



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Residential Section of The Owners, Strata Plan LMS 3131 v. The Owners, Strata Plan LMS 3131, 2025 BCCRT 733*

B E T W E E N :

RESIDENTIAL SECTION of THE OWNERS, STRATA PLAN LMS 3131

APPLICANT

A N D :

The Owners, Strata Plan NW 3131 and COMMERCIAL SECTION of
THE OWNERS, STRATA PLAN LMS 3131

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey

INTRODUCTION

1. This strata property dispute is about payment of an insurance deductible by a strata with sections.
2. The applicant, Residential Section of The Owners, Strata Plan LMS 3131 (residential section), is a separate section within the respondent strata corporation,

The Owners, Strata Plan NW3341 (strata). The other respondent, Commercial Section of The Owners, Strata Plan LMS 3131, is also a separate section within the strata. Generally speaking, the residential section and commercial section strata lots are located in separate multi-level buildings. The common areas in each building are primarily designated as limited common property (LCP) for the exclusive use of the owners of all strata lots in each respective section, such that there is no common property of the strata within either building.

3. In September 2021, a burst pipe on the 11th floor of the building comprising the residential section (residential building) causing significant water damage within the building. There was no damage to the strata's common property, the building comprising the commercial strata lots (commercial building), any commercial strata lots, nor any LCP designated to the commercial strata lots. The strata filed an insurance claim which was subject to a \$100,000.00 deductible. The strata ultimately charged the entire insurance deductible amount only to the residential section strata lots.
4. The residential section says the insurance deductible should be charged to all strata lots within the strata proportionate to unit entitlement. It originally sought an order for payment of \$70,783.38, but in submissions reduced its request to \$28,313.36, which is the amount of the total deductible it alleges is due from the commercial strata lots. The residential section also says the strata paid \$4,074.01 in legal fees to defend the residential section's claim in this dispute, which it says should not be charged to the residential section under the *Strata Property Act* (SPA).
5. It appears the strata initially determined that the residential section was responsible for the entire amount of the insurance deductible. However, in its amended Dispute Response, it now agrees with the residential section and says the commercial section should pay its proportionate share of the insurance deductible or \$28,313.36. The strata did not address payment of legal fees.
6. The commercial section says that the residential section is responsible to pay the entire amount of the \$100,000.00 deductible under the SPA and strata bylaws. It also says the manner in which the strata arranged for insurance repairs was

improper and is now moot (of no legal consequence). As for legal fees, the commercial section says the strata properly charged legal fees to both sections. It also says it is entitled to legal fees if it is successful in this dispute. I infer the commercial section asks that the residential section's claims be dismissed.

7. The residential section is represented by a residential section executive member. The strata is represented by a strata council member. The commercial section is represented by a commercial section executive member who is a lawyer.
8. As explained below, I dismiss the residential section's claims and decline to address any party's claim for legal fees.

JURISDICTION AND PROCEDURE

9. 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.
10. 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. I find I am properly able to assess and weigh the documentary evidence and submissions before me. I am satisfied an oral hearing is not necessary in the interests of justice and decided to hear this dispute through written submissions.
11. 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.

Preliminary Decision

12. Initially, the commercial section was not a named respondent in this dispute. CRT staff referred the matter of whether the commercial section should be added as a

respondent to a CRT vice chair. On June 12, 2024, the vice chair issued a preliminary decision to direct CRT staff to amend the Dispute Notice to add the commercial section as a respondent, serve the commercial section with a copy of the amended Dispute Notice, and provide a copy to the residential section and strata, which was done. The vice chair also directed staff to give the strata an opportunity to amend its Dispute Response, which it did. I have considered the amended information and the parties' evidence and submissions in my decision below.

