Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 2706 v. Morrell et al,* 2018 BCCRT 28

B E T W E E N :

The Owners, Strata Plan LMS 2706

APPLICANT

A N D :

Robyn Elizabeth Morrell and Derrick Allen Bonson

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Kate Campbell

INTRODUCTION

1. The Owners, Strata Plan LMS 2706 (strata) claim that the respondents, owners of strata lot 6 in the strata, owe $8,244.46 for costs related to fire alarm testing, unpaid strata fees and interest, bylaw infractions, repairs following sewer backups, and legal fees relating to unpaid strata fees. The strata seeks an order that the respondents pay this amount.

2. The strata is represented by a strata council member. The respondents are self-represented.

3. For the reasons set out below, I dismiss all the applicant's claims except one. I find the respondents must pay $545.16 plus interest for rental costs for an air scrubber.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. The applicable tribunal rules are those that were in place at the time this dispute was commenced.

8. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

ISSUES

9. The issues in this dispute are:

   a. Should the respondents be ordered to pay the strata $37.00 in costs related to a fire alarm inspection?

   b. Should the respondents be ordered to pay the strata $209.39 for unpaid strata fees and interest?

   c. Should the respondents be ordered to pay the strata $1,775.30 for bylaw infraction fines and related administrative fees?

   d. Should the respondents be ordered to pay the strata $5,022.77 for repair costs related to sewer backups in March and November 2015?

   e. Should the respondents be ordered to pay the strata $1,200.00 for legal fees related to unpaid strata fees, fines, and chargebacks?

EVIDENCE, FINDINGS & ANALYSIS

10. I have read all of the evidence provided, but refer only to evidence I find relevant to provide context for my decision.

Fire Alarm Inspection

11. The applicant says the respondents failed to provide a contractor access to their unit for a scheduled fire alarm inspection, and must pay a $37.00 re-inspection fee. They say that since 2014, it has been strata policy that all owners must be signed up with the property management company's web portal in order to access notices, meeting minutes, and other correspondence.

12. The respondents say they did not receive notice of the testing.

13. In this proceeding, the burden of proof is on the applicants, and I find they have not proven that the respondents received notice of the initial fire alarm inspection. They did not send out a written notice, but instead posted it on a web portal. There

is no way to know if the respondents checked the portal, and no indication that they were prompted to do so prior to the inspection. They applicants say that since the fire alarm inspection was the only maintenance the respondents missed, one can assume they received notice of the fire alarm inspection. I find that such an assumption is too speculative.

14. Also, section 61 of the SPA sets out the requirements for how strata corporations are permitting to deliver notices, including leaving it with the person or unit occupant, putting it under the door or in a mail slot, or mail, fax, or email. A web portal is not a permitted form of notice under section 61, and any policy the strata may have regarding the web portal does not replace the requirements of the SPA.

15. Accordingly, I make no order for fire alarm inspection costs.

Unpaid Strata Fees

16. The strata says the respondents owe $209.39 for unpaid strata fees and related interest.

17. The respondents say the strata has never provided information about what month's strata fees are owing, and because the claimed fees date back to at least 2010, the limitation period has expired.

18. The strata provided a December 17, 2010 letter from the former property manager to the respondents stating that their account was outstanding in the amount of $179.28. The letter does not specify when this outstanding amount arose, nor is a dated for the claimed fees set out in the subsequent correspondence provided in evidence.

19. The burden of proof regarding the claimed $179.28 and corresponding interest is on the applicant strata. I find the strata has not proved this debt, as they have not established when the unpaid fees arose, nor have they established how the interest was calculated (rate or time period).

20. The *Limitation Act* applies to tribunal disputes . A limitation period is a specific time period within which a person may pursue a claim. If the time period expires, the right to bring the claim disappears.

21. British Columbia's *Limitation Act* was replaced on June 1, 2013. The current version says that for a claim discovered before June 1, 2013, the limitation period in the former legislation applies. Section 8 of the *Limitation Act* says a claim is "discovered" on the first day that the person know or reasonably ought to have known that the loss had occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate means to seek to remedy the loss.

22. The strata's letter shows they were aware of the claimed outstanding fees by December 17, 2010. Thus, the claimed fees were discovered before June 1, 2013, the previous legislation applies, and the limitation period for this claim is six years.

23. The six-year limitation period starts to run on the first day that the person making the pre-existing claim discovers the claim, based on the discovery rules in section 8 of the *Limitation Act.*

24. The strata's bylaws say that strata fees must be paid on or before the first day of the month to which the strata fees relate. This means that if the respondents' strata fees were in arrears, that arrears began on or before December 2, 2010. This reasonably ought to have been known to the property manager, who was responsible for keeping track of the strata's financial records. Accordingly, the outstanding fee issue was discovered by December 2, 2010 at the latest.

