



Civil Resolution Tribunal

Date Issued: July 5, 2024

File: ST-2023-007673

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan KAS 3589 v. Hester, 2024 BCCRT 645*

B E T W E E N :

The Owners, Strata Plan KAS 3589

APPLICANT

A N D :

PAUL MICHAEL JOHN HESTER and MICHAEL LUKE HESTER

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about responsibility for an insurance deductible arising from a fire.

2. The respondents, Paul Michael John Hester and Michael Luke Hester, co-own strata lot 257 in the applicant strata corporation, The Owners, Strata Plan KAS 3589.¹ Following a fire originating in SL 257, the strata made a claim on its insurance policy, and paid a \$25,000 deductible. The strata seeks reimbursement of the deductible from the respondents under the *Strata Property Act* (SPA) and its bylaws. A strata council member represents the strata.
3. Neither of the respondents dispute the strata's claim. Michael Luke Hester agrees with the claim description, and says the respondents agreed to reimburse the strata for the deductible once they sold SL 257. Michael Luke Hester is self-represented. Paul Michael John Hester did not provide a Dispute Response, or otherwise participate in this dispute, so they are in default. I address this further below.

JURISDICTION AND PROCEDURE

4. These are the Civil Resolution Tribunal's (CRT) formal written reasons. 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, and recognize any relationships between the dispute's 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. Here, neither party requested an oral hearing, there are no issues of credibility, and the respondents do not dispute the strata's claims. So, I find I am properly able to

¹ The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure the CRT addresses them respectfully throughout the process, including in published decisions. Michael Luke Hester provided his pronouns, but did not provide his title. Paul John Michael Hester did not provide their pronouns or their title. So, I will use Michael Luke Hester's specified pronouns and his full name, and gender-neutral pronouns and Paul John Michael Hester's full name, to refer to each of the respondents in this decision, intending no disrespect.

assess and weigh the documentary evidence and submissions before me without an oral hearing.

6. CRTA section 42 says the CRT may accept as evidence information it considers relevant, necessary, and appropriate, even where the information would not be admissible in court.
7. 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.

ISSUE

8. The issue in this dispute is whether the respondents must reimburse the strata \$25,000 for its insurance deductible.

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, the strata must prove its claims on a balance of probabilities (meaning more likely than not). I have read the strata's Dispute Notice, written submissions, and documentary evidence, and Michael Luke Hester's Dispute Response. However, I only refer to information I find necessary to explain my decision. Neither respondent made submissions other than Michael Luke Hester's Dispute Response, nor did they provide any documentary evidence.
10. As noted above, Paul Michael John Hester is in default. Generally, liability is assumed where a party is in default. Here, however, I do not need to assume liability. For the reasons below, I find the evidence before me proves the respondents are jointly and severally responsible to reimburse the strata for the insurance deductible.
11. The strata was created in December 2008 under the SPA. On June 9, 2022, the strata filed a complete new set of bylaws with the Land Title Office that repealed and replaced all previously registered bylaws. Then, on June 27, 2023, the strata filed another new set of bylaws that repealed and replaced the 2022 bylaws. Since the fire

at the centre of this dispute happened on April 8, 2023, I find the June 2022 bylaws apply.

12. The strata submitted a fire department incident report regarding the fire in SL 257. The report shows the investigator determined the fire's point of origin was a bedroom. The investigator said the burn pattern on the bedroom's mattress and bedframe suggested the fire started on the bed, and was human-caused. The report also indicates the fire was contained in the bedroom, but that there was smoke damage to the rest of SL 257, and water running throughout the building.
13. The strata made an insurance claim for property repair and restoration, the value of which triggered its deductible. This is supported by an invoice from a restoration company that sets out the deductible amount. The strata paid the deductible.
14. The strata relies on SPA section 158(2) in support of its claim for reimbursement of the deductible. That section permits a strata corporation to sue an owner to recover an insurance deductible, if the owner is responsible for the loss or damage that gave rise to the insurance claim. Responsibility in this context is not limited to circumstances where the owner is at fault, since the word "responsible" is not equivalent to the word "negligent" (see *Yang v. Re/Max Commercial Realty Associates (482258 BC Ltd.)*, 2016 BCSC 2147, at paragraph 139).
15. Whether a strata corporation can recover against an owner under section 158(2) "must be determined by all the provisions of the applicable statute and the bylaws, rules and regulations of the strata corporation" (see *The Owners Strata Corporation VR2673 v. Comissiona et al*, 2000 BCSC 1240, at paragraph 22). So, I find that to succeed in its claim, the strata must prove the respondents are responsible for the damage under its bylaws.
16. Bylaw 73 says, in part:
 - (1) An owner is deemed to be responsible for any loss or damage (...) to any strata lot (...) where the original cause of any such loss or damage

originated within the owner's strata lot (...) to the extent that the loss or damage is not fully paid from the proceeds of an insurance policy.

- (3) If any loss or damaged deemed to be the responsibility of an owner under (subsection (1)) above of this bylaw results in a claim against any insurance policy held by the Strata Corporation, that owner is strictly liable to reimburse the Strata Corporation for the full amount of any insurance deductible (...)

17. Based on the unchallenged fire department incident report, I find the fire clearly originated in SL 257. So, I find the respondents are responsible for the fire damage that was not paid for by the strata's insurance policy, and must reimburse the strata for the \$25,000 deductible.
18. On May 2, 2023, the strata manager wrote to the respondents to ask that they reimburse the strata for the deductible within 21 days. In that letter, the strata manager explained the strata might start legal proceedings if it did not receive the requested reimbursement within the applicable time. The strata's lawyers followed up with a second, more detailed letter dated June 14, 2023, requesting reimbursement by July 5, 2023, and advising the strata would start legal proceedings if payment was not received by the specified date. There is no evidence the strata agreed not to collect payment from the respondents until they sold SL 257, as Michael Luke Hester alleges. The strata filed its application for dispute resolution with the CRT on July 26, 2023.
19. In the Dispute Response, Michael Luke Hester suggests the strata did not comply with SPA section 112 before starting this CRT dispute. Section 112 says that before starting a CRT dispute to collect money, a strata corporation must give the owner at least two weeks' written notice demanding payment. A strata corporation must also indicate what action will be taken if payment is not made within the specified time. I find both the May and June letters described above meet the SPA section 112 requirements.

20. In these circumstances, I find the strata has proven its claim. I order the respondents to reimburse the strata \$25,000 for its insurance deductible.

CRT FEES, EXPENSES AND INTEREST

21. 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 dispute-related expenses. The strata was successful, so I find it is entitled to reimbursement of its \$225 CRT fees. The strata also requests reimbursement of its “expenses”, without specifying what those are or providing any documentary evidence in support. So, I dismiss the strata’s claim for dispute-related expenses.

22. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to prejudgment interest on the \$25,000 for the insurance deductible from July 5, 2023, the latest date by which the strata demanded payment, to the date of this decision. This equals \$1,275.45.

23. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the respondents.

ORDERS

24. I order that within 30 days of the date of this decision, Paul John Michael Hester and Michael Luke Hester, jointly and severally, pay the strata a total of \$26,500.45, broken down as follows:

- a. \$25,000 for the insurance deductible,
- b. \$1,275.45 in prejudgment interest under the COIA, and
- c. \$225 in CRT fees.

25. The strata is also entitled to post-judgment interest under the COIA.

26. 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.

Megan Stewart, Tribunal Member