



Civil Resolution Tribunal

Date Issued: November 8, 2024

File: ST-2023-005820

Type: Strata

Civil Resolution Tribunal

Indexed as: *Fales v. The Owners, Strata Plan BCS 2721*, 2024 BCCRT 1140

BETWEEN:

WESLEY JOHN FALES

APPLICANT

AND:

The Owners, Strata Plan BCS 2721

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Amanda Binnie

INTRODUCTION

1. This strata dispute is about damage from a water leak. The applicant, Wesley John Fales, co-owns strata lot 18 (SL18) in the respondent strata corporation, The Owners, Strata Plan BCS 2721 (strata). Mr. Fales says the strata did not properly make repairs after a roof leak. He claims \$35,000 to repair SL18. He also says the strata refused to hold a hearing, made false statements about him, and treated him unfairly.

2. The strata says it is not responsible for repairs to Mr. Fales' unit. It says as the strata had made the final decision that the ceiling was Mr. Fales' responsibility, it did not hold a hearing. In any event, the strata says it sent Design Roofing & Sheet Metal Ltd. to investigate and repair as needed.
3. Mr. Fales is self-represented. The strata is represented by its council president.

JURISDICTION AND PROCEDURE

4. 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. 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, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. I also find there is no significant credibility issues between the parties with respect to the leaks. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
6. 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.
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.

Late evidence

8. Mr. Fales submitted late evidence to this dispute, which was portions of the strata's evidence. The strata objected to this evidence on the basis that Mr. Fales relied improperly on its own evidence, and did not follow the proper CRT timelines.
9. While the strata is concerned Mr. Fales did not submit the whole of its evidence, I am satisfied by re-submitting strata's evidence, Mr. Fales intended to reference specific parts of the strata's evidence in his submissions. In any event, the full documents are already in evidence. I infer Mr. Fales did not realize he could rely on the strata's version already in evidence. I find there is no prejudice in allowing this late evidence because it is already a part of the dispute.

False statements and treatment

10. In the Dispute Notice, Mr. Fales references "false statements" and "significant treatment" based on strata's response to his request for repairs. He has made similar claims in past disputes about the strata (see: *Fales v. The Owners, Strata Plan BCS 2721*, 2022 BCCRT 455 and *Fales v. The Owners, Strata Plan BCS 2721*, 2024 BCCRT 760).
11. Here, while the strata has a harassment bylaw, I find there is nothing in that bylaw about the strata's conduct toward an owner. Further, I have reviewed the letter that the strata sent Mr. Fales. While Mr. Fales is correct that the strata said Mr. Fales had an issue with the roof vents, I accept this was an inadvertent error and nothing turns on it.
12. I turn to Mr. Fales' other allegation. I infer by saying the strata made "significant treatment against him", Mr. Fales means the strata treated him significantly unfairly. Mr. Fales has provided no evidence of significant unfairness, other than with respect to the strata's response to the first leak, so I will address this below.

ISSUES

13. The issues in this dispute are:

- a. Was the strata negligent in SL18's roof repairs?
- b. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, Mr. Fales must prove his claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find necessary to explain my decision.
15. The strata is a phased strata corporation under the *Strata Property Act* (SPA), with 9 phases built between 2007 and 2009. There are 37 townhouse-style strata lots in 19 buildings. SL18 is located in building 9 and has 3 storeys.
16. The strata filed a complete new set of bylaws with the Land Title Office in August 2009. These are the bylaws that apply to this dispute. Except the harassment bylaw previously discussed, subsequent bylaw amendments are not relevant.
17. SPA section 72 governs the strata's repair and maintenance obligations. It says the strata must repair and maintain common property unless it is limited common property or identified in the *Strata Property Regulation*. Currently, there is no applicable regulation for a strata corporation to make owners responsible for repair and maintenance of common property. Here, the parties agree the roof is common property, which the strata must maintain and repair.