Commercial section claims

13. The commercial section makes a number of claims in its Dispute Response and submissions. Specifically, it alleges that the **strata** acted outside its authority under SPA section 158, first by imposing a special levy contrary to subsection (1) that was greater than the insurance deductible, and second, by acting contrary to subsection (3) by imposing a special levy to pay back a contingency reserve fund expense it says the strata used to pay the insurance deductible. However, the commercial section did not file a claim against the strata. Therefore, I find the matters are not properly before me. I make no findings on how the strata went about raising funds and paying for repairs under the insurance claim. As I discuss below, I find the parties accept that the end result of the insurance claim process followed by the strata was that the residential section strata lots paid the entire \$100,000.00 deductible. This is what the residential section claims was wrong. I find I can properly address the residential section's claim without the need to address how the strata raised funds to pay for the repairs and deductible.

ISSUES

14. The issues in this dispute are:
- a. Is the allocation of the insurance deductible moot?
 - b. If not, who is responsible to pay the insurance deductible?
 - c. Is any party responsible to pay or refund legal fees?

BACKGROUND, EVIDENCE AND ANALYSIS

15. As applicant in a civil proceeding such as this, the residential section must prove its claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' submissions and evidence but refer only to information I find relevant to explain my decision.
16. The strata plan shows the strata was created in February 1998 under the *Condominium Act*. It now operates under the SPA and consists of a total of 158 strata lots in the 2 separate sections. There are 105 residential strata lots in the residential section and 53 non-residential strata lots in the commercial section.
17. Land Title Office documents show the strata filed a complete set of bylaws on August 7, 2008. I infer the Standard Bylaws under the SPA do not apply, but even if they did, I find none are relevant. I find the bylaws filed after August 2008 are not relevant, so the bylaws applicable to this dispute are the August 2008 bylaws. I discuss relevant bylaws below.

Is the allocation of the insurance deductible moot?

18. The commercial section says the residential section's claim for \$28,313.36 is moot. Its arguments are based on the allegation that the method used by the strata to address the insurance repairs was improper, which I have found is not before me, so I will not detail it here.
19. A claim is considered moot when something happens after a legal proceeding starts that removes any "present live controversy" between the parties. Generally, moot claims will be dismissed. However, the CRT has discretion to decide otherwise moot claims if doing so would have a practical impact and potentially avoid future disputes. See *Binnarsley v. BCSPCA*, 2016 BCCA 259.
20. Here, I find it obvious that the insurance deductible allocation remains a live issue, so I will decide it on its merits.

Who is responsible to pay the insurance deductible?

21. There is no dispute that water damage resulting from a burst pipe on the 11th floor of the residential building on September 24, 2021, triggered an insurance policy, subject to a \$100,000 deductible. A summary of the insurance coverage was provided in evidence that shows the strata and both separate sections as named insured. A full copy of the insurance policy is not before me.
22. At the time of the burst pipe in September 2021, the same strata manager acted for the strata and both sections. The manager provided a written statement confirming the following:
 - a. The source of the leak was from LCP designated to the residential strata lots and that “water flooded into the hallway, down the stairs and damaged both elevator shafts” in the building. Neither the commercial section nor strata’s common property was affected.
 - b. The strata filed the insurance claim after the residential section declined to do so.
 - c. Only the residential section strata lot owners paid the deductible.
23. None of the parties objected to the statement so I accept it is accurate and place significant weight on it.

Insurance requirements

24. I will first address insurance requirements under the SPA and bylaws and then consider how the insurance deductible should be applied.
25. SPA section 149 says, in part, that the strata must obtain and maintain insurance on common property, common assets, and buildings shown on the strata plan, including original fixtures and fittings within strata lots as defined in *Strata Property Regulation* (Regulation) section 9.1. Notably, these provisions do not distinguish LCP from common property nor identify any specific parts of a building which the strata is **not** required to insure. SPA section 1 defines common property to include “that part of the ... buildings shown on a strata plan that is not part of a strata lot”

and LCP as “common property designated for the exclusive use of the owners of one or more strata lots”. Therefore, I find the LCP is a form of common property that the strata must insure under section 149.

