



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Wu v. The Owners, Strata Plan LMS 461*, 2021 BCCRT 1304

B E T W E E N :

MEI WU

APPLICANT

A N D :

The Owners, Strata Plan LMS 461

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about who should pay for a replacement boiler and associated repairs. The applicant, Mei Wu, owns strata lot 46 (SL46) in the respondent strata corporation, The Owners, Strata Plan LMS 461 (strata).

2. Mei Wu is self-represented, and asked to be referred to by her full name in this dispute. The strata is represented by a strata council member.
3. Mei Wu claims \$7,616 as reimbursement for a replacement boiler and associated repairs.
4. Mei Wu says a common property B-vent that ran from SL46's furnace room wall up to SL46's roof (B vent) was missing a vent cap. She says rainwater damaged the B-vent. She says the damaged B vent prevented SL46's boiler from venting properly and caused carbon monoxide to build up in SL46's furnace room. Mei Wu says she and the strata agreed that replacing the boiler and installing a smaller flexible vent within the existing damaged B vent was the best option to fix the B vent. Mei Wu says the other option to fix the B vent was more costly and involved the strata replacing the B vent itself. Mei Wu says the strata should reimburse her for the replacement boiler and associated repairs because she incurred those costs on the strata's behalf, to avoid the more costly B vent repairs. The strata disputes this and says the only repairs completed were repairs within SL46, which are Mei Wu's responsibility under the bylaws.
5. Mei Wu also says the strata was negligent because it failed to properly maintain the common property B vent, and failed to detect the missing B vent cap. Mei Wu says the strata is responsible for the replacement boiler and associated repairs on that basis. The strata disputes this and says it regularly maintained the roof and was not negligent in failing to detect the missing B vent cap. The strata also says Mei Wu's actions contributed to the damaged B vent.

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.

Amount claimed in Dispute Notice

10. In her submissions, Mei Wu asked the CRT to increase her claim from the \$4,999 claimed in her dispute application to the full cost of repairs, totalling \$7,616. Mei Wu said she mistakenly thought the CRT's monetary limit for strata disputes under the CRTA was \$5,000. I accept this submission because the CRT's monetary limit for small claims disputes under CRTA section 118 and the regulations is \$5,000, but the CRTA does not prescribe a monetary limit under CRTA section 123 for strata disputes.
11. The strata opposes Mei Wu's requested increase because it says Mei Wu made no efforts to amend the Dispute Notice, and because a February 17, 2021 letter from Mei Wu's lawyer indicated that Mei Wu was seeking \$4,900 in reimbursement for the costs saved by the strata in not having to replace the B vent itself. The strata says it is inappropriate for Mei Wu to reframe her claim at this stage for the full amount of

the repairs. However, the strata does not dispute that Mei Wu was mistaken about the CRT's monetary limit for strata disputes.

12. In a November 13, 2020 email, Mei Wu asked the strata to reimburse her the full invoiced amount. The November 9, 2020 invoice in evidence totals \$7,616. Given this evidence and Mei Wu's submissions, and despite the February 17, 2021 letter from Mei Wu's lawyer seeking payment of a lesser amount, I find it is not procedurally unfair to allow Mei Wu to claim the full amount of the invoice. I find that Mei Wu is not seeking to re-frame her claim, as alleged by the strata. I find the nature of Mei Wu's claim has not changed, only the amount. Although this dispute has already entered the CRT's decision process, I find the strata was aware that Mei Wu was seeking reimbursement for the repair costs and knew the full amount of the repair costs since November 13, 2020.
13. While there is some prejudice to the strata in increasing the monetary value of Mei Wu's claim, there would be greater prejudice to Mei Wu if I were to decide this dispute without considering her full claim. So, given that I accept that Mei Wu claimed only \$4,999 in her dispute application because she was under the mistaken belief that the CRT did not have jurisdiction to consider a claim for any amount in excess of \$5,000, and in consideration of CRT rules 1.1 and 1.2, I allow Mei Wu to claim \$7,616 for the full amount of the invoice in this dispute despite her failure to amend the Dispute Notice to reflect this amount.

