



# Civil Resolution Tribunal

Date Issued: December 10, 2021

File: ST-2021-003445

Type: Strata

Civil Resolution Tribunal

Indexed as: *Owen v. The Owners, Strata Plan LMS 1495*, 2021 BCCRT 1299

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

TERRANCE OWEN

**APPLICANT**

**A N D :**

The Owners, Strata Plan LMS 1495

**RESPONDENT**

**A N D :**

TERRANCE OWEN

**RESPONDENT BY COUNTERCLAIM**

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## **REASONS FOR DECISION**

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Tribunal Member:

Roy Ho

## INTRODUCTION

1. This strata property dispute is about payment of repair costs after a water leak.
2. The applicant, Terrance Owen, jointly owns strata lot 52 (SL52) with PG in the respondent strata corporation, The Owners, Strata Plan LMS 1495 (strata). PG is not a party to this dispute. The strata is the applicant in the counterclaim.
3. Mr. Owen says the strata wrongly charged him \$24,109.44 for water leak repairs. He admits there was a leak from SL52 on October 20, 2019, which damaged common property and 2 other strata lots. Mr. Owen's insurance paid the first \$12,844.14 of the repair costs, but the strata charged him an additional \$24,311.14. The strata did not make a claim on its insurance since the damage was under its \$35,000 deductible.
4. Mr. Owen says the strata failed to notify him that it had increased its insurance deductible from \$10,000 to \$35,000. Mr. Owen says this lack of notification means he did not know that he should have updated his personal insurance to cover the new deductible amount. He says the strata's lack of notification was significantly unfair. Mr. Owen asks for an order that the strata reverse the charge of \$24,109.44 on his strata lot account. It is unclear why Mr. Owen claims \$201.70 less than what the strata charged him, but I find nothing turns on this given my conclusion below.
5. The strata says the charge is valid because it provided proper notice to Mr. Owen. In the counterclaim, the strata asks for an order that Mr. Owen pays \$24,311.14 for the chargeback to SL52 for the repairs, \$1,000 for administrative expenses, and \$2,000 for legal fees.
6. Mr. Owen is self-represented and the strata is represented by a strata council member.
7. For the reasons set out below, I dismiss Mr. Owen's claim and order him to pay the strata the \$24,311.14 charge on his strata lot account, the \$1,000 administrative expense, and the strata's \$2,000 claim for legal fees.

## **JURISDICTION AND PROCEDURE**

8. 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.
9. 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.
10. 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.
11. 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**

12. The issues in this dispute are:
  - a. Did the strata inform Mr. Owen of the increase to the strata's insurance deductible?
  - b. Was the strata's manner in providing notice to Mr. Owen significantly unfair, and if so, what is the appropriate remedy?

- c. Must the strata reverse the \$24,109.44 water leak repair charge on Mr. Owen's strata lot account?
- d. Is the strata entitled to recover \$24,311.14 for the water leak repairs from Mr. Owen?
- e. Is the strata entitled to recover a \$1,000 administrative expense from Mr. Owen?
- f. Is the strata entitled to recover \$2,000 in legal fees from Mr. Owen?

## **EVIDENCE AND ANALYSIS**

13. In a civil claim like this one, Mr. Owen, as the applicant, must prove his claim on a balance of probabilities (meaning "more likely than not"). The strata bears this same burden in its counterclaim. I have read all the parties' evidence and submissions, but I only refer to what is necessary to explain my decision below.

### ***Background***

- 14. The following background facts are undisputed.
- 15. The strata filed a set of amended bylaws with the Land Title Office in December 2012, which replaced previous bylaws. The strata also filed further bylaw amendments which are not relevant to this dispute. I discuss the relevant bylaws in my decision below.
- 16. On September 27, 2019, Mr. Owen and PG became SL52's registered owners.
- 17. On October 10, 2019, the strata renewed its insurance policy, which was to take effect on October 15, 2019. As part of that renewal, the strata's insurance deductible for water damage increased from \$10,000 to \$35,000.
- 18. The strata notified the owners about the insurance deductible increase on October 10 and 11, 2019 by posting notices on the strata's online platform, TownSQ, and in

the mailroom. The strata also notified all owners registered on TownSQ by email. Mr. Owen was not a TownSQ registrant but PG was.

