



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Fryer et al v. The Owners, Strata Plan LMS4255*, 2019 BCCRT 1000

B E T W E E N :

MICHELE FRYER and JOHN FRYER

APPLICANTS

A N D :

The Owners, Strata Plan LMS4255

RESPONDENT

A N D :

MICHELE FRYER and JOHN FRYER

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about who is responsible to pay for elevator repairs.
2. The applicants Michele and John Fryer jointly own a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS4255 (strata). The Fryers say the strata wrongly charged them for a repair after alleging that Mr. Fryer damaged the strata's elevator. The Fryers seek a reversal of the \$797.42 the strata charged to them for the elevator repair.
3. In its counterclaim, the strata says Mr. Fryer removed a hidden safety device from the elevator, disabling it. The strata then had to have the elevator repaired after-hours. The strata charged \$797.42 to the Fryers' strata lot, and fined Mr. Fryer \$200 for violating the bylaws. The strata says the Fryers have not paid these amounts. The strata claims \$997.42 for the fine and elevator repair bill.
4. Mr. Fryer denies intentionally disabling the elevator. He says that when he arrived in the lobby, neither elevator was working. Mr. Fryer says he then entered the elevator, waving at an area that he thought might contain a photo cell, and tried pressing a few buttons to see if the elevator would respond. The Fryers say the video evidence does not show Mr. Fryer damaging the elevator, and that he had no reason to do so.
5. The Fryers are self-represented. The strata is represented by a strata council member Jacques Courteau.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The tribunal must act fairly and follow the law. It must also recognize any relationships

between dispute parties that will likely continue after the tribunal's process has ended.

7. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
8. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The tribunal may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
9. Under section 123 of the CRTA 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, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

10. The issue in this dispute is whether Mr. Fryer damaged the common property elevator, making the Fryers responsible to pay for the elevator repair and a fine?

POSITIONS OF THE PARTIES

11. The Fryers say that Mr. Fryer did not damage the elevator, and so should not be responsible for costs to repair it nor the related fine. The Fryers say the video evidence shows that Mr. Fryer did not arrive in the elevator until it was already broken.
12. The strata says the elevator failed because Mr. Fryer tampered with it by removing a safety pin that activated a gate switch and locked the elevator.
13. The strata says it was appropriate to charge the Fryers for the elevator repair, because Mr. Fryer breached Bylaws 3(1) and 3(2) causing inconvenience, hazard and damage.

EVIDENCE AND ANALYSIS

14. I have reviewed the evidence and submissions but only refer to them here as I find necessary to explain my decision.
15. The applicable bylaws are those the strata registered with the Land Title Office (LTO) on February 13, 2018. The relevant bylaws are summarized as follows:
 - a. Bylaw 3 (1) - An owner must not use the common property in a way that: (a) causes a nuisance or hazard to another person.
 - b. Bylaw 3 (2) - An owner must not cause damage, other than reasonable wear and tear, to the common property.
 - c. Bylaw 3 (21) - An owner shall be responsible for any damage to the common property and will be liable for all costs connected with cleaning and repairs.
16. On May 16, 2018 elevator 5 (elevator) in the strata stopped working. The concierge log shows that the problem was logged at 21:37 hours.
17. The strata says Mr. Fryer pulled a safety pin activating a gate switch that locked the elevator, disabling it.
18. The Fryers disagree. They say Mr. Fryer entered the elevator after it stopped working to see if he could get it to start again. They say Mr. Fryer waved his hand at the top corner of the elevator above the door, trying to activate a sensor. Mr. Fryer then moved to the elevator panel and tried a few buttons to see if the elevator would move.
19. Video footage of the alleged infraction is time-stamped at 21:39:12 when Mr. Fryer enters the elevator. The footage, which I viewed, shows Mr. Fryer moving his hand towards the top of the elevator briefly, then trying a few buttons on the panel. The video does not clearly show Mr. Fryer pulling on a pin, or any part of the elevator. Rather, Mr. Fryer's hand is not shown in the video when he reaches to the top of the elevator, as it is outside of the frame. The video only shows him reaching with his right hand up towards the top left corner of the elevator doorway.