25. The strata filed its dispute notice on December 14, 2016. This is beyond the six year statutory limitation period. For this reason, I find their claim for unpaid strata fees and interest is statute-barred

Bylaw Infraction Fines

26. The strata says the respondents contravened multiple bylaws and failed to pay the resulting fines of $1,271.30. The strata says the respondents owe this amount plus administrative fees of $504, for a total of $1,775.30.

27. The respondents contest the claimed fines.

28. The strata said the warning letters and fine letters regarding the bylaw infractions were not provided, as the ledger speaks to the outstanding amounts. I disagree. The July 14, 2015 invoice from the strata's lawyer sets out the dates certain legal tasks were performed, but there is no evidence before me specifying which bylaws were breached and when. There is also no evidence about how the $1,271.30 in fines breaks down (how much for each alleged breach), or how the $504 in administrative fees was calculated. Section 116(3) of the SPA expressly prohibits the registration of a lien for an unpaid fine, so any administrative fee related to a certificate of lien for unpaid fines would be inappropriate.

29. While the strata provided a copy of the bylaw provision that allows the strata to assess fines, they did not provide evidence about which bylaws were breached. Bylaw 34.1 sets out various fines for different offences, with increased fines for second offences, but the evidence before me does not show which fines were levied against the respondents.

30. The procedure to be followed when issuing fines is set out at sections 129, 130, and 135 of the SPA. Those sections explain that:

    a) A strata may fine an owner or tenant to enforce a bylaw or rule contravened by the owner, tenant or occupant of the strata lot (sections 129 and 130);

    b) The strata must not "impose a fine" for a bylaw or rule contravention unless the strata has received a complaint about it and given the owner and tenant the particulars in writing and a reasonable opportunity to answer the complaint (section 135(1)(a)); and

c) Once the strata has complied with section 135 “in respect of a contravention of a bylaw or rule”, it may impose a fine for a continuing contravention without further compliance with the section (section 135 (3)).

31. The evidence before me does not established that these requirements were met. For that reason and the reasons set out above, I make no order for payment of fines and related administrative fees.

Chargeback of Legal Fees

32. The strata requests that I order the respondents to pay $1,200.00 in legal fees charged by their lawyer. The lawyer’s July 14, 2015 invoice and July 24, 2015 letter indicate that the $1,200.00 in legal fees were related to attempts to collect the unpaid strata fees discussed above.

33. A strata can collect reasonable legal fees: see *The Owners, Strata Plan KAS 2428 v. Baettig,* 2017 BCCA 377. However, in this case I find the $1,200.00 in legal fees is not reasonable because the strata has not established when the fee arrears began, and I have not ordered payment of the strata fees in question. Accordingly, I do not order payment of the resulting legal fees.

Water Damage and Cleanup

34. The strata says there was water damage requiring cleanup in the respondents’ unit due to a sewer pipe backup on November 23, 2015. The strata says that because the costs were below the strata’s insurance deductible amount, the respondents are responsible for the $5,022.77 cleaning and repair costs. This amount includes $545 for a rented air scrubbing unit, which the strata says the respondents’ tenant did not allow the contractor to pick up.

35. The respondents say that there was a previous sewer backup in March 2015, and the plumber’s report from that time says that backup originated in unit 8 due to sanitary wipes. The respondents say this also caused the sewer blockage in November 2015, and while the November 2015 plumber’s report says there were

rocks in the sewer line, these did not cause the blockage. The respondents also say the strata failed to maintain the sewer pipes and clean outs, which, as discussed below, I find to be common property.

36. A March 2015 plumbing service report indicates that there was a sewage backup in unit 8 on March 19-20, 2015, and the sewer pipe contained "what looked like sanitary wipes", which were removed. The sewer backup recurred on March 29, 2015, and more wipes were removed. The plumber cleaned the sewer pipe further on March 30, 2015 by accessing the clean out in unit 6 (the respondents' unit). The report stated that while they were called to unit 6, the blockage started in unit 8.

37. Subsequent reports indicated that sewage leaked into unit 6 as a result of this backup, and some drywall and flooring had to be replaced.

38. A May 27, 2015 email from the restoration company (Circle) to the strata's property manager said the resident of unit 6 had been contacted several times over the previous six weeks to schedule a pick up time for the air scrubber used in her unit, but she would not comply. The email said Circle would charge for the weekly rental of the air scrubber until they could access it. A September 9, 2015 invoice said the air scrubber rental charge was $545.16. The property manager charged this amount to the respondents.

39. There was another sewer backup in unit 6 on November 2, 2015. A November 5, 2015 plumber's invoice says the sewer line was inspected with a camera on November 3, 2015. Sanitary wipes were removed, and a lot of the sewer piping had rocks in it, which were flushed out with a garden hose.

40. Remediation work was performed, including removing the hot water tank to access the drain, use of vacuum, air scrubber, and drying equipment, drywall and flooring removal, disinfecting, and disconnecting a baseboard heater. A November 23, 2015 invoice says the charges for the plumbing and remediation totalled $4,477.61. The strata send the respondents a June 8, 2016 letter stating that this amount was their responsibility, and had been charged back to their strata account.

