



Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

BARBARA GREENWOOD

APPLICANT

A N D :

The Owners, Strata Plan LMS 4102

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey

INTRODUCTION

1. This strata property dispute is about a water leak into a strata lot from an unknown source.
2. The applicant, Barbara Greenwood, owns a strata lot (SL24) in the respondent strata corporation, The Owners, Strata Plan LMS 4102 (strata). She is self-represented. The strata is represented by a strata council member.

3. Ms. Greenwood says she noticed water in SL24 on July 2, 2024. She reported the water leak to the strata, which sent a contractor to investigate. The contractor cut 3 holes in the interior drywall of SL24 in an attempt to determine the source of the leak and concluded it came from one of the strata lots above SL24. Further investigation by the contractor and the strata did not determine the source of the leak. Ms. Greenwood seeks an order that the strata complete investigating the source of water leak and have it repaired at no cost to her.
4. Ms. Greenwood also says the strata did not provide records and documents she requested. She asks for an order that the strata provide her with the requested records and documents.
5. The strata says it has completed its investigation and was unable to determine the leak source. It says the leak was one a 1-time incident from a strata lot above SL24. The strata agrees to repair the drywall in SL24 to a “paint ready” condition, but declines to address any other SL24 damage, suggesting no other damage has been proven. The strata also says it has provided Ms. Greenwood with all the records and documents she is entitled to receive under *Strata Property Act* (SPA) sections 35 and 36. I infer the strata asks the Civil Resolution Tribunal (CRT) to dismiss Ms. Greenwood’s claims.
6. As explained below, the strata is not required to further investigate the July 2024 water leak and must fully repair the drywall it damaged in SL24. The strata must also provide Ms. Greenwood with an owners’ list. I dismiss Ms. Greenwood’s remaining claims.

JURISDICTION AND PROCEDURE

7. These are the CRT’s formal written reasons. 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.

8. 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.
9. 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.
10. To expedite resolution of this dispute, the CRT waived Ms. Greenwood's requirement to request a council hearing under SPA section 189.1(2). It also moved the dispute directly to the adjudication stage of the CRT process without going through the facilitation stage.

ISSUES

11. The issues in this dispute are:
 - a. What further investigation into the water the leak and repairs to SL24 must the strata complete, if any?
 - b. Has the strata provided Ms. Greenwood with her requested records and documents?

BACKGROUND, EVIDENCE AND ANALYSIS

12. As applicant in a civil proceeding such as this, Ms. Greenwood must prove her 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.

13. The strata plan shows the strata was created in February 2000 under the *Condominium Act*. It continues to exist under the SPA. The strata is a mixed-use building which comprises a total of 55 commercial and residential strata lots in a single 18-storey building above 4 levels of underground parking. SL24 is located on the 10th floor of the building.
14. Land Title Office documents show the strata filed a complete new set of bylaws on January 3, 2000, and several subsequent bylaw amendments. These are the bylaws that apply to this dispute. I address relevant bylaws below as necessary.

What further investigation into the water the leak and repairs to SL24 must the strata complete, if any?

15. Under SPA section 72 and bylaw 14, the strata has a duty to repair and maintain common property. In other CRT decisions, I have considered whether a strata corporation has a duty to investigate alleged common property issues and found that it does: See for example, *Barros-Harty v. The Owners, Strata Plan NW 962*, 2022 BCCRT 569 at paragraphs 32 to 34, and *Youlton v. The Owners, Strata Plan VIS 4390*, 2022 BCCRT 639 at paragraphs 24 to 25. The strata admits it has a duty to investigate reported water leaks, such as the one here.
16. I find the strata's duty to investigate is based on a reasonableness standard as established by the BC Supreme Court. Namely, the court has found that a strata corporation's obligation to repair and maintain common property is measured against a test of what is reasonable in all of the circumstances. See *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363. The court has also found that what is reasonable in the circumstances depends on the likelihood of the need to repair, the cost of further investigation, and the gravity of the harm sought to be avoided or mitigated by investigating and remedying any discovered problems. See *Guenther v. Owners, Strata Plan KAS431*, 2011 BCSC 119 at paragraph 40. With these decisions in mind, I conclude a strata corporation's duty to repair includes a duty to investigate the need for repair based on a standard of reasonableness.
17. Here, the strata responded to Ms. Greenwood's emergency call about water in SL24 by sending a plumbing contractor, National Hydronics Ltd. (National). National

