



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Sward v. The Owners, Strata Plan BCS 2236*, 2020 BCCRT 800

B E T W E E N :

ED SWARD

APPLICANT

A N D :

The Owners, Strata Plan BCS 2236

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about a water leak. The applicant, Ed Sward, owns a strata lot in strata corporation, The Owners, Strata Plan BCS 2236 (strata), Mr. Sward says that the strata improperly decided that there was a water leak from his strata lot that caused damage to the strata lot below. Mr. Sward says that he had just taken

possession of his strata lot and the water leak predated his ownership of the property. He says he is not responsible for the water leak and the strata should not have charged him \$1,942.48. Mr. Sward has not paid this amount and he asks that this charge be removed from his strata lot account. Mr. Sward represents himself.

2. The strata says that Mr. Sward is responsible for the water leak. The strata acknowledges that the damage might have occurred when the previous owner owned the strata lot, but they say Mr. Sward as current owner is responsible for it. The strata says that Mr. Sward knew there was a water issue and bought the strata lot at a reduced price. Therefore, the strata says that he took on the responsibility for the leak and so should pay for the damage. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

3. 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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the tribunal's process has ended.
4. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. In some respects, this dispute amounts to a "he said, it said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

5. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
6. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUE

7. Is Mr. Sward responsible for the water leak and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant, Mr. Sward, must prove his claim on a balance of probabilities. I have reviewed all of the evidence provided but refer only to evidence I find relevant to provide context to my decision.
9. The alleged incident occurred on July 21, 2018. The relevant bylaw at the time was filed at the Land Title Office as an amendment on September 28, 2015. It states that if an owner is responsible for any loss or damage to a strata lot the owner must indemnify the strata from the expense of any maintenance, repair, or replacement rendered necessary to the strata lot but only to the extent that such expense is not reimbursed from the proceeds received by the strata insurance policy.
10. It is undisputed that the amount claimed here is below the strata's insurance deductible and that the strata did not make an insurance claim. The bylaw also says that "without limiting the generality of the word responsible, an owner is responsible for the owner's own acts and omission as well as those of their contractors." I note that the bylaw does not say that an owner is responsible for damage caused by a previous owner.

11. Based on this, if the water damage occurred as a result of Mr. Sward's or his contractor's work, Mr. Sward would be responsible. In *Wawanesa Mutual Insurance Company v. Keiran*, 2007 BCSC 727, the British Columbia Supreme Court held that being responsible is not the same as being negligent and that responsibility is a lower threshold. I am bound by this decision but find that even though responsibility is a lower threshold, the strata has not proved that the owner was responsible for the leak. My reasons follow.
12. It is undisputed that Mr. Sward knew there was water damage to his strata lot when he bought it in June 2018. Mr. Sward took possession of the strata lot on July 18, 2018 and started renovations with a contractor on July 19, 2018. The renovations included removing the kitchen floor. Mr. Sward submitted a picture showing that the floor panels were warped because of previous water damage. The contractor also removed the counter tops and the kitchen sink.
13. Mr. Sward says that the water was turned off to the strata lot during the renovations. The strata does not dispute this. Mr. Sward's contractor's statement also says that the main water supply to the unit was shut off. Mr. Sward's contractor states that he had a basin under the P-trap (which is a u-shaped portion of the pipe under the sink) to catch the very little water that remained in the trap. The contractor pointed out that he made sure no water would be released because he was laying on the bottom shelf of the cabinet to work on releasing the countertop where escaping water would flow. I find that the water was turned off to the strata lot.
14. Mr. Sward's contractor says that when he was dismantling the lower cabinet the strata's contracting company's representative, K, came to the suite to see what he was doing. Mr. Sward's contractor says that G, the strata's building maintenance man, was there as well. He says that K took a moisture reading and a picture of the area in the corner where the sink usually sits. Mr. Sward's contractor also says that K was only in the kitchen for 5 minutes and then left. Mr. Sward's contractor does not indicate that K performed a thorough investigation or that he made any comment about a water leak and how to stop it. Mr. Sward's contractor's statement

does not indicate that K performed any repairs. I also note that the strata does not say that K needed to perform any repairs in Mr. Sward's strata lot.

