



Civil Resolution Tribunal

CRT USE ONLY

Date: December 8, 2020

File: ST-2020-006641

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

PETER BURTON

CHARLES TELFORD

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 LMS 519

RESPONDENT[S]

DEFAULT DECISION AND ORDER

CRT USE ONLY

DEFAULT DECISION AND ORDER

Tribunal Member: Kate Campbell

Date: December 8, 2020



A: MONETARY CLAIMS AND ORDERS

Claim
Amount (\$)

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Order (\$)

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

I want the Strata Corporation to levy owners for an engineering study as the next phase of a window replacement project that will result in bid documents.

\$43,800.00

\$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)

Attached to this Claim is a copy of the Sense Engineering proposal setting out the amount claimed for the necessary next phase of the window replacement project.

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

\$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)

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

\$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)



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

Party name: -----	What would like them to do or stop doing? -----
Why: -----	
Party name: -----	What would like them to do or stop doing? -----
Why: -----	
Party name: -----	What would like them to do or stop doing? -----
Why: -----	



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 (\$)	<i>CRT USE ONLY</i> 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		\$150.00
Total fees and dispute-related expenses		\$150.00



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

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 Court Order Interest Act	\$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

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The applicant is also entitled to post-judgment interest.

TOTAL MONETARY ORDER:

\$150.00



CRT Default Decision and Order

The applicant applied for strata property dispute resolution with the Civil Resolution Tribunal (CRT) and requested a default decision and order of the CRT. The following is the CRT'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 CRT.
2. Having reviewed the evidence, I am satisfied, on the balance of probabilities, that the respondent strata corporation received the Dispute Notice and did not respond to it by the deadline set out in the CRT's rules. This means the respondent is in default, as defined in section 1(1)(a) of the *Civil Resolution Tribunal Act* (CRTA).

Jurisdiction:

3. The CRT's strata property jurisdiction is set out in section 121 of the CRTA. The applicable CRT rules are those in place at the time the Dispute Notice was issued.
4. In a default decision such as this one, the CRT will make a binding decision without the participation of the respondent. The CRT will send the parties a copy of the final decision and order.
5. Under the CRTA and the CRT's rules, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.



Decision:

6. Liability is assumed in default decisions. Since the respondent is in default, I find in favour of the applicant.
7. In accordance with the CRTA and the CRT's rules, I find the respondent must pay the applicant the monetary amounts as set out in the preceding pages. This amount is payable immediately.
8. I find the applicant is entitled to any applicable post-judgment interest, which is not included as part of the "total order" amount.
9. In the Dispute Notice, the applicant asked for an order that the respondent strata corporation (strata) impose a special levy of \$43,800.00 on the strata ownership, in order to pay for an engineering study as the next phase of a window replacement project.
10. Although the strata is in default, I decline to issue the order the applicant has requested, as I find it is inconsistent with the *Strata Property Act* (SPA) and BC Supreme Court (BCSC) decisions in prior strata property cases.
11. SPA section 108(2) says a special levy must be approved by a $\frac{3}{4}$ vote of owners at an annual general meeting (AGM) or special general meeting (SGM). While the CRT has jurisdiction to order a strata corporation to impose a special levy without a vote of the ownership, this will only be done in exceptional circumstances. There are numerous decisions from the BCSC stating that a court should not interfere with the democratic governance of a strata unless absolutely necessary: *Oakley et al v. Strata Plan VIS 1098*, 2003 BCSC 1700; *Lum v. Strata Plan VR519 (Owners of)*, 2001 BCSC 493; *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333. I find that this reasoning applies equally to the CRT, which did not exist at the time these decisions were written.

12. Based on these BCSC cases, which are binding precedents, and SPA section 108(2) I do not order the strata to impose a special levy. However, since the strata is in default, I order that within 90 days of this default decision and order, the strata must hold an AGM or SGM and allow the strata ownership to vote on a $\frac{3}{4}$ vote resolution to approve a special levy of \$43,800.00 to pay for an engineering study, including production of bid documents and an updated cost estimate for full window replacement.
13. The strata must meet the notice requirements set out in SPA section 45 in holding the AGM or SGM. This includes providing the wording of the special levy resolution in writing to owners at least 2 weeks before the meeting.

CRT ORDER

14. In accordance with the CRTA and the CRT's rules, I order the respondent to immediately pay the applicant the monetary orders set out in the preceding pages. The applicant is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
15. I also order the following:
- a. Within 90 days of this default decision and order, the strata must hold an AGM or SGM and allow the strata ownership to vote on a $\frac{3}{4}$ vote resolution to approve a special levy of \$43,800.00 to pay for an engineering study, including production of bid documents and an updated cost estimate for full window replacement.
 - b. The strata must meet the notice requirements set out in SPA section 45 in holding the AGM or SGM. This includes providing the wording of the special levy resolution in writing to owners at least 2 weeks before the meeting.

16. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Kate Campbell, Vice Chair