



# Civil Resolution Tribunal

Date Issued: August 19, 2021

File: ST-2020-008746

Type: Strata

Civil Resolution Tribunal

Indexed as: *Amali v. The Owners, Strata Plan BCS 2478*, 2021 BCCRT 912

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

BEHZAD AMALI

**APPLICANT**

**A N D :**

The Owners, Strata Plan BCS 2478

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. This dispute is about a chargeback for repairs to a fire safety system in a strata lot.
2. The applicant, Behzad Amali, owns and lives in strata lot 82 (unit 1503) in the respondent strata corporation, The Owners, Strata Plan BCS 2478 (strata).

3. Mr. Amali acknowledges that he disconnected 2 wires in a fire alarm speaker in his strata lot. The strata called a technician to repair the speaker and address other issues with the building fire alarm system. The repairs ended up requiring several trips and costing \$4,064.39, which the strata charged to Mr. Amali. Mr. Amali seeks an order that the strata reverse the chargeback because he says the bylaws do not authorize the charge. Alternatively, if the chargeback was valid, he seeks an order that the strata revise its charge to reflect the cost of replacing his fire alarm speaker and not other fire alarm system repairs.
4. The strata says it applied the chargeback in accordance with its bylaws. In its submissions, the strata acknowledges that Mr. Amali is not responsible for certain aspects of its contractor's invoice it originally charged to Mr. Amali. It says the revised charge for which Mr. Amali is responsible is \$1,567.65. The strata did not file a counterclaim.
5. Mr. Amali represents himself. The strata is represented by a council member.

## **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 the law. 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, 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 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.

## **ISSUES**

10. The issues in this dispute are:

- a. Do the strata's bylaws authorize it to charge Mr. Amali's strata lot account for repairs?
- b. If so, for how much of the repair costs is Mr. Amali responsible?

## **EVIDENCE AND ANALYSIS**

11. As the applicant in this civil dispute, Mr. Amali must prove his claims on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.
12. The strata includes 2 high-rise residential towers. Mr. Amali owns and lives in unit 1503, which is on the 15<sup>th</sup> floor of tower 1.
13. It is undisputed that in early May 2020, there was a minor fire incident in the strata building that set off fire alarms. Mr. Amali says a fire alarm speaker in his strata lot was activated after midnight, causing him and his wife to startle awake. He says his wife was experiencing a migraine attack, so he rushed to silence the alarm. He pressed the silencing button a few times to no avail. He says several minutes passed and the alarm did not stop. At that point, he opened the speaker from the ceiling and disconnected a wire. When it did not stop the alarm, he disconnected a second wire, and stopped the alarm. He says he noticed 1 or 2 other wires hanging loose in the speaker box.

14. The strata says following any incident that triggers the strata's fire safety system, the system must be reset and reactivated. The strata's contractor, Viking Fire Protection Inc. (Viking), attended the strata building on May 4, 2020, but could not reset and reactivate the fire safety system, including the fire alarm panel. Viking requested, and Mr. Amali allowed, access to unit 1503.
15. Viking reconnected Mr. Amali's fire alarm speaker but was unable to resolve the issue and reset the fire safety system. After troubleshooting, it found an issue with isolators on the 15<sup>th</sup> floor. Although the strata's initial dispute response indicated it believed the isolators were located within unit 1503, in submissions it acknowledged that the isolators are in a utility room on the 15<sup>th</sup> floor, consistent with Viking's evidence.
16. Between September and November 2020, the strata and Mr. Amali exchanged letters and held a hearing. The strata imposed a \$200 fine on Mr. Amali for contravening 2 bylaws. Mr. Amali does not ask for an order that the strata reverse the fine, so it is not necessary to describe the strata's procedural steps or the relevant bylaws here.
17. As noted, the strata originally applied a chargeback to Mr. Amali's strata lot account for the full amount of Viking's invoice, \$4,064.39. In preparation for this CRT dispute, the strata requested Viking provide more details about the unit 1503 speaker issue and related repairs. Roy Fu, the technician who attended, provided an undated written report, summarizing Viking's work done on May 4, July 7 and July 14, 2020. The July 14 work included engaging another contractor to clear the mapping error on the main panel. As noted, the strata now acknowledges the mapping error on the main panel was not attributable to Mr. Amali and says the correct charge for Viking's work related to unit 1503 is \$1,567.65.

