



# Civil Resolution Tribunal

Date Issued: June 22, 2021

File: SC-2021-004673

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Smith v. The Owners, Strata Plan BCS4330*, 2021 BCCRT 687

BETWEEN:

ANTHONY SMITH

**APPLICANT**

AND:

The Owners, Strata Plan BCS4330

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

## INTRODUCTION

1. This is a dispute about damage to a bicycle. The applicant, Anthony Smith, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS4330 (strata). Mr. Smith says one of his bicycles was damaged when the strata removed it

from a storage area. He asks for an order that the strata pay him \$2,016 as compensation for this damage. The strata denies that it is responsible for the damage to the bicycle or the associated repair costs.

2. Mr. Smith is self-represented. A member of the strata council represents the strata.

## **JURISDICTION AND PROCEDURE**

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that 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.
4. Section 39 of the CRTA 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.
5. Section 42 of the CRTA says the CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

### ***Preliminary Jurisdiction Matter***

7. Originally, Mr. Smith filed his dispute against the strata under the CRT's strata property jurisdiction, which is set out in section 121 of the CRTA. This section gives the CRT jurisdiction over a claim "in respect of the *Strata Property Act* [SPA]" and describes the limited scope of the CRT's strata property jurisdiction.
8. The fact that the dispute involves common property and a strata corporation's actions does not establish that it is "in respect of" the SPA. The Supreme Court of Canada has found the phrase "in respect of" to be very broad, but not a phrase of "infinite reach" (*Sarvanis v. Canada*, 2002 SCC 28 at paragraph 22). When interpreting the phrase, we must consider the context in which the words are found (*Sarvanis* at paragraphs 24).
9. In *Alameer v. Zhang*, 2021 BCCRT 435, a CRT Vice Chair considered *Sarvanis* and found that a claim "in respect of" the SPA is a claim that could only proceed by relying on the SPA. The Vice Chair also determined that a claim with an independent basis in tort is not "in respect of" the SPA. Although this decision is not binding upon me, I agree with the Vice Chair's reasoning and find it persuasive.
10. This dispute is about damage that allegedly was caused by negligence. Although the incident occurred in a strata property, I find that the claims have an independent basis in tort and are not "in respect of" the SPA. Accordingly, this dispute falls under the CRT's small claims jurisdiction over damages as set out in section 118(1) of the CRTA.
11. At my request, CRT staff contacted the applicant and asked if he would agree to move the dispute to the CRT's small claims jurisdiction. He agreed, and I directed that the dispute be considered under the CRT's small claims jurisdiction. The dispute documents were changed to reflect a new dispute number in the small claims stream.

## **ISSUES**

12. The issues in this dispute are:
  - a. Whether the strata is responsible for the damage to Mr. Smith's bicycle, and
  - b. If so, whether Mr. Smith has proven the amount of his damages.

## **EVIDENCE AND ANALYSIS**

13. In a civil claim such as this, an applicant bears the burden of proof on a balance of probabilities. With the exception of evidence about settlement negotiations during the CRT facilitation process (which I did not read given the CRTA's provisions about keeping settlement discussions confidential), I have considered all of the information submitted by the parties. However, I will refer only to what is relevant and necessary to provide context to my decision.
14. The strata is made up of residential strata lots and has a number of common property storage areas, including areas for bicycles. Mr. Smith says that he has stored his bicycles in the same space since 2010.
15. The strata has created rules to address the bicycle storage areas. Among other things, the rules say that the strata "is not responsible for any loss or damage to bikes stored on common property". They also say that the strata "reserves the right" to remove bikes that contravene the rules or are abandoned and "to remove ALL bikes (bi) annually for room cleaning" (reproduced as written).
16. The parties agree that bicycle storage space is at a premium, and the strata manages this space through audits to identify abandoned bicycles. The strata's practice is to flag each bicycle and send notices to residents to remove the flag from their bicycles. If the flag is not removed by a deadline, the strata removes the bicycle from the storage area, cutting the locks if necessary. It provides a period of time for residents to re-claim their bicycles, after which any remaining items are donated to charity.

