



# Civil Resolution Tribunal

Date Issued: March 31, 2022

File: ST-2021-002418

Type: Strata

Civil Resolution Tribunal

Indexed as: *Section 2 of The Owners, Strata Plan LMS 1991 v. The Owners, Strata Plan LMS 1991, 2022 BCCRT 363*

B E T W E E N :

SECTION 2 OF THE OWNERS, STRATA PLAN LMS 1991

**APPLICANT**

A N D :

The Owners, Strata Plan LMS 1991 and Section 1 of The Owners,  
Strata Plan LMS 1991

**RESPONDENTS**

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## REASONS FOR SUMMARY DECISION

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Tribunal Member:

Trisha Apland

## INTRODUCTION

1. This is a summary decision of the Civil Resolution Tribunal (CRT).
2. The applicant, Section 2 of The Owners, Strata Plan LMS 1991 is the commercial section (commercial section) of the respondent strata corporation, The Owners,

Strata Plan LMS 1991 (strata). The respondent, Section 1 of The Owners, Strata Plan LMS 1991 is the strata's residential section (residential section).

3. This dispute is about metering natural gas consumption and apportionment of the gas expense under the *Strata Property Act* (SPA) and bylaw 128(3)(c). Bylaw 128(3)(c) says that unless separately metered for different strata lots, all costs of the natural gas supplied to the strata lots with gas fireplaces must be paid only by the owners of those strata lots calculated on a unit entitlement basis.
4. At this time, natural gas is not separately metered, only strata lots in the residential section have gas fireplaces, and the gas expense is not apportioned under bylaw 128(3)(c). The commercial section says the strata must "enforce" bylaw 128(3)(c) and fireplace gas must be metered so the commercial owners can calculate "an accurate amount to claim for overpayment of strata fees since August 2015". It seeks the following orders:
  - a. The strata "enforce" bylaw 128(3)(c).
  - b. The residential section "is responsible for the cost of metering the gas consumed in fireplaces in lots 1-81 and that the metering be completed within 120 days of the decision".
  - c. The cost of fireplace gas metered in the first full fiscal year is the basis for determining the amount commercial owners overpaid in strata fees for fireplace gas since August 2015.
5. The respondents deny the commercial section's claims. They say it is misinterpreting the SPA and bylaw 128(3) and the bylaw does not require installation of separate meters. They also say the issues in this dispute were already decided in a prior CRT decision, indexed as *Commercial Section of the Owners, Strata Plan LMS 1991 v. The Owners, Strata Plan LMS 1991*, 2018 BCCRT 333 (2018 Decision). One of the issues in the 2018 Decision was apportionment of natural gas expenses under the SPA and the fireplace gas expense bylaw 128(3)(c). I come back to the 2018 Decision and the related orders below.

6. The strata says the commercial section already started enforcement proceedings in the BC Supreme Court (BCSC) and the commercial sections' claims are an attempt to "bifurcate" the proceedings, which means to split proceedings in 2 parts. It says the CRT is the wrong forum to resolve these claims.
7. The commercial section is represented by an executive member. The strata is represented by a lawyer, Stephen Hamilton and the residential section by lawyer, Shawn M. Smith.
8. For the reasons set out below, I refuse to resolve this dispute under section 11(1)(a)(i) of the *Civil Resolution Tribunal Act* (CRTA). Section 11(1)(a)(i) says the CRT may refuse to resolve a dispute within its jurisdiction if it considers that it would be more appropriate for another legally binding process.

## **JURISDICTION AND PROCEDURE**

9. The CRT has jurisdiction over strata property claims under CRTA section 121.
10. 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.
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.
12. Under CRTA section 16.4(1)(b) a party may bring or continue a claim in the BCSC if the CRT refused to resolve the claim under section 11 of the CRTA.

### ***Preliminary Decisions***

13. During the facilitation phase, CRT staff referred this dispute to a CRT vice chair to determine on a preliminary basis whether the CRT should resolve this dispute, or

refuse to resolve it under section 11(1)(a)(ii). That section says the CRT may refuse to resolve a claim or a dispute if it considers that it has already been resolved through a legally binding process or other dispute resolution process. At that preliminary stage, the vice chair concluded that the claims in this dispute were not *res judicata*, meaning “already decided”. As the CRT vice chair’s conclusions in that preliminary decision are not binding on me and I refused to resolve this dispute on a different basis, I have not summarized her reasons here. The vice chair made no findings on the merits of this dispute.

## **ISSUE**

14. The issue is whether the CRT should resolve the claims in this dispute and if so, what, if any, are the appropriate remedies?