19. As noted, on October 20, 2019, water undisputedly leaked from SL52 causing damage to common property and 2 other strata lots. It is somewhat unclear whether the leak's cause was from SL52's dishwasher supply tap or line. However, I find nothing turns on this distinction since the parties agree that the leak's source originated from within SL52. At the time, Mr. Owen's home insurance policy only provided a maximum of \$10,000 deductible coverage for water damage.
20. The strata invoiced Mr. Owen \$12,844.14 for initial repairs, which his insurer paid in full waiving the excess amount. After all the repairs, the strata invoiced Mr. Owen's strata lot account the balance of \$24,311.14, which Mr. Owen's insurer did not cover. Mr. Owen disagrees with this charge and asks to have \$24,109.44 reversed from SL52's account.

***Did the strata inform Mr. Owen of the increase to the strata's insurance deductible?***

21. Mr. Owen says that the strata failed to provide adequate notice to him about the insurance deductible increase. He says if not for the strata's lack of notice he would have increased his strata lot's insurance coverage, thus avoiding the strata's \$24,311.14 chargeback.
22. The strata says that it took all reasonable steps to inform owners about the deductible change in 2019, including SL52's owners. The strata also says that Mr. Owen ought to have been alive to the possibility of an insurance deductible increase from the 2018 annual general meeting (AGM). I agree with the strata for the reasons that follow.
23. Section 154 of the *Strata Property Act* (SPA) requires the strata to review the adequacy of its insurance coverage on an annual basis, and to report on its insurance coverage at each AGM. Under section 154(c), it says that a strata corporation must "inform owners and tenants as soon as feasible of any material change in the strata corporation's insurance coverage, including any increase in an insurance deductible.

24. Mr. Owen says that the strata did not notify him “as soon as feasible” about a material change to the strata’s insurance coverage, as required under SPA section 154(c). The strata says it met its obligation under section 154, since at the time, the strata was only required to report to owners about insurance matters at each AGM. I agree. Section 154(c) was a recent amendment to section 154, which did not receive royal assent until August 14, 2020. The strata’s insurance deductible change and the notice it provided were before section 154(c) came into effect. So, I find section 154(c) does not apply to this dispute. Even if section 154(c) applied, I find the strata provided the notice “as soon as feasible”. The undisputed evidence shows that the strata was shopping for lower insurance deductibles from August 15 to early October 2019. The strata found an insurance provider and renewed its insurance on October 10, 2019 and notified the owners on the same day. Therefore, I find the strata provided notice “as soon as feasible” to the owners.
25. Section 61 of the SPA lists the ways a strata corporation can send a “notice or other record or document that the strata corporation is required or permitted to give to a person under [the SPA]”. Section 61(1)(a) says that if a person has provided the strata with an address outside the strata plan for receiving notices, the strata must either leave the notice with the person, or mail it to the provided address. There is no evidence or suggestion that Mr. Owen or PG had provided the strata with an address outside the strata plan for receiving notices, therefore, I find that they did not.
26. The strata submitted in evidence its property manager AG’s affidavit with exhibits. AG says when an owner’s email is added to their system, “an email invitation to join TownSQ is automatically generated and sent to the owner”. He says that TownSQ allows the strata to “blast out mass emails to all registered owners when there is important information to share”. AG states that his office sent the notice about the insurance deductible increase to all owners registered on TownSQ on October 10, 2019. I accept this is accurate because AG submitted in evidence records confirming all TownSQ registrants who had checked the insurance deductible increase email notification. AG also submitted in evidence PG’s registration record. Mr. Owen does not allege that PG’s registered email was incorrect, and from Mr. Owen’s records, it shows it is the same. Therefore, I find that PG’s email was correct.

