



# Civil Resolution Tribunal

Date Issued: November 26, 2021

File: ST-2020-008732

Type: Strata

Civil Resolution Tribunal

Indexed as: *Ben v. The Owners, Strata Plan LMS 2371*, 2021 BCCRT 1252

**BETWEEN:**

LI BEN

**APPLICANT**

**AND:**

The Owners, Strata Plan LMS 2371

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. This dispute is about chargebacks for strata lot water damage repairs.
2. The applicant, Li Ben, owns strata lot 240 (SL240) in the respondent strata corporation, The Owners, Strata Plan LMS 2371 (strata). Water leaked into the ceiling of unit 1910, directly below SL240, multiple times. Li Ben says the strata improperly

charged her strata lot account \$5,452.40 for water leak repairs. Li Ben requests an order requiring the strata to remove chargebacks totalling \$4,626.74 from her strata lot account. She also claims a \$826.56 refund for a partial payment that has allegedly been deducted from her bank account.

3. The strata denies Li Ben's claims. The strata says that its chargebacks were valid under the *Strata Property Act* (SPA) and the strata's bylaws because the leak originated from SL240's toilet.
4. Li Ben is self-represented in this dispute. The strata is represented by a strata council member.

## **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). 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.
6. 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.
7. 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.

8. 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.

## **ISSUES**

9. The issues in this dispute are:
  - a. Are the strata leak repair chargebacks valid? If not, what is the remedy?
  - b. Must the strata refund money deducted from Li Ben's bank account? If so, how much does the strata owe Li Ben?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, as the applicant Li Ben must prove her claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. The strata was created in 1996 and operates under the SPA.
12. The parties agree that water leaked into the ceiling of unit 1910, directly below SL240, on June 19, 2020.
13. The strata hired Avenue Restoration Services Ltd. (Avenue) to provide water restoration services on June 19, 2020. Avenue sent the strata an August 10, 2020 invoice for \$1,835.40.
14. Li Ben was notified of the water leak into unit 1910 on July 2, 2020 and she hired Pacific West Plumbing Heating Air Conditioning Ltd. (Pacific West) for plumbing repairs. Pacific West replaced the toilet seal in SL240 on July 3, 2020. Li Ben says she paid Pacific West's invoice for this work.
15. The strata hired Pacific West Mechanical Ltd. to perform further water leak repairs to SL240. Though the contractor's business name differs from the name provided by Li

Ben, I infer that both parties are referring to the same contractor since the invoices provided by both parties have the same business address. As such, I do not find this discrepancy to be significant.

16. Pacific West investigated and repaired water leaks at SL240's toilet on July 8, July 13, July 14, July 30, August 5 and August 11, 2020. Pacific West's July 8, 2020 invoice says the toilet flange was not sitting properly. Pacific West says it reinstalled the toilet and replaced the wax seal again. Pacific West's invoices also say that it replaced SL240's damaged toilet flange on July 13 and 14, 2020. Pacific West's invoices say this involved chipping out concrete under SL240 and removing pipe to repair and replace the broken toilet flange. Li Ben says the leak originated from the building's pipes because Pacific West worked on the building pipes. However, based on its invoices, I find that Pacific West's work is consistent with its stated toilet flange repair in SL240. In the absence of contrary evidence, I find that the water leaks repaired by Pacific West in the July 8 and July 29, 2020 invoices originated from SL240's toilet seal and flange.
17. Li Ben replaced her toilet on approximately July 22, 2020, after Pacific West's toilet flange repairs. The strata says that the July 30, 2020 leak originated from Li Ben's July 2020 toilet installation, which Li Ben denies. The strata provided a supporting a July 2, 2021 email from Clare Gilbert, director of Pacific West. However, since Ms. Gilbert did not describe her plumbing expertise, I am unable to find that the Ms. Gilbert has sufficient experience to provide an expert plumbing opinion under CRT rule 8.3 and I have not considered her opinion. Regardless, I find it unnecessary to determine the source of July 30, 2020 water leak because I find that the related chargeback is invalid anyway for the reasons discussed below.