provided a report to the strata dated July 22, 2024. The report states National attended SL24 on July 1, 2024, to investigate a leak in a bedroom closet. I find nothing turns on whether National attended SL24 on July 1, 2024, or July 2, 2024, as claimed by Ms. Greenwood. According to National, the SL24 bedroom closet shares a wall with the SL24 bathroom, so National used a camera to inspect the bathtub drain and cut into the closet drywall but found no leaks. Using a moisture meter, National determined the bathroom ceiling was wet and cut another opening there. It found 3 cast iron plumbing stacks in the ceiling space but reported that nothing was leaking at the time. National suggested monitoring the leak and gaining access to the strata lots on floors 11 through 16 directly above SL24. It also stated the leak could have been a 1-time water spill on the bathroom floor in one of those strata lots.

18. The report goes on to say that National returned to the building on July 19, 2024, to inspect the strata lot immediately above SL24 and found no signs of leaks or moisture despite being advised the bathroom was used daily. Emails from National dated July 6 and 11, 2024, report the same findings and reach the same conclusion that the leak was likely a single occurrence.
19. Ms. Greenwood suggests that further investigation is required to determine the source of the leak. I disagree on the basis Ms. Greenwood has not reported any further leaks since July 2024. I find Ms. Greenwood's concern that the strata obtained access to the strata lot above SL24 18 days after the leak occurred is immaterial for the same reason. I find it extremely unlikely that almost a year later, investigation of additional strata lots would assist in determining where the July 2024, leak originated, or that an investigation would uncover a systemic problem. The fact there were no further leaks also goes against Ms. Greenwood's argument that the strata should follow National's suggestion to investigate additional strata lots
20. I accept National's report and its finding that the leak was a single occurrence. As a result, I find the strata has met its duty to investigate the July 2024 leak and is not reasonably required to extend its investigation to additional strata lots.

21. I turn now to repairs required to SL24.
22. Ms. Greenwood argues the strata is responsible to repair common property, such as the plumbing stacks. I agree with Ms. Greenwood on this point. I find the plumbing stacks are common property because they service more than 1 strata lot. That means they are the strata's responsibility to repair and maintain under SPA section 72 and bylaw 14.
23. Ms. Greenwood also argues the strata must repair and "any related" damage to SL24 resulting from the July 2024 water leak. However, bylaw 5 states that owners are responsible to repair and maintain their strata lots. There are exceptions to this general requirement under the SPA and common law. They include whether the damage is covered by insurance, whether the strata was negligent, and whether the strata intentionally caused damage. I address each of these exceptions below.
24. In addition to the drywall damage, Ms. Greenwood asserts the bedroom carpet in SL24 was wet from the water leak and that a contractor found mould on the bathroom ceiling drywall. However, as earlier noted, Ms. Greenwood must prove her claims. She did not provide evidence, such as a report from a qualified contractor, that the bedroom carpet or underlay was damaged nor that mould existed on the bathroom ceiling drywall. To the extent Ms. Greenwood's claim includes carpet, underlay and mould repairs, I find her claim is unproven, and I dismiss it.
25. This leaves only the drywall damage.

Insurance

26. The strata must carry property insurance under SPA section 149. There are no submissions on the cost of the repairs, but the evidence is the strata carried property insurance with a \$35,000 water damage deductible. That means the strata's insurance policy would only be triggered and the resultant water damage repairs would be only covered under the strata's policy, if the total damage exceeded \$35,000.
27. Based on the photographs of the 3 drywall holes in SL24, and that Ms. Greenwood

has not proven any other repairs, I find it unlikely the damage to SL24 exceeded the strata's deductible. Therefore, the strata's insurance policy was not triggered and there is no coverage available to repair SL24.