ISSUE

14. The issue in this dispute is whether the strata must reimburse Mei Wu \$7,616 in repair costs.

EVIDENCE AND ANALYSIS

15. In a civil claim such as this one, Mei Wu must prove her claim on a balance of probabilities (meaning "more likely than not"). While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

16. The strata was created in 1998. The strata plan filed in the Land Title Office (LTO) shows that SL46 is a duplex. Mei Wu has owned SL46 since 2016. The strata filed consolidated bylaws in the LTO on November 20, 2018. I find these are the applicable bylaws to this dispute.
17. It is undisputed that Mei Wu installed a new hydronic boiler in SL46 in 2016. A 2016 invoice from ABA Plumbing & Heating (ABA) in evidence confirms this. It is also undisputed that on October 15, 2020, the carbon monoxide detector in SL46's furnace room went off, and Mei Wu engaged an ABA technician to investigate this issue.
18. Mei Wu says an ABA technician, TZ, attended SL46 on October 16, 2020. Mei Wu says TZ replaced a "corroded flue" and connected it to the B vent, but did not inspect or suspect the B vent was a problem at that time. The strata does not dispute this. An October 16, 2020 photograph shows a metal flue with "2020 Oct" written on it, connected to the boiler. I find that a new flue was installed and connected to SL46's existing boiler on October 16, 2020. However, Mei Wu does not claim reimbursement for the flue in this dispute so I have not addressed this further.
19. Mei Wu says TZ returned on November 2, 2020 to check the carbon monoxide levels and the B vent. Mei Wu says TZ discovered low levels of carbon monoxide and a large amount of rust and debris collecting at the bottom of the B vent. Mei Wu also says that a strata council member met with TZ and Mei Wu. The strata does not dispute this.
20. The meeting details were explained by Mei Wu and set out in the Dispute Notice and a February 17, 2021 letter from Mei Wu's lawyer to the strata, which was submitted in evidence by the strata. Mei Wu says during this meeting, TZ presented two repair options.
21. Mei Wu says the first repair option was to keep the original boiler and replace the B vent, which would involve removing and replacing the corroded B vent and B vent cap, inspecting and repairing the roof membrane and flashing if required, removing and re-installing drywall in the vertical B vent chase, furnace room and attic as required. Mei Wu says she could not live in SL46 while this work was completed

because she would not have heat or hot water. Mei Wu says the second repair option was to replace the original boiler with a combi-boiler, clean the B vent and install a “Inno-Flue” vent system inside the B-vent. Mei Wu says this second repair option did not require any drywall repair, and would only take one day. Mei Wu says the strata agreed that she had no option but to proceed with the second option, which was faster and more affordable. The strata admits that a strata council member attended at SL46 on November 2, 2020, but did specifically address the meeting with TZ and Mei Wu in its submissions, and did not provide a statement from the strata council member who attended this meeting. Given that the strata did not provide a statement from the strata council member who attended the meeting, submitted the February 17, 2021 letter in evidence, and did not specifically dispute this meeting or the details of the meeting set out in the letter and explained by Mei Wu, I find the meeting occurred as set out above.

22. A November 2, 2020 email from TZ to Mei Wu confirmed that they inspected the boiler and venting and found the B vent cap was missing. TZ said rain falling into the B vent cooled down the flue, causing condensation and corrosion of the flue, B vent, and boiler. TZ said the boiler and B vent were not safe to use, and recommended replacing the boiler with a “high efficiency combi boiler which need a plastic vent pipes running through the existing vent to the roof as what I did in unit 139” (reproduced as written). TZ also said that doing so meant they would not have to replace the corroded vent pipes which would cause a lot of damage to the wall and roof. The strata does not dispute this evidence. Although TZ did not state their qualifications as required by the CRT rules, here I find it is appropriate to waive their requirement to do so under CRT rule 1.2(2). I find I can rely on this email as expert evidence because I find it is undisputed that the TZ was qualified to assess the condition of the boiler and vents and provide recommendations for their repair and maintenance.
23. It is undisputed that Mei Wu sent TZ’s email to the strata the same day. In her email to the strata, Mei Wu said TZ attended and turned off her gas and did an inspection. She said TZ noticed the underlying cause of the carbon monoxide problem, and she hoped the problem could be solved soon because the weather was getting colder.