***Are the strata leak repair chargebacks valid?***

18. The strata's property managers sent Li Ben the following chargeback letters relating to the water leaks which Li Ben asks to cancel:
  - a. An August 24, 2020 chargeback for \$262.82 for Pacific West's July 8, 2020 invoice.

- b. An August 24, 2020 chargeback for \$2,575.18 for Pacific West's July 20, 2020 invoice.
  - c. A September 8, 2020 chargeback for \$1,835.40 for Avenue's August 10, 2020 invoice.
  - d. A September 8, 2020 chargeback for \$543.38 for Pacific West's August 11, 2020 invoice.
19. The strata provided corresponding invoices supporting each of the chargeback letters.
20. Li Ben also requests the cancellation of an additional \$10.63 allegedly charged by the strata on February 15, 2021. However, Li Ben did not provide a copy of a chargeback letter relating to this charge or any submissions explaining the nature of this alleged charge. Further, the strata did not provide any evidence or submissions relating to this alleged \$10.63 charge. Without further evidence or explanation, I find that Li Ben has not proved that the strata assessed this charge against her strata lot account or that this alleged charge was improper. So, I dismiss her claim relating to this charge.
21. The strata does not say that Li Ben agreed to pay for Pacific West's and Avenue's work. However, the strata argues that its chargebacks are authorized by SPA section 158(1). This provision says strata corporations may sue an owner in order to recover the deductible portion of an insurance claim if the owner is responsible for the loss or damage that gave rise to the claim. However, the strata says that it did not submit an insurance claim because the losses were less than the insurance deductible and the damage was not covered under the policy. Without an insurance claim, I find that SPA section 158(1) does not apply.
22. The strata also says that bylaws 3, 4, 12, 17 and 21 authorize it to charge Li Ben's strata lot account for Pacific West's and Avenue's invoices. The strata also refers to the Standard Bylaws. However, I find that the strata repealed and replaced its previous bylaws by filing amended bylaws at the Land Title Office (LTO) in 2006. So,

I find that the Standard Bylaws do not apply to the strata. The strata also subsequently filed additional bylaw amendments. Of these, I find that only the amendments filed at the LTO on February 6, 2020, adding bylaw 21, are relevant to this dispute.

23. The strata's bylaw 3(1)(iii) requires an owner to repair and maintain their strata lot and keep it in a state of good repair, other than reasonable wear and tear. The strata, on the other hand, is responsible under section 72 of the SPA and its bylaws to maintain and repair the common property and common assets.
24. Even if Li Ben is responsible under bylaw 3(1)(iii) to repair maintain the toilet, I find the strata must have a legal basis to charge Li Ben's strata lot account for its contractors' investigation and repair work.
25. Prior CRT decisions have concluded that a strata corporation is not entitled to charge costs it has incurred to an owner's strata lot account without an agreement or enforceable bylaw or rule that creates the debt: see *Rintoul et al v. The Owners, Strata Plan KAS 2428*, 2019 BCCRT 1007 at paragraphs 33 to 38, citing *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512; *The Owners, Strata Plan LMS1092 v. Souki*, 2021 BCCRT 55 paragraphs 23 to 28; and *Sanchez v. The Owners, Strata Plan BCS 4281*, 2021 BCCRT 26 at paragraphs 21 to 23. Although CRT decisions are not binding on me, I find the reasoning in these CRT decisions persuasive and I adopt it.
26. In support of its chargebacks, the strata refers to bylaw 4 which sets out the strata's repair obligations. However, bylaw 4 does not authorize the strata to impose chargebacks against strata lots so I find that it does not apply here.
27. Next, I considered bylaw 12 that says the strata can recover from an owner in an action for debt money which the strata is required to expend as a result of an act or omission by an owner or an infraction or violation of the bylaws or rules. I also considered SPA section 133(2), which permits a strata corporation to charge an owner for the reasonable costs of remedying a bylaw contravention.
28. There is no evidence that the toilet seal or flange failed from an action or omission of Li Ben or a lack of reasonable maintenance. So, I find that the evidence does not

establish that Li Ben breached bylaw 3(1)(iii) or that the strata is entitled to recovery under bylaw 12 or SPA section 133(2) in relation to the initial water leaks. However, the strata could impose a chargeback for Pacific West's \$543.38 invoice relating to the July 30, 2020 leak under bylaw 12 or SPA section 133(2) if that leak resulted from Li Ben's toilet installation. However, to do so the strata must also fulfill the procedural requirements of SPA section 135(1). This is discussed further below.

