



# Civil Resolution Tribunal

Date Issued: March 18, 2020

File: ST-2019-005358

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan EPS 3602 v. Chin, 2020 BCCRT 313*

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

The Owners, Strata Plan EPS 3602

**APPLICANT**

**A N D :**

HON KWAN CHIN

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Lynn Scrivener

## **INTRODUCTION**

1. This dispute is about an insurance deductible. The respondent, Hon Kwan Chin, owns a strata lot in the applicant strata corporation, The Owners, Strata Plan EPS3602 (strata). The strata says that, in September of 2017, there was a water leak from the respondent's strata lot that caused damage to other strata lots and

common property (CP). The strata asks for an order that the respondent pay it the \$25,000 insurance deductible. The respondent admits that he is liable in this matter, but says that he does not have the resources to pay lump-sum damages.

2. The strata is represented by a member of the strata council. The respondent 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 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.
4. 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.
5. 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.
6. 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**

7. In his Dispute Response, the respondent stated that the strata had not proven that his strata lot was the source of the water leak. In his submissions, he no longer disputed the source of the leak, and admitted that leak came from his shower. The respondent also stated that he no longer disputes liability in this matter. Accordingly, I will not address the source of the leak or the respondent's responsibility for it further.
8. The remaining issue in this dispute is whether the respondent must reimburse the strata \$25,000 for the insurance deductible in a lump-sum payment.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

9. The respondent owns strata lot 78, which is also known as suite 715.
10. At some point in late August of 2017, someone reported a water leak. The strata arranged for a restoration company to investigate the problem, which was identified as coming from the shower in the respondent's strata lot.
11. In a September 6, 2017 email message, the building superintendent stated that "a defective shower arm was installed in suite 715 and leaked slowly over a long period". This defect was confirmed in the September 21, 2017 invoice from a contractor who conducted the repairs. The contractor stated that he or she "[f]ound that shower arm is a factory defect. When it is fully on, it is spraying badly towards the back wall".
12. The restoration company conducted repairs, but the extent of the damage is not described in the evidence before me. The restoration company issued an invoice to the strata for \$25,000, which was the amount of the insurance deductible. The strata's property manager wrote to the respondent on September 27, 2018 to ask for reimbursement of the \$25,000 insurance deductible. The strata's insurance coverage summary document confirms that its deductible for water damage is \$25,000.

13. The strata seeks reimbursement of the insurance deductible. As noted above, although the respondent initially denied responsibility for the leak and reimbursing the insurance deductible, the respondent now admits liability for this matter. However, he says that, in the circumstances, he should not be required to pay the strata a lump sum. Instead, the respondent proposes a repayment plan that would have him repay the insurance deductible and interest under the *Court Order Interest Act* (COIA) in installment payments of \$200 per month. If he sells the strata lot before the full amount is repaid, the respondent says he will apply sale proceeds to the balance owing so that it is paid in full within 1 month of the closing date. The respondent also proposes that the strata may not register a judgment against his strata lot unless he fails to comply with the payment plan. Although the respondent did not comment on the matter specifically, the strata says that the respondent did not have insurance at the time of the leak.
14. The strata says that it is not in a position to provide the respondent with “financial services”, and the amount awarded should be paid in a single lump sum. Further, the strata says it should be entitled to the remedies available to any judgment creditor, such as registering the judgment against the strata lot, in order to secure its interests. The strata suggests that the respondent seek a loan from a financial institution.
15. The respondent’s proposed payment plan would result in payments for a period of more than 10 years if he did not sell his strata lot before the amount is paid in full. In effect, the respondent is asking for an order that the other strata lot owners carry a long-term, unsecured debt. While I acknowledge the respondent’s financial position, I decline to grant an order for a payment plan as I find it would be contrary to the democratic right of the other strata lot owners to vote on decisions about the strata’s finances and budget.
16. I find that the respondent must reimburse the strata for the \$25,000 insurance deductible in a single lump sum.

## TRIBUNAL FEES AND EXPENSES

17. Under section 49 of the CRTA, and the tribunal rules, the tribunal generally will order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As the strata was successful, I order the respondent to reimburse the strata for tribunal fees of \$225.00.
18. The strata is entitled to pre-judgment interest on the \$25,000 under the COIA. Calculated from October 11, 2018 (which was the deadline on the property manager's September 27, 2018 demand letter), this equals \$673.12.
19. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the respondent.

## ORDERS

20. I order that, within 60 days of the date of this decision, the respondent must pay the strata a total of \$25,898.12, broken down as follows:
  - a. \$25,000 as reimbursement of the insurance deductible,
  - b. \$673.12 in pre-judgment interest under the COIA, and
  - c. \$225.00 as reimbursement of tribunal fees.
21. The strata is also entitled to post-judgment interest under the COIA.
22. 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.
23. 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 strata 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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Lynn Scrivener, Tribunal Member