***Do the strata's bylaws authorize it to charge Mr. Amali's strata lot account for repairs?***

18. A strata corporation is not entitled to charge back costs it has incurred to an owner without an enforceable bylaw or rule that creates the debt: see *Shen v. The Owners, Strata Plan LMS 1005*, 2020 BCCRT 63, citing *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512 and *Rintoul et al v. The Owners, Strata Plan KAS 2428*, 2019 BCCRT

1007. Although CRT decisions are not binding on me, I find these decisions persuasive.

19. The strata says it charged back the cost of Viking's invoices to Mr. Amali's strata lot account under bylaw 32.4. In summary form, that bylaw says that an owner will indemnify the strata for the cost of repair or replacement of common property, common facilities or any strata lot made necessary because of the owner's act, omission, negligence or carelessness.
20. I do not find it necessary to determine whether the fire-detection equipment in the strata lot is common property or part of the strata lot. This is because under bylaw 32.4, the strata can charge back necessary repairs regardless of this distinction. Given the importance of fire safety systems and the evidence of the interconnected nature of the strata's fire alarm system, I am satisfied that it was necessary for the strata to repair unit 1503's fire alarm speaker.
21. Was the repair necessitated by Mr. Amali's act, omission, negligence or carelessness? Mr. Amali says these words are to be read collectively and import a standard of negligence: *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 519.
22. I find bylaw 32.4 is clearly intended to make owners liable for repair costs where there is an element of fault, including intentional acts. Wherever possible, every word used in a provision must be given meaning and effect: *Greater Vancouver (Regional District) v. British Columbia*, 2011 BCCA 345. I find Mr. Amali's action of disconnecting 2 wires in the fire alarm speaker was an intentional act that made it necessary for the strata to have Viking repair his fire alarm speaker. Under bylaw 32.4, the strata can charge back these costs to Mr. Amali.
23. In case I am wrong, I will also consider Mr. Amali's argument that his actions did not amount to negligence in the circumstances. In particular, he says disconnecting the speaker was reasonable given the alarm happened after midnight, the silencing button failed, and his wife had a migraine headache, which is supported by a doctor's note.

24. In a negligence analysis, the primary question is whether the owner breached the standard of care, which is reasonableness: see *Burris v. Stone et al*, 2019 BCCRT 886. Even accepting Mr. Amali's assertion that the silencing button did not work, I still find that it was not reasonable for Mr. Amali to disconnect the fire alarm speaker. I find that a reasonable person in Mr. Amali's situation, finding the noise intolerable, would exit the strata lot and contact the building manager or property manager. I say this acknowledging that Mr. Amali's wife was attempting to sleep with a migraine and it was early in the morning. These factors, in my view, do not make disconnecting the fire alarm speaker a reasonable course of action. I say this in part because of the importance of fire safety equipment.

***For how much of the repair cost is Mr. Amali responsible?***

25. The strata asked Mr. Fu to provide the cost of Viking's repair to "just the speaker in unit 1503" – in other words, to break down the cost of repairs Mr. Fu would attribute to unit 1503 as opposed to other work on Viking's August 31, 2020 invoice. On March 29, 2021, Mr. Fu said the work on unit 1503 included:

- a. May 4: 3 hours of labour with 2 technicians at \$105 per hour, plus a truck charge of \$50, totalling \$680.00.
- b. July 7: 1 hour of 1 technician's labour, plus \$214.50 for 1 fire alarm speaker, totalling \$319.50.