20. The time stamp on the video evidence shows Mr. Fryer entering the elevator roughly two minutes after the concierge logged that the elevator was not working.
21. While I have considered the strata's argument that the concierge log may have been completed after the events took place, I find it is the best evidence of when the elevator shut down. The strata did not file evidence from the person who recorded the concierge log, so there is no evidence to prove that the log's timing is inaccurate. I find that Mr. Fryer could not have caused the elevator shut down because he did not enter the elevator until about 2 minutes after it stopped. For this reason, and because the video does not actually show Mr. Fryer pulling on any pin or a similar action, I prefer the Fryers' account of what happened in the elevator.
22. The invoice from the elevator mechanic reads "CAR DOOR LOCK WAS PUSHED ON WHILE DOORS OPEN, CHECKED OUT, RUN OK CAR 5". I find this description inconsistent with the strata's argument that a safety pin was pulled.
23. On May 29, 2018, the strata wrote to the Fryers informing them that it had received a complaint they had contravened the bylaws by fiddling with an elevator causing it to fail. The letter asks the Fryers to respond with any materials they wish to have the strata council consider, within two weeks. The letter also offers the opportunity for a hearing. I find that this letter complies with section 135 of the SPA.
24. On June 21, 2018, Mr. and Mrs. Fryer received a letter from the strata demanding \$797.42 in reimbursement for the elevator repair. The letter says the invoice was charged to the Fryers for "Residents' actions of allegedly fiddling with elevator equipment, which resulted in failure of elevator # 5".
25. On July 18, 2018, the strata council wrote to the Fryers saying it had considered a complaint about one of them "allegedly" fiddling with elevator equipment, resulting in the elevator failing. The July 18, 2018 letters cited Bylaw 3(1) and (2) and 40(4) and imposed a fine of \$200 as well as charging the costs of elevator repair to them.
26. On August 20, 2018, the Fryers emailed strata council requesting a hearing. The hearing was held on August 27, 2018.

27. On September 4, 2018, the strata wrote to the Fryers saying that strata council had decided to uphold its decision to charge them for the elevator repairs and fine them.
28. On September 16, 2018, the Fryers wrote back to strata council pointing out that the elevator was already broken by the time they arrived at the elevator.
29. On October 12, 2018, the strata wrote to the Fryers referring them to the video evidence.

Are the Fryers responsible to pay for the elevator repairs and related fine?

30. I have found that Mr. Fryer entered the elevator two minutes after it broke down. The video evidence shows that he then entered the elevator and pressed a few buttons on the control panel. Given the timing and the video footage of his actions, I find Mr. Fryer did not damage the elevator.
31. JC, the mechanic who worked on the elevator, wrote an email in which he observed that the elevator's gate switch was activated with the "hall door open". JC wrote that "...when doing this the signal is sent to the PLC that the elevator door is locked and the elevator is ready to run but there is a hall door open therefore the elevator is placed into shutdown mode by the safety redundancy monitoring of the PLC as per the B44 code." The strata did not explain how this evidence from JC proves that Mr. Fryer is at fault for the elevator stopping. This evidence also seems inconsistent with the strata's position that Mr. Fryer pulled a safety pin.
32. Given these findings, I find that the Fryers are not responsible for the repairs to the elevator or the fine because they did not breach the bylaws.

33. I allow the applicants' claim and dismiss the strata's counterclaim. I order the strata to cancel the fine and the repair charges it issued to the Fryers, totalling \$997.42, immediately. The evidence shows that the Fryers have not yet paid these amounts.

TRIBUNAL FEES and EXPENSES

34. Under section 49 of the CRTA, 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 not to follow that general rule. I therefore order the strata to reimburse the applicants for tribunal fees of \$225. The applicants did not claim dispute-related expenses.

35. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners.

ORDERS

36. I order the strata to:

- a. immediately cancel the charges to the applicants of the \$797.42 for the elevator repair,
- b. immediately cancel the \$200 fine for damaging the elevator, and
- c. within 14 days of this decision, reimburse the applicants \$225 in tribunal fees.

37. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing a validated copy of the attached order in the Supreme Court of British Columbia (BCSC). Once filed, a tribunal order has the same force and effect as a BCSC order.

38. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia (BCPC). However, the principal amount or the value of the personal property must be within the BCPC's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under

section 58 of the CRTA, the applicants can enforce this final decision by filing a validated copy of the attached order in the BCPC. Once filed, a tribunal order has the same force and effect as a BCPC order.

Julie K. Gibson, Tribunal Member