



# Civil Resolution Tribunal

**CRT USE ONLY**

Date: December 3, 2019

File: ST-2019-008632

Type: Strata

**BETWEEN:**

*Please enter legal names of all applicants exactly as they appear on the Dispute Notice or on the most recent Amended Dispute Notice*

JANE LEONOV

OWEN DENNIS

**APPLICANT[S]**

**AND:**

*Please enter legal names of all respondents exactly as they appear on the Dispute Notice or on the most recent Amended Dispute Notice*

The Owners, Strata Plan NW65

**RESPONDENT[S]**

## DEFAULT DECISION AND ORDER

**CRT USE ONLY**

**DEFAULT DECISION AND ORDER**

Tribunal Member: Kate Campbell

Date: December 3, 2019



### A: MONETARY CLAIMS AND ORDERS

Claim  
Amount (\$)

*CRT USE ONLY*  
Order (\$)

1. Describe claim "1" (claim summary for claim 1, from Dispute Notice):

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\$0.00

\$0.00

If claim 1 is a non-debt claim, describe evidence to support the amount of claim 1.  
(see above for information on debt claims and non-debt claims)

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2. Describe claim "2" (claim summary for claim 2, from Dispute Notice):

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\$0.00

\$0.00

If claim 2 is a non-debt claim, describe evidence to support the amount of claim 2.  
(see above for information on debt claims and non-debt claims)

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3. Describe claim "3" (claim summary for claim 3, from Dispute Notice):

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\$0.00

\$0.00

If claim 3 is a non-debt claim, describe evidence to support the amount of claim 3.  
(see above for information on debt claims and non-debt claims)

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### B. NON-MONETARY CLAIMS - OTHER ORDERS

(For example, requests for a party to do or stop doing something)

If you would like the tribunal to order a party to do or stop doing something, include it below. Do not add anything that was not requested in the Dispute Notice. Explain what you would like the tribunal to order, and why you would like the order. Examples might include: “an order that the strata repair my door” or “an order that the owner of strata lot x stop using my parking spot”.

*Please note the CRT will not generally order parties to apologize, make donations, or stop serving on strata councils.*

### REQUESTS FOR A PARTY TO DO OR STOP DOING SOMETHING

<b>Party name:</b> The Owners, Strata Plan NW65	<b>What would like them to do or stop doing?</b> An order to the strata to permit us to install a central air conditioning unit in our strata unit.
<b>Why:</b> The Strata Corporation is unreasonably denying our request. Installation of AC unit is within the strata by-laws. We require it as we have vulnerable people living here who are unable to regulate body temperature and are at risk of a heat stroke without a central AC unit. Night time temperatures with all possible non-AC cooling options still hover around 30C.	
<b>Party name:</b> -----	<b>What would like them to do or stop doing?</b> -----
<b>Why:</b> -----	
<b>Party name:</b> -----	<b>What would like them to do or stop doing?</b> -----
<b>Why:</b> -----	



### C. CRT FEES AND DISPUTE-RELATED EXPENSES

You can claim CRT filing fees and reasonable expenses you paid to prepare for the CRT dispute resolution process. Generally, the CRT will not order the reimbursement of fees paid to a lawyer or other representative. If you are claiming more than \$50, please submit your receipts to the tribunal by email, along with this form. For expense claims for \$50 or less, retain your receipts in case the CRT requests them later.

CRT Fees and Expenses Description	Expense Amount (\$)	CRT USE ONLY Order (\$)
a. Service fees if the CRT advised you that you must serve the Dispute Notice and instructions for response (For example, fees for courier or registered mail.) <i>(receipts required, if total of a. service fees, b. cost of expert reports, and c. other expenses is more than \$50)</i>	\$0.00	\$0.00
b. Cost of expert reports to support CRT claim <i>(receipts required, if total of a. service fees, b. cost of expert reports, and c. other expenses is more than \$50)</i>	\$0.00	\$0.00
c. Other expenses <i>(receipts required if more than \$50)</i> expense description:	\$0.00	\$0.00
d. CRT Application and other CRT fees		\$0.00
<b>Total fees and dispute-related expenses</b>		\$0.00



### D. INTEREST

Please enter the interest rate that applies to your claim. Note that interest applies only to monetary orders (debt and non-debt) and doesn't apply to non-monetary awards. The interest rate must be specified in your contract or strata bylaws and claimed in your Dispute notice (do not submit your contract. ). If it is not, please refer to the Court Order Interest Act to identify the applicable interest rate. The CRT will calculate interest from the date of the Dispute Notice to the date of the Default Order. For more information on Court Order Interest please see:

[http://www.courts.gov.bc.ca/supreme\\_court/about\\_the\\_supreme\\_court/Court\\_Order\\_Interest\\_Rates.aspx](http://www.courts.gov.bc.ca/supreme_court/about_the_supreme_court/Court_Order_Interest_Rates.aspx)

NOTE: If you don't calculate your interest claim correctly, or tick the box below to waive your claim, the CRT will return your form. There will be a delay in getting your default decision and order from the CRT.

