



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Afandi v. The Owners, Strata Plan BCS2854*, 2021 BCCRT 838

B E T W E E N :

AHMED AFANDI

APPLICANT

A N D :

The Owners, Strata Plan BCS2854

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about who should pay for water damage repairs. The applicant, Ahmed Afandi, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS2854 (strata). Ahmed Afandi says the strata wrongly charged back repairs to his strata lot account for water damage to 3 other strata lots and a common hallway

in the strata. The chargebacks were automatically paid through a positive strata lot account balance. Ahmed Afandi seeks an order for reimbursement of \$6,239.66.

2. The strata disagrees. It says Ahmed Afandi breached its bylaws and is liable for the costs of remedying the breach.
3. Ahmed Afandi is self-represented. A strata council member represents the strata.
4. For the reasons that follow, I find Ahmed Afandi has proven their claims. I order the strata to pay Ahmed Afandi the amounts set out below.

JURISDICTION AND PROCEDURE

5. 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 the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
6. The CRT 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 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.
8. 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.

Late Evidence

9. Ahmed Afandi submitted late evidence about the strata's water damage deductible. The strata did not object and had the opportunity to review the late evidence and provide submissions and evidence in response, which it did. I find the evidence relevant to this dispute. Consistent with the CRT's mandate that includes flexibility, I find there is no actual prejudice to the strata in allowing the late evidence and do so.

ISSUES

10. The issues in this dispute are as follows:
- a. Did Ahmed Afandi breach the strata's bylaws, and if not, what is the appropriate remedy?
 - b. Did the strata comply with the procedural requirements of section 135 of the *Strata Property Act*?

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Ahmed Afandi as applicant must prove their claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
12. I begin with the undisputed background. Ahmed Afandi co-owns a strata lot in the strata. A tenant lives there. On December 26, 2019, a water leak caused damage in to 4 different strata lots, including Ahmed Afandi's, and to a hallway that is common property. A restoration specialist, TWM, determined that the leak originated from a toilet in Ahmed Afandi's strata lot. The toilet's flapper and wax seal were faulty.
13. The strata did not file any insurance claim because the total damage was less than the strata's deductible at the time of \$15,000. Ahmed Afandi filed an insurance claim with their own personal insurer. A January 7, 2020 invoice shows TWM charged the strata \$6,441.52 for emergency repairs in the 4 strata lots and common property. Subsequently, the strata emailed Ahmed Afandi on March 29, 2020 to advise that

Ahmed Afandi had to pay \$6,441.52 for the repairs to date and also “subsequent invoices to follow”. Ahmed Afandi’s insurer paid \$6,441.52 for the emergency repairs so it is not at issue.

14. A ledger for Ahmed Afandi’s strata lot account shows the strata subsequently charged back the following invoice amounts, close in time to the invoice dates: 1) \$338.71 for a June 22, 2020 invoice for hallway repairs, 2) \$1,620.84 for a June 25, 2020 invoice for repairs to another strata lot, 3) \$2,391.75 for a July 1, 2020 invoice for repairs to another strata lot, and 4) \$1,888.36 for a September 24, 2020 invoice for repairs to another strata lot. These 4 invoices are the chargebacks at issue. They total the claimed amount of \$6,239.66. The chargebacks were covered by a substantial credit balance at the time.

Issue #1. Did Ahmed Afandi breach the strata’s bylaws, and if not, what is the appropriate remedy?

15. Under section 26 of the *Strata Property Act* (SPA), the strata must enforce its bylaws. The strata registered a complete set of bylaws in the Land Title Office in January 2014. The strata has registered several amendments since then that I find are not relevant to this dispute. The parties dispute whether Ahmed Afandi contravened bylaw 3(2), which states the following:

An owner, tenant, occupant, or visitor must not cause damage, other than reasonable wear and tear, to the common property, common assets or those parts of a strata lot which the strata corporation must repair and maintain under these bylaws and insure under section 149 of the *Strata Property Act*. Where an owner, tenant, occupant or visitor has caused damage to the common property, common assets or those parts of a strata lot insured by the strata corporation, the owner of the strata lot responsible for the damage shall be liable to reimburse the Strata Corporation for any insurance deductible expense incurred by the Strata Corporation to repair the damage.

16. I note this bylaw resembles a bylaw considered by the CRT Vice Chair in *Hu v. The Owners, Strata Plan BCS 3507*, 2020 BCCRT 74 at paragraph 27. The Vice Chair held that the bylaw only permitted the strata to charge back the amount of the insurance deductible and not a repair amount that falls below the deductible.

