



# Civil Resolution Tribunal

Date Issued: May 10, 2021

File: ST-2020-008398

Type: Strata

Civil Resolution Tribunal

Indexed as: *Chen v. The Owners, Strata Plan NW 308*, 2021 BCCRT 495

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

HAOHAN CHEN

**APPLICANT**

**A N D :**

The Owners, Strata Plan NW 308

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell, Vice Chair

## INTRODUCTION

1. This dispute is about a chargeback for water leak repairs in a strata corporation.
2. The applicant, Haohan Chen, owns a strata lot (unit 115) in the respondent strata corporation, The Owners, Strata Plan NW 308 (strata). He says the strata improperly

charged him \$2,725.34 for emergency restoration work following a May 2019 water leak. Mr. Chen says the leak came from a common property (CP) pipe, so he is not responsible to pay. He requests an order that the strata remove the chargeback from his strata lot account.

3. The strata says Mr. Chen is responsible to pay the chargeback because there were 2 separate leak incidents, one on May 27, 2019 into Mr. Chen's kitchen, and another on May 30, 2019 into Mr. Chen's bathroom. The strata says the source of the second leak was "an asset" that was a neighbouring strata lot owner's responsibility to repair and maintain, so Mr. Chen is responsible for the chargeback. The strata also says Mr. Chen should have had homeowner's insurance but did not.
4. Mr. Chen is self-represented in this dispute. The strata is represented by a strata council member.
5. For the reasons set out below, I find Mr. Chen is not responsible to pay the chargeback, and the strata must reverse it.

## **JURISDICTION AND PROCEDURE**

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow legal principles. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
7. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconference, 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 CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The

CRT 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 CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

## ISSUE

10. Must the strata remove the chargeback from Mr. Chen's strata lot account?

## BACKGROUND FACTS

11. In a civil claim like this one, the applicant Mr. Chen must prove his claims on a balance of probabilities (meaning "more likely than not"). While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
12. The strata consists of 47 residential strata lots in a 3-storey building. The strata filed consolidated bylaws with the Land Title Office in December 2016. I find these are the bylaws applicable to this dispute. The strata filed subsequent bylaw amendments in 2018 and 2019 about surveillance and cannabis, which I find are not relevant to this dispute.
13. There was a prior CRT dispute about the same May 2019 water leak. In that dispute, Mr. Chen named his upstairs neighbour Richard Cogan (unit 215), as respondent. The strata was not a party. Mr. Chen sought an order that Mr. Cogan reimburse him for the strata's chargeback (the same chargeback that is the subject of this dispute), plus \$1,732.50 for repairs to Mr. Chen's kitchen ceiling.
14. In a decision published on September 16, 2020, *Chen v. Cogan*, 2020 BCCRT 1041, I dismissed Mr. Chen's claim against Mr. Cogan. I found that the evidence established that the source of the leak was a CP pipe in the ceiling above Mr. Cogan's kitchen.

Since the pipe was CP, I concluded that Mr. Cogan was not responsible to pay any leak repair costs.

15. In this new dispute, Mr. Chen says that since the leaking pipe was CP, he is not responsible to pay the chargeback, and the strata should remove it from his strata lot account.

## **Res Judicata**

16. I have considered whether this claim about the chargeback is *res judicata* (already decided), since it was the subject of a previous dispute. However, I find it was not. As summarized by the CRT chair in *East Barriere Resort Limited et al v. The Owners, Strata Plan KAS1819*, 2017 BCCRT 22, *res judicata* can arise in two ways. The first is cause of action estoppel, which stops someone from pursuing a matter that was or should have been the subject of a previous process. The second is issue estoppel, which stops someone from raising an issue that has already been decided in another process.
17. The legal tests for cause of action and issue estoppel are set out in various court decisions, including *Cliffs Over Maple Bay (Re)*, 2011 BCCA 180. For both types of estoppel, one of the mandatory parts of the test is that the parties in the current litigation must also have been parties in the previous litigation. The strata was not a party to *Chen v. Cogan*. So, I find Mr. Chen's claim against the strata is not *res judicata*.

