



Civil Resolution Tribunal

Date Issued: June 7, 2024

File: ST-2022-009172

Type: Strata

Civil Resolution Tribunal

Indexed as: *Tam v. The Owners, Strata Plan BCS 4130*, 2024 BCCRT 519

B E T W E E N :

KAM BENG TAM

APPLICANT

A N D :

The Owners, Strata Plan BCS 4130

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. Kam Beng Tam owns a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS 4130. Mrs. Tam asks for orders that the strata repair and maintain parts of her strata lot and the strata's common property. Specifically, she asks for orders that the strata replace her carpet with hardwood flooring, rebuild a wooden garden frame, and repair her window seal. A family member represents Mrs. Tam.

2. The strata agrees with Mrs. Tam's claim about the garden frame, but says that it is not responsible for her remaining claims. A strata council member represents the strata.

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). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Considering the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
5. 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.

ISSUES

6. The issues in this dispute are:
 - a. Must the strata replace Mrs. Tam's carpet with hardwood flooring?
 - b. Must the strata rebuild Mrs. Tam's wooden garden frame?
 - c. Must the strata repair Mrs. Tam's window seal?

EVIDENCE AND ANALYSIS

7. As the applicant in this civil dispute, Mrs. Tam must prove her claims on a balance of probabilities, meaning more likely than not. I have read all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.

Carpet

8. Mrs. Tam says that the carpet in her strata lot is uneven and bulges upwards, which creates a tripping hazard. She says this is because of water coming in through her back patio door. She asks for an order that the strata replace the carpet with hardwood flooring. The strata says that flooring inside a strata lot is the owner's responsibility.
9. The strata's bylaws are the Schedule of Standard Bylaws set out in the *Strata Property Act*, except as modified by the strata's filed bylaw amendments, none of which I find applicable here.
10. Bylaw 2 says that an owner must repair and maintain their strata lot, except for repair and maintenance that the bylaws say is the strata's responsibility. No bylaw makes the strata responsible for the repair and maintenance of flooring inside a strata lot. So, I find Mrs. Tam is responsible for the repair and maintenance of her strata lot's carpet.
11. However, that does not end the matter. As noted, Mrs. Tam says that her carpet is damaged because of water coming in through an exterior door. Bylaw 8 says that the strata is responsible to repair and maintain a strata lot's exterior doors and windows.
12. The strata is not an insurer, but it is liable to pay for repairs in a strata lot that are required because of its negligence.¹ The standard of care for the strata's repair and maintenance obligations is reasonableness.² So, in order to succeed in her claim that

¹ See *John Campbell Law Corp. v. Owners, Strata Plan 1350*, 2001 BCSC 1342, and *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231.

² See *Weir v. Strata Plan NW 17*, 2017 BCSC 784.

the strata is responsible for replacing her carpet, Mrs. Tam must prove that the strata did not reasonably fulfill its obligations to repair and maintain her exterior door, and that the strata's failure to do so caused the alleged carpet damage.

13. Mrs. Tam says that she has been unable to properly close her patio door since she moved into her strata lot in 2013. She says that the strata attempted to repair it multiple times, but that it was never properly fixed. In support of this, Mrs. Tam provided a handwritten form titled "15 Month Building Review / Common Property Deficiencies". While the form does not show the date it was completed, it says that it must be returned to the strata by November 1, 2013, so I accept that Mrs. Tam completed it before that date. On the form, Mrs. Tam wrote that the patio door frame was warped and that she was unable to close the door properly.
14. While Mrs. Tam says that the issues with the door continued after this, despite the strata's repair attempts, she provided no documentary evidence to show that she raised this issue with the strata again before filing this dispute in November 2022. In the absence of supporting evidence that the problems with the door persisted and that the strata was aware of this, I find Mrs. Tam has not proven that the strata acted unreasonably with respect to the door's repair and maintenance.
15. Even if Mrs. Tam had proven that the strata was aware of ongoing issues with her patio door, I would have found that she has not proven that water from the door caused any problems with her carpet.
16. Mrs. Tam provided a November 28, 2023 report prepared by MD, a project manager at Incredible Restorations. The report says, in part, that the bottom portion of Mrs. Tam's patio door is cracked, and appears to be allowing water to enter the home. It says that it is "undoubted" that there is mould under the carpet near the door, given the length of time the issue has been ongoing. However, MD does not say that they observed mould under the carpet, nor does it specify how long the water issue has been ongoing.
17. MD's report includes 62 photographs. Several show buckling carpet, which the report says is present in the living room, dining room, recreation room, and bedroom. MD's

report says that water ingress is “affecting the carpet”, but they do not explain how they reached this conclusion. While some of the photographs appear to show readings from a moisture meter or other diagnostic tool, these readings are focused on the area around the patio door. There are no photographs of moisture readings in the other areas where the carpet is buckling. In any event, MD provided no evidence about what the readings shown in the photographs mean, or what level of moisture is acceptable. Absent further explanation or evidence, I find Mrs. Tam’s argument that water ingress is causing the carpet issues speculative and unproven.