## **REASONS AND ANALYSIS**

15. As mentioned, this dispute is about metering fireplace gas consumption and the allocation of fireplace gas expenses to strata lot owners under the SPA and bylaw 128(3)(c).
16. In the published 2018 Decision, the CRT member decided the commercial section’s claim that the strata allocated residential section expenses to the commercial section contrary to the SPA and the applicable bylaws. The commercial section argued, in part, that the residential section was using a disproportionate amount of gas delivered to the building. It said the strata was paying for gas used for some residential-only purposes, including for 77 fireplaces and it had not correctly allocated the expense to those residential owners. Since the gas was not metered, the strata had no clear method to distinguish and allocate the expenses just to the residential section. There was a similar issue with the unmetered electrical expenses.
17. The CRT member considered the application of bylaw 128(3)(c), held that fireplace gas was not a “strata expense” and decided that separate meters might help resolve some of the parties’ expense-related issues. She ordered:

Order 12: Following receipt of this order, the strata immediately take steps to obtain and provide information about the possibility and cost of installing separate meters for the commercial section for electricity and gas. The strata to provide this information to the commercial section within 30 days of the date of this decision. If the information indicates that the installation of separate meters is possible, and if the commercial section wishes to proceed with the installation, the commercial section is to pay the cost of the installation.

18. On the allocation issue, the CRT member made Order 9 that required the strata to provide the commercial section with certain financial documents and set out a process to resolve incorrect past expense allocations. That order said that if the parties were unable to agree on an amount the strata was to pay the commercial section, they were free to bring a new claim to the CRT on that issue. I find the Order did not mean the CRT was required to decide a new dispute over the allocation issue, which is also not argued. In any event, the commercial section has since commenced enforcement proceedings against the strata and in doing so brought the dispute over the orders before the BCSC.
19. The submitted records indicate the commercial section brought a petition before the BCSC in Vancouver Registry No. S-1813443 in what appears to be a “contempt” proceeding related to the 2018 Decision. A registry search in evidence also shows an enforcement proceeding filed in the New Westminster Law Courts on August 16, 2018 under file number 205237. However, the parties provided little other information about these proceedings.
20. Prior to commencing this dispute, the commercial section had also brought a CRT claim against the strata and residential section for reimbursement of \$108,000 in expenses. That decision is indexed as: *Commercial Section of the Owners, Strata Plan LMS 1991 v. The Owners, Strata Plan LMS 1991*, 2020 BCCRT 1459 (2020 Decision).

21. In the 2020 Decision, the CRT member concluded that the relief sought was a combination of enforcing and settling the CRT orders from the 2018 Decision and was integrally interwoven with ongoing BCSC enforcement proceedings. The CRT member refused to resolve the commercial section's claims under CRTA section 10 and CRTA section 11(1)(a)(i). Section 10 says the CRT must refuse to resolve a claim that is outside its jurisdiction.
22. The 2020 Decision is not a binding precedent and the claims are different from those here. However, I agree with the CRT member's conclusion that the CRT has no authority to enforce its own orders. Under CRTA sections 57 and 60, I find enforcement is under the BCSC's sole jurisdiction.
23. Turning back to this dispute, the commercial section says the strata must "enforce" bylaw 128(3)(c) and the residential section must pay to install meters for the gas fireplaces. Again, it says it needs this gas metering so it can calculate what the strata owes it since 2015 for its "BCSC" claim. It says the first year of metered consumption should be used to calculate average consumption since August 2015 and applied to the cost of gas (with adjustments for price changes) to the date of settlement. The commercial section does not clarify what BCSC claim or settlement it is referring to. I infer it means for the filed petition and enforcement proceedings described above.
24. The commercial section also says CRT Order 12 in the 2018 decision made it responsible for metering costs only when it is to the commercial section's advantage and the residential section should pay for the new meters. The respondents say the cost to install meters is the commercial section's responsibility as already ordered under Order 12.
25. It is clear from the parties' submissions that they have been unable to agree on the responsibility for the cost of installing meters or to settle past incorrect gas expense allocations. As I refuse to resolve this dispute, I find no need to summarize the rest of the parties' arguments.
26. I agree with the strata that the commercial section seems to be splitting its claims between forums since it seeks the requested remedies to calculate its BCSC claim

or settlement. I find it would be an unnecessary duplication of process and might lead to inconsistent results if I made findings on issues that relate to claims that the commercial section is currently bringing or intends to bring before the BCSC. I find the commercial section's claims and requested remedies are also interwoven with the issue of enforcement of the 2018 decision that is within the BCSC's sole jurisdiction.

27. There is already a concurrent BCSC proceeding, the CRT has no jurisdiction over enforcement, and the BCSC has broad jurisdiction to decide all the claims. Given the risk of inconsistent findings and the duplication of process, I find it is in the interest of justice that the issues are resolved in only one forum, the BCSC. I also recognize the parties' relationship will continue after this dispute process is complete. Given this, I find that resolving the claims in the BCSC is more likely to bring finality to the disputed issues that have been going on for many years. For these reasons, I find the BCSC is the more appropriate forum to resolve all the claims in this dispute and I exercise my discretion to refuse to resolve this dispute under CRTA section 11(1)(a)(i).

28. To be clear I have made no findings on the merits of this dispute or whether the claims are *res judicata*.

## **DECISION AND ORDERS**

29. I refuse to resolve the commercial sections claims against the respondents under CRTA section 11(1)(a)(i).

30. In the circumstances, I direct the CRT to refund the commercial section's CRT fees.

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Trisha Apland, Tribunal Member