



# Civil Resolution Tribunal

Date Issued: October 18, 2019

File: ST-2019-001562

Type: Strata

Civil Resolution Tribunal

Indexed as: *Joustra v. The Owners, Strata Plan K607*, 2019 BCCRT 1204

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

HARRY JOUSTRA

**APPLICANT**

**A N D :**

The Owners, Strata Plan K607

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell

## **INTRODUCTION**

1. The applicant, Harry Joustra (owner) owns a strata lot in the respondent strata corporation, The Owners, Strata Plan K607 (strata).

2. The owner says the strata approved a special levy in September 2013, to pay for replacement windows and patio doors. The owner says that in February 2018, the strata hired a property management company, and under its guidance wrongfully included the special levy as a line in the operating budget. The owner said the strata then wrongfully included the special levy in its calculation of strata fees.
3. The owner seeks reimbursement of \$361.36, which is amount he says he overpaid for “special levy fees” for November and December 2018.
4. The strata denies the owner’s claim. It says there was no special levy, but instead on September 15, 2013 the strata entered into a loan agreement to borrow \$140,000 from a corporate lender, Nadina Logging Ltd. (Nadina). The strata says the monthly payments to Nadina were properly included in the strata’s operating budget, and the owner did not overpay.
5. For the reasons set out below, I dismiss the owner’s claim.
6. The owner is self-represented in this dispute. The strata is represented by a strata council member.

## **JURISDICTION AND PROCEDURE**

7. 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.
8. 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.

9. 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.
10. 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**

11. The issue in this dispute is whether the strata must reimburse the owner \$361.36 for special levy payments.

## **EVIDENCE AND ANALYSIS**

12. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding such as this, the applicant owner must prove his claims on a balance of probabilities.
13. In his initial dispute application, the owner said the strata approved a special levy in September 2013.
14. Based on the evidence provided by the parties, I agree with the strata that there was no special levy in September 2013, as asserted by the owner. Rather, the evidence shows that the strata entered into a written loan agreement with Nadina on September 15, 2013.
15. It is unclear from the owner's submissions whether he disputes whether the strata had proper authority to enter into the loan agreement in 2013. However, even if the owner raised this issue, I would dismiss it in any event. This is because I find the 2 year limitation period for such a claim, as set out in the *Limitation Act*, had expired by the time the owner filed his dispute application in February 2019.

16. The loan agreement says the strata would borrow \$140,000, with interest of 4% per annum. The agreement says the strata would make monthly payments of \$2,576.23 starting on October 15, 2013, with a final payment on September 15, 2018.
17. The loan agreement was registered under the *Personal Property Security Act* on September 27, 2013. The October 9, 2013 strata council minutes say that since the loan was not registered until after September 15, 2013, the full monthly loan payments would begin on November 15, 2013, and not October 15, 2013 as set out in the loan agreement. Thus, the final loan payment was due on October 15, 2018.
18. Since there was no special levy, I find the strata does not owe the owner any reimbursement for special levy payments or fees. For the same reason, I also find the strata did not violate section 108(4) of the *Strata Property Act* (SPA), which requires a strata corporation to account for special levy funds separately from its operating fund or other monies. I dismiss the owner's claims about the special levy.
19. For clarity, I will address a further submission made by the owner. He says that since the loan was paid off as of October 15, 2018, he should not have had to make any payments on it after October 2018. He says the strata wrongfully collected loan payments in November and December 2018, after the loan was already paid off.
20. The strata's response is that while it only made 10 loan payments in 2018, totalling \$25,766.30, for the purpose of collecting the money from the owners, their proportionate amounts were broken down into 12 monthly installments. That is, the strata collected \$25,766.30 from the owners over 12 months in 2018, but paid off the loan in October 2018 by using some money from its operating fund.
21. The strata says that while the owner's loan installments from 2013 to 2017 were \$180.68 per month, in 2018 the owner's payments were reduced to \$150.56, to reflect the fact that the total loan balance owing was lower that year. The loan payments were properly approved expenses in the 2018 budget. I find there is nothing in the SPA or bylaws that prohibited the strata from doing this. I also find that the documents provided by the owner do not prove he was charged for more than his proportionate share of the \$25,766.30 loan balance in 2018.

22. For these reasons, I dismiss the owner's claim.

### **TRIBUNAL FEES AND EXPENSES**

23. As the owner was unsuccessful in this dispute, in accordance with the CRTA and the tribunal's rules I find he is not entitled to reimbursement of tribunal fees. Neither party claimed dispute-related expenses, so none are ordered.

24. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the owner.

### **ORDER**

25. I dismiss the owner's claim and this dispute.

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Kate Campbell, Tribunal Member