



# Civil Resolution Tribunal

Date Issued: March 31, 2022

File: ST-2021-005514

Type: Strata

Civil Resolution Tribunal

Indexed as: *Liang v. The Owners, Strata Plan NW 1374* , 2022 BCCRT 361

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

**CHUAN WEI LIANG**

**APPLICANT**

**A N D :**

**The Owners, Strata Plan NW 1374**

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Leah Volkers

## **INTRODUCTION**

1. This strata property dispute is about a chargeback to a strata lot account.
2. The applicant, Chuan Wei Liang, co-owns strata lot 60 (SL60) in the respondent strata corporation, The Owners, Strata Plan NW 1374 (strata).

3. Mr. Liang says the strata wrongfully charged \$9,843.15 to his strata lot account following a water leak in 2019. Mr. Liang says the water leak did not originate from SL60, so he is not responsible to pay the chargeback. Mr. Liang requests an order that the strata remove the \$9,843.15, reimburse the chargeback amount, and “remove the claim” that SL60 caused the leak.
4. The strata says it believes the leak originated from the faucet feedline under SL60’s bathroom sink, and leaked into two other strata lots below SL60 (unit 116 and unit 216). It says Mr. Liang installed a washing machine that was not “to code” and it is fair to assume that it was connected to the faucet feedline under the sink. The strata says Mr. Liang removed the washing machine before the strata’s contractor arrived to complete the repairs. The strata says “the initiator”, who infer is Mr. Liang or his representative, has already paid the chargeback, and Mr. Liang is not entitled to any reimbursement.
5. Mr. Liang is represented by his son-in-law. The strata is represented by a strata council member.

## **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.

## **ISSUES**

10. The issue in this dispute is whether the strata must reverse or reimburse Mr. Liang the \$9,843.15 chargeback.

## **BACKGROUND**

11. In a civil proceeding such as this one, Mr. Liang, as the applicant, must prove his claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submissions and evidence, but below I only refer to what is necessary to explain my decision.
12. The strata consists of 74 strata lots in a 4-storey building. Mr. Liang’s SL60 is on the third floor.
13. The strata filed consolidated bylaws with the Land Title Office (LTO) in January 2002, which I find are applicable to this dispute. After 2002, the strata filed further bylaw amendments, most of which are not relevant to this dispute. However, I find the August 2019 bylaw amendment, adding bylaw 31, is relevant and I will discuss it below.
14. The parties do not dispute that on June 24, 2019 a water leak was discovered in “unit 116”, a strata lot located two floors beneath SL60. The parties also do not dispute

that the strata dispatched a contractor, Latham's, to investigate the leak. However, the parties dispute where the leak originated and whether Mr. Liang is responsible for the leak and resulting expenses.

15. It is unclear from the available evidence whether the strata completed repairs to common property, other strata lots, SL60, or a combination of the above. However, I find the parties do not dispute that at some point after June 24, 2019, the strata completed repairs resulting from the leak and charged back a total of \$9,843.15 to Mr. Liang's strata lot account. So, the question is whether the strata was entitled to do so.

## **EVIDENCE AND ANALYSIS**

### ***Must the strata reverse the \$9,843.15 chargeback or reimburse Mr. Liang that amount?***

16. For the following reasons, I find the strata must reverse the \$9,843.15 chargeback, and reimburse Mr. Liang if he has already paid the chargeback amount.
17. As set out in prior CRT decisions such as *The Owners, Strata Plan K 407 v. Kelly*, 2019 BCCRT 789 and *Chen v. The Owners, Strata Plan NW 308*, 2021 BCCRT 495, a strata lot owner is not responsible for the cost of leak repairs and related restoration services unless they:
  - a. agreed to pay them,
  - b. are responsible under the *Strata Property Act* (SPA) or bylaws, or
  - c. were negligent.
18. Prior CRT decisions are not binding, but I find the reasoning in these decisions persuasive, and rely on it here.
19. Neither party argued that Mr. Liang agreed to pay for any expenses incurred by the strata following the leak, and the evidence does not establish that Mr. Liang agreed

to do so. I therefore find Mr. Liang never agreed to pay for the expenses charged back to his strata lot account, and he is not liable on that basis.

20. I also find Mr. Liang is not responsible to pay based on the SPA or bylaws. In *Ward v. Strata Plan VIS #6115, 2011 BCCA 512*, the BC Court of Appeal said that in the absence of a bylaw or rule giving its authority to do so, a strata corporation cannot charge an owner for costs it has incurred. In *Ward*, the charge in question was for legal fees. However, in *Rintoul et al v. The Owners, Strata Plan KAS 2428, 2019 BCCRT 1007*, a CRT vice chair applied the reasoning in *Ward* in a dispute where the strata had charged strata lot owners for a damaged hydroelectric line. The vice chair concluded that since the strata had no bylaw allowing it to charge back the repair costs, the owners were not obligated to pay. He found the reasoning in *Ward* applied to repair charges, and not just to legal fees. Although *Rintoul* is not a binding precedent, I find its reasoning persuasive and rely on it.

