



# Civil Resolution Tribunal

Date Issued: May 17, 2019

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 2544 v. Bradvica*, 2019 BCCRT 602

**B E T W E E N :**

The Owners, Strata Plan NW 2544

**APPLICANT**

**A N D :**

Brigita Bradvica

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

### **INTRODUCTION**

1. The respondent, Brigita Bradvica, is the owner of a strata lot in the applicant strata corporation, The Owners, Strata Plan NW 2544 (strata). The strata claims \$993.83 because it says that Ms. Bradvica's spouse, Mark Bradvica, drove a truck into the

strata's parkade gate, causing damage. Ms. Bradvica disputes that she is required to pay for the repairs.

2. The strata is represented by a member of strata council. Ms. Bradvica is self-represented.

## **JURISDICTION AND PROCEDURE**

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 121 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute involves assessing the credibility of the parties. 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 tribunal'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 tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. The applicable tribunal rules are those that were in place at the time this dispute was commenced.

7. Under section 123 of the Act and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

## **ISSUE**

8. The issue in this dispute is whether Ms. Bradvica must reimburse the strata for the cost to repair the gate.

## **BACKGROUND AND EVIDENCE**

9. In a civil claim such as this, the strata must prove its case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
10. The strata consists of 64 strata lots in duplex and townhouse-style strata lots in Surrey. The strata has 2 entrances for vehicle traffic, both of which are protected by a gate. Most of the residents, including Ms. Bradvica, must pass through one of the gates to access their strata lot. The gates are common property.
11. The strata filed a complete set of bylaws with the Land Title Office on November 30, 2001, as well as several amendments since that time. The bylaws relevant to this dispute are:
  - a. Bylaw 2(3) says that an owner is liable for damage to common property attributable to an occupant of the owner's strata lot.
  - b. Bylaw 2(5) says that an owner must indemnify the strata for any repairs to common property caused by a family member to the extent that the expenses are not covered by the strata's insurance.
  - c. Bylaw 46(3) says that the strata must recover the costs to repair physical damage to common property that is not covered by the strata's insurance policy from the owner responsible for the damage, including occupants of the owner's strata lot.

12. Ms. Bradvica has been the owner of her strata lot since 2011. At the times relevant to this dispute, Mr. Bradvica was an occupant of the strata lot.
13. The strata says that on July 9, 2017, Mr. Bradvica struck the gate with his truck. The strata says that Mr. Bradvica admitted to doing so to 2 strata council members immediately after the incident, including the strata council member who is representing the strata in this dispute. The strata says that a strata council member took photographs of the damage. The photographs are in evidence and they show several bent pickets and other signs of an impact.
14. The strata says that Mr. Bradvica caused the following damage to the gate:
  - a. Bent aluminum pickets.
  - b. Damaged cedar slats.
  - c. Bent the horizontal bar.
  - d. Damaged rollers, causing the gate to wobble when opening and closing.
15. On July 10, 2017, a garage door contractor attended and advised on what repairs would be necessary. Because some parts needed to be ordered, the contractor did not complete the repairs that day. The contractor returned on August 2, 2017, and replaced 10 damaged pickets and the rubber rollers. The contractor invoiced the strata \$993.83. Because the strata's applicable insurance deductible is \$1,000, the strata's insurance was not triggered. Accordingly, the strata paid the contractor directly and charged the amount back to Ms. Bradvica.
16. On November 14, 2017, the strata's property manager sent a chargeback letter to the Ms. Bradvica, which referred to the repair as a "garage door repair". The strata says this was a typographical error and that the property manager sent a revised letter on November 20, 2017, which clarified that the repairs were for the gate.
17. On November 18, 2017, Ms. Bradvica sent an email to another owner, DP, asking for his thoughts about the strata's attempt to charge the repair costs back to Ms. Bradvica. In that email, Ms. Bradvica says that "my husband was entering upper

gate and accidentally bumped in to the gate and knocked it off track”. DP gave Ms. Bradvica some advice about the relevant bylaws and commented that the repair cost seemed high.

18. Ms. Bradvica initially challenged the contractor’s invoice because she said it showed the wrong address. The strata says this was a typo by the contractor. The contractor reissued the invoice with the correct address.
19. The parties continued to correspond regularly about the chargeback, with Ms. Bradvica consistently refusing to pay.

## **POSITION OF THE PARTIES AND ANALYSIS**

20. First, with respect to the incident itself, Ms. Bradvica’s submissions do not explicitly admit that Mr. Bradvica drove into the gate as alleged. There is no statement from Mr. Bradvica in evidence. However, I find that it is implicit in her submissions that she does not dispute that Mr. Bradvica drove into the gate, and I find that he did so.
21. Before turning to Ms. Bradvica’s substantive arguments, I will address the strata’s concerns about her credibility.
22. Ms. Bradvica’s position has changed over time. In her email to DP in November 2017, she tells him that Mr. Bradvica ran into the gate. In contrast, in correspondence with the strata, such as her emails of June 29, 2018, and July 27, 2018, she implies that Mr. Bradvica did not run into the gate. In one she prefaces her arguments with the statement “IF my husband hit the gate” and in another refers to the allegation that Mr. Bradvica admitted to hitting the gate as “false”.
23. Ms. Bradvica has also regularly referred to the strata’s demand that she pay for the contractor as “unexplained”. It is difficult to understand Ms. Bradvica’s position since the strata has repeatedly and clearly explained what the chargeback was for. I find that Ms. Bradvica’s position does not represent genuine confusion over the chargeback. I find that she has been evasive in her dealings with the strata.

