



Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

CHAMIKA BASNAYAKE

APPLICANT

A N D :

The Owners, Strata Plan LMS 2031

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey

INTRODUCTION

1. This strata property dispute is about a chargeback of repair expenses to an owner.
2. The applicant, Chamika Basnayake, owns strata lot 35 (SL35) in the respondent strata corporation, The Owners, Strata Plan LMS 2031 (strata). Mr. Basnayake is self-represented. The strata is represented by a strata council member.

3. Mr. Basnayake says the strata improperly charged him \$3,998.17 for water damage repairs to the 2 strata lots directly below his (units 103 and 203), contrary to the strata's bylaws. He says the strata was negligent in its repair and maintenance of his limited common property (LCP) balcony, which caused the water damage to the strata lots below. Mr. Basnayake seeks an order that the strata remove the chargeback from his strata lot account.
4. The strata denies it was negligent. It says that the water damage to the strata lots below SL35 was caused by a build up of ice and snow on the LCP balcony designated to Mr. Basnayake. It says that he is responsible to clear the ice and snow but failed to do so. I infer the strata asks the CRT to dismiss Mr. Basnayake's claim.
5. As explained below, I find in favour of Mr. Basnayake.

JURISDICTION AND PROCEDURE

6. 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.
7. 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. I therefore decided to hear this dispute through written submissions.
8. 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.

ISSUE

9. The sole issue in this dispute is whether the strata is entitled to charge alleged water damage repair expenses totalling \$3,998.17 back to Mr. Basnayake.

BACKGROUND, EVIDENCE AND ANALYSIS

10. As applicant in a civil proceeding such as this, Mr. Basnayake must prove his 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.
11. The strata plan shows the strata was created in June 1995 under the Condominium Act. It now exists under the SPA. There are a total of 47 apartment-style strata lots located in a single 3-storey building. SL35 is located on the top or third floor below the building's main roof. The strata plan shows the balcony located next to SL35 is designated as LCP for the exclusive use of Mr. Basnayake. Based on photographs and videos provided in evidence, the SL35 balcony is set back under the main roof of the building such that it is mostly protected by the roof. There is a small area of the balcony next to the railing that is not protected by the main roof. There are 2 balcony drains (scuppers) through the vertical wall below the railing.
12. The strata filed a complete new set of bylaws with the Land Title Office (LTO) on June 12, 2013. The filed documents confirm the June 2013 bylaws replaced all previous "enacted and registered bylaws", which I find includes the Standard Bylaws under the SPA. The strata filed subsequent bylaw amendments with the LTO, but none are relevant. I summarize the relevant bylaws as follows:

Bylaw 2(1) that says an owner must repair and maintain their strata lot, except for repair and maintenance that is the strata's responsibility,

Bylaw 2(2) that says an owner must repair and maintain LCP designated to them except for repair and maintenance that is the strata's responsibility,

Bylaw 9(1)(c)(b) that says the strata must repair and maintain common property that has not been designated as LCP (which I note is also set out in SPA section 72), and

Bylaw 9(1)(c)(ii)(C) and (D) that say the strata must repair LCP, no matter how often the repair or maintenance normally occurs, if the LCP relates to balconies attached to the exterior of the building or doors and windows on the exterior of the building.

13. I note the strata referenced a bylaw numbered 3(4) that it says allows the strata to direct an owner to undertake repairs to common property or limited common property. However, no such bylaw has been filed with the LTO, so under SPA section 120 I find the referenced bylaw has no force or effect.
14. SPA section 68 describes the boundaries of a strata lot as the midpoint between the structural portion of the wall or ceiling between the strata lot and the common property unless the strata plan states otherwise. Here, the strata plan does not specify a different boundary, so I find the entire building exterior and roof are common property. Based on the bylaws, I find the main roof and building exterior and LCP balcony next to SL35 are the strata's responsibility.
15. I turn now to the leak, which allegedly occurred on December 23 and 24, 2022, and the following sequence of events.
16. Mr. Basnayake wrote to a strata council member on November 22, 2022, advising that water was leaking continuously onto his balcony. Photographs taken on that date show water dripping from the main roof onto the SL35 balcony. In response, the council member replied that the gutters were likely clogged, and the strata council was waiting for the leaves to fall before having the gutters cleaned.
17. Video evidence taken December 23, 2022, shows water overflowing the main roof gutters onto the SL35 balcony at the same location. It also shows that water is draining slowly through the scuppers but significantly ponding on the balcony. Mr. Basnayake appears to be attempting to address the issue with a bucket, which he says was required every 20 minutes.

