



# Civil Resolution Tribunal

Date Issued: April 7, 2020

File: ST-2019-008256

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan EPS 3987 v. Goman, 2020 BCCRT 378*

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

The Owners, Strata Plan EPS 3987

**APPLICANT**

**A N D :**

IVAN GOMAN

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell, Vice Chair

## **INTRODUCTION**

1. The respondent, Ivan Goman (owner), owns a strata lot in the applicant strata corporation, The Owners, Strata Plan EPS 3987 (strata).

2. The strata says the owner damaged the door to its underground parking garage. It seeks reimbursement of \$6,959.40 for a replacement door.
3. The owner admits that while driving his car, MP hit the bottom of the garage door. The owner says this only caused minor damage. He says he already paid the strata \$260.42 for repairs, and is not responsible to pay another \$6,959.40 to replace the entire door.
4. The strata is represented by a strata council member in this dispute. The owner is self-represented.
5. For the reasons set out below, I find the strata has not proven its claim for repair costs. I therefore dismiss the claim, and this dispute.

## **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.
10. Tribunal documents show the strata initially had another claim about payment of strata fees, but has since withdrawn that claim. I therefore have not addressed that claim in this decision.

## **ISSUE**

11. Must the owner pay \$6,959.40 for garage door damage?

## **EVIDENCE AND ANALYSIS**

12. I have read all the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding like this one, the applicant must prove their claims on a balance of probabilities.
13. The parties agree that on March 17, 2018, the owner's car, driven by MP, hit the garage door and damaged it. The owner admits he was responsible to pay for the door damage MP caused, but says he already paid the strata \$260.42 for repairs. He says after that the strata decided to replace the entire door. The owner says the need for door replacement was a result of multiple accidents, so he should not be solely responsible to pay for it.
14. Since liability is admitted in this dispute, the sole issue to be decided is how much more, if anything, the owner must pay for repairs. Also, for the reasons explained below, even if liability were contested, my decision would be the same because I find the strata has not proven its claim.
15. The strata admits the door was also hit by another strata resident, but says full repairs were completed and billed to that resident before MP hit the door on March 18, 2018.

16. Based on the evidence before me, I accept that the garage door was entirely replaced in February 2018, before MP hit it. A February 21, 2018 invoice shows that Garage Door Depot charged \$7,554.75 to provide and install a replacement door. A February 27, 2018 letter from the strata shows this cost was charged to another strata lot owner.
17. MP hit the door on March 17, 2018. The evidence shows that Garage Door Depot, performed repairs to the door on March 19, 2018. The invoice says the rubber on the bottom of the door had come apart at the middle, and the door's bottom section was damaged. The invoice says the technician re-secured the bottom rubber, measured for replacement door sections, and tested and inspected the door's operation.
18. Garage Door Depot charged \$260.42 including tax for the March 19, 2018 repairs. The strata charged this amount to the owner, and the evidence shows he paid it.
19. On April 25, 2018, Garage Door Depot attended the strata and replaced the garage door. The invoice says the technician removed and disposed of the old door, installed a new one, replaced the bottom rubber and gearbox, and painted the finish white. The charge for this work was \$6,959.40 including tax. The strata sent the owner a letter on May 30, 2018 stating it had charged back \$6,959.40 to his strata lot account.
20. The strata says that since the owner admits his car hit the door, he is responsible for the damage and must pay for the repairs. The strata says the damage was significant, and required replacement of the door. The owner says the damage caused by the March 17, 2018 incident was minor. He says his car scratched the lower section of the door, and caused the rubber strip on the bottom of the door to come off.
21. The strata says the damage caused on March 17, 2018 was significant, and required replacing the door. I find the evidence before me does not confirm that assertion.

22. MB, a strata resident, witnessed the incident and wrote a statement about it via email on March 18, 2018. MB wrote that MP hit the garage gate with the steel roof rails on the SUV she was driving, as the gate was coming down. MB said the gate was still operational after the incident, but the black trim was hanging down from it, and it appeared to be “dented/damaged” on the white metal frame.
23. I place significant weight on MB’s statement because they are not a party to this dispute, they witnessed the incident firsthand, and they wrote their observations down less than 24 hours after the incident occurred. I find that MB’s statement confirms that MP damaged the gate more extensively than the “scratch” described by the owner. However, I find MB’s statement does not prove that the damage was so significant that it required a new gate.
24. I accept that Garage Door Depot has expertise in garage door repairs, as argued by the strata. However, the strata bears the burden of proof in this dispute, and I find the evidence does not establish why an entirely new door was required, or that the need for a new door on April 25, 2018 was due to the March 17, 2018 incident when MP hit the door.
25. Garage Door Depot’s March 19, 2018 invoice suggests that some further door repairs were still required, based on the technician’s report that they measured for replacement sections. The invoice also says, “quotation to replace sections to be provided.” No such quotation was provided in evidence. There is also no explanation or evidence before me about why it then became necessary to replace the entire door on April 25, 2018, rather than merely replace some sections. Without such evidence, I find it would be speculative to conclude that the April 25, 2018 door replacement was due to the March 17, 2018 incident. While that is possible, I find the strata has not met the burden of proving it on a balance of probabilities.
26. For these reasons, I find the strata has not proven its claim for \$6,959.40 for garage door replacement. I find the owner is not liable to pay any further amount for repairs, as the evidence before me does not prove that any repairs beyond the March 19, 2018 invoice were due to the March 17, 2018 incident.

27. I therefore dismiss the strata's claim, and this dispute.
28. The owner provided evidence and submissions about how strata or vehicle insurance ought to have covered the damage. However, based on my finding above, I find it is not necessary to address insurance in this decision.
29. I also note that a strata corporation is not entitled to charge common property repairs back to an owner without an enforceable bylaw that creates the debt. (See *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512, at paragraphs 40-41, and *Rintoul et al v. The Owners, Strata Plan KAS 2428*, 2019 BCCRT 1007.) I make no finding about issue here because I have decided the dispute on other grounds. However, I raise it for the strata's consideration because none of its 3 chargeback letters in evidence cited any bylaw as authority for the charges.

## **TRIBUNAL FEES AND EXPENSES**

30. The applicant strata was unsuccessful in this dispute. In accordance with the CRTA and the tribunal's rules, I find it is not entitled to reimbursement of tribunal fees.
31. Neither party claimed dispute-related expenses, so none are ordered.
32. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the owner.

## **ORDER**

33. I dismiss the strata's claim, and this dispute.

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Kate Campbell, Vice Chair