



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vigh v. The Owners, Strata Plan EPS1468*, 2023 BCCRT 373

B E T W E E N :

QUINTON VIGH and ANAMARIA VIGH also known as ANAMARIA
ARESTA

APPLICANTS

A N D :

The Owners, Strata Plan EPS1468

RESPONDENT

A N D :

QUINTON VIGH and ANAMARIA VIGH also known as ANAMARIA
ARESTA

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. These 2 disputes are about money paid to use the recreational facilities in a strata corporation. I have issued a single decision for the 2 linked disputes because they involve the same parties and I find they consist of a claim and counterclaim.
2. The applicants and respondents by counterclaim are Quinton Vigh and Anamaria Vigh also known as Anamaria Aresta. The respondent strata corporation and applicant by counterclaim is The Owners, Strata Plan EPS1468 (strata).
3. The Vighs say they paid the strata \$350 through a credit card as a damage deposit to rent the strata's clubhouse. They allege that the strata refused to return the deposit even though they left the premises clean and undamaged. In the Dispute Notice, they claim \$310 for the return of the deposit. I note this is less than the \$350 they say they paid. More recently, in submissions they say that they successfully charged back the deposit through the credit card dispute process. The Vighs now seek only reimbursement of Civil Resolution Tribunal (CRT) fees.
4. The strata disagrees. It counterclaims for the charged back amount of \$310. It says the Vighs paid the strata this amount under the terms of an amenity rental contract. Of this, the strata says 1) \$60 was for a rental fee, 2) \$50 was for a damage deposit for the barbeque, and 3) \$200 was for a damage deposit covering the facilities. The strata says they are entitled to the money as the \$60 fee was non-refundable, and the Vighs forfeited the damage deposits by leaving the barbeque dirty and by breaching the strata's rules and bylaws. The Vighs deny the strata's allegations.
5. Quinton Vigh represents the Vighs. A strata council member represents the strata.
6. For the reasons that follow, I find the strata has partially proven its counterclaim.

JURISDICTION AND PROCEDURE

7. These are the CRT's formal written reasons. 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.

8. 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. Some of the evidence in this dispute amounts to a "they said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.
9. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
10. 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.
11. 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.

Is this dispute within the CRT's small claims jurisdiction?

12. The strata submits that this dispute should be decided under the CRT's strata and not small claims jurisdiction. The Vighs did not directly address this in submissions.
13. It is undisputed that the strata runs a "clubhouse" that can be accessed by multiple strata corporations, including the strata. The evidence shows that Anamaria Vigh and the strata entered into a June 29, 2022 written contract. The strata agreed to provide Ms. Vigh and 15 guests access to the clubhouse kitchen and lounge for a birthday party held on July 3, 2022.
14. The strata's bylaws allow it to charge tenants user fees for using the facilities. However, the strata provided equivocal submissions about whether the Vighs were tenants in the strata or a neighbouring strata corporation. There is no evidence on the matter. In the absence of evidence and clear submissions on the matter, I find it unproven that the Vighs were tenants in the strata. I find that the Vighs and the strata essentially allege the other breached the contract and seek damages. As such, I find this dispute falls within the CRT's small claims jurisdiction for debt or damages, as outlined under CRTA section 118(1)(a). I note that if I am wrong, I would alternatively refuse to resolve both 2 disputes.
15. I also acknowledge that the contract refers to the strata's bylaws. The interpretation of bylaws is a matter within the CRT's strata property jurisdiction. However, I find that I need not interpret or refer to the bylaws in order to resolve this dispute. I will return to this topic below after further discussion of the evidence.