Bylaws

18. I turn now to the strata's applicable bylaws. Bylaw 2.1 says an owner must repair their own strata lot, except when it is strata's responsibility under the bylaws. Bylaw 8.1 says the strata must repair and maintain, among other things, common property.
19. Bylaw 8.1(d) outlines when the strata is required to repair and maintain a strata lot, and includes the structure of a building and the exterior of a building, as well as

“other things attached to the exterior of the building”. Notably, it does not include a strata lot’s interior ceilings.

The leaks

20. Mr. Fales had two leaks into his unit, on April 19, 2023 and May 22, 2023. After the first leak, Mr. Fales advised the strata the same day about the leak and asked the strata to send a roofer or other tradesperson to investigate.
21. LH, the strata’s manager, responded on April 28, saying that because there was no active leak, it would not investigate. LH also says the strata was not responsible for repairs to an individual strata lot. Finally, LH denied Mr. Fales’ request for a hearing because it would not change the outcome of the strata’s decision, which was final.
22. I accept Mr. Fales’ submission nothing was done to SL18’s roof between the first and second leak. The strata does not dispute this.
23. The second leak happened on May 22, 2023. Mr. Fales phoned LH’s office to report the leak. Strata then hired Design Roofing to investigate the leak.
24. In its report, Design Roofing found that “pipe boot” coming through the roof was not properly secure, which likely caused the leak. Design Roofing secured the pipe boot and invoiced the strata \$2,882.40, which it paid. There is no evidence that Mr. Fales had further leaks into SL18 after Design Roofing’s repairs.
25. While the strata does not say Design Roofing’s report is expert evidence, Mr. Fales does not dispute the loose pipe boot was the cause of the leaks. I find that it likely was the cause of the leak, given that there have been no further leaks since the repair and no evidence of other possible sources.
26. The strata does not dispute these leaks caused damage to SL18. I accept from the photos there is damage at least to Mr. Fales’ ceiling. However, I find it is unclear from the photos if there is only water marks or actual damage to SL18’s walls. Mr. Fales did not provide evidence he has repaired his unit or a quote for what the cost of any repair would be.

Was the strata negligent in SL18's roof repairs?

27. Subject to its bylaws, a strata corporation is not responsible for repairs to the interior of a strata lot unless it has been negligent (see: *Kayne v. LMS 2374*, 2013 BCSC 51 and *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231). This is the case even where the strata lot damage was caused by a common property failure (see: *Wawanesa Mutual Ins. Co. v. Keiran*, 2007 BCSC 727).
28. Here, both parties agree the roof is common property, and under bylaw 8.1 and SPA section 72, the strata owed the applicants a duty of care to repair and maintain the roof.
29. It is well established that to fulfill its repair and maintenance obligation, a strata corporation must act reasonably. It is not held to a standard of perfection (see: *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113, at paragraph 69). The court has found the strata must act in the best interests of all owners and try to achieve the greatest good for the greatest number by implementing necessary repairs within a budget the owners can afford. Because of this, the strata is entitled to some deference in their repair and maintenance decisions because they are best placed to balance competing interests within their community. The strata's decisions must be assessed based on what it knew at the time and not with the benefit of hindsight.
30. Finally, because strata councils are made up of lay volunteers who are not expected to have expertise in building repair and maintenance, the strata is entitled to rely on professional advice. If those professionals provide bad advice or perform poor work, the strata will not be negligent as long as it acted reasonably in hiring and instructing them.
31. So, Mr. Fales must prove the strata breached section 72 or bylaw 8.1 by acting unreasonably in maintaining and repairing the roof.
32. Mr. Fales does not argue the strata improperly maintained the roof. Neither party provided any evidence about the roof's condition before the first leak. This means

Mr. Fales has not proven the strata knew or ought to have known there were issues with the roof before the first leak. So, I find the strata is not responsible for any damage to Mr. Fales' strata lot from the first leak.