29. The strata refers also refers to bylaw 17(c) which requires an owner to reimburse or indemnify the strata for expenses and damages caused by the owner, its agents, servants, "workmen", invitees and licensees from a strata lot renovation. There is no suggestion that Li Ben performed any renovations other than the toilet replacement on approximately July 22, 2020. Only the strata's September 8, 2020 chargeback for Pacific West's \$543.38 invoice relates to water leak repairs from Li Ben's toilet installation. So, the strata could also impose a chargeback for Pacific West's \$543.38 invoice relating to the July 30, 2020 leak under bylaw 17(c) if the leak was related to the toilet installation. However, as mentioned above, the strata must also comply with SPA section 135(1).
30. 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.
31. In *Terry* at paragraph 28, the Court of Appeal wrote that the strata must identify the bylaw or rule contravened. The strata's August and September 2020 chargeback letter do not cite any bylaws. The strata also provided an August 24, 2020 notice of decision letter that says the strata held a hearing at an unspecified date and imposed an unspecified bylaw fine for contravening bylaws 1(a) and 2(1). However, the bylaws quoted in this letter are inconsistent with the strata's bylaws. For the above reasons, I find that the strata has not notified Li Ben of the bylaw or rule contravened. As such,

I find that the strata has not complied with the procedural requirements set out in section 135. So, I find that charges listed in the property manager's August 24, 2020 and September 8, 2020 letters are not valid and the strata must remove them from Li Ben's strata lot account.

***Must the strata refund money deducted from Li Ben's bank account?***

32. JL sent the strata's property manager a November 3, 2020 email on Li Ben's behalf saying that the strata removed \$579.41 from Li Ben's bank account without her permission on November 2, 2020. Li Ben does not explain the discrepancy between this amount and the \$826.56 refund claimed in her application for dispute resolution.
33. The strata says that the Li Ben authorized the strata to automatically deduct strata fees, fines and chargebacks from her bank account, up to \$1,000 monthly. Further, the strata says that it deducted \$1,000 from Li Ben's bank account, consisting of \$420.59 for strata fees and \$579.41 as partial payment of the chargebacks, which Li Ben does not dispute. Based on these undisputed submissions, and JL's November 3, 2020 email, I find that the strata removed \$579.41 from Li Ben's bank account on November 2, 2020 as partial payment of the chargebacks.
34. Since I have determined above that the charges listed in the property manager's August 24, 2020 and September 8, 2020 chargeback letters are not valid, I find that Li Ben is entitled to a \$579.41 refund of the payments deducted from her bank account.

**CRT FEES, EXPENSES AND INTEREST**

35. Under section 4 9 of the CRTA, and the CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I therefore order the strata to reimburse Li Ben for CRT fees of \$225. Li Ben did not claim reimbursement of dispute-related expenses.



36. The *Court Order Interest Act* (COIA) applies to the CRT. Li Ben is entitled to prejudgment interest on the \$579.41 refund from November 2, 2020, the date that the strata withdrew this amount from Li Ben's bank account, to the date of this decision. This equals \$2.78.
37. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Li Ben.

## **ORDERS**

38. Within 15 days of the date of this decision, I order the strata to remove the charges listed in the property manager's August 24, 2020 and September 8, 2020 letters from Li Ben's strata lot account.
39. Within 30 days of the date of this decision, I order the strata to pay Li Ben \$807.19, broken down as follows:
  - a. \$579.41 as a refund of chargeback payments,
  - b. \$2.78 for prejudgment COIA interest, and
  - c. \$225.00 for CRT fees.
40. Li Ben is also entitled to post-judgment interest under the COIA.
41. 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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Richard McAndrew, Tribunal Member