ISSUE

16. The issue in this dispute is whether any party breached the facilities rental contract, and if so, what remedies are appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

17. In a civil proceeding like this one, the Vighs and the strata must prove their respective claims and counterclaims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision. The Vighs provided no evidence, though they were reminded to do so.
18. As noted above, Ms. Vigh signed a June 2022 facility rental contract with the strata. The parties agree that Ms. Vigh paid the strata a total of \$310, broken down as follows: \$200 damage deposit, a \$50 damage deposit specifically to use the exterior barbeque, and a \$60 rental fee. Given this, I find that the Vighs' statements in the Dispute Notice about paying the strata \$350 were in error.
19. The contract had the following terms. It said that Ms. Vigh had to clean the facility after using it by the end of the booked time, otherwise the "damage deposit could be jeopardized". Further, it said that Ms. Vigh had to remove any garbage, otherwise she would lose her damage deposit.
20. The contract also said that Ms. Vigh had to clean the barbeque before the end of the booked time. So, I find it was an implied term that Ms. Vigh would lose the \$50 deposit if she left the barbeque dirty or damaged beyond ordinary wear and tear.
21. The Vighs and the strata disagree on whether the rental fee was refundable. The contract does not directly address this. However, as Ms. Vigh agrees that it was a "fee" she paid to use the facilities, I find that the most reasonable interpretation is that this amount was non-refundable.
22. The Vighs held the birthday party on the afternoon of July 3, 2022, for a total of 4 hours. The strata provided photos of the barbeque taken after the event. It shows heavy amounts of grease on a steel tray.
23. The parties agree that, following the event, the strata did not willingly return money to the Vighs. An electronic document shows Ms. Vigh initially paid the strata \$310

through a credit card. The Vighs' filed a complaint, and their financial institution resolved the matter in Ms. Vigh's favour on October 28, 2022. It returned \$310 to her.

Did any party breach the facilities rental contract?

24. As noted above, I have found that the parties agreed on a rental fee of \$60. So, I find the strata is entitled to payment of this amount from Ms. Vigh.
25. I next consider the barbeque. I find the photos show that Ms. Vigh breached the contract by leaving it dirty. Mr. Vigh submits that he cleaned it himself and "left it cleaner" than when he found it. However, the Vighs provided no evidence and I find the photos contradict him. Given the amount of grease and the large area affected, I find that the strata might reasonably pay someone the damage deposit amount to clean it. So, I find Ms. Vigh must pay the strata \$50.
26. Notably, Mr. Vigh is not a party to the contract. So, I dismiss the counterclaims against him for the rental fee and barbeque damage deposit.
27. This leaves the strata's remaining counterclaim for the \$200 damage deposit. I find this counterclaim unproven and dismiss it. This is because the strata provided no evidence that the Vighs damaged or left dirty any other property. The Vighs specifically denied damaging the strata's pool table. However, the strata did not allege that the Vighs did so, or provide evidence that the Vighs damaged anything.
28. I acknowledge the strata says it is entitled to keep the damage deposit because the Vighs breached the bylaws. I find this unsupported by the contract's wording. It says that the resident manager or committee may close the facilities in the event of a breach of the bylaws, rules or regulations by any party in attendance at the function. If so, the \$200 damage deposit is forfeited. However, that did not happen here. The Vighs rented the facilities to the end of the booked time. There is no evidence that a manager or committee closed the facility. As such, I find it unnecessary to interpret or refer to the bylaws.

29. I note that the strata may enforce its bylaws and rules using the procedures outlined in the *Strata Property Act*. However, there is nothing before me that allows the strata to retain the contractual damage deposit for such alleged breaches. And, as stated earlier, for the purposes of these 2 disputes only, I find it unproven that the Vighs are tenants in the strata. So, I make no findings about whether the Vighs breached the strata's rules or bylaws.
30. In summary, I order Ms. Vigh to pay the strata \$110 for breach of contract. The *Court Order Interest Act* applies to the CRT. The strata is entitled to pre-judgment interest on damages of \$110 from July 3, 2022, the date of the breach, to the date of this decision. This equals \$2.61.
31. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Overall, the strata was the more successful party. I order Ms. Vigh to reimburse the strata \$75 for CRT fees. I dismiss the Vighs' claims for reimbursement of CRT fees. The parties did not claim any dispute-related expenses.

ORDERS

32. Within 30 days of the date of this order, I order Ms. Vigh to pay the strata a total of \$187.61, broken down as follows:
- a. \$110 as damages,
 - b. \$2.61 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$75 in CRT fees.
33. The strata is entitled to post-judgment interest, as applicable.
34. I dismiss the strata's counterclaims against Mr. Vigh.
35. I dismiss the Vighs' claims.

36. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

David Jiang, Tribunal Member