



Civil Resolution Tribunal

Date Issued: July 26, 2024

File: ST-2023-001992

Type: Strata

Civil Resolution Tribunal

Indexed as: *Ashworth v. The Owners, Strata Plan BCS983*, 2024 BCCRT 722

B E T W E E N :

JANET ASHWORTH

APPLICANT

A N D :

The Owners, Strata Plan BCS983

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. Janet Ashworth co-owns strata lot 42 (SL42) in the strata corporation The Owners, Strata Plan BCS983. In November 2021, the crawlspace under SL42 flooded after heavy rains. The strata has never made any repairs to the crawlspace to ensure it does not flood again, which Ms. Ashworth considers unreasonable. She asks for an order that the strata retain a structural engineer to assess whether the cracks in the

crawlspace's concrete foundation are structural and, if they are, repair them. Ms. Ashworth is self-represented.

2. The strata denies that the flood caused any cracks or that the cracks pose a threat to the building. It says it reasonably determined after a thorough investigation that no repair work was necessary. It asks me to dismiss Ms. Ashworth's claims. A 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). 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. Section 39 of the CRTA 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. Here, I am properly able to assess and weigh the documentary evidence and submissions before me. There are no significant credibility issues. So, the CRT's mandate to provide proportional and speedy dispute resolution outweighs any potential benefit of an oral hearing. I find that an oral hearing is not necessary in the interests of justice. 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. Ms. Ashworth initially claimed \$200 reimbursement for two fines the strata had imposed. In submissions, she said she was no longer pursuing that claim, so I have not considered it in this decision.

ISSUES

7. The issues in this dispute are:
 - a. Did the strata breach its obligation to repair and maintain the crawlspace underneath SL42?
 - b. If so, what remedy is appropriate?

BACKGROUND

8. In a civil claim such as this, Ms. Ashworth as the applicant must prove her 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.
9. The strata was created in 2004 and consists of 86 residential strata lots in 26 buildings. The strata lots are made up of townhouses and duplexes. SL42 is a middle unit in a building with four strata lots.

EVIDENCE AND ANALYSIS

10. I will start by outlining the applicable law. Section 72 of the *Strata Property Act* (SPA) requires the strata to repair and maintain common property. This obligation is reflected in the strata's bylaw 14.1(b). SPA section 1(1) defines common property as the land and buildings on the strata plan that are not part of a strata lot. The strata plan does not depict the crawlspaces, so I find they are common property that the strata must repair and maintain. The strata does not suggest otherwise.
11. To fulfill its repair and maintenance obligations, the strata must act reasonably. When faced with different repair or maintenance options, the strata may opt for a less expensive, more conservative choice over a more aggressive and expensive choice as long as the conservative choice is reasonable. This can include taking a "wait and

see” approach.¹ Finally, because strata councils are made up of volunteers who are not expected to have expertise in building repair and maintenance, the strata is entitled to rely on professional advice.² With that, I turn to the facts, which are generally not disputed.

12. In mid-November 2021, there was a severe “atmospheric river” rainstorm in southern BC that particularly affected the Fraser Valley, where the strata is located. During this storm, water entered four of the strata’s crawlspaces, including the one under SL42. Two of the others were elsewhere in SL42’s building. The strata’s residents had to get the water out themselves as area tradespeople were overwhelmed.
13. On December 2, 2021, the strata emailed all the owners that it would inspect the affected crawlspaces with a plumber. On March 26, 2022, the strata’s insurer’s adjuster emailed Ms. Ashworth reiterating the strata’s intention to have its plumber inspect “the affected suites” to determine whether to install sump pumps and seal foundation cracks. It is undisputed that no one inspected SL42’s crawlspace.
14. On March 30, 2022, the strata council president emailed Ms. Ashworth assuring her that the strata was dealing with the issue. The president said they were waiting on a work order and would “resolve the issue” once it had one.
15. On May 11, 2022, Total Service Plumbing & Heating wrote the strata a brief report recommending against installing sump pumps, as they would not prevent water ingress from a future severe flood. The plumber said that the atmospheric river raised the water table higher than the crawlspaces’ floors. So, in a similar storm, a sump pump would run non-stop but achieve nothing because there would be nowhere for the water to go. The strata says the plumber could tell sump pumps were unsuitable for the strata after inspecting one of the crawlspaces, which is why it did not end up inspecting Ms. Ashworth’s. Ms. Ashworth’s insurer also concluded the crawlspace water came up from the high water table. Ms. Ashworth offers no alternative

¹ *Rezaizanjani v. The Owners, Strata Plan VR 2517*, 2019 BCCRT 932.

² *Weir v. The Owners, Strata Plan NW 17*, 2010 BCSC 784, at paragraph 28, and *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113, at paragraph 69.

explanation for the water ingress, so I find that the high water table pushed water up through floor cracks and into the crawlspace.

