



# Civil Resolution Tribunal

Date of Original Decision: May 3, 2022

Date of Amended Decision: May 6, 2022

File: ST-2021-007484

Type: Strata

Civil Resolution Tribunal

Indexed as: *Rostamkhani v. The Owners, Strata Plan BCS 3165*, 2022 BCCRT 513

BETWEEN:

MILAD ROSTAMKHANI

**APPLICANT**

AND:

The Owners, Strata Plan BCS 3165

**RESPONDENTS**

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## **AMENDED REASONS FOR DECISION**

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Tribunal Member:

Andrea Ritchie, Vice Chair

### **INTRODUCTION**

1. This dispute is about an electric vehicle (EV) charging station.
2. The applicant, Milad Rostamkhani, owns a residential strata lot in the respondent strata corporation, The Owners, Strata Plan BCS 3165 (strata). Mr. Rostamkhani

says the strata is improperly charging him \$1,911 for his EV charging station which he says he has already paid, overcharged for the station's initial installation, and has turned off power to his station. Mr. Rostamkhani asks that the debt on his account be "cleared", each owner be paid back \$368.69 for the alleged overpayment, and for his charging station to be turned back on. Mr. Rostamkhani also seeks access to various strata documents.

3. The strata says Mr. Rostamkhani still owes the \$1,911 and it therefore turned off the power to his charging station as he is in default. The strata also says the charging station project is not complete until all 50 units have been installed, so any potential refund is not calculable until that time. Finally, the strata says access to the requested documents is available at the strata's management office, or upon Mr. Rostamkhani paying the required fees under *Strata Property Act* (SPA) Regulation section 4.2(1).
4. Mr. Rostamkhani is self-represented. 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 that 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. Section 39 of the CRTA says that 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. Section 42 of the CRTA says that 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.
8. Under section 123 of the CRTA, 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.

### ***Late evidence***

9. Both parties submitted late evidence. Bearing in mind the CRT's flexible mandate and because each party had an opportunity to review and respond to the other's late evidence, I find neither party is prejudiced. Therefore, I allow the late evidence and have considered it in my analysis below.

### ***Standing***

10. One of Mr. Rostamkhani's requested remedies is an order that the strata pay back strata lot owners who participated in the EV charging station project. I find Mr. Rostamkhani does not have standing, or legal authority, to bring claims on behalf of other owners. So, I have limited my analysis below to whether Mr. Rostamkhani alone is entitled to any reimbursement from the strata.

## **ISSUES**

11. The issues in this dispute are:
  - a. Does Mr. Rostamkhani owe \$1,911 for an EV charging station?
  - b. Is Mr. Rostamkhani entitled to restoration of power to his EV charging station?
  - c. Is Mr. Rostamkhani entitled to a refund of \$368.69?
  - d. Is Mr. Rostamkhani entitled to an order that the strata provide him with financial documents?

## **EVIDENCE AND ANALYSIS**

12. In a civil claim such as this, as the applicant Mr. Rostamkhani bears the burden of proof on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

### ***Background***

13. The development where the strata is located was created in 2008 and in 2010, Mr. Rostamkhani became the owner of strata lot 147 in the respondent residential strata.
14. In 2017, the strata initiated an EV charging station installation project in the strata’s parkade, as requested by several owners. After investigating the electrical capacity, the strata determined 50 charging stations could be installed at participating owners’ expense.
15. On May 15, 2017, the strata sent out an announcement about the project. The announcement stated that any owner who opted into the project would be responsible for their proportionate portion of the “core infrastructure installation costs”, plus \$3,500 to \$5,500 for the cost of connecting the owner’s specific parking stall charger to the infrastructure. Attached to the announcement was an indemnity agreement for any owner who wished to participate in the project. Among other things, the agreement stated that the strata would coordinate the charger’s installation, invoice the owners according to the number of project participants, and provide a credit to owners based on the total number of participants once maximum capacity was reached. The agreement stated the owner would pay their proportionate share of costs related to the installation and keep the charger and all electrical connections in good repair. Mr. Rostamkhani signed this indemnity agreement on August 30, 2017.
16. On June 5, 2018, the strata advised participating owners that the final price for initial installation would be \$3,822, based on the number of participants at that time. The strata further advised that it would proceed with a second-round installation program the following year and any additional participants joining would eventually result in a

