Strata Property Decisions

The Owners, Strata Plan VR1183 v. Smith

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B E T W E E N :

The Owners, Strata Plan VR1183

A N D :

BRIAN SMITH

RE

REASONS FOR DECISION

Tribunal Member: Richar

INTRODUCTION

1. This dispute is about water damage resulting from a toilet overflow in a strata co respondent, Brian Smith, owns strata lot 47 (SL47) in the applicant strata co Owners, Strata Plan VR1183 (strata). The strata lot was rented to a tenant when from SL47's toilet on July 14, 2019, damaging SL47 and other strata lots. In the I the strata claimed reimbursement of $22,855.68 in water remediation expenses strata has reduced its claim to reimbursement of the $15,000 insurance de submissions.

2. Brian Smith denies the strata's claim. They say that they are not responsible for the

3. The strata is represented by a strata council member. Brian Smith is represented b representative.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). jurisdiction over strata property claims under section 121 of the *Civil Resolutio* (CRTA). CRTA section 2 says the CRT's mandate is to provide dispute reso accessibly, quickly, economically, informally, and flexibly. In resolving disputes, apply principles of law and fairness, and recognize any relationships between the d 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 hearin writing, telephone, videoconferencing, email, or a combination of these. Here, I properly able to assess and weigh the documentary evidence and submissio Further, bearing in mind the CRT's mandate that includes proportionality and a spe of disputes, I find that an oral hearing is not necessary in the interests of justice and

6. CRTA section 42 says the CRT may accept as evidence information that it cons necessary and appropriate, even where the information would not be admissible CRT may also ask questions of the parties and witnesses and inform itself in ar considers appropriate.

7. Under CRTA section 123, in resolving this dispute the CRT may order a party to d something, order a party to pay money, or order any other terms or conditions the appropriate.

ISSUE

8. The issue in this dispute is whether Brian Smith must reimburse the strata's $15 deductible.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the strata, as the applicant, must prove its claim of probabilities (meaning more likely than not). I have read all the parties' su evidence but refer only to the evidence and argument that I find relevant to provide decision.

11. The strata filed consolidated bylaws with the Land Title Office (LTO) in March 2(has filed further bylaw amendments at the LTO which are not relevant to this disput specific bylaws relevant to this dispute in my reasons below.

12. The following is not disputed:

- Water escaped from SL47's toilet on July 14, 2019, damaging SL47 an directly below it. The strata also claims that the water leak damaged con which Brian Smith does not dispute. However, the repair evidence provid water damage to the strata lots.
- Altrex Plumbing and Heating Inc. (Altrex) provided plumbing service to S July 16, 2019, unclogging a blockage.
- The strata's insurance provider hired Phoenix Restorations Ltd. (Phoenix) to remediation services to SL47 and the strata lot below.
- Phoenix issued an October 4, 2019 invoice for $13,793.02 and a Nove invoice for $9,414.41 for water remediation at SL47 and the strata lot below.
- The strata's insurance deductible for water damage claims is $15,000.
- Brian Smith has not reimbursed the strata's $15,000 insurance deductible.

13. As set out in prior CRT decisions such as *The Owners, Strata Plan K 407 v. Kelly* 780 and *Chen v. The Owners, Strata Plan NW 308*, 2021 BCCRT 495, a strata l responsible for the cost of leak repairs and related restoration services unless they:

a. agreed to pay them,

b. are responsible under the *Strata Property Act* (SPA) or bylaws, or

c. were negligent.

14. Prior CRT decisions are not binding, but I find the reasoning in these decisions p rely on it here.

15. The strata argues that Brian Smith breached bylaws 5.2, 5.3 and 5.4. Bylaw 5 resident or visitor must not cause damage, other than reasonable wear and tear, t property or those parts of a strata lot which the strata must repair and maintain un or insure under section 149 of the Act. Bylaw 5.3 says an owner is responsible fo

16. The strata also relies on SPA section 158(2), which I will consider first. This sectio may sue an owner to recover a deductible if the owner "is responsible for the loss gave rise to the claim." Whether a strata corporation can recover against an owne 158(2) "must be determined by all the provisions of the applicable statute and th and regulations of the strata corporation" (*The Owners Strata Corporation VR2673 et al*, 2000 BCSC 1240).