41. Under section 1.1 of the SPA, sewer pipes are included in the definition of common property even if they are located "wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property." In *Taychuk v. The Owners, Strata Plan LMS 744*, 2002 BCSC 1638, the Supreme Court of British Columbia regarded pipes inside a strata lot as common property because they were connected to other pipes that serviced other units in the building. The court said that since the pipes were common property, the strata corporation was responsible for their repair.

42. I find the sewer pipes at issue in this dispute are common property because the plumbing reports from March 2015 indicate that the unit 6 sewer pipes are connected to those in unit 8.

43. As a general principle, the SPA contemplates that a strata corporation is responsible for the repair and maintenance of the common property, while a strata lot owner is responsible for the repair and maintenance of his or her own strata lot. This is consistent with the strata's bylaws. Bylaw 4.1 says an owner must repair and maintain the owner's strata lot, and bylaw 13.1 says the strata must remain and maintain common property.

44. Pursuant to section 72 of the SPA and bylaw 13.1, I find the strata was responsible to repair and maintain common property, which includes the sewer pipes at issue.

45. Bylaw 5.5 says that when an owner or his or her guests or tenants causes damage other than normal wear and tear to common property, the owner shall be liable for all costs related to that damage. Similarly, bylaw 15.9 says that where damage to common property is caused by the negligence of an owner or his or her guests or tenants, and the cost is not recoverable by insurance, the strata may charge the costs to the owner's strata lot account.

46. The applicant says the $4,477.61 repair bill is below the strata's insurance deductible amount, so it is recoverable. The respondents say the strata failed to maintain the sewer pipes.

47. I find that the strata was not negligent in their duty to repair and maintain the sewer pipes. The plumbing reports and invoices following the March 2015 leak show that the strata promptly called in a plumbing contractor who reported that the problems were resolved.

48. However, I also find that the strata has not established that the respondents or the occupant or guests of unit 6 caused damage other than normal wear and tear to the sewer pipes. The strata says that unit 6 was the only unit involved in the November 2015 sewer backup, but this does not prove damage beyond normal wear and tear or negligence. As submitted by the respondents, the November 5, 2015 plumber's invoice notes that sanitary wipes were removed from the pipes. The March 2015 plumbing reports also note blockage due to sanitary wipes, and specify that the blockage started in unit 8 rather than unit 6. This evidence does not support the conclusion that the November 2015 sewer backup was due to damage caused by an occupant of unit 6.

49. The strata suggests that the rocks found in the sewer line in November 2015 came from unit 6, but they have not provided evidence to support that assertion. There is a reference to a "lizard room" in unit 6 in the March 31, 2015 emergency water loss report, but this does not prove that the occupant of unit 6 caused rocks to enter the sewer line and cause a blockage in November 2015. The strata asserted that the rocks in the sewer line were gravel from multiple aquariums, and that the aquariums were seen by strata council members. There is no evidence before me to prove these assertions, or to prove that the sewer pipe was blocked by the rocks rather than by the sanitary wipes which were also found in the sewer line on November 3, 2015.

50. The strata has not proved that the occupant of unit 6 was negligent or caused damage other than normal wear and tear to the sewer pipes. Accordingly, the strata did not have authority under the bylaws to charge the repair costs back to the respondents account. Given that, I find the charge back of $4,477.61 to the owner's account was invalid, and I do not order payment of that amount.

Air Scrubber Rental Cost

51. I find that respondents are responsible to pay $545.16 for the air scrubber rental following the March 2015 sewer backup.

52. Again, bylaw 15.9 says that where damage to common property is caused by the negligence of an owner or his or her guests or tenants, and the cost is not recoverable by insurance, the strata may charge the costs to the owner's strata lot account.

53. The June 11, 2015 email from Circle sets out a detailed call log showing that their staff attempted to contact the unit 6 resident on at least six occasions from April 9, 2015 to June 10, 2015 in order to collect the air scrubber, and were refused access. The respondents have not responded to this evidence.

54. I find that the occupant of unit 6, who was either a guest or a tenant, was negligent in refusing Circle access to the rented air scrubber. Accordingly, I find that the respondents are responsible for that fee, and that under bylaw 15.9 the strata was entitled to charge back that amount to the unit 6 strata account

DECISION AND ORDERS

55. I order that within 30 days of this decision, the respondents pay the strata $545.16 for the air scrubber rental fee.

56. The *Court Order Interest Act* (COIA) applies to the tribunal and prejudgment interest must be awarded. Prejudgment interest is calculated on the debt owing as of the date the cause of action arose up to the date of this order.

57. I find the cause of action arose on September 21, 2015, the date the strata requested that the respondents pay for the air scrubber rental and provided the relevant invoice. I calculate prejudgment interest payable by the respondents to be $9.35.

58. The strata is also entitled to post-judgment interest.

59. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. The applicants have not claimed tribunal fees, and they were not substantially successful in this dispute. I therefore make no order for reimbursement of tribunal fees.

60. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

61. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently $35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Kate Campbell, Tribunal Member