



# Civil Resolution Tribunal

Date Issued: March 25, 2022

File: ST-2021-000992

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan K 325 v. Blackall*, 2022 BCCRT 341

**BETWEEN:**

The Owners, Strata Plan K 325

**APPLICANT**

**AND:**

RONALD JAY BLACKALL

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. This dispute is mainly about payment of strata fees.
2. The respondent, Ronald Jay Blackall, owns a strata lot in the applicant strata corporation The Owners, Strata Plan K 325 (strata). The strata says Mr. Blackall owes

\$6,848.61, primarily in strata fees. The strata seeks orders that Mr. Blackall pay that alleged debt and promptly pay his strata fees going forward.

3. Mr. Blackall says he is reluctant to pay strata fees based on how the strata has been spending money. He says he makes payments when he can but says expecting full payment is unreasonable during a pandemic when people are struggling to pay their bills.
4. Mr. Blackall represents himself. 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.
9. CRT documents incorrectly show the name of the respondent as The Owners, Strata Plan, KAS 325. Based on section 2 of the *Strata Property Act* (SPA), the correct legal name of the strata is The Owners, Strata Plan K 325 as shown on the strata plan. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the strata's name above.

## **ISSUES**

10. The issues in this dispute are:
  - a. Is Mr. Blackall required to pay the strata \$6,848.61, or some other amount, for outstanding strata fees?
  - b. Should the CRT order Mr. Blackall to promptly pay strata fees going forward?

## **EVIDENCE AND ANALYSIS**

11. As the applicant in this civil proceeding, the strata must prove its claim on a balance of probabilities, meaning more likely than not. While I have read all the evidence and submissions, I only refer to what is necessary to explain my decision. Mr. Blackall did not submit evidence but had the opportunity to do so.
12. The strata was created in 1980 and includes 20 residential strata lots. Mr. Blackall has owned strata lot 7 since 1998.
13. The strata repealed all previous bylaws and replaced them with a complete set of bylaws in 2009. Bylaw 1 addresses payment of strata fees. It says owners must pay strata fees on or before the first day of the month to which the strata fees relate. Failure to pay entitles the strata to register a lien against the corresponding strata lot.

Bylaw 1(2) says owners must provide the strata or its agent with 12 consecutive monthly post-dated cheques each fiscal year, or written authorization for monthly automatic debit from the owner's bank account.

14. Bylaw 1(5) says owners must pay interest of 10% per year compounded annually and calculated on a monthly basis from the date strata fees were due until the last day of the month in which they are paid. There are other interest rates amounts payable other than strata fees.
15. Bylaw 1(6) says payments received on overdue accounts will be applied in a specific order. Strata fees are paid last after fines, other amounts, and interest.

### ***Strata fees and other amounts***

16. As noted, the strata claims \$6,848.61 in this dispute. The strata's account ledger for Mr. Blackall shows that amount as the balance owing as of March 1, 2021. While I acknowledge that the strata provided the ledger up to September 1, 2021, I find it would be procedurally unfair to consider strata fees and other amounts owing beyond what the strata claimed in this dispute given the strata did not seek to amend the Dispute Notice. So, I have limited my consideration to the debt claimed as of March 1, 2021. While the debt claimed is primarily outstanding strata fees, there are also interest charges and fees associated with registering a lien on strata lot 7. I find the interest charges are authorized by bylaw 1(5) and the lien-related fees are authorized by SPA section 118. That provision says reasonable legal costs, land title and court registry fees, and other reasonable disbursements may be added to the amount owing. Mr. Blackall does not challenge any of these fees or the interest charges.
17. Mr. Blackall's submissions are brief. Although he says the strata's "information is incorrect," he does not elaborate. He says this in the context of criticizing the strata council and strata manger's failure to acknowledge their alleged "wrong doings", so I do not interpret it as an argument that his account ledger is incorrect. Even if it were intended that way, Mr. Blackall provided no evidence or submissions about how the ledger is incorrect. He does not directly dispute the amount the strata claims. He says he will slowly pay down his debt when he can "generate some more revenue."