15. The strata submits that the person in the strata lot below Mr. Sward called G on July 21, 20 and said that there was a water leak in the ceiling. The strata says that G attended and confirmed that the ceiling was wet. I note that this description of events is different from the one contained in the email from K to the strata. In the email K says that he spoke with G who advised that there was visual damage from possible previous water losses. I also note that the strata has not provided a statement from the person in the strata lot below.
16. K provided a report saying that G requested their attendance. The claim details say that there was water damage in the suite below Mr. Sward's, possibly a result of the current renovations. The claim details do not say that there was an active leak and the pictures provided in K's report do not show evidence of an active leak. Further, K's report states that the plan was to photograph the ceiling, document moisture readings, and install a dehumidifier. This occurred on Saturday July 21, 2018 and the plan was to follow up on the Monday. There were no emergency steps suggested to stop an active leak.
17. K's report also stated that he had a talk with Mr. Sward. Mr. Sward disputes this and says he was not there when K was there. Mr. Sward's contractor did not say that Mr. Sward was there. On the evidence, I find that K must have spoken to Mr. Sward's contractor. K also does not indicate what was said in this conversation. K says that based on this conversation, as well as a visual and device inspection showing "wet materials" in the kitchen, K determined that the leak was a result of water escape when the sink was removed.
18. K does not explain what he means by "wet materials." Also, K goes on to confirm that the water to the area was shut off prior to his inspection. There is no explanation as to how there could be a water leak if the water was shut off. Also, K does not address the fact that the floorboards showed that there was prior water damage. This would likely not have been related to the sink removal. K did not

address how the previous water damage occurred and how he could be sure that the damage he saw in the strata lot below was not old damage but new and related to the renovation. Based on these issues, I dismiss K's report.

19. Mr. Sward says that once renovations began it was clear that there was mould from a previous leak. He says he hired mould inspectors and the inspection report indicated that the mould was from a previous leak, had developed over time, and was not recent. I have reviewed the report and it states that the fungal growth within the kitchen cabinet was a result of long-term water leaks.
20. Mr. Sward also says that he attended a council hearing with his realtor and explained that the leak could not have happened in his first three days of ownership because the water was turned off. He says that the strata told him that the strata council members sympathized, but the strata could not claim against the previous owner and it had to charge someone. Mr. Sward's realtor provided a statement confirming that this was said. The strata does not deny that this was said. Tellingly, the strata also submitted that the damage could have been caused by previous water leaks.
21. I also note that the strata says that the damage must have been caused by Mr. Sward and that it was not from any pipes that would be common property which would be the strata's obligation to maintain and repair. The strata has provided no evidence showing where the leaks came from. I have already dismissed K's report and also note that it did not address the source of the previous leaks.
22. Mr. Sward says that there are many cases of water leaks in the building and that there are cut outs in the ceiling drywall showing the multiple leaks that have occurred. Mr. Sward says that the strata has been trying to deal with the water leaks and is considering new technology to deal with the problem. Again, the strata did not dispute that this was the case.
23. The strata says that Mr. Sward knew that there was water damage to his unit. Mr. Sward agrees but says that he believed the water leak was fixed and that he just had to repair the damage already done.

24. Based on the overall evidence, I find that the strata has failed to prove that Mr. Sward is responsible for the damage done to the ceiling of the person living below him. The evidence does not show that there was an active water leak on July 21, 2018. I have already found that the water was shut off to Mr. Sward's strata lot and accept Mr. Sward's contractor's evidence that no water escaped during the renovation. I also find that there was previous water damage to Mr. Sward's strata lot and the strata lot below, but the evidence does not establish where this leak came from. Therefore, I find that Mr. Sward is not responsible for the damage, I order the strata must reverse the \$1,942.48 charge to Mr. Sward's strata lot account.

CRT FEES AND EXPENSES

25. Under section 49 of the CRTA, 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. Because Mr. Sward was successful in his claims, he is entitled to reimbursement of \$225 for CRT fees he paid. There was no claim for expenses, so I order none.
26. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against Mr. Sward.

ORDERS

27. I order that the strata must immediately remove the \$1,942.48 charge from Mr. Sward's strata lot account.
28. I order that, within 14 days of the date of this order, the strata must pay Mr. Sward \$225 for CRT fees.
29. Mr. Sward is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.

30. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. Under section 58 of the CRTA, the order can be enforced through the Provincial Court of British Columbia 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 that it is filed in.

Kathleen Mell, Tribunal Member