27. Mr. Owen argues that instead of email, the strata should have given notice to him in person under SPA section 61(1)(b)(i) or placed it under SL52's door under section 61(1)(b)(iii). However, section 61(1)(b)(vii) says that if a person has not provided the strata with an address outside the strata for receiving notices and records, like Mr. Owen and PG here, the strata may send notice by emailing them to an email address provided by the person for that purpose. Given that PG registered their email on TownSQ, I find the strata was permitted to send notice by email under SPA section 61(1)(b)(vii). Therefore, I find that the strata did not need to send a duplicate notice to SL52's owners by giving it to them in person or placing it under their door. While under section 61(3) says an owner is not deemed to have received the email until 4 days later, I find nothing turns on this since the deemed notice service date of October 14, 2021 was 6 days before SL52's water leak on October 20, 2021.
28. However, Mr. Owen denies that PG received any email from the strata. He says that he made numerous searches with terms and names related to the strata, but he did not find any email related to the insurance deductible increase. I note that Mr. Owen did not say which mailboxes he searched, including whether he also searched PG's junk and deleted mailboxes for the strata's email. There is also no evidence from PG about whether PG had received the strata's email, given that it was PG's email account.
29. Mr. Owen says that the strata has not produced a record of a sent email to PG. The strata does not explain the absence of this record. However, I decline to make an adverse inference against the strata in this circumstance. Mr. Owen bears the burden of proof, and I am not satisfied that PG did not receive the strata's email, particularly where it is unclear whether Mr. Owen checked PG's junk and deleted mailboxes. Mr. Owen also did not provide evidence from PG confirming that PG did not receive the strata's email, which is central to this issue. So, I find that the strata has provided sufficient evidence to show that it had emailed all TownSQ registrants, including PG.
30. Mr. Owen also argues that had the strata not lost his owner's registration form with his contact information, the strata could have entered his information into its system and he would have received an email inviting him to join TownSQ. I infer that Mr.

Owen is saying that he would have joined TownSQ had he received the strata's registration email invite. However, I reject this argument for 4 reasons. First, I find it is speculative and unproven that the strata lost Mr. Owen's registration form. Second, I find nothing turns on Mr. Owen registering on TownSQ because the joint owner PG undisputedly did. Third, Mr. Owen undisputedly received an information package from the strata which also invited him to register on TownSQ. Fourth, previous strata council minutes, which Mr. Owen undisputedly received at the time of SL52's purchase, notified owners to register on TownSQ.

31. Based on the evidence before me, on balance, I find the strata informed Mr. Owen on October 10, 2019 about the increase to the strata's insurance deductible from \$10,000 to \$35,000. Therefore, I find that the strata does not need to reverse the \$24,109.44 water leak repair charge on Mr. Owen's strata lot account.

***Was the strata's manner in providing notice to Mr. Owen significantly unfair?***

32. The CRT has jurisdiction over significantly unfair strata actions under CRTA section 123(2), which has the same legal test as cases under SPA section 164 (*The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164). Significantly unfair means conduct that is oppressive in that it is burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in bad faith, or conduct that is unfairly prejudicial in that it is unjust or inequitable (*Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, affirmed in 2003 BCCA 126 and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173).
33. In *Kunzler*, the Court of Appeal confirmed that an owner's expectations could be considered a relevant factor in assessing significant unfairness. In considering an owner's reasonable expectations, the following test from *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164 applies: (a) What was the affected owner's expectation? (b) Was that expectation objectively reasonable? (c) Did the strata violate the expectation with a significantly unfair action or decision?
34. I find Mr. Owen's expectation that the strata would provide SL52's owners with additional notice beyond emailing it was not objectively reasonable. First, this is



because PG was a TownSQ registrant, and as noted, I am satisfied that the strata sent notice to PG's email on October 10, 2019. Second, the evidence shows that other owners registered on TownSQ also received the notice in the same manner. Third, Mr. Owen admits that he was not living in SL52 at the time and "was visiting occasionally to pick up mail". In such a circumstance, I am not satisfied that the strata providing physical notice to Mr. Owen would have made any difference.

