



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS 2583 v. Boyle*, 2021 BCCRT 1285

B E T W E E N :

The Owners, Strata Plan BCS 2583

APPLICANT

A N D :

JULIA BOYLE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This strata property dispute is about damage to a parkade gate.

2. The applicant, The Owners, Strata Plan BCS 2583 (strata), is a strata corporation operating under the *Strata Property Act* (SPA). The respondent, Julia Boyle, owns a strata lot in the strata.
3. The strata says that a vehicle driven by Ms. Boyle's guest, BD, collided with the exterior overhead gate to the strata's parkade. The strata says the collision was caused by improper operation of the gate fob. The strata requests an order that Ms. Boyle pay \$6,354.15 for gate replacement and emergency call out expenses.
4. Ms. Boyle says BD's vehicle did not collide with the gate, and she is not responsible to pay any repair expenses. Ms. Boyle says the incident was caused by a faulty gate sensor. Ms. Boyle says she was a passenger in the vehicle at the time, and BD was driving. Ms. Boyle says they followed another car through the open gate, with no fob use required, and then the gate hit the mid-roof of BD's car because a faulty sensor failed to prevent the gate from coming down as they drove under it.
5. The strata is represented by a strata council member in this dispute. Ms. Boyle is self-represented.

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.

ISSUE

10. Must Ms. Boyle pay the strata \$6,345.15 for gate repair expenses?

REASONS AND ANALYSIS

11. In a civil claim like this one, the strata, as applicant, must prove its 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.
12. The strata filed a set of bylaws with the Land Title Office (LTO) in October 2007 which replaced the Standard Bylaws in the SPA. The strata has filed numerous bylaw amendments since then. The 2007 bylaws plus all the filed amendments make up the strata’s bylaws. I discuss the specific bylaws applicable to this dispute below.
13. The strata’s dispute application says the gate incident occurred on July 6, 2021, but in its submissions the strata says it happened on July 5, 2020. I find the evidence, including an email from Ms. Boyle reporting the incident to the strata and a repair invoice, establish that the gate incident occurred on July 5, 2020. I infer the reference to July 6, 2021 in the dispute application is an error.

14. I find the garage gate is a common asset of the strata corporation, located on common property. I make this finding because the parties do not argue otherwise, and the strata plan shows it is installed at the entrance to a common property parkade.
15. Under SPA section 72, the strata is generally responsible to repair and maintain common assets and common property. However, in this dispute the strata says Ms. Boyle is responsible for the gate repair expenses because the damage was caused by improper fob operation by Ms. Boyle or BD. In its submissions and earlier correspondence to Ms. Boyle imposing and seeking payment of the chargebacks, the strata relies on several bylaws to support its position.
16. In its CRT submissions, the strata relies in part on bylaw 44(o), which was filed in the LTO in January 2010. Bylaw 44(o) says a resident must not enter or exit the parking garage without using their own fob for access.
17. I find Ms. Boyle is not liable to reimburse the strata for gate repairs based on bylaw 44(o). SPA section 133 says the strata may do what is reasonably necessary to remedy a bylaw contravention by doing work on common property, and may require the person who may be fined for the bylaw contravention to pay for that work. However, in order to charge an owner for repair costs under SPA section 133, a strata corporation must first give written notice, as required under SPA section 135.
18. SPA section 135 says a strata corporation may not require a person to pay the costs of remedying a contravention unless, among other things, the strata corporation has given the owner the particulars of the complaint in writing and a reasonable opportunity to answer the complaint.
19. In *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, the BC Court of Appeal said that SPA section 135 must be strictly followed. While *Terry* dealt with bylaw fines, rather than imposed costs for remedying a contravention, the section 135 requirements are the same for both types of charges. Therefore, I find the analysis applies equally to repair costs as to bylaw fines.

20. I find that none of the strata's letters to Ms. Boyle mention bylaw 44(o). In *Terry*, the Court of Appeal specifically considered what constituted sufficient particulars for the purpose of section 135. In paragraph 28, the Court said:

...an owner or tenant who may be subject to a fine must be given notice that the strata corporation is contemplating the imposition of a fine for the alleged contravention of **an identified bylaw or rule**, and particulars sufficient to call to the attention of the owner or tenant the contravention at issue (my emphasis added).

21. *Terry* is a binding precedent, and I must follow it. I also agree with that reasoning. Without knowing what bylaw has allegedly been breached, an owner cannot have a reasonable opportunity to respond to a complaint about a bylaw breach. Since the strata did not give Ms. Boyle notice of an alleged breach of bylaw 44(o) before imposing the chargeback, I find she is not liable to pay based on bylaw 44(o).

22. In its correspondence to Ms. Boyle, the strata cited bylaws 4(a) and (b). I paraphrase these bylaws as follows:

- Bylaw 4(a) – an owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the responsibility of a strata or a section.
- Bylaw 4(b) – an owner who has the use of limited common property must repair and maintain it, except for limited common property that is the responsibility of the strata or a section.

23. I find that Ms. Boyle is not liable to pay for gate repairs under bylaws 4(a) and (b), because the gate is not part of a strata lot, and is not limited common property. I note that limited common property is defined in SPA section 1(1) to mean common property assigned to the exclusive use of one or more strata lot owners.

24. The strata's letters to Ms. Boyle also cited bylaws 5(b) and (d). In summary, the relevant parts of these bylaws say:

- Bylaw 5(b) – A resident 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 or a section must repair and maintain.
- Bylaw 5(d) – to the extent not reimbursed through insurance, an owner will indemnify the strata from the expense of any maintenance, repair, or replacement rendered necessary to common property by the owner's act, omission, negligence or carelessness, or by that of an owner's visitors or guests.

25. The strata cited bylaws 5(b) and (d) in its letters to Ms. Boyle imposing the chargeback and demanding payment. These letters are dated August 10, 2020 and January 14, 2021. However, I find the evidence before me shows that the strata repealed bylaw (d) by filing a bylaw amendment with the LTO on March 11, 2020. That amendment says bylaw 5(d) is deleted "in its entirety", and is replaced with a new bylaw 50.
26. Thus, the strata imposed the chargebacks on Ms. Boyle based on a bylaw that was no longer in force at the time of the July 2020 gate incident. I therefore find that the strata was not entitled to impose the chargebacks.
27. Bylaw 50 was in force in July 2020 and afterwards. Bylaw 50(b) says an owner will indemnify the strata from the expense of any maintenance, repair, or replacement of common property for which the owner or their guests is responsible. It may be that Ms. Boyle could be liable under bylaw 50. However, since the strata did not mention that bylaw in any of its correspondence, or in its CRT dispute application or submissions, I find it would be unreasonable and procedurally unfair to order payment based on bylaw 50(b). I find this is particularly true since the strata's correspondence to Ms. Boyle never mentioned bylaw 50(b), and instead specifically cited bylaw 5(d) without indicating it had already been repealed.
28. The parties provided evidence and submissions about whether the gate sensors were operating correctly, and whether it was reasonable for Ms. Boyle and BD to follow another car into the parkade without using the fob (which Ms. Boyle and BD both admit in their evidence). However, I find those factors are not determinative of this

dispute, as the strata relied on either inapplicable or repealed bylaws as justification for the repair chargeback.

29. For these reasons, I find the strata's claim for repair reimbursement must fail, and I dismiss it.

CRT FEES AND EXPENSES

30. 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.

31. Ms. Boyle is the successful party. She paid no CRT fees and claims no dispute-related expenses. I therefore do not award them to any party.

32. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Boyle.

ORDER

33. I dismiss the strata's claims and this dispute.

Kate Campbell, Vice Chair