24. On November 3, 2021, the strata responded to Mei Wu and told her to inform “her contractor” to proceed with the replacement boiler. The strata also said “after analysing the information you provided some of the costs may have to be borne by you”. The strata also advised Mei Wu to have her contractor install the B vent cap to prevent further damages from inclement weather, and advised they would meet in person with Mei Wu the next day.
25. The emails in evidence indicate that further discussions about the repairs occurred between the strata and Mei Wu both in person and by email on November 3 and 4, 2020. On November 4, 2020, the strata emailed Mei Wu and told her that it had not, at any time, implied that the strata would pay for any of the costs related to the boiler replacement, and advised that Mei Wu would be reasonable to cover the costs. The strata also advised that once the repairs were complete, Mei Wu had to provide the strata with “the required information” to review and determine how much, if any of the costs would be reimbursed to Mei Wu.
26. I find these emails show the strata and Mei Wu disputed who would be responsible for the repair costs. However, I also find the emails show the parties agreed that Mei Wu should complete the repairs recommended by the ABA technician to resolve the B vent damage and carbon monoxide build up in SL46.
27. Mei Wu also submitted a statement from a Trend Mechanical Services Ltd. (Trend) technician, GP. GP’s statement confirms that they were hired by Mei Wu to replace the boiler, and did so on November 9, 2020. GP says after investigating the venting pipework connected to the boiler, they discovered corrosion and scale build-up in the B vent, and found the B vent cap was missing. GP said Mei Wu needed to replace the existing boiler because the missing B vent caused water to leak inside the vent and blocked the vent with debris, causing carbon monoxide to build up. GP says they estimated that only repairing the B vent would be too costly, due to corrosion, and “would require wall demo on 1st and second floors, new B-vent to the roof, C-vent to boiler, mid efficient boiler due to plugged heat exchanger, drywall repair and tapping, painting” (reproduced as written). GP did not state their qualifications as required by the CRT rules. However, as with TZ, here I find it is appropriate to waive their

requirement to do so under CRT rule 1.2(2). I find I can rely on this statement as expert evidence because I find it is undisputed that GP completed the repairs and is qualified on that basis to assess the condition of the boiler and vents and provide recommendations for their repair and maintenance.

28. On November 13, 2020, Mei Wu emailed the strata and attached a November 11, 2020 Trend invoice for \$7,616. In her email, Mei Wu says she involuntarily replaced the whole boiler system because the water dripping down the vents caused the whole system to rust, and asked the strata to reimburse her for the entire invoice. The invoice shows that Trend replaced the existing boiler and indirect water tank with a combination boiler, “installed B-vent termination and flex thru the chimney for exhaust”, and added a “new gas regulator and flex line”, along with associated repairs. The strata does not dispute the invoice or any of the repairs listed in the invoice.
29. On December 21, 2020, the strata sent a letter to Mei Wu denying her request for compensation and reimbursement of any costs she incurred. In the letter, the strata advised that it had contacted Mei Wu’s contractor, who confirmed that the carbon monoxide detector was beeping in SL46 because the B vent pipe was partially blocked from flue gas residue and debris, and the boiler exhaust was no longer able to properly vent through the flue pipe to exit outside. The strata said the contractor confirmed that the heat exchanger on the boiler was not damaged and was operational, but could not be used because of the damaged B-vent pipe (my emphasis added). The strata also confirmed it authorized Mei Wu to install the new boiler, but said it did not agree to share in any costs. I infer that the strata is referring to TZ, as they are the ABA technician that was initially called to assess the carbon monoxide issue in SL46, and undisputedly discussed the issue with the strata. TZ’s evidence in this letter is hearsay evidence. However, the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law, including hearsay evidence. Here, I find the hearsay statements are relevant, reliable and admissible because they confirm and mirror TZ’s email already in evidence, and because they

are undisputed by the parties in any event. I find this letter confirms that Mei Wu's boiler was not damaged, but could not be used as a result of the damaged B vent.

Must the strata reimburse Mei Wu \$7,616 in repair costs?

Repair and maintenance obligations

30. SPA section 72 says that the strata must repair and maintain common property and assets.
31. Bylaw 2(1) in division 1 of the bylaws says an owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the strata's responsibility under the bylaws.
32. Bylaw 1 in division 2 of the bylaws says the strata must repair and maintain, among other things, chimneys, stairs, balconies and other things attached to the exterior of a building.
33. I find it is undisputed that the B-vent and B-vent cap are common property. I find the strata is obligated to repair and maintain the B vent under the SPA and the bylaws. I also find that B vent was damaged and caused exhaust from SL46's boiler to escape into SL46, rather than venting outside through the B vent, as it was supposed to do.
34. It is undisputed that the boiler itself was located within SL46, and is not common property. I find Mei Wu is obligated to repair and maintain SL46's boiler under the bylaws. However, part of the issue in this dispute is whether the replacement boiler was required to repair the existing boiler in SL46, or to repair the B vent.
35. As noted above, Mei Wu says the strata agreed that the best option to repair the B vent was for Mei Wu to replace her boiler and install a flexible vent inside the damaged B vent to allow for proper venting. Mei Wu says the other option to fix the B vent involved the strata replacing the B vent itself. The strata does not dispute that it authorized Mei Wu to replace her boiler. The strata did not provide any explanation for why it authorized the replacement boiler instead of replacing the B vent. Rather,

the strata says only that Mei Wu made repairs within SL46 that made repairs to common property unnecessary.