## **REASONS AND ANALYSIS**

### ***Liability for Chargeback***

18. In an October 31, 2019 letter, the strata said it had imposed a chargeback of \$2,715.34 against Mr. Chen's strata lot account. The letter said Mr. Chen was responsible to pay this amount because the cost of repairs to his strata lot was below the strata's insurance deductible. The strata attached a copy of a September 5, 2019 invoice from Platinum Pro-Claim (Pro-Claim), for \$2,715.34, for "emergency services" to Mr. Chen's strata lot.

19. In his dispute application, Mr. Chen said that the disputed chargeback was for \$2,725.34, rather than the \$2,715.34 shown on the strata's correspondence. I find that was likely a typographical error. In any event, for the reasons set out below, I find Mr. Chen is not responsible to pay the October 31, 2019 chargeback, and the strata must reverse it.
20. As set out in *The Owners, Strata Plan K 407 v. Kelly*, 2019 BCCRT 789, a strata lot owner is not responsible for the cost of leak repairs unless they:
- a. agreed to pay them,
  - b. are responsible under the SPA or bylaws, or
  - c. were negligent.
21. Prior CRT decisions are not binding on me, but I find the reasoning in *Kelly* persuasive and apply its reasoning here.
22. Mr. Chen say he did not agree to pay for Pro-Claim's restoration services. This is not specifically disputed by the strata, who hired Pro-Claim, and there is no evidence Mr. Chen agreed to pay. So, I find Mr. Chen is not responsible to pay based on any agreement.
23. There is also no allegation that Mr. Chen was negligent, so I find no liability due to negligence.
24. The strata says the chargeback against Mr. Chen is authorized under its bylaws. I summarize the relevant bylaws as follows:
- Bylaw 39.1 – an owner is deemed responsible for loss or damage to CP or a strata lot where the cause of the loss or damage originated within the owner's strata lot.
  - Bylaw 39.2 – an owner is deemed responsible for loss or damage to CP or a strata lot where the cause of the loss or damage is an act, omission,

negligence, or carelessness of the owner, or their tenants, occupants, visitor, or pets.

- Bylaw 39.4 – if the loss or damage deemed to be the owner’s responsibility under bylaws 39.1 or 39.2 does not exceed the strata’s insurance deductible, the owner is strictly liable and must indemnify the strata for any resulting maintenance, repair, or replacement rendered necessary which is the strata’s responsibility to perform.
- Bylaw 39.5 – any amount an owner is responsible to pay the strata under the above bylaws will be charged back against the owner’s strata lot account.

25. I find Mr. Chen is not liable for the Pro-Claim invoice under these bylaws. Bylaw 39.1 does not apply, because the source of the damage addressed by Pro-Claim was the CP pipe above Mr. Cogan’s strata lot. Thus, the damage did not originate within Mr. Chen’s strata lot. This is specifically stated in Pro-Claim’s invoice, which says that the “cause of loss” was a pipe in Mr. Cogan’s (unit 215) kitchen ceiling.

26. Invoices from the strata’s plumbing company, A-1 Drainage Plumbing & Heating Ltd. (A-1), show that A-1 attended the strata building on both May 27 and May 30, 2019, to deal with 2 reported leaks. The invoices contain the following information:

- On May 27, 2019, A-1 found water “pouring from the ceiling” in unit 215’s kitchen.
- A-1 removed part of the unit 215 ceiling to trace the leak.
- The technician located a pin hole on the domestic hot water (DHW) pipe supplying units 215 and 315, and a second pin hole on the DHW supply pipe in the corridor outside unit 215.
- A-1 installed temporary clamps on both leaks.
- On May 30, 2019, A-1 attended unit 115 and found that an existing pin hole repair in the ceiling above the bathtub had started leaking again. The pin hole was located at the spot where the pipe entered the hallway wall.