26. I also note that SPA section 149 and Regulation section 9.1 include original fixtures within all strata lots and does not distinguish between residential and non-residential strata lots. Therefore, I find that the strata must also insure original fixtures within individual strata lots.
27. My conclusions about the strata’s insurance responsibilities are supported by section 153 which says the **strata** has an insurable interest in **any property** insured under section 149.
28. I also note section 194(4). It addresses the powers and duties of a section as they relate to insurance. It reads (my emphasis added):

A section may obtain insurance **only**

(a) against perils that are not insured by the strata corporation, or

(b) **for amounts that are in excess of amounts insured by the strata corporation.**

29. Read together, I find the foregoing SPA provisions require the strata, and not a section, to obtain and maintain mandatory property insurance for all the buildings shown on the strata plan, regardless of whether some parts of the buildings are designated as LCP, and include original fixtures within a strata lot, regardless of whether the strata lot is part of a section. In other words, the strata has a clear duty to insure all of its property.

The insurance deductible

30. I turn now to payment of the insurance deductible, which I find is governed by the parties’ duty to repair.
31. As noted, both the residential section and the strata say the commercial section must reimburse the residential section \$28,313.36 for the commercial section’s

portion of the deductible. The strata makes no other submissions, so I find the strata agrees with the residential section. I find the fact that the strata may be controlled by the residential strata lot members and has likely changed its initial position does not matter. I say this because there is no dispute the strata council was properly elected, and I have previously found that the SPA does not restrict a strata council from changing its position. See for example, *von Hugo v. The Owners, Strata Plan VIS 5543*, 2024 BCCRT 1044.

32. The residential section makes 2 arguments to support its position that the insurance deductible should be an expense shared by the entire strata. First, it says the insurance coverage benefits the entire strata, so it is “equitable and legally appropriate for all owners to fulfill their responsibilities by sharing the insurance deductible costs, irrespective of where the insured accident occurred”. Second, it says that insurance deductibles are specific financial obligations arising from an insurance claim which are distinct from regular maintenance and repair expense
33. Generally speaking, the commercial section argues the insurance deductible is an expense that relates solely to the residential section because only the residential building was affected by the burst pipe. As such, the commercial section says the entire deductible must be paid by the residential section. For the reasons that follow, I agree with the commercial section.
34. SPA section 158(1) says payment of an insurance deductible is a common expense of a strata corporation to be contributed to by means of strata fees calculated in accordance with section 99(2) or 100(1). Section 99(2) says a strata lot’s share of its contributions to the strata are proportional to unit entitlement. Section 100(1) says a strata corporation can pass a unanimous vote to approve a different contribution formula, but the strata has not done that here. On its face, section 158 says an insurance deductible is a common expense of the strata as the residential section suggests. However, for a sectioned strata corporation, SPA provisions under Part 11 (sections 190 to 198) also apply.
35. The commercial section relies on the provisions of SPA Part 11. In particular, it relies on SPA sections 190, 194(2), and 195.

36. Section 190 says that the provisions of the SPA apply to a strata corporation with sections and, in the case of a conflict between Part 11 provisions and other SPA provisions, Part 11 provisions prevail.
37. SPA section 194(2) sets out a list of powers and duties available to a section with respect to matters that relate solely to the section. I agree with the commercial section that in *Norenger Development (Canada) Inc. v. Strata Plan NW 3271*, 2018 BCSC 1690, the court found the provisions relating to matters listed in section 194(2) are intended to govern a section's exercise of those powers in the same way that they would govern the exercise of those powers in a strata corporation without sections. The relevant parts of section 194(2) include allowing a section to establish its own operating fund and contingency reserve fund for the section's common expenses, including expenses relating to LCP designated for the exclusive use of the strata lots in the section.
38. In *The Owners, Strata Plan VIS 6083 v. Section B of The Owners, Strata Plan VIS 6083*, 2024 BCCRT 1070, a CRT tribunal member considered a similar dispute about payment of an insurance deductible between a strata corporation and one of its sections. That dispute was about repair and maintenance of common property, rather than LCP as is the case here, but the tribunal member determined *Norenger* was helpful in interpreting how SPA section 158 applies to sections. This was, in part, because the reasoning in *Norenger* supports a conclusion that the strata can allocate insurance deductibles to a section given it is consistent with the principle that sections have autonomy over matters related solely to them. I agree with the reasoning in *VIS 6083* and adopt it here. Since the property in question here is LCP of the residential section rather than common property of the strata, I find *Norenger* provides even stronger support for a finding that the residential section owners are responsible to pay the deductible.
39. As noted, section 190(2) says the SPA Part 11 prevails over other SPA provisions. So, to the extent section 158 says a strata corporation's insurance deductible is a common expense to be contributed to by all owners, I find section 194(2) prevails making the insurance deductible common expense of the residential section only.

