



# Civil Resolution Tribunal

Date Issued: May 8, 2020

File: ST-2019-009866

Type: Strata

Civil Resolution Tribunal

Indexed as: *Cooke v. The Owners, Strata Plan NW 2275*, 2020 BCCRT 503

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

NAOMI COOKE

**APPLICANT**

**A N D :**

The Owners, Strata Plan NW 2275

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

David Jiang

## **INTRODUCTION**

1. This dispute is about the unfortunate death of a housecat, Oso. The applicant, Naomi Cooke (owner) owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 2275 (strata).

2. The owner says a strata council member, who was also the strata's property manager, poisoned Oso by negligently spreading rodenticide, a type of poison used for controlling rodents. She claims \$10,000 for a blend of medical expenses and punitive damages. She also seeks an order that the strata stop using illegal poison and illegal bait traps. She says this latter claim has a value of \$2,000, though I infer she only seeks payment for the \$10,000 noted earlier.
3. The strata denies liability and says a strata council member, RI, acted without the strata's knowledge or authorization in spreading any alleged poison. The strata also says that there is insufficient evidence that the owner's cat died of poison. RI is not a named party in this dispute.
4. The owner is self-represented. A strata council member represents the strata.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
7. 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.

8. 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.

## **ISSUES**

9. The issues are as follows:
  - a. Should I order the strata to stop using illegal poison and illegal bait traps?
  - b. Did the strata negligently cause the owner's cat's death and if so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicants bear the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

### ***Issue #1. Should I order the strata to stop using illegal poison and illegal bait traps?***

11. I will first discuss the issue of the strata's use of poison and bait traps as it helps provide background. For the reasons that follow, I find the strata used and stored poison or pesticide (including rodenticide) in breach of the *Integrated Pest Management Act* (IPMA). However, I decline to make the owner's requested order in these circumstances.
12. The strata complex consists of a building with 5 floors and 63 residential strata lots. According to the January 21, 2019 strata council meeting minutes the strata approved installing access hatches in the ceilings for the purposes of rodent control. I infer this was to allow the strata to place traps or poison in what would be newly accessible areas.

13. It is undisputed that at the time RI was a strata council member and the strata's property manager. In his February 2019 report to council, he documented taking several steps in relation to rodent control. He helped hire and supervise contractors to install 2 attic hatches, placed mouse traps in the third-floor attic, removed 2 mice from another strata lot and purchased "more mouse poison".
14. The strata says it was unaware that RI purchased and placed poison. It also says if RI placed poison, he was acting in his personal capacity. I disagree. RI was carrying out measures to address a rodent issue that was documented in the January 2019 strata council minutes. He reported his actions to the strata, including purchasing poison, and had twin roles as council member and property manager at the time. I find it clear he was acting on behalf of the strata.
15. The Ministry of Environment's Integrated Pest Management Environmental Protection Division ("Ministry") received a complaint that the strata was improperly using and storing poison (pesticides). The Ministry conducted an inspection and reported its findings in an August 21, 2019 warning letter.
16. The Ministry concluded that the strata had breached sections of the *IPMA*. The Ministry noted that the strata lacked the certification or license to use the pesticide. One of the pesticides was not registered for use in Canada and was labelled for use in and around agricultural buildings only. The Ministry also concluded the pesticides were stored improperly. An unknown rodenticide was stored in a plastic grocery bag. Another rodenticide was on the floor, in an area where it was likely to be stepped on. The Ministry's compliance staff also found several bait stations placed on the building exterior without proper anchoring or fastening to prevent tipping or removal. The Ministry warned that if the strata failed to take steps to restore compliance, it would face escalating enforcement actions that might include fines, imprisonment, or administrative penalties.
17. The Ministry also wrote that the strata council president advised its staff that RI purchased, stored, and used rodenticide. However, the Ministry found the strata in breach rather than RI as an individual. There is no indication the strata appealed or

otherwise challenged the Ministry's findings. From the above I conclude the strata used and stored poison, or pesticides, in breach of the IPMA.

