the respondent purchased the strata lot on June 15, 2021.
10. The strata filed a complete set of bylaws in the Land Title Office on July 27, 2009. Bylaw 7.4 says, in relevant part, that an owner must indemnify the strata from any repair expenses caused an "act, omission, negligence or carelessness" of essentially anyone using the owner's strata lot, to the extent the strata's insurance does not cover the expense. Bylaw 7.4 goes on to say that it applies to the strata's insurance deductible. None of the strata's bylaw amendments filed since then changed bylaw 7.4.
11. Section 158(2) of the *Strata Property Act* says that a strata corporation can sue an owner to recover an insurance deductible if the owner is "responsible" for the damage. However, the strata concedes that bylaw 7.4 means that it must prove that the respondent negligently caused the damage to recover the insurance deductible. This is because the strata chose to impose a higher standard than "responsibility" by using the words "act, omission, negligence or carelessness". The negligence standard also applies to the strata's claim for the plumber's invoice, which was a repair expense.

12. To prove negligence in this context, the strata must prove that the respondent's conduct fell below the standard of a reasonable strata lot occupant, and that the respondent's conduct caused the flood and resulting damage.
13. The leak occurred on August 9, 2021. According to a report from Mega Hydraulics Inc., its plumber arrived at the strata just before 3:00 am to respond to a water leak in the strata lot below the respondent's. The fire department had already arrived and had located the leak's source as the respondent's toilet. According to Mega Hydraulics' report, the toilet's fill valve had been replaced. The plumber could tell because it was not the same brand as the toilet. The plumber also found that the overflow hose had not been reattached. As a result, the toilet was spraying water to the backside of the toilet and onto the wall behind the toilet.
14. I note that the plumber's identity (the report just calls them "Ali M") and credentials are not in evidence, which is a requirement for expert opinion evidence under the CRT's rules. Expert fact evidence does not need to satisfy the same requirements. Expert fact evidence may include technical observations that go beyond the knowledge of a layperson as long as it does not offer an opinion.¹ I find that the report is expert fact evidence, and I accept that the plumber accurately described what they observed. In doing so, I infer that the person who attended had some level of training and experience as a plumber, based on fact that a plumbing company sent them to respond to an emergency leak. I therefore find that they were qualified to observe how the toilet functioned.
15. The respondent provided no evidence about what happened. Their Dispute Response includes a blanket denial of the strata's allegations but does not say anything about the night of the leak. The only substantive thing the respondent says is that they did not know there was anything wrong with the strata lot's "fixtures" because they had recently purchased it. However, the respondent had owned the strata lot for almost two months by the time of the leak, which I find is enough time to learn whether a toilet was functioning properly or not.

¹ See *Le v. B.C. Wide Home Services Ltd.*, 2023 BCCRT 933, at paragraph 18.

16. When a party fails to provide relevant evidence with no explanation, the CRT may draw an adverse inference. An adverse inference is when the CRT assumed the party did not provide the relevant evidence because it would have damaged their case. I find that an adverse inference is appropriate here. I find that if the Mega Hydronics report was not accurate, or if there was a non-negligent explanation for the leak, the respondent would have said so either in their Dispute Response or by providing evidence or submissions later in the CRT's process.
17. With that, I find that the leak occurred because someone had improperly installed the toilet's fill valve. Was it the respondent? There is no way to know, and I find it does not matter. As the strata points out, the court established the standard of care of strata lot occupants in *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 519. The court essentially said that occupants must monitor a toilet to make sure it empties and refills properly after flushing. That case was about a clogged toilet, but I find the same reasoning applies here. Mega Hydronics' report indicates that water was spraying against the wall behind the toilet. I find that with reasonable diligence, the respondent would have noticed this after using the toilet and shut off the water, preventing the flood. In short, I find that the respondent's conduct fell below the standard of care and caused the flood. This means the respondent was negligent.
18. I therefore find that the respondent must indemnify the strata for its repair expenses from the flood, including its insurance deductible. The strata provided copies of an invoice from its restoration contractor for the \$25,000 deductible and Mega Hydronics' \$718.20 invoice. I find that the respondent is responsible for both under bylaw 7.4.

TRIBUNAL FEES, EXPENSES, AND INTEREST

19. Under CRTA section 49 and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The strata was successful, so it is entitled to \$225 in CRT fees. The strata did not claim any dispute-related expenses.

20. The *Court Order Interest Act* applies to the CRT. The strata is entitled to pre-judgement interest on the invoices from September 30, 2021, the day the strata demanded payment, to the date of this decision. This equals \$1,996.54.
21. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against the respondent.

DECISION AND ORDERS

22. Within 30 days of this decision, I order the respondent to pay the strata \$27,939.74, broken down as follows:
- a. \$25,718.20 in damages,
 - b. \$1,996.54 in prejudgment interest, and
 - c. \$225 in CRT fees.
23. The strata is also entitled to post judgement interest under the Court Order Interest Act, as applicable.
24. 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.

Eric Regehr, Vice Chair