



Civil Resolution Tribunal

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File: ST-2022-003216

Type: Strata

Civil Resolution Tribunal

Indexed as: *DeBoer v. The Owners, Strata Plan BCS 1388*, 2024 BCCRT 989

B E T W E E N :

CAROL DEBOER

APPLICANT

A N D :

The Owners, Strata Plan BCS 1388

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. Carol DeBoer used to own strata lot 1 (SL1) in the strata corporation The Owners, Strata Plan BCS 1388. In late 2020, there was a significant leak in the strata that damaged common property and multiple strata lots. The strata made an insurance claim, and its insurer charged a \$25,000 deductible. The strata then charged the deductible to Ms. DeBoer, which she paid when she sold SL1. Ms. DeBoer disputes

that she was responsible for the deductible and asks for an order that the strata to pay it back. She is self-represented.

2. The strata says it was authorized to charge the deductible to Ms. DeBoer because she was responsible for the leak. The strata is represented by a council member.

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.
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 credibility issues. I find that an oral hearing is not necessary. 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.

ISSUE

6. The issue in this dispute is whether Ms. DeBoer had to pay the \$25,000 deductible.

EVIDENCE AND ANALYSIS

7. In a civil claim such as this, Ms. DeBoer 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. The relevant facts are mostly undisputed.

8. The strata is a three floor mixed-use building. SL1 is on the second floor above the commercial strata lots. At the time of the leak, Ms. DeBoer did not live in SL1. She rented it to her son.
9. The leak occurred on October 7, 2020, when Ms. DeBoer's son hit the glass bulb on the fire sprinkler in SL1's laundry room with a piece of drywall. He was renovating SL1 at the time. According to a site report from the strata's emergency contractor, Belfor Property Restoration, 90% of SL1 was affected.
10. On October 26, 2020, the strata wrote Ms. DeBoer a letter about the leak. The letter said that the sprinkler discharge had damaged SL1, common property, and a commercial strata lot below SL1. The strata said that if the damage was over \$25,000, the strata would make an insurance claim and charge the deductible to Ms. DeBoer under section 158 of the *Strata Property Act* (SPA).
11. On June 18, 2021, Belfor sent the strata an invoice for the \$25,000 deductible. On June 28, the strata wrote to Ms. DeBoer confirming it had charged the deductible to Ms. DeBoer under section 158.
12. I note that Ms. DeBoer denies receiving both these letters. The strata sent them to SL1's civic address. This is consistent with SPA section 61 and the strata's bylaws, which both allow the strata to give notice to an owner by mailing it to the strata lot. Ms. DeBoer says that the strata provided no proof it actually sent the letters or that she received them, but that is the nature of regular mail. There is no proof of receipt. I also note that there is no evidence from Ms. DeBoer's son that he never received the letters, and he was the one living in SL1. I find that the most likely explanation is that the strata mailed the letters, but Ms. DeBoer's son did not give the letters to her.
13. Because she did not receive the strata's letters, Ms. DeBoer did not find out about the deductible charge until she read the minutes for the strata council's November 17, 2021 meeting. Those minutes mentioned that the strata had charged a \$25,000 deductible after an October 2020 flood caused by sprinkler damage, which Ms. DeBoer inferred was about her. She contacted the strata manager, alleging among

other things that the strata did not charge another owner a deductible after a fire and that Belfor had told her the strata would be responsible for the repair costs. The strata refused to remove the deductible, and Ms. DeBoer paid it as part of her sale of SL1 on March 23, 2022. She started this dispute in May 2022.

14. Ms. DeBoer does not argue in this dispute that the strata treated her differently than other owners. The strata provided evidence showing it had charged the deductible to the owner responsible for the earlier fire. She does say that a Belfor employee told her the strata would pay the deductible. I agree with the strata that Belfor is the strata's contractor with no authority to make promises on the strata's behalf. So, I find that nothing turns on what the Belfor employee told Ms. DeBoer.
15. With that, I turn to the relevant law. SPA section 158(2) 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. Some strata corporations have passed bylaw amendments about insurance deductibles, but the strata here has not.
16. In *Mari v. Strata Plan LMS 2835*, 2007 BCSC 740, the BC Supreme Court applied section 158(2) to a strata corporation that did not have a bylaw about insurance deductibles. In that case, the strata sued an owner after a flood from a faulty water level switch in a washing machine. There was no suggestion that the owner had done anything to cause the flood. However, the court concluded that the word "responsible" in section 158(2) did not require the strata corporation to prove negligence or fault. An owner can be responsible for the deductible even where there was nothing they could have done to prevent the damage.
17. Along similar lines, in *Wawanesa Mutual Ins. Co. v. Keiran*, 2007 BCSC 727, a pipe inside a wall burst, causing a flood. The cause of the burst pipe was high acid levels in the local water supply, which is something the owners had no reason to believe was a problem. The court found that the owners had to pay the deductible because owners are "responsible for what occurs within their unit".

18. As noted above, Ms. DeBoer did not hit the fire sprinkler with the drywall. Her tenant did. Some strata corporations have bylaws that explicitly make owners responsible for damage caused by their tenants. The strata here has no such bylaw. The question then is whether Ms. DeBoer is responsible for her tenant's conduct under section 158(2).
19. I find that she is. In *Strata Plan LMS 2723 v. Morrison*, 2012 BCPC 300, a strata corporation sued an owner for an insurance deductible where the owner's tenant caused the damage. The tenant had started a fire by leaving a candle unattended. The court found that the owner was responsible for the damage even though she had no control over the tenant's conduct. BC Provincial Court decisions are not binding on me, but I agree with this outcome. Section 158(2)'s purpose is to reallocate risk from the strata to individual owners for deductibles resulting from major incidents. This purpose would be undermined if it applied only to owner-occupied strata lots. I note that the strata provided evidence showing it complied with SPA section 154, which requires the strata to report annually on its insurance coverage, including its deductible. This reporting allows owners to protect themselves with their own insurance to cover the deductible, if they choose to do so.
20. Ms. DeBoer provided several strata law articles about how a strata can impose a chargeback. A chargeback typically refers to situations where a strata corporation has incurred a repair or maintenance expense and wants an individual owner to pay it. In those circumstances, the strata must generally have a valid bylaw authorizing it to charge those repair expenses to an owner. These principles do not apply to insurance deductibles because section 158(2) provides the strata with the necessary authority to charge the responsible owner.
21. Ms. DeBoer also refers to SPA section 135, which sets out a mandatory process the strata must follow when enforcing its bylaws. I find that section 135 does not apply to situations where a strata corporation is collecting a deductible under section 158(2). This is because the strata's right to collect a deductible under section 158(2)

does not require proof that the owner breached any bylaw. So, charging the deductible to an owner is not bylaw enforcement.

22. In summary, I find that Ms. DeBoer is responsible for the deductible under SPA section 158(2) because her tenant caused the leak by hitting the fire sprinkler. On that basis alone, she was required to pay the deductible. I dismiss her claim.

TRIBUNAL FEES AND EXPENSES

23. 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. DeBoer was unsuccessful, so I dismiss her claim for CRT fees and dispute-related expenses. The strata did not claim any dispute-related expenses or pay any CRT fees.

DECISION AND ORDER

24. I dismiss Ms. DeBoer's claims.

Eric Regehr, Vice Chair