reimbursement to all participants. The strata required a 50% deposit payable by June 18, 2018. It is undisputed Mr. Rostamkhani paid \$1,911 to the strata in June 2018.

17. The parties say 32 owners have joined the project, and the maximum capacity is 50.
18. At issue in this dispute is whether Mr. Rostamkhani ever paid the remaining 50% balance, and whether Mr. Rostamkhani is entitled to any reimbursement due to further participants joining the project.

***Does Mr. Rostamkhani owe \$1,911 for the EV charging station?***

19. It is undisputed the project's first round installation completed in approximately April 2019. The strata says, unbeknownst to it, Mr. Rostamkhani's car charger was activated despite him not having paid the 50% outstanding balance for the charger's installation. The strata says it did not become aware of this issue until January 2021, when it audited its financials and discovered 18<sup>1</sup> owners had failed to pay the balance of the installation costs. As a result, on January 31, 2021 the outstanding balance was added to Mr. Rostamkhani's account and on February 24, 2021 the strata emailed Mr. Rostamkhani to advise him of the \$1,911 outstanding balance.
20. The strata continued to follow up with Mr. Rostamkhani for payment until July 7, 2021, when it ultimately turned off the power to his charger.
21. Mr. Rostamkhani says he paid the \$1,911 in April 2019 and provided a carbon copy cheque that he says he wrote. Mr. Rostamkhani alleges he left the cheque with his building's concierge. The strata submits, and I agree, that a carbon copy cheque is not proof of payment, but rather only shows that Mr. Rostamkhani wrote a cheque for \$1,911 at some point. It does not mean the cheque was delivered, cashed, or cleared the bank.
22. Mr. Rostamkhani says his bank does not provide cancelled cheque statements past 18 months. However, the strata contacted Mr. Rostamkhani's branch and submitted

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<sup>1</sup> Paragraph 19 has been amended under section 64 of the CRTA, to correct a typographical error. The change is shown as underlined text in this amended decision.

an email from a Customer Service Representative, EM, who stated a cheque from April 2019 would be viewable online or can be printed at the branch. EM stated the image of the cancelled cheque would show the cheque was processed and deposited, but if the money never left the account, no cheque would show in the transaction history.

23. Other than saying his bank does not make statements available after this much time has passed, Mr. Rostamkhani did not address EM's statement or explain why he did not attend his bank to confirm the cheque was cashed. I find Mr. Rostamkhani has not proven he paid the balance owing for the charging station as he had agreed to do. Mr. Rostamkhani asks that his account be "cleared" of the \$1,911 debt, and I decline to make this order, given my conclusion above.

***Is Mr. Rostamkhani entitled to restoration of power to his EV charging station?***

24. As noted above, the power to Mr. Rostamkhani's charging station was turned off after July 7, 2021 when he refused to pay his outstanding balance. Mr. Rostamkhani seeks an order that this power supply be reconnected and wants \$200 per month as compensation for having to purchase fuel because he could not use his charger.
25. The strata says Mr. Rostamkhani is not entitled to the charger's use until it is fully paid for. Once the balance is paid or proper proof of prior payment is shown, the strata says it will reconnect the charger's power.
26. Given my findings above, I find the strata acted reasonably in turning off the power to Mr. Rostamkhani's charger until payment is received or proven. I decline to order the strata to restore power, and I dismiss Mr. Rostamkhani's claim for compensation noting that he did not provide any receipts or invoices in support of his compensation claim in any event.