18. Mr. Blackall says he lives outside of BC and he intends to obtain a written statement from a person who lives in BC. Parties are advised in the CRT process of the importance of providing evidence to support their positions, so it is not enough for Mr. Blackall to say he intends to obtain evidence. In any event, it is not clear what relevant evidence this person would provide that Mr. Blackall could not have provided himself.
19. SPA section 92 says owners must contribute to the strata's common expenses by paying strata fees. Mr. Blackall says his reluctance to pay strata fees is based on how the strata has been spending money. In *Stewart v. The Owners, Strata Plan KAS 2601*, 2020 BCSC 809, at paragraph 106, the BC Supreme Court held that the payment of strata fees is mandatory for all strata owners under the SPA and cannot be waived or withheld in protest of strata actions. In a different decision, the same court also held that difficult financial circumstances, like those Mr. Blackall asserts without providing supporting evidence, do not relieve owners of their obligation to pay strata fees (see *The Owners, Strata Plan NW57 v Lambert*, 2019 BCSC 64). Consistent with the SPA and these court decisions, I find Mr. Blackall is required to pay strata fees and cannot withhold them for any reason.
20. Although Mr. Blackall did not raise a limitation defence, I considered whether the strata's claims are barred by the *Limitation Act*, which applies to CRT disputes. A limitation period is a period within which a person may bring a claim. The basic limitation period under section 6 of the *Limitation Act* is 2 years from the date a claim is discovered. If that period expires, the right to bring the claim ends, even if the claim would have otherwise been successful. CRTA section 13.1 says the limitation period stops running after an applicant requests the CRT to resolve a claim.
21. I find the current version of the *Limitation Act*, which came into force on June 1, 2013, applies to the strata's claims. This is because I find the strata claims for strata fees and other amounts that became due from August 2017 onwards. August 2017 was the last time Mr. Blackall's account had a zero or negative balance. Previous CRT decisions have found that each monthly strata fee charge is a new claim for the purposes of the *Limitation Act* (see e.g., *The Owners, Strata Plan VIS6386 v. Verbin*,

2021 BCCRT 482). Although CRT decisions are not binding on me, I agree with the reasoning in these decisions and apply it here.

22. The strata filed its application for dispute resolution on February 24, 2021. On its face, the strata's claims to some of the strata fees and other amounts from before February 24, 2019 appear to be of time. However, section 24 of the *Limitation Act* says that a limitation period may be extended if a person acknowledges liability before the expiry of the limitation period. Payment or partial payment of a "liquidated sum" is considered an acknowledgment of liability. A liquidated sum is one which is already determined or capable of being determined as a matter of arithmetic (see *Sawry v. Roshanagh et al*, 2006 BCSC 470). I find the strata fees and other charges on Mr. Blackall's ledger are undisputed and constitute a liquidated sum.
23. Mr. Blackall made 8 partial payments totalling \$7,500 between February 26, 2018, and January 13, 2021. Under bylaw 1(6), the strata was required to apply to partial payments to outstanding fines, then interest, then other amounts, then strata fees. On balance, I find these partial payments extended the limitation period such that none of the strata's claims are out of time under the *Limitation Act*. I note that the onus is on Mr. Blackall to show which, if any, of the strata's claims for strata fees and other amounts are out of time, and I find he has not done so.
24. I find the strata has proven its claim for \$6,848.61. I order Mr. Blackall to pay this amount, which will make his strata lot account current to March 1, 2021. Nothing in this decision prevents the strata from filing another CRT dispute for payment of strata fees and other charges accrued after March 1, 2021, should that be necessary.

***Should the CRT order Mr. Blackall to promptly pay strata fees going forward?***

25. As noted above, strata fees are mandatory and cannot be withheld in protest of strata actions or for financial difficulty. Given Mr. Blackall's history of failing to pay on time and the strata's efforts to obtain payment, I find it appropriate to make an order that seeks to ensure Mr. Blackall will promptly pay his strata fees. In accordance with bylaw 1(2), I order Mr. Blackall to, within 14 days, provide the strata with written authorization for monthly automatic debit from Mr. Blackall's bank account or post-

dated cheques dated for the first day of each month for the remainder of the strata's current fiscal year, and 12 post-dated cheques at the start of each fiscal year thereafter.

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

26. 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. The strata was successful and paid \$250 in CRT fees. The strata did not claim any dispute-related expenses, so I order Mr. Blackall to pay the strata \$250. Mr. Blackall did not pay any CRT fees or claim dispute-related expenses.
27. The strata is entitled to prejudgment interest under bylaw 1(5) on the \$6,848.61 debt confirmed in this decision, from March 1, 2022 to the date of this decision. I calculate this to be \$603.72.
28. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Blackall.

## **ORDERS**

29. I order Mr. Blackall, within 14 days of the date of this order, to provide the strata with written authorization for monthly automatic debit from Mr. Blackall's bank account or post-dated cheques dated for the first day of each month for the remainder of the strata's current fiscal year, and 12 post-dated cheques at the start of each fiscal year thereafter.
30. I order Mr. Blackall, within 30 days of the date of this order, to pay the strata a total of \$7,702.33, broken down as follows:
  - a. \$6,848.61 in debt to March 1, 2021,
  - b. \$603.72 in pre-judgment interest under the strata's bylaws, and
  - c. \$250.00 in CRT fees.

31. The strata is entitled to post-judgment interest under the *Court Order Interest Act* as applicable.
32. 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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Micah Carmody, Tribunal Member