33. However, I find the strata was negligent by doing nothing after the first leak. The strata told Mr. Fales it would not investigate because there was no "active leak" and asked Mr. Fales to notify the strata if there was an active leak. I find this was negligent, for the following reasons.
34. First, the strata provided no evidence about why it would only investigate an active leak. It did not say, for example, that the leak wasn't coming from common property. By asking Mr. Fales to notify the strata if there was an active leak, I find the strata was aware of the possibility of another leak. I find this is also a matter of common sense, if no repairs or investigations are done, there is a risk of another leak.
35. Second, strata does not say it was balancing other interests of the strata, or that it would investigate the leak at a later date. It did not respond at all to Mr. Fales' concerns about mold. The strata also does not say it could not afford the repairs, which were ultimately relatively inexpensive.
36. Finally, the strata ignored Mr. Fales' request for a hearing after the first leak, violating SPA section 34.1. This section is mandatory, though other CRT decisions have found that in certain circumstances, a strata does not need to hold a hearing at an owner's request.
37. The factors for not holding a hearing are outlined in *McDowell v. The Owners, Strata Plan 1875*, 2018 BCCRT 11:
 - a. The owner has not been fined or penalized;
 - b. The owner requested and was granted previous hearings;
 - c. The owner outlined demands he was making, not simply the reason for the hearing request;
 - d. The owner stated he would be making further demands;

- e. The owner wished to discuss a number of strata wide governance issues not specific to him; and
 - f. The reasons for the request were about strata governance, and would be more properly addressed at a meeting of the owners, or by majority direction of the owners.
38. While other CRT decisions are not binding on me, I find this reasoning helpful and adopt it here. While a. and c. are present in this case, I find the strata has not proven it reasonably refused Mr. Fales' request. I find that Mr. Fales was entitled to a hearing to ask the strata to investigate the leak. I also find the strata's refusal to hold a hearing is evidence that the strata was deliberately ignoring the leak.
39. I pause to note the SPA does not set out consequences for breaching section 34.1. Mr. Fales says the strata has not followed the SPA, but other than claims for repairs, he does not ask for another remedy. So, I address section 34.1 only to provide context for my negligence decision.

What is the appropriate remedy?

40. Mr. Fales claims \$35,000 for "whatever the cost is" to repair his ceiling in the bathroom and bedroom. As I noted above, he has provided no receipts or quotes for repairing the damage.
41. Even though I have found the strata negligent for not repairing SL18's roof before the second leak, the difficulty for Mr. Fales is that he provided no evidence of the repair costs.
42. The strata says the photos provided are not time stamped and are inconsistent in dates. However, I accept Mr. Fales labelled each photo with the date the photo was taken, some after the first leak and others after the second.
43. However, I do agree with the strata these photos all appear to be from one room. From the photos dated after the first leak, I find there is damage to the ceiling near a pot light. I find the photos dated after the second leak show the same wall and

ceiling, with a larger area of damage near the same pot light and water running down the walls.

44. So, I find the second leak caused a larger stain on the ceiling. I find Mr. Fales has not proven actual damage to the walls from the second leak, as opposed to the wall being only wet immediately after the leak. On a judgment basis, I find \$500 is a reasonable amount to compensate Mr. Fales for this additional ceiling damage.

CRT FEES, EXPENSES AND INTEREST

45. 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. As Mr. Fales was partially successful, I find he is entitled to be reimbursed \$125, which is half his paid CRT fees. Neither party claimed any dispute-related expenses.
46. The *Court Order Interest Act* (COIA) applies to the CRT. However, COIA section 2(a) says the court (and the CRT) must not award interest on a monetary loss arising after the date of this order. As Mr. Fales has not yet had the repairs completed and so have not yet suffered a loss, I do not make any orders about prejudgment interest.
47. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Fales.

ORDERS

48. I order that within 30 days of this decision, the strata pay Mr. Fales a total of \$625, broken down as follows:
- a. \$500 in damages, and
 - b. \$125 in CRT fees.
49. Mr. Fales is also entitled to post-judgment interest under the COIA, as applicable.

50. 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.

Amanda Binnie, Tribunal Member