18. Early on December 24, 2022, a council member attended SL35 and advised Mr. Basnayake that leaks were occurring in units 203 and 103. Another video was taken on that day which shows a small amount of snow on the SL35 balcony and water dripping on to the balcony from the same roof location as the day before. The strata argues Mr. Basnayake failed to keep the SL35 balcony and scuppers cleared of snow and ice.
19. It is undisputed that the strata had the main roof gutter cleaned on January 27, 2023. However, the day before, the strata manager wrote to Mr. Basnayake advising \$3,998.17 had been charged to his account alleging a water leak from SL35 caused the damage to units 203 and 103. A copy of a restoration contractor's invoice for that amount was attached to letter that describes emergency work completed to the main bedrooms of the 2 strata lots. The letter did not mention any bylaw contraventions or the source of the water leak.
20. At Mr. Basnayake's request, the strata held a council hearing on February 15, 2023. On March 13, 2023, the strata manager wrote to Mr. Basnayake advising that the chargeback would remain on his account. The letter stated the water damage to units 103 and 203 was "a direct consequence of negligence and inaction to clear the balcony drains" citing bylaws 2(1) and (2). The strata's evidence about the cause of the leak is inconsistent, but nothing turns on this. An account statement for SL35 shows the claimed amount was charged to Mr. Basnayake on April 9, 2023.
21. For the following reasons, I find the strata is not entitled to charge back the repair invoice to Mr. Basnayake.
22. There is no evidence there was any leak from SL35 for which Mr. Basnayake would be responsible. There is also no evidence that the plugged gutters or scuppers caused water damage in the 2 strata lots below, such as a report from the restoration contractor. In addition, a past council member provided a written statement that the water damage in the main bedrooms of units 103 and 203 could not have resulted from the plugged gutters or scuppers for 2 reasons. First, the bedrooms are not located below the SL35 balcony. Second, the water damage in 203 was located at the floor level and not the ceiling. While the layout of SL35 and

units 103 and 203 was not provided, I accept the past council member's statement because the strata did not object to it.

23. Further, even if there was evidence that Mr. Basnayake caused the water damage, which there is not, several CRT decisions have found that a strata corporation cannot charge back repair expenses to an owner without the authority to do so under a valid and enforceable bylaw or rule that creates the debt. See for example *Rintoul et al v. The Owners, Strata Plan KAS 2428*, 2019 BCCRT 1007. Here, the strata does not have such a bylaw or rule.
24. Given my findings above, I do not need to consider if the strata was negligent.
25. For these reasons, I find Mr. Basnayake is not responsible for the water damage expense. I order the strata to immediately remove the \$3,998.17 chargeback from Mr. Basnayake's account.

CRT FEES AND EXPENSES

26. 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. Mr. Basnayake paid \$225.00 in CRT fees and the strata did not pay CRT fees. Given Mr. Basnayake was successful, I order the strata to pay him \$225.00 for payment of CRT fees.
27. The strata did not claim dispute-related expenses. Mr. Basnayake claimed \$11.36 for his registered mail expense to serve the strata with the Dispute Notice. However, he did not provide a receipt for the expense, so I make no order for reimbursement of dispute-related expenses.
28. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Basnayake.

DECISION AND ORDER

29. I order that the strata:

- a. Immediately remove the \$3,998.17 chargeback for water damage repairs to units 103 and 203 from SL35's account, and
 - b. Within 15 days of the date of this decision, pay Mr. Basnayake \$225.00 for CRT fees.
30. Mr. Basnayake is entitled to post-judgement interest under the Court Order Interest Act, as applicable.
31. 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 in which it is filed.

J. Garth Cambrey, Tribunal Member