36. Mei Wu says the strata never advised her it would repair the B vent and did not suggest any alternatives to fix the B vent if she did not complete the boiler replacement. As noted, the strata did not make any submissions on any other repair options for the damaged B vent and carbon monoxide issue in SL46.

Did the strata act in a significantly unfair manner?

37. Mei Wu says the strata failed to properly advise her about how the B vent would be fixed, and saved itself the cost of repairing the B vent by agreeing that Mei Wu should replace her boiler. I infer that Mei Wu suggests that it was significantly unfair for the strata to agree to Mei Wu replacing her boiler to fix the B vent and the accumulation of carbon monoxide in SL46, and then refuse to pay for any of the costs associated with doing so.
38. SPA section 164 sets out the BC Supreme Court's authority to remedy significantly unfair actions. The CRT has jurisdiction over significantly unfair actions under CRTA section 123(2), which has the same legal test as cases under SPA section 164. See *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164. Significantly unfair conduct is conduct that is 1) oppressive in that it is burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in bad faith, or 2) conduct that is unfairly prejudicial in that it is unjust or inequitable: *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173 at paragraph 88.
39. In *Kunzler*, the Court of Appeal confirmed that an owner's expectations should be considered as a relevant factor. I therefore use the test from *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, to consider the following factors:
- a. What is or was the expectation of the affected owner?
 - b. Was that expectation on the part of the owner objectively reasonable?
 - c. If so, was the expectation violated by an action that was significantly unfair?

40. In submissions Mei Wu says the strata approving the boiler replacement as the most appropriate repair and then refusing to reimburse her any of the repair costs resulted in the strata being unjustly enriched because it did not have to complete any B vent repairs. I find Mei Wu's expectation was that the strata should have either advised her that it would repair the B vent itself, which was undisputedly common property, or agreed to reimburse her for the costs of fixing the B vent at the time the repairs were completed.
41. I find Mei Wu's expectation objectively reasonable in the circumstances. While the strata is not obligated to repair the interior of SL 46 unless the strata is negligent, the strata is responsible for common property repairs, including repairing the B vent. I find it was reasonable for Mei Wu to expect that the strata would reimburse her for the costs associated with the B vent repair, despite the fact that the repairs completed involved replacing the boiler and inserting pipes into the B vent, rather than physically fixing the existing B vent. Although the B vent itself was not replaced, I find the evidence shows the repairs was undertaken to retrofit the B vent so it would vent properly. The strata itself confirmed that the SL46's boiler was functioning properly and did not need to be replaced. So, I find the boiler only needed to be replaced in order to accommodate the B vent retrofit.
42. I find it significant that Mei Wu did not have heat or hot water while this issue was being dealt with in November 2020. As a result, I find it was necessary for the appropriate repairs to be completed quickly.
43. I find that the strata should have either advised Mei Wu that it would take steps to repair the B vent itself, or agreed to pay for costs of retrofitting the B vent. None of the correspondence from the strata to Mei Wu prior to the repairs being completed advised her that the B vent was common property, and the strata was responsible for repairing it. None of the correspondence shows that the strata made any indication that it would take independent steps to repair the B vent, so Mei Wu could use her boiler without further carbon monoxide build up in SL46. The strata did not make any submissions about this.

44. I find the evidence shows that the strata agreed that the boiler replacement and B vent retrofit was the most appropriate manner to fix the damaged B vent, authorized Mei Wu to complete the repairs, and then left her with all the costs. I find that doing so was significantly unfair to Mei Wu.
45. Mei Wu asks for an order that the strata reimburse her \$7,616 for the repairs. I find that the strata reimbursing Mei Wu for a portion of the repair costs is appropriate to remedy the strata's significantly unfair action. Although I have allowed Mei Wu to claim the full invoice amount above, I do not find it is appropriate to award the full invoice amount. I say this because Mei Wu undisputedly got a new boiler when she completed the repairs. I find allowing the full \$7,616 for replacement boiler and associated repairs would amount to betterment for Mei Wu, meaning it would put her in a better position than if the strata had completed the B vent repair at its own expense. This would be unfair to the strata. The cost to install the original boiler in 2016 was \$4,200. The invoice for the replacement boiler and associated repairs in evidence did not break down the repair costs, so I do not know the cost of the replacement boiler itself, and I cannot determine whether the replacement boiler was more or less expensive than the original boiler. However, I find the replacement boiler was new, and I find it more likely than not that the new boiler was in a better working condition than the original boiler would have been in at the time Mei Wu replaced it. On a judgment basis, I allow \$6,000 for the replacement boiler and associated repairs.