40. Lastly, I consider SPA section 195. That provision states that any strata corporation expenses that relate “solely” to the strata lots in a section are shared between the strata lots in that section based on unit entitlement.
41. In *The Owners, Strata Plan VR 2213 (Re)*, 2021 BCSC 905, the court said that although section 195 does not say so explicitly, it refers to expenses for limited common property, reasoning that Regulation section 11.2 makes the connection explicit.
42. In *Yang v. The Owners, Strata Plan LMS 4084*, 2010 BCSC 453, the court said a section is empowered to establish its own operating fund and contingency reserve fund for the section’s common expenses, including expenses relating to LCP designated for the exclusive use of the strata lots in the section, if the bylaws permit it.
43. Here, bylaw 15 says each separate section must repair and maintain the LCP designated for use by the section strata lots, including fixtures and fittings used in connection with the LCP, such as the elevators in this dispute. So, I find bylaw 15 not only permits a section to take responsibility for the insurance deductible expense, but the bylaw also makes the residential section responsible to pay the deductible.
44. I disagree with the residential section’s argument that an insurance deductible expense is somehow distinct from an expense related to budgeted repair and maintenance because it is a “one-time expense arising from an uncertain, unexpected, and unpredictable event”. The only distinction relating to timing of expenses under the SPA involves contributions to operating and contingency reserve funds (section 92) and expenditures from those funds or unapproved expenditures (section 96 to 98). All of these “types” of expenses are captured under the definition of common expense, which SPA section 1 broadly defines as one that relates to common property and common assets or is required to meet any other purpose.
45. Lastly, bearing in mind section 190(2), I find section 195 prevails over section 99(2) and permits calculation of the insurance deductible from residential section strata

lots only.

46. For all of these reasons, I find the residential section is responsible to pay the \$100,000 insurance deductible. Since that is what occurred, I dismiss the residential claims.

Is any party responsible to pay or refund legal fees?

47. The residential section says the strata spent \$4,074.01 to pay a lawyer to defend its claims. It says that it contributed to the strata's funds, so it effectively contributed to defend its own proceeding, which it says is unfair and unjust. The strata did not provide submissions on the issue. The commercial section objected to the residential section's late claim because it was not included in the original or amended Dispute Notice. The commercial section also argued that the residential section was required to pass a $\frac{3}{4}$ vote before starting these proceedings, which is inaccurate because a CRT proceeding is not a "suit" as defined under the SPA. See for example, my decision in *Section 2 of The Owners, Strata Plan EPS1945 v. The Owners, Strata Plan EPS1945*, 2020 BCCRT 1225, at paragraphs 26 to 30.
48. The only remedy sought by the residential section was contingent on it being successful, which it was not. Therefore, I find I need not address the issue. I make no findings about the alleged use of strata funds to defend the residential section's claims.
49. The commercial section also made submissions that "if only 1 section must bear all the legal fees, it should be the residential section", essentially suggesting the residential section's claim was meritless and bound to fail. It then asked that the residential section pay its legal fees as well as the strata's legal fees. I decline to address the commercial section's request for 2 reasons. First, it has no standing (legal authority) to request the residential section pay the strata's legal fees. Second, it did not include a request for legal fees in its Dispute Response and appears to have included it only in response to the residential section's request.

CRT FEES AND EXPENSES

50. 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. The residential section is the only party that paid CRT fees, but it was not successful, so I make no order for CRT fees.
51. Other than the legal fees I have already addressed, no party claimed dispute-related expenses, so I order none.

DECISION

52. I dismiss the residential section's claims.

J. Garth Cambrey, Tribunal Member