



# Civil Resolution Tribunal

Date Issued: October 15, 2021

File: ST-2020-007983

Type: Strata

Civil Resolution Tribunal

Indexed as: *Mohammed v. The Owners, Strata Plan LMS 2260*, 2021 BCCRT 1099

B E T W E E N :

MUBARAK ALI MOHAMMED

**APPLICANT**

A N D :

The Owners, Strata Plan LMS 2260

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell, Vice Chair

## INTRODUCTION

1. This strata property dispute is about a chargeback for door repairs.
2. The applicant, Mubarak Ali Mohammed, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 2260 (strata).

3. Mr. Mohammed said the strata wrongfully charged him \$767.74 to repair the front door of his strata lot. Mr. Mohammed said he had the door repaired privately, and the strata should not have charged him. He requests an order that he is not responsible to pay the chargeback, and an order that the strata stop harassing him about the payment.
4. The strata says that after the strata lot door was breached to allow first responders to attend a medical emergency inside the strata lot, it had to call a contractor, Tarcott Construction (Tarcott), to secure the door. The strata says Mr. Mohammed is responsible for Tarcott's charge.
5. Mr. Mohammed is self-represented in this dispute. The strata is represented by a strata 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). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
7. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be

admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

9. Under CRTA section 123, 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.
10. Both parties provided late evidence in this dispute. Bearing in mind the CRT's mandate of flexibility, under the CRT's rules I allow the late evidence and consider it in my reasons below. Since both parties had the opportunity to respond to the late evidence, I find there is no unfairness in accepting it.

## **ISSUE**

11. Must Mr. Mohammed reimburse the strata for door repairs?

## **REASONS AND ANALYSIS**

12. In a civil claim like this one, Mr. Mohammed, as applicant, must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.
13. The strata filed consolidated bylaws with the Land Title Office (LTO) in 2004. I find that these are the bylaws relevant to this dispute. The strata filed further amendments with the LTO after 2004, which I find are not relevant to the issue in this dispute.
14. The parties agree that on December 4, 2017, first responders damaged the front door of Mr. Mohammed's strata lot in order to attend to a medical emergency inside.
15. The strata says that after the door was damaged, it had to call Tarcott to temporarily repair the door in order to secure it. Mr. Mohammed says that either this work was not done, that it was unnecessary, or that Tarcott's fee was unreasonably high.

16. Tarcott's November 20, 2018 invoice confirms it charged the strata \$767.74 for temporary door repairs performed on December 4, 2017. Tarcott's subsequent email confirms that after medical personnel damaged the door to enter the strata lot, Tarcott temporarily repaired the door, and provided an estimate to replace the door. Tarcott's email says the invoice was delayed due to "back and forth" with Mr. Mohammed, who eventually declined to have Tarcott replace the door.
17. Correspondence from the strata shows that it charged Tarcott's \$767.74 invoice to Mr. Mohammed's strata lot account.
18. The parties made submissions about who had keys for the door after it was repaired, and why Mr. Mohammed refused to have Tarcott replace the door. I find that none of this is determinative of whether Mr. Mohammed must pay for the December 4, 2017 temporary door repairs.
19. For the following reasons, I find Mr. Mohammed must reimburse the strata \$767.74 for the temporary door repairs.
20. The strata says, and Mr. Mohammed does not dispute, that the door was common property. *Strata Property Act* section 72 and strata bylaw 10 make the strata responsible to repair and maintain common property. However, bylaw 39(12) says that in the event of an emergency emanating from a strata lot whose occupant cannot be contacted, access for protection of common property or safety may be gained by force at the owner's expense.
21. Mr. Mohammed does not dispute that it was necessary for the emergency personnel to breach the door to enter his strata lot on December 4, 2017. This is confirmed in Tarcott's email, and witness statements provided by the strata indicate that police, firefighters, and ambulance attendants were present during or immediately after the incident. Based on this evidence, and since Mr. Mohammed has not asserted otherwise, I find there was an emergency in Mr. Mohammed's strata lot at a time when he could not be contacted, so it was necessary to gain entry by force to protect safety of the individual having a medical emergency inside. So, I find that under bylaw 39(12), Mr. Mohammed is responsible to pay for the temporary door repairs.

22. Mr. Mohammed submits that all or some of the repairs were not necessary. However, I find he has not proven this point. The photos provided by the strata show that the door and locking mechanism were damaged, and in need of repair. Mr. Mohammed submitted that he later had the door replaced at his own expense, but since Tarcott's invoice does not include door replacement, I find that is not determinative. I find that Mr. Mohammed, who bears the burden of proof as the applicant in this dispute, has not proven that the temporary door repairs performed on December 4, 2017 were unnecessary.
23. Mr. Mohammed also submits that Tarcott charged too much. However, I find he has not provided evidence to support that assertion, such as an estimate from another contractor. So, I find Mr. Mohammed's assertion that Tarcott's charges were unreasonably high is unproven. Also, bylaw 39(14) does not require the strata to find a reasonably priced solution in an emergency situation. The strata says it called Tarcott because its worker was on site at the time doing another job. I find that was reasonable given that the lock was broken and the strata lot vacant after the ambulance left.
24. In conclusion, based on bylaw 39(12), I find Mr. Mohammed is responsible to pay Tarcott's invoice. I therefore dismiss Mr. Mohammed's claims. The strata did not file a counterclaim, so I make no order for payment.

## **CRT FEES AND EXPENSES**

25. Under CRTA section 49 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.
26. The strata is the successful party. It paid no CRT fees and claims no dispute-related expenses. I therefore do not award them to any party.
27. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Mr. Mohammed.

## **ORDER**

28. I dismiss Mr. Mohammed's claims, and this dispute.

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Kate Campbell, Vice Chair