Negligence

46. Mei Wu also alleges that the strata was negligent because it failed to maintain, repair, and monitor the roof, and as a result did not promptly detect that the B-vent cap was missing. If the strata is negligent, it may then be liable for resulting damage to owners' strata lots: *Kayne v. LMS 2374*, 2013 BCSC 51 and *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231.
47. The test for negligence is set out by the Supreme Court of Canada in *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3. In order to succeed in a negligence claim, Mei Wu must prove 1) the strata owed Mei Wu a duty of care, 2)

the strata breached the standard of care, which is reasonableness in this case, 3) Mei Wu sustained a loss, and 4) the loss was caused by the strata's negligence.

48. The strata does not dispute that it owed Mei Wu a duty of care as a strata lot owner, however, the strata says it did not breach the standard of care. The strata says it conducted regular maintenance of the gutters and roof. The strata provided a statement from RB, its building maintenance contractor. In their statement, RB confirmed their staff are told to "keep an eye out for deficiencies" on every job site. RB confirmed their staff go onto the roof to clean the gutters and roof valleys, and are constantly on the lookout for anything out of the ordinary. RB says they reviewed their messages and emails and did not find any report of SL46 missing a vent cap. The strata also provided a summary of invoices from the building maintenance contractor that shows the gutters were cleaned in January 2018, April 2019, and December 2019, before the missing vent cap was discovered by Mei Wu on November 2, 2020. Mei Wu says the next gutter cleaning was not until April 16, 2021. Mei Wu says this shows the strata was not conducting the appropriate maintenance.
49. I find the standard of care in the circumstances is beyond the knowledge and experience of an ordinary person. In such cases, the party asserting a breach of the standard of care must often provide expert evidence to establish the standard of care (*Bergen v. Guliker*, 2015 BCCA 283). Mei Wu provided no evidence, expert or otherwise, to establish the maintenance standards for the strata, or to support a finding that performing gutter and roof maintenance at a 16-month time interval would fall below the strata's standard of care. There is also no evidence to determine when B vent cap first went missing. So, I find Mei Wu has not met her burden of proving the strata breached the standard of care and I find the strata was not negligent in maintaining the roof or in failing to detect the missing B vent cap. Therefore, I find that the strata is not responsible for any further claimed repair costs due to any negligence.

Boiler maintenance

50. The strata also argued that Mei Wu failed to maintain her boiler since 2016 and this contributed to the extent of the B-vent's damage. Mei Wu disputes this. She says the

boiler was functioning properly, and says the B-vent damage was caused by the missing B vent cap. As the party making the allegation, the strata bears the burden of proving it. The strata says it recommended owners have their boiler serviced annually. This is not disputed, and is confirmed by strata council meeting minutes in evidence. The strata also submitted the manual for SL46's original boiler, which recommends annual service by a qualified technician. The strata says had Mei Wu hired a professional plumber to maintain the boiler, which they say includes cleaning the heat exchanger system in the boiler, the plumber would have noticed debris within the B vent and this would have led to further investigation. The strata provided no expert evidence to support this submission, which I find is required. In addition, the B vent is undisputedly common property and the strata has the obligation to maintain it under the SPA and the bylaws. For these reasons, I find there is not sufficient evidence to show Mei Wu caused or contributed to damaged B vent by not having her boiler professionally maintained. I note that the strata has not filed a counterclaim or claimed a set off for Mei Wu's alleged failure to maintain her boiler in any event.

CRT FEES, EXPENSES AND INTEREST

51. 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 therefore order the strata to reimburse Mei Wu for her CRT fees, which total \$225. Mei Wu did not claim any dispute-related expenses.
52. The *Court Order Interest Act* (COIA) applies to the CRT. Mei Wu is entitled to prejudgment interest on the \$6,000 award for repair costs from November 13, 2020, the date of the invoice, to the date of this decision. This equals \$29.29.
53. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mei Wu.

ORDERS

54. Within 30 days of the date of this decision, I order the strata to pay Mei Wu \$6,254.29, broken down as follows:

- a. \$6,000 for the replacement boiler and associated repair costs,
- b. \$29.29 in pre-judgment interest under the COIA,
- c. \$225 in CRT fees.

55. Mei Wu is also entitled to post-judgment interest under the COIA.

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.

Leah Volkers, Tribunal Member