27. The strata says that part of the leak-related costs included in the chargeback are related to the second leak identified by A-1 on May 30. However, I find that cannot be possible because the correspondence shows that the entire chargeback is for amounts set out in Pro-Claims' September 5, 2019 invoice. The charges on that invoice were all for emergency restoration services performed on May 28, 2019. The A-1 invoices show that the second leak was not detected until May 30, 2019, and affected an entirely different part of Mr. Chen's strata lot.
28. In any event, based on the information in the Pro-Claim and A-1 invoices, I find neither of the water leaks originated in Mr. Chen's strata lot, so he cannot be deemed responsible for any repair costs under bylaw 39.1. As I explained in *Chen v. Cogan*, the leaks affecting Mr. Chen's kitchen arose from CP pipes above Mr. Cogan's strata lot.
29. Regarding the second leak, the A-1 invoice says that on May 30, 2019 its technician found a pinhole leak in the "ceiling above bathtub" unit 115. Another A-1 invoice dated June 14, 2019 says the technician "Ran water in bath tub of Unit #215 and observed leak from drain connection".
30. I find that neither of these leaks came from Mr. Chen's strata lot. SPA section 1(1) says, among other things, that pipes for the provision of water are CP if they are within a ceiling that forms a boundary between 2 strata lots. I find that applies here, so the pipe in the ceiling above the unit 115 bathtub was CP, and not part of unit 115. Also, the drain connection on the unit 215 bathtub is not part of Mr. Chen's strata lot.
31. Since neither of the leaks came from Mr. Chen's strata lot, he cannot be deemed responsible for any costs under bylaw 39.1.
32. I also find Mr. Chen cannot be deemed responsible for any costs under bylaw 39.2. This is because there is no suggestion in the evidence before me that the pinhole leaks or leaking bathtub drain in unit 215 were caused by an act, omission, negligence, or carelessness by Mr. Chen or anyone associated with his strata lot.

33. For these reasons, Mr. Chen cannot be deemed responsible for the leaks under bylaws 39.1 or 39.2. This means no costs can be charged to him under bylaw 39.4, and the strata's chargeback was not permitted under bylaw 39.5.
34. In its February 4, 2021 submission to the CRT, the strata argues that Mr. Chen is liable for the chargeback because the second leak was caused by the failure of an "asset" that was Mr. Cogan's responsibility to repair and maintain. By this I infer the strata means the bathtub drain. I make no findings in this decision about that. However, even if it is true that Mr. Cogan was responsible to repair the bathtub drain, the bylaws do not permit the strata to impose a chargeback against Mr. Chen in that circumstance.
35. The strata also argues that Mr. Chen must pay the chargeback because he should have had homeowner's insurance but did not. However, there is nothing currently in the *Strata Property Act* (SPA) or strata bylaws that requires a strata lot owner to carry homeowner's insurance. Also, even if Mr. Chen had insurance, I find the strata was still not entitled to impose the chargeback, for the reasons set out above.
36. In conclusion, I find the strata was not entitled to impose the October 31, 2019 chargeback on Mr. Chen's strata lot account, and must reverse it.

## **CRT FEES AND EXPENSES**

37. As Mr. Chen was successful in this dispute, in accordance with the CRTA and the CRT's rules I find he is entitled to reimbursement of \$225.00 in CRT fees. Neither party claimed dispute-related expenses, so none are ordered.
38. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Mr. Chen.

## **ORDERS**

39. I order the following:



- a. The strata must immediately remove the \$2,715.34 chargeback for Pro-Claim's September 5, 2019 invoice from Mr. Chen's strata lot account.
  - b. Within 30 days of this order, the strata must reimburse Mr. Chen \$225 for CRT fees.
40. Mr. Chen is entitled to postjudgment interest under the *Court Order Interest Act*, as applicable.
41. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

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Kate Campbell, Vice Chair