Negligence

28. To be successful in an action for negligence, Ms. Greenwood must demonstrate that the strata owed her a duty of care, that the strata breached the standard of care, that she sustained damage, and that the damage was caused by the strata's breach. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3.
29. The strata's obligation to repair and maintain common property establishes that the strata owes Ms. Greenwood a duty to repair the plumbing stacks. The courts have clearly established the strata's standard of care as it relates to its duty to repair and maintain under SPA section 72 is reasonableness. See for example, *Slosar v The Owners, Strata Plan KAS 2846*, 2021 BCSC 1174, at paragraph 66.
30. The difficulty for Ms. Greenwood is that she not provided evidence to prove the strata unreasonably maintained the plumbing stacks such that one of them leaked into SL24. National's report did not state the plumbing stacks caused the leak; it only stated the stacks existed in the bathroom ceiling space above SL24. Therefore, I find Ms. Greenwood has not proved the strata was negligent.

Intentional damage

31. Another exception to an owner's duty to repair their strata lot occurs when a strata corporation intentionally damages part of the strata lot during its investigation. This is the case here.
32. The CRT has consistently found the strata corporation is responsible for repairing that part of the strata lot it intentionally damages during an investigation. See for example, *Au v. The Owners, Strata Plan EPS5639*, 2024 BCCRT 892 and *Huang v. The Owners, Strata Plan EPS1279*, 2024 BCCRT 849. I adopt this reasoning and apply it here.
33. The evidence is that National cut holes in SL24's drywall during its leak

investigation. I find that is intentional damage which the strata is responsible to repair. I acknowledge that the strata has already offered to repair the drywall to a “paint-ready” condition. However, following *Au* and *Huang*, I find the strata must completely repair the 3 drywall holes, including repainting the walls and ceiling after the drywall repairs are complete. I order the strata to do this within 45 days of the date of this decision.

Has the strata provided Ms. Greenwood with her requested records and documents?

34. SPA section 35 requires the strata to prepare and keep certain records and documents. SPA section 36 requires the strata to make section 35 records and documents available for inspection or provide copies to an owner within 2 weeks of the request date, unless the request is for bylaws and rules, where the timeframe is 1 week. SPA section 36 and *Strata Property Regulation* section 4.2 do not allow the strata to charge for inspection of records and documents but allows it to charge a maximum fee of \$0.25 per copy, if copies are provided.

35. Here, I find Ms. Greenwood requested the following documents:

- a. A copy of the plumber’s report or invoice,
- b. The strata’s current insurance certificate,
- c. The strata’s bylaws,
- d. The name of the owner of the strata lot where the leak originated, and
- e. An owners list.

36. All of the listed documents are captured by SPA section 35, except for the plumber’s invoice, so the strata is not required to provide a copy of National’s invoice. See *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610. Document disclosure requirements under SPA section 36 are mandatory with certain exceptions that do not apply here.

37. The strata says it provided Ms. Greenwood with the documents she requested.

However, I find the evidence confirms Ms. Greenwood received all her requested documents as part of this dispute except the owners list required under SPA section 35(1)(c)(i). Therefore, I order the strata to provide Ms. Greenwood with a copy of the owners list within 14 days of the date of this decision. Given the length of time that has passed since Ms. Greenwood's original request, I order the strata provide the list to her at no cost.

CRT FEES AND EXPENSES

38. 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. Neither party paid CRT fees nor claimed dispute-related expenses, so I make no order.
39. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Greenwood.

DECISION AND ORDER

40. I order that the strata:
- a. Within 14 days of the date of this decision, provide Ms. Greenwood, at no cost, an owners list set out under SPA section 35(1)(c)(i).
 - b. Within 45 days of the date of this decision, completely repair the 3 drywall holes in SL24 made by National, including repainting the bedroom closet walls and bathroom ceiling after the drywall repairs are complete.
41. Ms. Greenwood's remaining claims are dismissed.

42. 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