



# Civil Resolution Tribunal

Date Issued: August 3, 2023

File: SC-2022-006489

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Epp v. Black Mountain Irrigation District*, 2023 BCCRT 650

B E T W E E N :

JANICE EPP

**APPLICANT**

A N D :

BLACK MOUNTAIN IRRIGATION DISTRICT

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Nav Shukla

## INTRODUCTION

1. This dispute is about a capital expenditure charge (CEC) for water facilities. The respondent, Black Mountain Irrigation District (BMID), is an improvement district incorporated under section 675 of the *Local Government Act* (LGA). It is undisputed that BMID required the applicant, Janice Epp, to pay a \$1,340 CEC for her newly constructed home with a suite. Ms. Epp does not dispute that BMID's Comprehensive

Capital Expenditure Charge (Water) Bylaw No. 706 (bylaw) requires a \$1,340 CEC be paid for a secondary suite. However, Ms. Epp says BMID was wrong to levy the CEC more than 1 year after BMID approved her building application and after she had paid the required water connection fees “in full”. Ms. Epp seeks a \$1,340 refund for the paid CEC.

2. BMID acknowledges that its employee incorrectly completed Ms. Epp’s building application form and did not initially charge Ms. Epp the CEC. However, BMID says the bylaw requires the CEC be levied and paid and that it has no discretion to waive the charge. So, it says Ms. Epp is not entitled to any refund.
3. Ms. Epp is self-represented. BMID is represented by its administrator.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.
6. 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.

7. 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.
8. In a February 22, 2023 preliminary decision, a CRT tribunal member (now Vice Chair) considered BMID's preliminary request to dismiss this dispute for lack of jurisdiction. BMID argued that the bylaw could not be contested as it was registered under provincial legislation. The tribunal member noted that Ms. Epp was not challenging the bylaw itself but rather BMID's late application of the bylaw. The tribunal member found that Ms. Epp's claim was for damages arising from BMID's alleged negligence in implementing the CEC, and such claims are within the CRT's small claims jurisdiction as set out in CRTA section 118. So, the tribunal member found the CRT has jurisdiction to consider this dispute. While the preliminary decision is not binding on me, I also find that the CRT has jurisdiction to hear this dispute for the same reasons set out in the preliminary decision.

## **ISSUES**

9. The issues in this dispute are:
  - a. Was BMID negligent when it failed to charge Ms. Epp the CEC until more than a year after approving her building application?
  - b. If so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, Ms. Epp as the applicant must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and argument but refer only to what I find relevant to provide

context for my decision. I note Ms. Epp did not provide any final reply argument despite having the opportunity to do so.

11. It is undisputed that on September 18, 2020, Ms. Epp attended BMID's office to inquire about what fees she would have to pay to connect the house that she was building to BMID's water facilities. A September 18, 2020 BMID building application in evidence and BMID's September 18, 2020 invoice show Ms. Epp paid \$900, consisting of \$400 in connection fees (\$300 for the house and \$100 for the suite) and \$500 for meter installation.
12. While the BMID building application included a place to input a "capital charge", no amount is listed here. The building application form, which Ms. Epp undisputedly signed, included an acknowledgment that by making the application, Ms. Epp had "reviewed the information provided and agree[d] to conform to all of the requirements of the [BMID]". Ms. Epp further agreed to pay the "Capital Charge" before using any water for irrigation, construction or domestic purposes.
13. Over a year later, in an October 19, 2021 letter, BMID informed Ms. Epp that there was an outstanding development payment that it required her to pay. In particular, the letter noted that BMID required Ms. Epp to pay a \$1,340 CEC in connection with the suite. The letter further said that BMID's former employee had failed to inform Ms. Epp that the CEC was required under the bylaw. So, BMID asked Ms. Epp to pay the \$1,340 CEC.
14. It is undisputed that after receiving this letter, Ms. Epp emailed BMID on November 13, 2021 appealing to waive the CEC. BMID says, and Ms. Epp does not dispute, that BMID's board of trustees considered Ms. Epp's appeal and ultimately denied her request, noting that the CEC is a legal requirement under the bylaw.
15. On August 10, 2022, BMID sent Ms. Epp a letter noting that the \$1,340 CEC remained unpaid. The letter said that BMID had sent numerous reminders to Ms. Epp which she failed to respond to, and that Ms. Epp had failed to answer BMID staff's phone calls. So, BMID informed Ms. Epp that it would be disconnecting her water service

during the week of August 29, 2022. Ms. Epp then undisputedly paid the \$1,340 CEC on September 6, 2022.

16. As noted above, Ms. Epp's refund claim is based on her allegation that BMID was wrong to charge her the \$1,340 CEC over a year after it approved her building application. BMID says despite its employee's error in not asking Ms. Epp to pay the CEC in September 2020, Ms. Epp was required to pay the \$1,340 CEC fee under the bylaw.
17. The bylaw is authorized under LGA section 746(1)(f). It requires every person who develops land to pay the applicable CEC as set out in the attached Schedule "A". Schedule "A" sets out a \$1,340 CEC for secondary suites. The bylaw further says that every person who obtains approval for an application for service will pay the applicable CEC at the time the application for service is approved. Ms. Epp does not dispute that the bylaw applies to her.
18. As noted, the evidence shows Ms. Epp's building application was approved by BMID on September 18, 2020. So, based on the bylaw, Ms. Epp should have paid the \$1,340 CEC for her secondary suite on this day. The question then is whether Ms. Epp is entitled to a refund due to BMID's failure to charge her the CEC until October 2021.
19. I find Ms. Epp's refund claim is based in negligence. In order to prove BMID was negligent, Ms. Epp must establish that BMID owed her a duty of care, breached the required standard of care, and the breach caused her to incur damages (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
20. The trouble for Ms. Epp is that even if BMID was negligent in failing to charge her the CEC until October 2021, she has not proven what loss or damages she has incurred as a result of the alleged negligence. As noted, Ms. Epp's only requested remedy is for a \$1,340 refund. However, regardless of when BMID informed her about the CEC, I find the bylaw requires her to pay the \$1,340 fee. While BMID's employee admittedly made a mistake in failing to charge Ms. Epp the \$1,340 on September 18, 2020, this

mistake does not negate her obligations as set out in the bylaw. Ms. Epp does not allege that BMID's failure to charge her the CEC until October 2021 caused her to incur any additional costs or expenses other than the \$1,340 CEC she paid. Had BMID informed her about the \$1,340 CEC fee on September 18, 2020, Ms. Epp would have had to pay the fee then, before BMID approved her application. So, regardless of BMID's alleged negligence, I find Ms. Epp was required to pay the \$1,340 CEC under the bylaw. As a result, I find I do not need to decide whether BMID was negligent as Ms. Epp has failed to prove any damages resulting from BMID's alleged negligence. I dismiss Ms. Epp's claim accordingly.

21. 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. Since Ms. Epp was unsuccessful, I find she is not entitled to any reimbursement for her paid CRT fees. BMID paid no CRT fees and neither party claims any dispute-related expenses, so I order no reimbursement.

## **ORDER**

22. I dismiss Ms. Epp's claims and this dispute.

---

Nav Shukla, Tribunal Member