



# Civil Resolution Tribunal

Date Issued: March 28, 2022

File: ST-2021-006517

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Smith v. The Owners, Strata Plan BCS815*, 2022 BCCRT 303

BETWEEN:

DYLAN SMITH

**APPLICANT**

AND:

The Owners, Strata Plan BCS815 and CRAIG DOHERTY

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This is a summary decision dismissing this dispute because no party had paid the Civil Resolution Tribunal (CRT) decision fee. This dispute is about enforcement of bylaws in connection with a meat smoker. The applicant, Dylan Smith, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS815 (strata).

The applicant says the other respondent, Craig Doherty, is the landlord for the tenant that uses the meat smoker. The applicant says the smoker is a nuisance.

2. The applicant and Craig Doherty represent themselves. A strata council member represents the strata.
3. As discussed below, I dismiss the applicant's claims because no party has paid the CRT decision fee.

## **JURISDICTION AND PROCEDURE**

4. These are the CRT's formal written reasons. The CRT has jurisdiction, or legal authority, over strata property claims brought under section 121 of the *Civil Resolution Tribunal Act* (CRTA). 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. 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.
6. CRTA section 42 says 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. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

## **ISSUE**

7. The issue is whether the CRT should resolve this dispute, refuse to resolve it, or dismiss it.

## **EVIDENCE AND ANALYSIS**

8. The applicant submitted their application for dispute resolution on August 20, 2021, which included their email address and phone number to be used for this dispute. As shown on the Dispute Notice, the applicant seeks orders for the strata to enforce its bylaws, to “respond to concerns from other strata lots in a timely manner”, and for Craig Doherty to stop their tenant from using the smoker.
9. The respondents deny the applicant’s claims. In its Dispute Response, the strata says that the applicant is a vexatious litigant and had yet to make a formal complaint or request a hearing about the smoker before filing this dispute. The strata also says it found the tenant was not breaching the bylaws. In Craig Doherty’s Dispute Response, they deny the applicant’s claims for similar reasons as the strata.
10. CRT rule 5.4(3) says that if no party pays the CRT decision fee within the time period set by the case manager, the CRT can refuse to resolve the dispute, proceed to hear the dispute, or dismiss the dispute. Under section 4(2) of the CRTA and CRT rule 5.4, the CRT may ask the applicant to pay the CRT decision fee. While a respondent can choose to pay the fee, the applicant is obliged to do so to move the dispute forward.
11. The case manager provided the following details:
  - a. On February 17, 2022, the case manager emailed the parties to advise that facilitation was over, and the dispute could proceed to adjudication. The case manager advised that the applicant or another party had to pay the CRT decision fee of \$100, otherwise the CRT could dismiss the dispute or refuse to resolve it. The case manager provided a February 22, 2022 deadline to respond.

- b. On March 1, 2022, the case manager emailed the applicant to request payment of the fee again by a new deadline of March 3, 2022. The case manager warned that if the applicant did not make the payment, they would ask the other parties if they wished to do so. If they did not, the case manager warned the CRT could dismiss or refuse to resolve the dispute without further notice.
  - c. The CRT also sent an automated email message on March 1, 2022, with essentially the same information as above, and a reminder email to pay on March 2, 2022.
  - d. On March 3, 2022, the case manager emailed and spoke to the applicant on the phone. As noted in the email, the case manager extended the deadline to pay the fee to March 8, 2022. The case manager also asked the applicant to confirm if they wanted to pay the fee or withdraw any claims.
  - e. The CRT also sent an automated email message on March 3, 2022, with essentially the same information as above, and a reminder email to pay on March 7, 2022.
  - f. On March 9, 2022, the case manager spoke to the applicant. The applicant said they would pay the fee that day. The CRT sent an automated email message that same day, similar to the ones from March 1 and 3, 2022. It contained a link for online payment and noted a same-day deadline of March 9, 2022 to pay.
  - g. On March 10, 2022, the case manager emailed the parties, including the applicant, advising that the applicant had not paid the fee or withdrawn any claims. The case manager invited the respondents to pay the fee. The case manager noted that if no party did, the CRT could refuse to resolve the dispute, proceed to hear it, or dismiss it under CRT rule 5.4(3).
12. Ultimately, no parties paid the CRT decision fee. The case manager then referred the matter of the lack of payment of the CRT decision fee to me for a decision as to whether I should resolve the dispute, refuse to resolve it, or dismiss it under CRT rule 5.4(3).

13. I find it appropriate to dismiss this dispute. As noted above, the case manager and CRT's messaging system warned the applicant 5 times, in writing, about the risks of their failure to pay the CRT decision fee. The case manager also spoke to the applicant about the matter. Based on the evidence described above, I find that the applicant had proper notice and knew the consequences if they failed to pay the fee, which was the potential dismissal of their dispute.
14. The applicant advised on March 9, 2022, that they had some difficulty making the payment online. CRT staff notes indicate the applicant previously paid the fee for dispute resolution online on August 20, 2021. The applicant provided little explanation for why they failed to pay the fee.
15. I am also satisfied the dispute largely affects only the named parties, and I see no prejudice to the respondents or the unnamed tenant in making an order dismissing the applicant's dispute. In the circumstances, I find it is appropriate to dismiss the applicant's dispute. I see no utility in otherwise resolving the dispute as there are no counterclaims.
16. On the other hand, if I were to refuse to resolve the claim, there would be no finality to this dispute as it would be open to the applicant to make a further request for CRT resolution, subject to any limitation period. I find that in refusing to resolve, there would be no finality and no consequence to the applicant for failing to participate, which would be unfair to the respondents.
17. No parties provided any evidence or submissions. The applicant effectively abandoned the process after being asked to pay the CRT decision fee.
18. The CRT's resources are valuable and its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party does not want to participate. I find that it would be wasteful for the CRT to continue applying its resources on a dispute where, through a failure to pay the CRT decision fee as required, the applicant shows they do not want the CRT's assistance in resolving their claim.

19. In weighing all the factors, I find the applicant's claims, and this dispute, should be dismissed.
20. In deciding to dismiss the claims rather than refuse to resolve them, I have put significant weight on the following factors:
  - a. There is no counterclaim,
  - b. The respondents are not prejudiced by such an order, and
  - d. The need to conserve the CRT's resources.
21. Therefore, I dismiss the applicant's claims and this dispute.
22. Under its rules, the CRT can make orders about payment of fees or reasonable dispute-related expenses in the case of a withdrawal or dismissal. Given the applicant's refusal to pay the CRT decision fee, I find they are not entitled to a refund of paid CRT fees. The successful respondents did not pay any CRT fees or claim expenses.
23. The strata must comply with section 189.4 of the *Strata Property Act*, which includes not charging dispute-related expenses against the applicant.

## **ORDER**

24. I dismiss the applicant's claims and this dispute.

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David Jiang, Tribunal Member