35. Mr. Owen suggests that the importance of registering on TownSQ was not clearly communicated by the strata since TownSQ's description seemed "more like a social media platform rather than a site requiring mandatory registration to receive notices". However, I am not persuaded by this assertion. This is because at the end of all strata council meeting minutes, it stated that owners can access "important documents" on the TownSQ. As noted, it is undisputed that Mr. Owen received a copy of previous council meeting minutes. The strata's 2018 AGM, which Mr. Owen also undisputedly received at the time of SL52's purchase, also said the same thing. Therefore, I find the strata sufficiently and fairly communicated to the owners, including Mr. Owen, the importance of registering on TownSQ.
36. I find that the strata's manner of providing notice was not burdensome, harsh, wrongful, unfair, in bad faith, unjust or otherwise unfairly prejudicial conduct by the strata. I find the strata's manner in providing notice was reasonable, practical, and efficient. The strata's manner of providing notice was clearly effective and expedient, as shown by the fact that other owners registered on TownSQ had received the notice. I note that at the time, the strata was only required to provide notice of insurance changes at the next AGM, but nevertheless diligently and promptly provided notice about the insurance deductible change to the owners before then. I also note that the September 19, 2019 council minutes specifically notified the owners that there will be an "expected rise in premiums" for strata insurance. Based on the evidence before me, I find the strata did not treat Mr. Owen significantly unfairly.

***Is the strata entitled to recover \$24,311.14 for the water leak repairs?***

37. I find the strata's bylaws permits the strata to recover payment from SL52's owners for water leak repairs. The relevant bylaws are as follows:

- Bylaw 2.1(b) – an owner or occupant is responsible to “keep such articles as dishwashers, washing machines, dryers, kitchen and bathroom faucets, shut-offs, drains, toilets and other fixtures and appliances in good condition, and shall be responsible for loss or damage caused as a result of the failure, breakage, or malfunction of the said articles and appliances”.
- Bylaw 7.1 – an owner of a strata lot will be responsible for any loss or damage, however caused, to a strata lot, or common property or assets, which arises totally from within his/her strata lot, up to the amount of the insurance deductible on the insurance policy maintained by the strata. The owner will reimburse the strata for the cost of repairing or remedying the loss or damage up to the amount of the deductible.
- Bylaw 7.2 – “For the purpose of this bylaw, any costs for which a strata lot owner is responsible shall be considered as an expense chargeable to the owner and shall be added to and become a part of the assessment of that owner”.

38. The strata provided SL52's site visit report and all the invoices associated with the repairs from the water damage. Based on the records before me, I am satisfied that the strata incurred repair costs of \$24,311.14 from SL52's water leak.

39. Mr. Owen says that because the strata contacted him late about the water leak, he could not attend SL52 earlier to turn off the hot water valve, resulting in more widespread water damage. The strata says that there is no evidence that sooner communication would have made a difference in the damage caused. I agree with the strata. There is no evidence about at what point in time shutting off the hot water valve would have prevented further damage. There is also no evidence when the leak was reported and when Mr. Owen received the strata's phone call to infer whether

there was any delay. I find Mr. Owen's assertion speculative and unproven, so I do not accept it.

40. Based on the strata's bylaws 2.1(b), 7.1, and 7.2, and repair records in evidence, I find that the strata is entitled to recover the \$24,311.14 for water leak repairs from the owners of SL52. I order Mr. Owen to pay this amount to the strata.

***Is the strata entitled to recover a \$1,000 administrative expense from Mr. Owen?***

41. The strata asks for an order that Mr. Owen pays \$1,000 for administrative expenses, which it says was for additional management fees its management company charged. Mr. Owen disagrees with this charge relying on CRT rule 9.5(3)(b). However, the rule Mr. Owen relies on relates to a party's recovery of legal fees, which I find does not apply to management fees.
42. In the nonbinding but persuasive decision of *Shen v. The Owners, Strata Plan LMS 1005*, 2020 BCCRT 63, at paragraph 28, citing *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512 and *Rintoul et al v. The Owners, Strata Plan KAS 2428*, 2019 BCCRT 1007, the vice chair found that a strata is not entitled to chargeback costs it had incurred to an owner without an enforceable bylaw or rule that creates the debt.
43. Here, the strata has such a bylaw. Under bylaw 7.3, it says:

An owner who fails to pay the cost of repair or remedying the loss or damage when due shall reimburse the strata corporation and save it harmless against any and all costs and expenses required to collect such reimbursement, whether by court action or other means and including council member or management costs associated with lost time from employment, strata management costs and legal costs, comprised of legal fees, taxes, disbursement and other related expenses, as between a solicitor and his own client or on a full indemnity basis.