18. The strata provided a January 29, 2024 email from SC, an employee of Key Restoration. In the email, SC says that they performed repairs at Mrs. Tam’s strata lot on January 25. They say that they lifted the carpet near the door and found that it was damp, though they did not find water accumulating under it. They also say they did not observe any mould under or on the carpet. SC says that they identified several possible points of water ingress, including gaps around the door. They say that they repaired these issues by replacing a weather strip, caulking the door and window, and securing the door transition. Lastly, SC says they dried the carpet, underlay, and concrete subfloor before replacing the carpet. An email from SC to Mrs. Tam in evidence says that when Key Restoration returned to Mrs. Tam’s property on January 30 to check the repairs, its moisture meter registered zero percent moisture content in the carpet area inside the patio door despite several days of rain.
19. Based on these two reports, I accept that water was entering Mrs. Tam’s strata lot through her patio door before Key Restoration’s repairs. However, I find that neither report establishes that water from the door caused the carpet buckling in Mrs. Tam’s strata lot. So, I dismiss this part of her claim.

Garden frame and grass

20. Mrs. Tam says that the wooden frame around her garden and lawn needs to be replaced. She says that the strata sent someone to look at the garden ties, and that she was told the entire frame would need to be replaced. She says the strata has agreed to rebuild the frame, but has only partially replaced it.

21. In its Dispute Response filed at the outset of this dispute, the strata agreed to Mrs. Tam's requested remedy that it rebuild the wooden garden frame. I infer the frame is common property or limited common property, which the strata must repair and maintain under SPA section 72 and the strata's bylaws.
22. Mrs. Tam did not provide photographs of the frame or ties she refers to. The only documentary evidence Mrs. Tam provided in support of this claim is a page of her own undated handwritten notes about the issues in this dispute. The only part of these notes which appears to address the garden frame issue says "They replace only one wooden block, instead 4 pieces." I infer this refers to portions of the frame that Mrs. Tam says need to be replaced. However, it is unclear from these notes and her submissions what exactly the wooden blocks are, where they are located, which of them need to be replaced, and why. It is also unclear whether the strata partially repaired the frame after Mrs. Tam began this dispute, and Mrs. Tam argues that those repairs were insufficient, or whether she argues that the strata has not made any repairs.
23. Despite the strata's initial agreement with this claim, the burden is on Mrs. Tam to prove that she is entitled to the orders she seeks. Given the lack of evidence about what kind of repair or replacement is required for the garden frame and whether any repairs have already been completed, I find I am unable to make an order with sufficient specificity for the strata to comply with it. So, I dismiss this part of Mrs. Tam's claim.
24. Mrs. Tam also argues that the grass is not maintained and keeps dying due to a lack of soil and damage from rabbits. Mrs. Tam did not request a specific remedy for the grass in her Dispute Notice, but says generally that it needs topsoil. In submissions, she asks for a time frame for when this will be completed.
25. It is unclear where the grass Mrs. Tam refers to is located. She refers to a photograph of the grass in her submissions, but did not submit such a photograph in evidence. In the absence of further evidence or details about the grass issue, I dismiss this part of Mrs. Tam's claim as well.

Window seal

26. Lastly, Mrs. Tam says that the wood and sealant on one of her strata lot's windows is cracked and peeling. She says water and insects can get in. She asks for an order that the strata repair the wood and sealant.
27. As noted above, the strata must repair and maintain exterior windows under the bylaws. In its Dispute Response, the strata said the window and sealant have been inspected. I infer the strata argues that they do not require repair.
28. Mrs. Tam provided a photograph of a portion of the window which she says was taken on February 1, 2023. I find this photograph does not establish that the window is in need of repair. It does not show visible cracks or holes in the window's trim or sealant. Mrs. Tam did not provide photographs or videos of water or insects entering her strata lot, or any expert evidence saying that the window needs repair. In the absence of any other documentary evidence supporting Mrs. Tam's assertion, I dismiss this part of Mrs. Tam's claim. Nothing in this decision changes the strata's ongoing obligation to repair and maintain common property under SPA section 72.

CRT FEES AND EXPENSES

29. 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 Mrs. Tam was unsuccessful, I dismiss her claims for CRT fees and dispute-related expenses. The strata did not pay any CRT fees or claim dispute-related expenses, so I make no order for them.
30. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mrs. Tam.

ORDER

31. I dismiss Mrs. Tam's claims and this dispute.

Alison Wake, Tribunal Member