



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan EPS 4911 v. Libera*, 2025 BCCRT 1165

B E T W E E N :

The Owners, Strata Plan EPS 4911

APPLICANT

A N D :

ROBERT LIBERA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Mark Henderson

INTRODUCTION

1. The respondent, Robert Libera, owns strata lot 91 (SL91) in the applicant strata, The Owners, Strata Plan EPS 4911. Robert Libera rents SL91 to a tenant. The strata seeks \$16,849.21 for property damage arising from 2 plumbing incidents. The strata says a loose riser clamp securing the p-trap under the SL91 shower caused the first plumbing incident leading to \$1,149.51 in repairs. The strata says a toilet

drain blockage in SL91 caused the second plumbing incident with water damage to SL91, SL84, and SL85 requiring \$15,699.70 in repairs.

2. Robert Libera says the repairs were necessitated by improper plumbing design by the third-party strata developer which is not a party to this dispute. Robert Libera also says the necessary repairs were to strata common property and so were the strata's responsibility.
3. A lawyer, Hassan Khan, represents the strata. Robert Libera's tenant, who is not a lawyer, represents Robert Libera.

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. 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.

ISSUE

7. The issue in this dispute is whether the strata is entitled to payment for the repairs arising from the water leaks.

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, as the applicant, the strata must prove its 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.

Background

9. The strata was created in April 2018 and consists of a residential section of 89 residential strata lots and a commercial section of 5 commercial strata lots. The strata passed its bylaws in April 2018. Bylaw 3.1 says the strata must repair and maintain common property. In circumstances where an owner breaches a bylaw and causes damage, bylaw 4.1(4) says that the strata can charge the owner for the cost to repair any damage arising from that bylaw breach, including plumbing damage.
10. On September 15, 2021, the strata approved a bylaw amendment to add bylaw 14.1 which says an owner must obtain separate insurance to pay for any deductibles that the owner is responsible for, including under bylaw 14.1(3)(c)(v) for damage arising from a toilet or bathtub.
11. On April 6, 2021, the strata hired a plumber to investigate a noise in SL84, directly below SL91, which routinely occurred whenever SL91's tenant was using the shower. On April 20, 2021, the plumber found that when a person stands in the shower there is a creaking noise. The plumber concluded that movement from the tub caused the clamp on the p-trap to gradually loosen. The plumber accessed the p-trap through SL84's ceiling and tightened the riser clamp that connected to the p-trap. The plumber also used foam to support the tub to reduce its movement.

12. On August 13, 2021, a toilet blockage to two toilets in SL91 caused flooding and water damage in SL91, as well as SL84 and SL85.

Is the strata entitled to payment for either plumbing incident?

13. The CRT has consistently found that a strata corporation can hold an owner responsible for costs it incurs to repair a strata lot where the owner agreed to pay the costs, the owner was responsible under the SPA or the strata bylaws, or the owner was negligent. See for example *Gut v. The Owners, Strata Plan NW1799*, 2024 BCCRT 1066, *Lee v. The Owners, Strata Plan LMS3463*, 2024 BCCRT 517, and *The Owners, Strata Plan K 407 v. Kelly*, 2019 BCCRT 789. Other CRT decisions are not binding on me, but I agree with this reasoning.
14. The strata did not provide any evidence that Robert Libera agreed to pay the repair costs. The strata says that Robert Libera was responsible for the damage under the strata bylaws. The strata also says Robert Libera was negligent. So, I consider each of the strata's arguments below.

Was Robert Libera responsible for the repair costs under the SPA or the strata bylaws?

15. There are two ways an owner can be responsible for repair or remediation costs based on the SPA and strata bylaws. The first is under SPA section 133 where the owner breaches a bylaw, and that breach causes damage.
16. Bylaw 2.3(2) prohibits an owner or tenant from causing damage other than reasonable wear and tear. Bylaw 7.1(l) prohibits an owner or tenant from permitting a condition that results in waste or excessive consumption of the strata's water. If the strata wanted to hold the tenant responsible for plumbing costs for the toilet leak under bylaw 2.3(2) or bylaw 7.1(l), the strata needed to follow the bylaw enforcement process under SPA section 135 to notify the tenant and Robert Libera of the alleged bylaw breach. The strata has not provided any evidence that it followed the SPA section 135 requirements to enforce bylaw 2.3(2) or bylaw 7.1(l) against Robert Libera or their tenant.