21. I find bylaw 31 is applicable here. The relevant portions of bylaw 31 state as follows:

(1) An owner shall indemnify and save the harmless the [strata] from the expense of any maintenance, repair or replacement rendered necessary to the common property, limited common property, common assets or to a strata lot for which the owner or any member of his or her family or tenants or their guests, servants, agents or invitees is responsible, but only to the extent that such expense is not reimbursed [by insurance].

(4) 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 for the month next following the date on which the expense was incurred and is due and payable on the monthly assessment's payment date.

22. Mr. Liang, as the applicant, generally has the burden of proof in this dispute. However, since the chargeback must be validly imposed by the strata under bylaw 31 in order for the strata to rely on it, I find the strata must establish that it was entitled to charge back its expenses to Mr. Liang's strata lot account. I find the strata has not done so.

23. Under bylaw 31, Mr. Liang can only be liable to pay the chargeback if he is responsible for rendering the repair expenses necessary. For the following further reasons, I find Mr. Liang is not liable for the strata's expenses.
24. The strata says Mr. Liang connected a washing machine to the faucet supply lines under the bathroom sink, and says this was the "main source of water leakage to the below floors".
25. Mr. Liang does not dispute that a washing machine was installed in SL60, but says it did not cause the leak. He says he showed the Latham's technician the washing machine when they were investigating the leak's source, and there was no mention of any issue with it at that time. Mr. Liang says that the leak's cause was likely a clogged drain on the strata building's roof, which had previously leaked. He provided photographs of a clogged drain with pooled water on what I infer is the strata building's roof. He also says the location of the water damage in the other strata lots supports this. He also provided photographs of the alleged water damage in the other two strata lots, which he says is consistent with previous water damage outside SL60's door from a prior roof leak. The strata did not address this argument in its submissions. However, there is no independent or expert evidence to support Mr. Liang's position on the leak's cause, so I find Mr. Liang has not proved that the leak was caused by a clogged roof drain.
26. The strata seeks to rely on two invoices in combination to show that Mr. Liang was responsible for the leak. A July 5, 2019 invoice totalling \$706.65 from Latham's noted that its technician investigated the leak in unit 116's front entry ceiling, as follows:

"Accessed #216, found leak from above. Found large puddle of water by shower in [SL60], shower curtain outside of tub. No active plumbing leaks detected, as per attached service report. Please note: while on site also found dishwasher installed, but connections not to code. It is the tenant's responsibility to move".

The handwritten portion of Latham's invoice noted in part that "there is a laundry machine installed". So, although the typed portion of the invoice noted a dishwasher,

I find this was likely a typographical error and Latham's intended to note a washing machine installed. This is consistent with both Mr. Liang and the strata's submissions.

27. The strata also submitted an August 28, 2019 invoice totalling \$2,901.59 from Platinum Pro-Claim (Platinum) for repairs to units 116, 216 and SL 60. That invoice also notes the cause of loss as "faucet feed line under bathroom sink", but does not identify where the bathroom sink was located. The specific repairs completed by Platinum were not listed in the invoice submitted in evidence.
28. In the strata's Dispute Response Form, the strata says Latham's and Platinum's reasons for the water damage differ because they did not communicate directly with each other. The strata says that connecting the two reports, "it is a fair assumption that the laundry machine was connected to the faucet feedline underneath the bathroom sink".
29. I find the Latham's and Platinum invoices do not confirm that Mr. Liang's washing machine was the leak's source, or that Mr. Liang was otherwise responsible for the leak. Here, I accept and place significant weight on Latham's invoice, as its technician attended SL60 on the day the leak was discovered. However, while the technician noted a puddle of water outside the shower, they did not identify the leak's source, and specifically noted that they did not find any active plumbing leaks. I find Latham's invoice did not confirm the leak's source. Platinum's invoice notes the source of the leak as the faucet feed line under the sink, but did not identify the sink's location. Platinum also did not attend when the leak occurred, and so I place less weight on its invoice.
30. In its written submissions, the strata inserted typed text that it says is a June 24, 2019 email from Latham's. This email included an opinion that the leak was caused by an illegal laundry machine installation in SL60, and attached "a stream" and photos. However, the email and its attachments were not submitted as documentary evidence in this dispute. There is no way for me to determine whether the typed text contained within the strata's written submissions is an authentic email, or who sent it. I also find it would be procedurally unfair to consider this alleged email when the strata

neglected to provide it in evidence, and Mr. Liang says he specifically asked for a copy of it which was never provided. Finally, even if the email itself had been submitted as documentary evidence, I would not have accepted it as expert opinion evidence on the leak's cause. This is because the email's author and their qualifications to provide an expert opinion are not identified, as required by CRT rule 8.3 on expert evidence. Given all the above, I have not considered this alleged email from Latham's that was included as part of the strata's written submissions.