18. The owner says I should order the strata to stop using illegal poison and bait traps. I find it unnecessary as the evidence shows the strata has since brought itself into compliance with the IPMA. As noted in the October 21, 2019 strata council minutes, the strata hired a third-party contractor for pest control. The strata submits, and I accept, that the contractor now handles "all pest control matters".
19. Notably, the strata provided emails exchanged with the Ministry from January 2020, showing that the owner complained to the Ministry about finding rodenticide outside her strata lot on December 31, 2019. This was after the strata hired a contractor for pest control services. In the emails the strata denied being aware of the poison.
20. The owner provided undated photos, which I infer are the same ones she sent to the Ministry. The photos show white specks on the carpet outside her strata lot in the hallway. She says the specks are rat poison that fell from a nearby ceiling hatch. A photo of the hatch shows a package of what the owner says is rodenticide. More photos show a family member disposing of the poison by giving it to a pest control company.
21. The strata says the owner placed the rodenticide there and falsely stated it was present in June 2019, when Oso fell ill. The owner says the strata placed it there in retaliation for her claims. For the purposes of this dispute, I find it enough to conclude it is highly unlikely that the strata placed rodenticide outside the owner's strata lot after the Ministry's August 2019 inspection or the hiring of a pest control contractor in October 2019. The owner provided her complaint to the Ministry, which it followed up on, and there is no indication it made any further findings that the strata breached the IPMA.
22. In these circumstances, I find that ordering the strata to stop using illegal poison and bait traps would serve little purpose. The strata is already legally obligated to do so, and the evidence before me indicates it is complying with the IPMA.

23. If I am wrong on the above, I would also refuse to resolve this claim under CRTA section 11(a). I find the Ministry's process of complaints is the more appropriate venue for deciding whether the strata is complying the IPMA and not using illegal poison or bait traps. The Ministry has already conducted an initial investigation and the owner is free to contact the Ministry with further complaints.

24. I dismiss this claim.

***Issue #2. Did the strata negligently cause the owner's cat's death and if so, what is the appropriate remedy?***

25. In order to find the strata responsible, I must find it acted in a negligent manner. Although not expressly argued, I considered whether the strata acted negligently and find it did not. My reasons follow.

26. To prove negligence, the owner must show that the strata owed her a duty of care, the strata breached the standard of care, the owner sustained damage, and the damage was caused by the strata's breach (See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at paragraph 33).

27. Under SPA sections 3 and 72 and bylaw 11, the strata must repair and maintain common property for the benefit of all owners. I find these obligations include the rodent control measures in this dispute. I am satisfied the strata has a duty of care to avoid causing damage or loss to the owners (such as harming their pets) in carrying out these measures.

28. It is well-established that the standard of care for the strata is reasonableness: see *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784. The evidence shows the strata breached the provisions of the IPMA by failing to have the appropriate certifications or licenses to use rodenticide. As the strata used pesticides in breach of the law, I find it clear that the strata breached the standard of care in storing and using the rodenticide.

29. The real question is whether the strata's breach caused the owner's loss. For the following reasons, I find the evidence falls short of proving the owner's claim on a balance of probabilities.
30. RI's report to the strata council, mentioned earlier, shows that he began placing rodenticide by February 2019 at the latest. The owner brought her cat Oso to an animal hospital several months later, on June 25, 2019. The veterinarian conducted blood, urine, and other tests. A receipt shows the veterinarian put down Oso a few weeks later, on July 18, 2019.
31. The owner says the medical evidence shows Oso was poisoned. I disagree and find the evidence shows Oso's likeliest cause of death was never determined. In a June 26, 2019 report, a pathologist noted weight loss, low appetite, and lethargy for the preceding week. The pathologist noted symptoms and test results but did not provide a firm diagnosis.
32. In handwriting, someone wrote on the report that Oso was suffering from liver failure or kidney failure, there appeared to be no bacterial infection, Oso appeared to have anemia, and rat poison causes anemia. In different handwriting someone else (I infer the attending veterinarian or pathologist) wrote there were 5 possible diagnoses: infection, poisoning, gastroenteritis, "chronic DZ", and "other". The owner says there was no infection present, but the test (a urinalysis) appeared to only test for the presence of bacteria and not viruses. In any event, infection was still listed in handwriting as a possible diagnosis in the June 26, 2019 report.
33. The June 26, 2019 report therefore mentions poisoning as 1 of 5 possible diagnosis. There is no indication the veterinarian or pathologist found this to be the most likely cause of death.
34. The owner provided other evidence that I did not find compelling. She provided 2 pictures of dead mice in her strata lot. One of the mice appeared half-eaten. The owner says Oso may have died by eating a poisoned mouse. While I find this theory plausible, the owner did not provide any evidence showing that the mice were poisoned or that cats are likely to become sick from eating poisoned mice. More

critically, the owner did not say when she took the photo of the mice. It is therefore unclear if Oso or 1 of the owner's 3 other cats ate the mouse. I note there is no indication that any of the other 3 cats became ill.

35. In summary, I am not satisfied the strata negligently caused Oso the cat's death. For these reasons, I dismiss the owner's claims.

## **TRIBUNAL FEES AND EXPENSES**

36. 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. The strata is the successful party. I do not order any tribunal fees or dispute-related expenses as the strata did not claim any.

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

## **ORDER**

38. I dismiss the owner's claims and this dispute.

---

David Jiang, Tribunal Member