17. In May of 2019, the strata council approved a bike audit. According to a notice posted by the strata council, the bicycles were flagged with ribbons starting on May 23, 2019. Residents were given until June 10 to remove the ribbons from their bicycles.
18. The strata's maintenance consultant, BA, and another worker, MA, cut the locks on a number of bicycles and removed them from the bike storage area. According to BA's February 1, 2021 statement, they "only cut the locks/chain securing the bikes and did not cause any damage to the body of the bicycles".
19. Mr. Smith says he was away for several weeks and did not receive notice of the audit until he returned home. By that time, his bicycles had been removed from the storage area. When he reclaimed them on June 28, 2019, Mr. Smith says he discovered damage on one of the frames. Photos in evidence show that a layer of material has been removed from small portion of a bicycle frame, with visible tool marks inside the area of the defect.
20. Mr. Smith believed that the strata's staff cut the frame of his bicycle when they removed the lock with a rotary angle grinder, and requested compensation from the strata. The strata denied this request based on the rules and the fact that it had provided notice of the audit. According to the minutes from the July 3, 2019 strata council meeting, it also denied requests for compensation from other residents whose locks had been damaged when their bicycles were removed.
21. Mr. Smith says his bicycle frame is made of carbon fibre and the size of the cut compromised the frame beyond repair and made it unsafe to ride. Although Mr. Smith says he has received quotes as high as \$2,571.45 to replace the frame, he asks for an order that the strata pay him \$2,016 in damages.
22. The strata says the tool used to remove the bicycle locks was not capable of causing any damage. In any event, it points out that the rules say it is not responsible for any loss or damage to bicycles, and that it has the right to remove bicycles from the storage areas.

23. Although he did not say so specifically, I find that Mr. Smith is arguing that the strata was negligent. To be successful in a claim for negligence, Mr. Smith must establish all of the following: that the strata owed him a duty of care, that the strata breached the standard of care, that he sustained damage, and that the damage was caused by the strata's breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
24. I accept that the strata owes a duty of care to strata lot owners. However, I find the more significant consideration here is whether the evidence establishes a connection between the damage to Mr. Smith's bicycle and the strata's actions. Although Mr. Smith says that the tool the strata used to remove bicycle locks was "more than capable" of causing the damage, I find that this statement does not prove that the tool could or did cause damage to the bicycle frame. In the absence of evidence to establish a link between the strata's action of removing the bicycle and the damage to it, I find that negligence has not been established.
25. As a strata corporation falls within the definition of "occupier" in the *Occupiers Liability Act* (OLA) (see, for example, *Cater (Guardian of) v. Ghag Enterprises Ltd.*, 1991 CanLII 2300 (BCSC)), I have also considered whether the strata could be responsible for Mr. Smith's bicycle under the OLA.
26. Section 3 of the OLA says that an occupier has a duty to take reasonable care that a person's property on its premises will be "reasonably safe", except where the person willingly assumes a risk to their property. There is no dispute that Mr. Smith was aware of the rules governing the use of the bicycle storage areas and the strata's practice of removing bicycles through the audit process. I find that Mr. Smith willingly assumed the risk of leaving his bicycles in the storage area. Where there has been a willing assumption of risk, section 3(3) of the OLA limits an occupier's liability to a duty not to "create a danger with intent to harm" the property, or to act with reckless disregard to the property's integrity.
27. As noted above, BA admits that he and MA cut the locks on the bicycles as instructed by the strata. However, I find that this admission does not establish that the strata created any danger or acted with reckless disregard toward Mr. Smith's bicycles. I also find that the remainder of the evidence before me does not meet this threshold.

28. Given the circumstances and the available evidence, I find that the strata is not liable for the damage to Mr. Smith's bicycle, either in negligence or in occupier's liability.
29. Even if I had found the strata liable for the bicycle damage, I would not have made the order Mr. Smith requests. The question of whether damage to the bicycle's frame made it unsafe so that it needed to be replaced is something that is not within ordinary knowledge and needs to be answered with reference to expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283). Mr. Smith provided several quotes from bicycle vendors about replacement costs, but these quotes do not contain information about the safety of the bicycle or the need to replace the frame. Further, I find that that quotes do not meet the requirements for expert evidence set out in CRT rule 8.3. Based on what is before me, I find that Mr. Smith's claim for damages is not established.

## **CRT FEES AND EXPENSES**

30. Under section 49 of the CRTA, and the CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The strata was successful, but did not pay CRT fees or claim dispute-related expenses.
31. Mr. Smith initially paid \$225 in CRT fees. Due to the change in jurisdiction, I directed CRT staff to reimburse \$100 in CRT fees to him. However, as Mr. Smith was not successful, I dismiss his claim for reimbursement of the \$125 of remaining CRT fees.

## **ORDER**

32. I dismiss Mr. Smith's claims and this dispute.

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Lynn Scrivener, Tribunal Member