44. The strata submitted a signed contract with the management company setting out a rate of \$100 per hour for litigation support in CRT disputes, and an invoice showing that the management company charged the strata 10 hours for “Administration of CRT action to recover debt to strata [SL52]”, totalling \$1,000. Clause 5.2(d) of the contract states that litigation support includes “collection of outstanding fees and assessments, assisting with the preparation of legal actions, responses, research and acting as a witness”. Based on the records and evidence before me, I find that AG substantially provided this service to the strata. I find that the rate the management company charged was reasonable given the management company charged the lowest rate under its contract with the strata. I also find that the time the management company charged was reasonable, given the evidence AG provided for this dispute.
45. Based on the strata’s bylaw, the above authorities, and the strata’s contract with the management company and the invoice in evidence, I find that the strata is entitled to chargeback the management fee to Mr. Owen. I order Mr. Owen to pay \$1,000 to the strata for administrative expense.

***Is the strata entitled to recover \$2,000 in legal fees?***

46. The strata asks for an order that Mr. Owen pays \$2,000 for legal fees it had incurred to collect the repair costs for the water damage. In support of its counterclaim, the strata provided invoices from its lawyer detailing the work completed. The total invoices provided in evidence exceed the strata’s claimed \$2,000. However, the strata did not amend the Dispute Notice to reflect this increased amount. I find it would be procedurally unfair to allow a larger claim at this later stage. I find the strata is limited to its original \$2,000 claim for legal fees.
47. Mr. Owen disputes this claim relying on CRT rule 9.5(3)(b), which says that the CRT will not order reimbursement of a lawyer’s fees unless there are extraordinary circumstances. The strata says there are extraordinary circumstances here because “all the owners in the Strata Corporation are bound by the bylaws to pay legal costs of enforcement of bylaws”. I agree.

48. Under CRT rule 9.5(4)(d), it states I may consider any other factors I consider appropriate to award legal fees. In this case, the strata's bylaw 7.3 specifically allows it to charge an owner for legal fees incurred by the strata in correcting or curing bylaw infractions. I find this specific understanding in place with the ownership is a relevant factor. I say this because the owners passed such a bylaw in anticipation that such a cost would not be borne by the ownership. I find that the fact the owners contemplated this event to mitigate the ownership's costs is sufficiently extraordinary to award legal fees to the strata.
49. Under sections 123(1)(c) and 121(1)(d) of the CRTA, the CRT has authority to order payment of money owed under a strata bylaw. Based on the invoices in evidence before me, I am satisfied that the strata incurred \$2,000 in legal fees under bylaw 7.3. For all the above reasons, I order Mr. Owen to pay the strata \$2,000 for the legal fees it had incurred.

## **CRT FEES, EXPENSES AND INTEREST**

50. 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. The strata was successful in this dispute, and so I find it is entitled to reimbursement of \$125 in CRT fees it had paid. I dismiss Mr. Owen's claim for reimbursement of CRT fees, as he was not successful in this dispute. Neither party claimed any dispute-related expenses.
51. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to prejudgment interest on the \$25,311.14 for water leak repairs, \$1,000 for administrative expense, and \$2,000 on legal fees. I calculate prejudgement interest for the water leak repairs from July 9, 2020, the date of the strata's invoice to SL52's account, to the date of this decision. This equals \$161.83. There is no evidence about when the strata paid for its administrative expense and legal fees, so I calculate prejudgement interest for these amounts from June 1, 2021, the date of the strata's

counterclaim, to the date of this decision. This equals \$7.12. In sum, the total prejudgement interest equals \$168.95.

52. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners of SL52.

## **ORDERS**

53. I order that within 30 days of this decision, Mr. Owen pays the strata a total of \$28,605.09, broken down as follows:

- a. \$28,311.14 for water leak repairs, administrative expense, and legal fees,
- b. \$168.95 in COIA interest, and
- c. \$125 in CRT fees.

54. The strata is also entitled to post-judgment interest under the COIA, as applicable.

55. Mr. Owen's claims are dismissed.

56. 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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Roy Ho, Tribunal Member