17. In *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 519, the BC Provincial Court determine if section 158(2) was affected by the strata's bylaws. In particul corporation's bylaws required the strata corporation to show the strata lot owner wa opposed to "responsible" for a loss under section 158(2) of the SPA before being its insurance deductible. The trial judge determined that the strata's bylaw, which re lot owner to indemnify the strata for expense, maintenance, repair or replacer necessary "by the owner's act, omission, negligence or carelessness" should be "r and import a standard of negligence."

18. *Morrison* was also considered by the CRT in *The Owners, Strata Plan BCS 1589* 2017 BCCRT 88 and upheld by the B.C. Supreme Court on appeal in *The Owne BCS 1589 v. Nacht*, 2019 BCSC 1785. The Supreme Court's decision in *Nacht* is bi

19. Here, strata bylaw 5.4.a says an owner must reimburse expenses and insuran relating to maintenance, repair, additional insurance, or replacement, rendered common property or strata lots caused by the "act, omission, negligence or carele owners or their tenants to the extent that such expense is not reimbursed f proceeds. Bylaw 5.4.a's wording is nearly identical to the relevant bylaws in *Morriso* find that bylaw 5.4.a's use of the phrase "act, omission, negligence or careles means an owner must be negligent in order for the strata to recover an insura under the bylaw, as was found in *Morrison* and *Nacht*. I find that the strata, by 5.4.a clearly intended to set out the more stringent standard of negligence, r standard of responsibility contained in SPA section 158(2).

20. In light of bylaw 5.4.a, I find that if either Brian Smith or their tenant negligently ca leak, then Brian Smith, as the named owner in this dispute, is responsible for the section 158(2) of the SPA. Following *Nacht*, I find that in order to recover the $15,(the strata must prove that either Brian Smith or their tenant negligently caused or the water damage.

21. To prove negligence, the strata must show that Brian Smith owed it a duty of care, the standard of care, that the strata sustained damage, and that the damage was

22. I accept that, as SL47's owner, Brian Smith owed the strata a duty of care. I also applicable standard of care is reasonableness (*Burris v. Stone et al*, 2019 BCCRT no dispute that water escaped from SL47's toilet on July 14, 2019. The issue is Smith or their tenant breached the standard of care and, if so, whether that caused

23. The strata says that Brian Smith has admitted, in a March 18, 2021 email th insurance adjuster, that their tenant negligently let the water leak occur. Brian Sn "The tenant at that time, clearly and accidentally plugged the toilet and then flush the weekend, unaware that the drainage pipe was blocked and the toilet wa resulting in substantial damage to several condos."

24. Brian Smith now says, through their insurance representative, that their own emai speculative because they do not live at the strata lot and they were not present wh occurred. Further, Brian Smith says that they cannot now confirm that their tena toilet or that the tenant left the toilet unattended without ensuring that the toile properly. Brian Smith also now says that their own email does not explain the basis statements.

25. However, Brian Smith does not explain why they had written that the tenant had "c the toilet and let it overflow unattended in the email if Brian Smith did not know tha argue. I find that Brian Smith's use of the word "clearly" in the March 18, 2021 ema they were making a factual assertion rather than speculating. Further, Brian S provide their own statement, or a statement from the tenant, describing their versi or explaining why their current submissions differ from the earlier email.

26. When a party fails to provide relevant evidence without a reasonable explanation draw an adverse inference against them. An adverse inference is when a decision CRT, assumes that a party failed to provide evidence because the missing evide have supported their case. Since Brian Smith is arguing that their own email is would expect Brian Smith to explain the basis for their email's content's and descri understanding of the events. In the absence of a statement from Brian Smith or t without providing an explanation for their absence, I find that it is appropriate to dr inference in these circumstances.

27. Based on the above, I find that Brian Smith's March 18, 2021 email was an adm toilet became clogged and overflowed after their tenant flushed the toilet. Further, I Smith admitted that their tenant left the toilet unattended without confirming that th properly. Since these statements are admitted, I accept them as accurate.

they are negligent. More specifically, the court said the owner in that case needed each time after flushing, the waste cleared properly from the bowl and the tank ar safely and the water from the tank into the bowl shut off appropriately. In *Morrison* owner was found to be negligent after their toilet overflowed from the bowl and caus

29. The facts here are similar to those in *Morrison.* I find that on July 14, 2019, the to Brian Smith's tenant's control. Based on Brian Smith's March 18, 2021 email, I find flushed the toilet and the tenant was in a position to monitor the toilet's working c ensure that nothing prevented the toilet bowl from emptying or caused it to overflow tenant owed a duty to the strata to monitor the toilet's functioning.