***Is Mr. Rostamkhani entitled to a refund of \$368.69?***

27. Mr. Rostamkhani says the strata overcharged participants in the EV charging project and seeks an order the strata reimburse each participant \$368.69. As noted above, Mr. Rostamkhani does not have standing to bring this claim on behalf of other owners, only for himself. He says if all 32 participants paid \$3,822 then the strata collected \$122,304, while the expenses related to installing the chargers totaled \$110,506.25. This amounts to a difference of \$11,797.75 in total, or \$368.68 each. Mr. Rostamkhani seeks reimbursement of that amount.
28. The strata acknowledges that there is a cost variance and says it will reimburse participating owners, but not until the project is completed. As the project's capacity is 50 chargers and only 32 have been purchased so far, the strata says final calculations cannot be made yet as other owners still have the opportunity to join.
29. The parties' indemnity agreement also sets out terms for reimbursement. It states the strata will provide a "credit" to the owner of their proportionate cost based on the number of owners that install a charger, up to the 50 charger maximum.
30. Further, in strata meeting minutes from November 22, 2021, the strata announced that the project would terminate when all 50 chargers were purchased, or on December 31, 2022, whichever came first. I am satisfied the time for calculating a refund for participants' initial installation costs has not yet come. I accept the strata acknowledges a refund is due, but I agree that it is reasonable to wait until the project's completion which, at the latest, will be the end of this year. In fact, at that time the participating owners may be owed a reimbursement greater than Mr. Rostamkhani claims currently. Additionally, as I have found about, Mr. Rostamkhani has not proven he has paid in full for the charger, so would not be entitled to a refund in any event. I decline to order a refund at this time.

***Is Mr. Rostamkhani entitled to an order that the strata provide him with financial documents?***

31. Mr. Rostamkhani seeks an order requiring the strata to disclose all money received and spent, and the reason for the receipt or expenditure, from June 1, 2018 to January 1, 2020. Mr. Rostamkhani also requested production of “detailed invoices” for the EV charger project.
32. The strata says the documents are available to Mr. Rostamkhani upon his payment to the strata for copying the documents. After a hearing on October 25, 2021, the strata sent Mr. Rostamkhani a letter on November 1, 2021 which advised the strata’s full general ledgers showing money spent and received between June 1, 2018 and January 20, 2020 were available from the strata’s management firm. The strata noted there was a copying charge of \$0.25 per page, as per the SPA Regulation section 4.2(1), for a total charge of \$95.55 (\$91 plus tax) owing. The strata says the “detailed invoices” were provided as evidence in this dispute, so that request is moot. It is undisputed Mr. Rostamkhani has not paid for the records.
33. Although Mr. Rostamkhani says he “does not have an objection to paying” for the records, he argues the records should be provided to him at no cost. I disagree.
34. SPA section 36(1) says that upon request, the strata must make records and documents listed in section 35 of the SPA available for inspection to owners, and must provide copies. Section 36(4) allows the strata to charge a fee for copying documents, and says the strata may refuse to supply copies until the fee is paid. Section 4.2(1) of the SPA Regulation says that the maximum fee for document copies is \$0.25 per page. I find the strata’s refusal to release the documents before Mr. Rostamkhani pays for them is compliant with the SPA and regulation. I find the only reason the strata has not provided the documents is because Mr. Rostamkhani has not paid for them. I decline to make an order requiring the strata to disclose the documents.
35. In summary, I dismiss all of Mr. Rostamkhani’s claims.

## **CRT FEES AND EXPENSES**

36. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As Mr. Rostamkhani was not successful, I find that he is not entitled to reimbursement of tribunal fees or dispute-related expenses. The strata did not pay tribunal fees or claim any dispute-related expenses.
37. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Rostamkhani.

## **ORDER**

38. I order Mr. Rostamkhani's claims, and this dispute, dismissed.

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Andrea Ritchie, Vice Chair