16. There is also an April 24, 2022 email between strata council members that a municipal engineer had suggested installing a sump pump that would empty to the street. The strata said this would require owners to manually attach a hose during a flood and run it to the street.
17. Ms. Ashworth and her spouse had a strata council hearing on April 20, 2022. They were disappointed by the lack of action and concerned that future floods would damage their furnace and hot water heater, which are both in the crawlspace. The strata manager wrote to Ms. Ashworth on April 28. They noted the furnace and hot water heater were the only things in the crawlspace and there was no allegation the water had damaged either appliance. The strata manager said the strata was still investigating possible repairs, but did not commit to a particular course of action.
18. The strata repaired cracks in the other three crawlspaces that experienced water ingress, but not SL42's. In June 8, 2022 strata council meeting minutes, the strata reported that it had "exhausted all avenues" and asked owners to monitor the crawlspaces.
19. Ms. Ashworth argues that the cracks in her crawlspace must be professionally inspected. She provided photos that show cracks in the concrete floor and along one wall. She also provided a photo she says shows "damp" coming up through a crack near the furnace and hot water heater. I have reviewed these photos closely and I cannot conclude from them alone that there are cracks that put the crawlspace or structure at risk, or that there is an ongoing moisture problem.
20. Instead, I find that this is a technical question that requires evidence from an expert. Ms. Ashworth did not provide any expert evidence to suggest that the cracks are structural, that they pose any threat to the building, or that the strata's handling of the post-flood period was unreasonable. She did provide a November 3, 2022 quote from Miller & Co Concrete Solutions Inc. for "crawlspace leak repair" for \$1,490 plus tax. The quote explains the work Miller & Co would do, but it does not say anything about

whether the work is necessary. So, I find it does not help Ms. Ashworth prove her claim.

21. I recognize that part of Ms. Ashworth's claim is that the strata should hire an engineer. In that sense, it may seem odd that she needs expert evidence to prove that the strata needs to hire an expert. However, it is well-established that no owner can dictate how the strata fulfills its repair and maintenance obligations. To obtain a CRT order that the strata must do something specific, like hire a structural engineer, Ms. Ashworth must prove that the strata's current approach is unreasonable. Photos of cracks and Ms. Ashworth's subjective concerns are not enough to prove that.
22. Ms. Ashworth relies significantly on the fact that SL42 was the only strata lot with water in the crawlspace that did not get any cracks repaired. The strata says this is because the other three crawlspaces had cracks in the external foundation walls. The strata says this is important because a crack in an external foundation wall exposes the crawlspace directly to the ground outside, meaning water could enter during any rain, not just severe floods that raise the water table. The strata says the only wall crack in SL42's crawlspace is between two strata lots, and so it cannot be a source of water entry. Ms. Ashworth does not dispute the strata's evidence that there are no external wall cracks in SL42's crawlspace, so I accept this is accurate.
23. Ms. Ashworth says there is no objective evidence to support the strata's argument about internal versus external wall cracks. She correctly points out that the strata council member is not an expert. I also note that a party cannot be an expert witness in their own case. However, I find that the strata's explanation of why it repaired some wall cracks and not others is not so technical that it requires expert evidence. I find it to be common sense that external foundation walls pose different water ingress challenges than internal foundation walls, which justifies a different response.
24. As for the floor cracks, I find the strata's approach reasonable on its face. There have been no floods since November 2021. And while I take Ms. Ashworth's point that climate change may make so-called 100-year floods occur more often than in the past, this alone does not mean that the strata's wait-and-see approach is

unreasonable. I rely primarily on the fact that even in that severe storm, the water that entered the crawlspace caused no damage. It just came and went. Even if there are comparable floods every decade instead of every century, I find the absence of damage justifies the strata's decision to do nothing. I recognize that Ms. Ashworth is concerned about the hot water heater and furnace. However, there is no evidence to suggest they are actually at risk.

25. I also recognize that one reason Ms. Ashworth expected the strata to do repairs in the crawlspace is because strata council members committed to repairs in the early days after the flood. This made the strata's later decision not to do any repairs strike Ms. Ashworth as deceitful and irresponsible. However, I find it understandable that the strata initially overcommitted to repairs in the chaotic aftermath of the floods. I find that the strata was entitled to change its planned approach as it learned more about what caused the flood as things calmed down.
26. In summary, I find that Ms. Ashworth has not proved that the strata's response to the flood was unreasonable, or that there is any current need for a structural engineer to assess the crawlspace under SL42. I dismiss Ms. Ashworth's claim.

TRIBUNAL FEES AND EXPENSES

27. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. Ashworth was unsuccessful, so I dismiss her claim for CRT fees and dispute-related expenses. The strata claimed \$7.50 in "clerical expenses" but did not say what these expenses were for or provide any receipts for them. I dismiss the strata's claim.
28. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Ashworth.

DECISION AND ORDER

29. I dismiss Ms. Ashworth's claims, the strata's claim for dispute-related expenses, and this dispute.

Eric Regehr, Vice Chair