31. There is no further evidence, expert or otherwise, from Latham's or Platinum that shows Mr. Liang caused the leak or is otherwise responsible for it. Given all the above, I find Mr. Liang is not responsible for the leak. It follows that Mr. Liang is not responsible the strata's expenses resulting from the leak.
32. Even if I had found that Mr. Liang was responsible for the leak, the available evidence does not show that the strata spent \$9,843.15 repairing the leak. Although strata council meeting minutes from September 30, 2019 confirm that the strata charged back \$9,843.15 to Mr. Liang's strata lot, the invoices in evidence do not reflect this amount. As discussed above, the only invoices in evidence are a Latham's \$706.65 invoice for investigating the leak, and Platinum's \$2,901.59 invoice for repairs to unit 116, 216 and SL60. However, as noted, the repairs are not listed, or otherwise explained. In addition, the two invoices only total \$3,608.24. It is unclear what further expenses were charged back to Mr. Liang's strata lot, or on what basis. In his application for dispute resolution, Mr. Liang said he received an invoice from Pacific Quorum, the strata's property management firm, that charged \$6,234.91 to SL60 and an incident report. However, there is no invoice, incident report, or other documentary evidence from Pacific Quorum. Although the chargeback amount is undisputed as between the parties, the evidence before me does not show that the strata incurred this additional \$6,234.91 in repair expenses following the leak. Given the above, I find the available evidence does not support the \$9,843.15 chargeback in any event.
33. For these reasons, I find that the Mr. Liang is not responsible for the leak or the expenses the strata allegedly incurred as a result of the leak. Therefore, I find the



strata was not entitled to chargeback \$9,843.15 to Mr. Liang's strata lot account, and Mr. Liang is not responsible to pay it.

***What are the appropriate remedies?***

34. As noted, Mr. Liang asks for orders that the strata remove the chargeback from his strata lot account and reimburse him the chargeback amount. The strata ledger is not in evidence, so I do not know when the chargeback was first imposed, or whether the chargeback is still listed on Mr. Liang's strata lot account. Given this, I find it is appropriate to order the strata to remove the chargeback from Mr. Liang's strata lot account. I find the parties agree that Mr. Liang paid the \$9,843.15 chargeback. Therefore, I also order the strata to reimburse Mr. Liang the paid \$9,843.15 chargeback.
35. Mr. Liang also asks for an order that the strata remove the claim that SL60 "is the cause of the incident". I infer the claim is simply the strata's decision that SL60 caused the leak. I have already found that the evidence does not show Mr. Liang is responsible for the leak. So, I find making this further requested order would serve no purpose and I decline to do so.

**CRT FEES, EXPENSES AND INTEREST**

36. 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. I therefore order the strata to reimburse Mr. Liang for CRT fees of \$125. Mr. Liang did not claim any dispute-related expenses and so I award none. The strata paid CRT fees of \$100. However, as it is the unsuccessful party in this dispute, I find it is not entitled to reimbursement of its paid CRT fees.
37. The *Court Order Interest Act* (COIA) applies to this dispute. Mr. Liang is entitled to prejudgment interest on the \$9,843.15 chargeback. However, the evidence does not show when Mr. Liang paid the chargeback. Given this, I find Mr. Liang is entitled to prejudgment interest from July 5, 2021, the date Mr. Liang says the strata imposed

the chargeback to the date of this decision, which I find is reasonable in the circumstances. This totals \$32.68.

38. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Liang.

## **ORDERS**

39. I order that:

- a. The strata must immediately reverse the \$9,843.15 chargeback from Mr. Liang's strata lot account.
- b. Within 30 days of the date of this order, the strata must reimburse Mr. Liang a total of \$10,000.83, broken down as follows:
  - i. \$9,843.15 for the chargeback,
  - ii. \$32.68 in COIA prejudgment interest, and
  - iii. \$125 in CRT fees.
- c. Mr. Liang is also entitled to postjudgment interest under the COIA, as applicable.

40. 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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Leah Volkers, Tribunal Member