26. Mr. Fu's total for unit 1503 is \$999.50. This excludes GST, which was charged on the August 31 invoice.

27. Despite Mr. Fu's evidence, the strata says Mr. Amali must pay \$1,567.65. The strata's calculation differs from Mr. Fu's in that the strata attributes the cost of new isolators and their installation to Mr. Amali. For the reasons that follow, I find Mr. Amali is not responsible for any charges related to the isolators.

28. The strata says its reports indicate the fire safety system was operating properly before Mr. Amali disconnected his speaker. The only report in evidence indicates that

the unit 1503 alarm was operational as of January 23, 2019, more than a year before the incident. That report does not explicitly mention the 15<sup>th</sup>-floor isolator(s). I also note Mr. Fu's May 5, 2020 email said he could not find the 15<sup>th</sup>-floor isolator, and compared with the floors above and below, it was "gone." In Mr. Fu's more recent but undated report prepared for this dispute he described the 15<sup>th</sup> floor isolators as faulty. Mr. Fu did not explain this discrepancy.

29. If the 15<sup>th</sup>-floor isolator was missing, then Mr. Amali's disconnected speaker is unrelated to the isolator issue. Even if the isolator was faulty or damaged, I find it unlikely that Mr. Amali's speaker disconnection caused the issue.
30. The strata relies on a written statement from strata council president SZ about a conversation with Mr. Fu after unsuccessful facilitation in the CRT proceedings. SZ said Mr. Fu advised that the isolator issue "was more likely than not" attributable to Mr. Amali's actions. I place no weight on this evidence because it is hearsay, meaning a statement made outside the CRT proceeding that a party seeks to use to prove its truth. The CRT may accept hearsay evidence, but I find no reasonable basis to do so here. The statement SZ attributes to Mr. Fu is inconsistent with Mr. Fu's March 29, 2021 email in which he was specifically asked to attribute the repair costs to unit 1503 and did not attribute to unit 1503 any costs associated with isolators. Further, in Mr. Fu's undated written report explaining the work Viking did, he did suggest that there was a link between the isolators and Mr. Amali's tampering with his fire safety speaker. I find if it was Mr. Fu's opinion that Mr. Amali caused the isolator failure, he would have said so in either his written report or follow-up email. Alternatively, the strata could have asked him to provide another statement about the isolator. On balance, I find Mr. Amali did not cause any isolator damage and is not responsible for the isolator replacement.
31. Mr. Amali did not specifically dispute Mr. Fu's evidence of the hours Viking spent in unit 1503 repairing the speaker. It is undisputed that unit 1503 includes 3 speakers that required investigation and Viking had to return to inspect the bedroom speaker because the bedroom was initially occupied. Therefore, I accept Mr. Fu's evidence of the repair cost attributable to unit 1503, with one exception. For reasons that are not

explained, Mr. Fu added a \$50 truck charge in his March 29, 2021 email. There was no truck charge on the August 31, 2000 invoice, so I do not allow the truck charge. I find Mr. Amali responsible for 6 hours of labour on May 4, 2000, 1 hour on July 7, and the replacement speaker. The total is \$949.50. With GST, the total is \$996.98.

32. Mr. Amali asked, if he was unsuccessful in having the chargeback removed, for an order that the strata reduce the chargeback to what he was responsible for. In the circumstances, I find the appropriate order is for the strata to reduce the chargeback of Mr. Amali's strata lot account to \$996.98, which is the amount for which I find Mr. Amali is responsible.

## **CRT FEES AND EXPENSES**

33. 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. Mr. Amali was partially successful, so I order the strata to reimburse Mr. Amali \$112.50 for one-half of his \$225 CRT fees. Neither party claimed any dispute-related expenses, so I order none.
34. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Amali.

## **ORDERS**

35. I order the strata to:
- a. Immediately reduce the chargeback on Mr. Amali's strata lot account to \$996.98.
  - b. Within 14 days of the date of this order, pay Mr. Amali \$112.50 as reimbursement for CRT fees.
36. Mr. Amali is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.



37. 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.

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Micah Carmody, Tribunal Member