17. I find Vice Chair's reasoning persuasive and applicable to this dispute. I find that bylaw 3(2) is a chargeback bylaw that permits the strata to charge back the insurance deductible expense but not the actual cost of repairs.
18. The strata submits a different interpretation is correct. It says the second sentence of bylaw 3(2) provides for 1 possible remedy for the strata if a person causes the damage referred to in the first sentence. The strata says the second sentence does not prevent the strata from recovering the cost of remedying the damage described in the first sentence under SPA section 133. The strata says that is what it did here.
19. Section 133 says a strata corporation may do what is reasonably necessary to remedy a bylaw contravention, including doing work on a strata lot, common property or common assets. The strata corporation may also require the reasonable costs of remedying a bylaw contravention to be paid by the person who may be fined for the contravention under SPA section 130. SPA section 130 says this includes the owner of a strata lot.
20. On balance, I find the strata's interpretation is incorrect. I find it would involve reading the first sentence of bylaw 3(2) in isolation. I find this to be contrary to the textual, contextual, and purposive analysis described in *HighStreet Accommodations Ltd. v. The Owners, Strata Plan BCS2478*, 2019 BCCA 64, that I should use to interpret strata corporation bylaws. I find bylaw 3(2) must be read as a whole. Its second sentence clearly explains the consequences of the first. This is reflected by the fact that both sentences contain much the same wording and one immediately follows the other. The second sentence has no wording to show it is intended to enlarge or expand on the remedies available to the strata. For example, it does not use words such as "including" or "not limited to".
21. Given this, I find Ahmed Afandi did not breach this chargeback bylaw and the strata cannot rely on it to charge back the repairs at issue. I order the strata to reimburse Ahmed Afandi the claimed amount of \$6,239.66 in the terms set out below.

Issue #2. Did the strata comply with the procedural requirements of section 135 of the Strata Property Act?

22. Even if Ahmed Afandi breached bylaw 3(2) I would still order reimbursement for the following reasons. As noted earlier, the strata says it charged back the cost of remedying Ahmed Afandi's bylaw contravention under SPA section 133. SPA section 135(1) says that before requiring a person to pay the costs of remedying a contravention, a strata corporation must give that person written particulars of the complaint against them, and a reasonable opportunity to answer the complaint, including a hearing if requested.
23. In *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, the BC Court of Appeal found that strict compliance with SPA section 135 is required before a strata corporation can impose fines. The court also determined that bylaw fines may be found to be invalid if the procedural requirements set out in section 135 are not followed. I find that strict compliance is equally necessary when the strata requires a person to pay the costs of remedying a contravention, as the same provisions of section 135 are engaged.
24. Based on the correspondence and the ledger mentioned above, I find the strata did not comply with SPA section 135. In its March 29, 2020 email the strata first notified Ahmed Afandi that he would be liable for "invoices to follow". I do not find this email provided sufficient written particulars. The strata did not identify the bylaw breached as required by *Terry* at paragraph 28. The strata also did not say how much Ahmed Afandi would ultimately be liable for, which would be key information. It did not provide an estimate or wait until the invoices in this dispute had been issued.
25. The strata then subsequently charged the repair invoices directly to Ahmed Afandi's strata lot account in June, July and September 2020, shortly after TWM issued them. As noted above, the invoices were automatically paid through a positive account balance. There is no indication that the strata provided Ahmed Afandi any warning or time to respond before it did so. Given this, I find Ahmed Afandi had no reasonable opportunity to respond before the chargebacks were paid.

26. I note that in *Cheung v. Strata Plan VR 1902*, 2004 BCSC 1750, the court held that a strata corporation can cure a procedural breach of SPA section 135(1) if it reverses a fine and provides new notice documents. The strata never reversed the chargebacks in this dispute, so I do not find it cured any procedural breaches. So, I would order the strata to reimburse Ahmed Afandi \$6,239.66 for these reasons as well.

CRT FEES, EXPENSES AND INTEREST

27. The *Court Order Interest Act* applies to the CRT. Ahmed Afandi is entitled to pre-judgment interest on the damages award of \$6,239.66, calculated on the underlying invoice amounts from invoice chargeback dates, to the date of this decision. This equals \$28.88.

28. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I order the strata to pay Ahmed Afandi \$225 in CRT fees. The parties did not claim for any dispute-related expenses, so I order none.

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

ORDERS

30. Within 14 days of the date of this order, I order the strata to pay Ahmed Afandi a total of \$6,493.54, broken down as follows:

- a. \$6,239.66 as damages,
- b. \$28.88 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$225 in CRT fees.

31. Ahmed Afandi is entitled to post-judgment interest, as applicable.

32. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, 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.

David Jiang, Tribunal Member