17. The strata says Robert Libera breached bylaw 2.2, which requires an owner to repair and maintain the owner's strata lot except for repair and maintenance that is the strata's responsibility to maintain. Once again, there is no evidence that the strata followed the mandatory procedure set out in SPA section 135 to notify Robert Libera of the alleged bylaw violation and give them a chance to respond before demanding payment for the repairs. Despite the apparent absence of bylaw enforcement for the alleged bylaw breach, I consider whether the strata has proved that Robert Libera breached bylaw 2.2.
18. Under SPA section 72 and bylaw 3.1 the strata must repair and maintain common property. The definition of "common property" under SPA section 1 includes pipes and other facilities for the passage of water and sewage that are located within a strata lot's boundary floor, wall, or ceiling, or that is wholly or partly within a strata lot if it can be used in connection with the enjoyment of another strata lot or the common property.
19. The strata provided a copy of the plumber's invoice from Werner Smith Mechanical Inc. for the April 2021 incident. The invoice said the plumber accessed the p-trap for repair through the SL84 ceiling. So, I find that the p-trap was in the boundary floor of SL91 or the boundary ceiling of SL84, meaning it was common property, and the strata was responsible to repair it under SPA section 72.
20. The strata also provided a copy of the plumber's report following the toilet blockage in August 2021. The strata hired Werner Smith Mechanical Inc. to diagnose and repair the issues. The report's author does not describe their qualifications. CRT Rule 8.3 says an expert must state their qualifications in writing. So, I am unable to accept the report as expert evidence. However, I find that I can accept the report as a business record of what steps the plumber took to repair the toilet blockage.
21. The plumber identified that when they attended the strata, SL91's ensuite bathroom toilet and SL91's powder room toilet were backed up and water was coming up the shower drain. The plumber first tried to auger with a toilet auger but was unsuccessful. The plumber contacted their office to obtain more drain cleaning

equipment and used a different auger, which I infer was more powerful. The plumber says that they ran the second auger to about 18 feet and encountered resistance.

22. The plumber says they looked at the building drawings and saw that the 2 bathrooms in SL91 are tied in together and the drain runs down and ties into a sanitary stack below SL84. While the plumber does not explicitly say, I infer that both toilet drains were in the floor below SL91. I say this partly because the plumber reported that the toilets and the shower drain were backed up, and I have already found that the shower drain was in the floor between SL91 and SL84. Since the shower drain was also reportedly backing up, I conclude that the blockage was somewhere below the shower drain. I also note that SL91 appears to be a one-story strata lot, and toilets commonly drain through plumbing in the common property floor below a strata lot.
23. So, I find that the drain blockage occurred in a pipe that was part of the strata common property and so was the strata's responsibility to repair and maintain under SPA section 72.
24. For these reasons, I find the strata has not proved that Robert Libera breached bylaw 2.2 because neither repair was to their strata lot. I therefore find the strata cannot rely on this alleged bylaw breach to claim against Robert Libera.
25. Since the strata has not proved that Robert Libera or the tenant breached a bylaw, I find the strata has not proved that Robert Libera is responsible under bylaw 4.1(4) to pay for the plumbing repairs.
26. The strata also relies on bylaw 4.1(5) which makes an owner responsible for repaying an insurance deductible in circumstances where the strata makes a claim against its insurance policy because of a bylaw breach. Since the strata has not proved that Robert Libera or their tenant breached a bylaw, I find that bylaw 4.1(5) is not applicable either.

27. The second way to find an owner liable under the SPA and bylaws is where a strata passes a bylaw that specifically requires an owner to indemnify the strata for repair costs when the owner damages common property or another strata lot. Although the strata passed bylaw 14.1 which requires an owner to indemnify the strata, I note that the strata passed bylaw 14.1 on October 6, 2021, after these plumbing costs were incurred. I find that Robert Libera cannot be found liable for breaching a bylaw where that bylaw was not in force at the time of the incidents. So, I find that bylaw 14.1 does not apply to this dispute.

Was Robert Libera negligent?

28. The strata says Robert Libera was negligent for failing to maintain the SL91 toilet. The strata relies on *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 519, where the owner was found to be negligent for leaving their toilet running despite an apparent drain blockage that led to an overflowing toilet.

29. I find that the decision in *Morrison* is distinguishable for two reasons. First, in *Morrison*, the owner lived in the strata unit and so was found to be aware of the blocked toilet that morning. Here, Robert Libera did not live in SL91 and there is no evidence whether Robert Libera was aware of the toilet blockage when it occurred. There is also no information about how the tenant's actions contributed to the toilet blockage. The strata also alleges that Robert Libera was aware that the toilet was defective. But did not offer any evidence to prove this allegation.

30. I also find that *Morrison* is of limited assistance because the Court did not make any findings about whether the blockage that lead to the flooding occurred in the strata lot or in the common property plumbing elsewhere in the strata.

31. The strata did not provide any other details of how Robert Libera's or their tenant's specific acts or omissions breached the standard of care of a strata unit owner. So, I find that the strata has not proved Robert Libera or their tenant was negligent in maintaining the SL91 toilet.

32. For these reasons, I find that the strata has not proved it is entitled to payment for either plumbing incident.

CRT FEES AND EXPENSES

33. 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 strata was unsuccessful and I dismiss its claim for CRT fees and dispute-related expenses. Robert Libera paid no CRT fees and did not claim any dispute-related expenses.

34. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Robert Libera.

ORDER

35. I dismiss the strata's claims and this dispute.

Mark Henderson, Tribunal Member