24. As mentioned above, DP send Ms. Bradvica 2 emails in response to her email. Ms. Bradvica provided DP's emails in evidence. The strata says that Ms. Bradvica altered DP's emails by making a "collage" of the 2 emails. The strata argues that Ms. Bradvica has tried to mislead the tribunal. Ms. Bradvica says that she did not intend to mislead but only to highlight certain portions of DP's emails.
25. I agree with the strata. It appears that Ms. Bradvica made efforts to take the portions of DP's 2 emails that served her purposes appear to be a single email. She also did not include her initial email, in which she acknowledges Mr. Bradvica's responsibility for the damage. The only reason this came to light was because the strata shared the emails with DP, who provided the full email chain while expressing frustration at how Ms. Bradvica used the emails.
26. In light of these findings, I find that Ms. Bradvica is not a credible witness.
27. Turning to Ms. Bradvica's arguments, she relies on inconsistencies between the original invoice and subsequent invoice as evidence that the strata is trying to charge her for repairs that are unrelated to the incident. I agree with the strata that the invoices clearly relate do the same incident even though minor details (such as part numbers) are different between the 2 invoices. While the contractor does not explain the differences, I find that they are trivial. The part descriptions are the same, the quantities are the same, and the prices are the same. In addition, the contractor emailed the property manager in January 2018 to confirm that the repairs were caused by an impact.
28. In terms of the repairs themselves, Ms. Bradvica argues that the strata council member's initial statement says that only 3 to 4 pickets were damaged but the contractor charged for 10 new pickets. She says that the horizontal bar is still bent. She says that strata council member's initial statement also does not mention the gate wobbling. She also disputes an "emergency charge" that she says the contractor charged.
29. With respect to the number of pickets repaired, the strata says that the strata council members only noticed 3 to 4 bent bars but the contractor advised that 7

more pickets had been damaged and needed to be replaced. The contractor also advised that the rollers needed to be replaced because the gate was wobbling. The contractor also recommended against fixing the bent horizontal bar because it would likely break if the contractor tried to bend it straight. The strata simply followed the contractor's advice. I find that it was reasonable for the strata to rely on the expertise of the contractor.

30. The strata says that there was no "emergency charge", just a regular commercial call-out charge. There is nothing on the invoice to suggest that the contractor charged an "emergency charge" as Mr. Bradvica alleges. The repairs were done during normal business hours.
31. I also rely on my negative assessment of Ms. Bradvica's credibility to reject her implicit assertions that some of the damage pre-existed the incident. Both strata council members who gave statements say that the damage was not present before Mr. Bradvica ran into the gate and I accept their evidence.
32. Therefore, I find that the charges set out in the contractor's invoice were all caused by Mr. Bradvica driving his truck into the gate.
33. Ms. Bradvica says that the strata should not have arranged for the repairs without giving her an opportunity to make a claim under her vehicle insurance.
34. The strata says that Ms. Bradvica has denied responsibility for damaging the gate from the outset. The strata questions why it would provide Ms. Bradvica with an opportunity to make an insurance claim when she denied causing any damage. I agree. In addition, nothing that the strata did prevented Ms. Bradvica from making a claim under her vehicle insurance and there is no evidence that she has attempted to do so.
35. Ms. Bradvica also provided quotes for materials that total about \$100, presumably to argue that the contractor's invoice was unreasonably high. The materials in Ms. Bradvica's quotes do not appear to be for the same as the materials that the contractor used and there is no quote for labour. I find that these quotes do not

assist Ms. Bradvica. She did not provide any competing quotes for the parts and repair.

36. In any event, the strata admits that its garage door contractor may not be the least expensive available. However, it says that it has used the same contractor for years and has developed a trusting relationship. There is no suggestion that the contractor was not qualified in its area of expertise, which includes automatic door repair and maintenance. Ms. Bradvica provided a printout of some negative online reviews but I find that these are insufficient to prove that the strata should not have hired the contractor. I find that the strata council had the authority to choose the contractor to complete the repairs and had no obligation to shop around for a cheaper quote. I find that the contractor's invoice is reasonable.
37. In summary, I find that Mr. Bradvica caused damage to the gate that cost the strata \$993.83 to fix. Under bylaws 2(3), 2(5) and 46(3), the strata was required to charge these repair expenses to Ms. Bradvica as the owner of the strata lot that Mr. Bradvica occupies. I find that she must reimburse the strata for the repair costs, and I order her to do so.

## **TRIBUNAL FEES, EXPENSES AND INTEREST**

38. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case to deviate from the general rule. I therefore order Ms. Bradvica to reimburse the strata for tribunal fees of \$225.00 and dispute-related expenses of \$11.34 for a total of \$236.34.
39. The strata is also entitled to prejudgment interest under the *Court Order Interest Act* from August 2, 2017, which totals \$17.93.
40. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner.



## DECISION AND ORDERS

41. I order that within 28 days of the date of this decision, Ms. Bradvica pay the strata \$1,248.10, broken down as follows:
- a. \$993.83 for the repairs to the gate,
  - b. \$17.93 in prejudgment interest, and
  - c. \$236.34 in tribunal fees and dispute-related expenses.
42. The strata is also entitled to post judgement interest under the *Court Order Interest Act*, as applicable.
43. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 123.1 of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.
44. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 123.1 of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Eric Regehr, Tribunal Member