Interest Item	Applicant Submission	CRT USE ONLY Order (\$)
1. Principal amount owing as of date of the dispute notice:	\$0.00	\$0.00
2. Contractual rate of interest (if any, specified as an annual rate) Leave this blank if you didn't claim a contractual rate of interest in the Dispute Notice (you will be entitled to interest below, under the Court Order Interest Act).	%	%
3. Interest on principal amount owing up to the date of the dispute notice calculated according to the contractual rate (above, if applicable) or the <b>Court Order Interest Act</b>	\$0.00	\$0.00
4. Interest from the Dispute Notice date to the Default Order date FOR CRT USE ONLY		\$0.00
Total interest order:		\$0.00

☒ I am waiving my claim for interest

### CRT USE ONLY

*The applicant is also entitled to post-judgment interest.*

### TOTAL MONETARY ORDER:

**\$0.00**



## **CRT Default Decision and Order**

The applicant(s) applied for strata property dispute resolution with the Civil Resolution Tribunal (CRT or tribunal) and requested a default decision and order of the tribunal. The following is the tribunal's default Decision and Order.

### **CRT DECISION**

#### **Proof of Notice:**

1. A respondent must respond to a Dispute Notice within 14 days of receiving the Dispute Notice, as indicated on the Dispute Response Form or as permitted by the tribunal.
2. Having reviewed the evidence, I am satisfied, on the balance of probabilities, that the respondent(s) received the Dispute Notice and did not respond to it by the deadline set out in the tribunal's rules.
3. Specifically, the respondent strata acknowledged receipt of the Dispute Notice package by email and requested an extension of the time to file its response. In a November 26, 2019 email, tribunal staff instructed the respondent to provide the response by November 27, 2019 (it had originally been due on November 20, 2019). The tribunal's email warned that if the respondent did not provide the dispute response, the dispute might proceed on a default basis.
4. The respondent did not reply, and did not provide a dispute response as instructed. This means the respondent is in default, as defined in section 1(1)(a) of the *Civil Resolution Tribunal Act* (CRTA).

#### **Jurisdiction:**

5. The tribunal's strata property jurisdiction is set out in section 121 of the CRTA. The applicable tribunal rules are those in place at the time the Dispute Notice was issued.

6. In a default decision such as this one, the tribunal will make a binding decision without the participation of the respondent(s). The tribunal will send the parties a copy of the final decision and order.
7. Under the CRTA and the tribunal's rules, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

**Decision:**

8. Liability is assumed in default decisions. Since the respondent is in default, I accept that the applicant's position is correct.
9. There was no monetary order requested in this dispute, so I make none.
10. The applicant strata lot owners say they requested permission from the respondent to install a central air conditioning unit (AC) in their strata lot. The strata denied that request. Further correspondence and a hearing before the strata council occurred. The strata again denied the request to install the AC. In this dispute, the applicants effectively wish to appeal the strata's decision, on the grounds that it is unreasonable. They seek an order that the strata allow the AC.
11. I note that strata bylaw 44.6 says that a resident must not display or erect fixtures or other structures permanently or temporarily on limited common property. Bylaw 44.8 says a resident must not puncture or affix anything to the exterior surface of the building without approval from the strata.
12. I infer from the Dispute Notice that the applicants wish to install the AC unit on the limited common property balcony or patio adjacent to their strata lot, and run the necessary tubing through a hole in the building's wall. The applicants say that the strata should permit them to install the AC regardless of the bylaws, because other residents have pierced the exterior wall to install planters and mailboxes, have installed window AC units, and have unidentified fixtures on balconies and in backyards.

13. Since the strata did not file a dispute response, I must infer that that applicants' position is correct. I therefore accept that the strata has allowed others to affix items to the building exterior, and place fixtures on limited common property. However, I find this is not the same as allowing a large hole to be cut through the entire building envelope and into the exterior of the strata lot.
14. For these reasons, I find that it is not reasonable or appropriate to allow the applicants' claim on a default basis. However, I again note that the strata has failed to provide a dispute response.
15. In a November 25, 2019 email to the tribunal (which was not a dispute response), the strata's property management firm wrote that the strata planned to bring a resolution about a bylaw amendment addressing air conditioning installation and specifications forward for a vote at the strata's annual general meeting (AGM) in February 2020.
16. I find that the most appropriate remedy in this case is to order the strata to hold that vote. I therefore order as follows:
- a) At its next AGM, the strata must allow the ownership to vote on a bylaw amendment or amendments about AC installation. The bylaw amendments must address the circumstances and requirements under which AC units will be permitted, including specifications and future liability/indemnity.
  - b) In putting forward this resolution, the strata must follow all the applicable voting and notice requirements of the *Strata Property Act* (SPA), including sections 45, 50, and 128.
  - c) If the bylaw amendments pass by the required  $\frac{3}{4}$  majority, the applicants may reapply for permission to install an AC unit. The strata must make a decision about that request and inform the applicants within 14 days of receiving the request, unless otherwise agreed by the parties.



17. 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.
18. 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 applicant 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.

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Kate Campbell, Vice Chair