30. Brian Smith argues that they were not negligent because the overflow resulted fr outside SL47. Brian Smith relies on Altrex's July 16, 2019 plumbing invoice whicl toilet blockage was located 6 feet down the toilet drain line, inside the building's s stack. Altrex's owner, LG, sent Brian Smith's insurance representative a July confirming that they performed this plumbing work and that the blockage was insi stack. Since the invoice and email were prepared by a plumbing technician contractor's owner, I am satisfied that these documents meet the criteria for exper CRT rule 8.3.

31. In contrast, the strata provided an undated statement from R&M Mechanical Ltc wrote that a blockage could occur in the toilet trap and then get pushed into the sa attempts to clear it by plunger or auger. However, I find that R&M's statement doe requirements for expert evidence under CRT rule 8.3 because it does not disclos identity, qualifications, or experience. Further, even if R&M's statement met the re an expert report, I would find it unhelpful because there is no evidence showing tha knowledge of this specific blockage or the specific plumbing in SL47 or the buildi R&M's opinion very little weight.

32. Based on Altrex's invoice and email, I am satisfied that the blockage occurred stack. SPA section 1(1) says sewage pipes, which I find includes the sanitary stac property if they are used by other strata lots or the common property. Since the s use is shared, I find that the blockage occurred in common property.

33. SPA section 72 and bylaw 22.1.b say that the strata is responsible for repairing a common property. Since the blockage occurred in the common property sanitar Smith argues that they are not responsible for the repair expenses.

34. However, though the blockage occurred in common property, I find that Brian

Smith admitted that the toilet overflowed as a result of a clog and that their tenar unattended without confirming that the toilet drained properly. I find that the tena readily discovered the toilet was not draining properly and could have stopped the had exercised due care. By failing to do so, I find Brian Smith's tenant negliger water damage, even though the blockage occurred outside the strata lot.

35. Based on the above finding, I find that the strata is entitled to recover its insura from Brian Smith pursuant to SPA section 158(2) for necessary water repair exper this, I find it is unnecessary to also determine whether Brian Smith breached st created a nuisance.

36. Brian Smith argues that they are not responsible for the repair expenses for SL47 did not authorize the work for their own strata lot. Brian Smith refers to the Oc authorization form which was only signed by the strata. However, Brian Smith has supporting statement explaining their version of events or explaining why they per to access their strata lot multiple times to perform remediation work if they did no the absence of an explanation, I find it likely that Brian Smith allowed repair access had authorized Phoenix's work. So, I find that Brian Smith is responsible for Phoer repairs to both strata lots pursuant to SPA section 158(2).

37. Phoenix's September 26, 2019 billing itemization shows that it performed flood rer and placed humidifiers to both SL47 and the strata lot below, costing $13,793 November 14, 2019 invoice shows that Phoenix charged an additional $9,414.4 work to both strata lots. Brian Smith does not dispute that Phoenix's repair work wa fix the water damage to SL47 and the strata lot. So, I find that Phoenix perforr repairs to the strata lots pursuant to bylaw 5.4.a. Further, since Brian Smith does amount of Phoenix's charges or the quality of its work, I find that Phoenix's repa reasonable. Since Phoenix's repair charges exceed the strata's $15,000 insuranc find that Brian Smith owes the strata reimbursement of the $15,000 deductible unc and SPA 158(2).

38. Based on the above, I find that Brian Smith owes the strata $15,000.

CRT FEES, EXPENSES AND INTEREST

39. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order a party to reimburse a successful party for CRT fees and reasonable dispute-relat see no reason in this case not to follow that general rule. I therefore order I reimburse the strata for CRT fees of $225. Neither party claimed reimbursem

reimbursement, to the date of this decision. This equals $86.86.

41. The strata must comply with section 189.4 of the SPA, which includes not cha related expenses against Brian Smith.

ORDERS

42. I order that, within 30 days of this decision, Brian Smith pay the strata a total broken down as follows:

    a. $15,000 for the insurance deductible,

    b. $86.86 in pre-judgment interest under the COIA, and

    c. $225 in CRT fees.

43. The strata is also entitled to post-judgement interest under the COIA, as applicable

44. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforc British Columbia Supreme Court. Under section 58 of the CRTA, the order ca through the British Columbia Provincial Court if it is an order for financial compens of personal property under $35,000. Once filed, a CRT order has the same force a order of the court that it is filed in.

Richard McAn