



Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

BARDIA TANAVOLI

APPLICANT

A N D :

The Owners, Strata Plan BCS 3702

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Bardia Tanavoli, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS 3702 (strata). In July 2021, residents reported a possible gas leak. The strata's contractor determined that the source of the gas leak was a gas outlet on or near Mr. Tanavoli's patio. The strata determined that Mr.

Tanavoli was therefore responsible for the majority of the investigation costs and charged \$8,631 to Mr. Tanavoli's strata lot account. The strata also concluded that Mr. Tanavoli had contravened 4 strata bylaws, for which it fined him \$800.

2. Mr. Tanavoli disputes the chargeback and the bylaw contravention fines on several grounds. Primarily, he says the patio gas outlet was not the source of the leak. Mr. Tanavoli asks for orders that the strata remove the chargeback and the bylaw contravention fines from his strata lot account. Mr. Tanavoli represents himself.
3. The strata denies Mr. Tanavoli's claims, and I infer says they should be dismissed. A strata council member represents the strata.
4. For the reasons set out below, I find the strata must reverse the chargeback and 3 of the 4 bylaw contravention fines from Mr. Tanavoli's account.

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. In some respects, both parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes

proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions.

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.

ISSUES

9. The issues in this dispute are:
 - a. Was the gas outlet near Mr. Tanavoli's patio the source of the gas leak?
 - b. Did the strata's bylaws authorize the \$8,631 chargeback?
 - c. Did Mr. Tanavoli breach the bylaws as alleged?
 - d. What remedies, if any, are appropriate?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Mr. Tanavoli must prove his claims on a balance of probabilities, meaning more likely than not. After reviewing the parties' submissions and evidence, I asked the parties to provide submissions on whether the strata's bylaws applied to an investigation expense like the gas leak investigation. I considered all the parties' submissions and evidence, but I will refer only to the evidence and argument that I find relevant to provide context for my decision.
11. The strata was created in 2010. The strata plan identifies 60 strata lots, some of which are townhouse-style units and others are in a 22-floor tower. Mr. Tanavoli owns strata lot 4, a townhouse-style strata lot with a limited common property patio.

12. The strata plan does not identify the location of the dual-outlet gas box, but from photos I find it is located on the exterior wall between strata lot 4 and space designated as a common property planter. Although nothing turns on this, I find the gas outlet is common property. I say this because the *Strata Property Act* (SPA) defines common property to include parts of a building that are not part of a strata lot, and because SPA section 68 defines a strata lot boundary as the mid-point of an exterior wall. In any event, there is no dispute that the gas outlet in question serviced only Mr. Tanavoli's patio.

Gas leak

13. The undisputed timeline of the gas leak is as follows.

14. On Friday, July 16, 2021, a concierge and several residents, including Mr. Tanavoli, reported smelling gas in the lobby and other areas of the building. FortisBC attended on an emergency basis. FortisBC detected gas but was unable to locate the source. There was no need to evacuate because FortisBC confirmed the gas was not at a threatening level. FortisBC recommended the strata have its HVAC contractor locate the source.

15. The strata's HVAC contractor, Tower HVAC (Tower), attended Friday evening but was unable to identify a leak. Tower shut off the main gas line for the evening.

16. On Saturday, Tower returned, turned the gas line on and continued to check for leaks. Tower cut drywall in various places to trace the gas lines. Tower found a small leak in a gas line in the parkade near the mechanical room, which was repaired.

17. Saturday evening brought new reports of gas odours, so Tower returned and shut off the gas. There was no investigation work on Sunday.

18. On Monday, July 19, 2021, Tower returned and resumed searching for the leak. Tower traced the leak to the gas box on strata lot 4's patio. Mr. Tanavoli was not home at the time.

19. Tower's investigation steps are documented in a "job summary" report. In the report, Tower noted its technicians detected gas at irregular intervals throughout parking level 1 and checked the fresh air supply. They found gas odour "very present at air inlet to supply fan" and traced the duct to the outside of the building. They located the fresh air intake grills in a garden planter at townhouse 286, which is Mr. Tanavoli's strata lot 4. They found the patio's "dual port BBQ box with both isolation knobs open." One line was connected to a fire table and the other had no appliance connected and was not capped. It was discharging gas into the planter right next to the air intake grills for the supply fans.
20. The job summary report is dated July 16, which I find refers to the date the investigation started. It is not clear when the report was prepared but it is consistent with a July 19 email in which Tower technicians reported their initial findings to the strata manager. I place significant weight on the report.
21. Tower also provided the strata manager with photos. Those photos show the gas hose found in the garden, and they show 2 hoses connected to the gas outlet.
22. Mr. Tanavoli disputes Tower's observations and says the patio gas outlet was not the source of the gas leak. He says he came home from work on July 19 and found that someone had been on his patio. One of the gas hoses had been left on the patio floor, and its cap, which he says had always been there previously, was missing.
23. Mr. Tanavoli says Tower's photos show the gas outlets were in fact turned off when Tower found them. I am unable to tell from Tower's photos or Mr. Tanavoli's photos what position corresponds to the gas outlets being "on" or "off". In any event, Tower's reports did not say whether it photographed the outlets before or after turning the gas outlets off.
24. Mr. Tanavoli says FortisBC's initial investigation is more evidence that his patio was not the source of the gas leak. He says FortisBC investigated his patio using a gas detector and did not find any gas leak. Mr. Tanavoli prepared a statement to this effect and had JK, a neighbour, sign it. The statement said that JK was on Mr. Tanavoli's patio to witness the inspection, in which a gas detector was used and no gas leak

was detected. Mr. Tanavoli also says that 2 strata employees attended during that investigation and confirmed that the gas outlets were in the “off” position.

25. The strata disputes this account. It says FortisBC only determined that there was no leak at the street connection site and that the presence of gas in the building was not concentrated enough to require evacuation. It denies that FortisBC or any strata employees attended Mr. Tanavoli’s patio on July 16.
26. I find it unnecessary to resolve this conflict in the evidence. Even if I accept that FortisBC inspected Mr. Tanavoli’s patio and found no gas leak, I find that does not undermine Tower’s findings. It is clear that FortisBC did not investigate as thoroughly as Tower. I say this because it is undisputed that after FortisBC confirmed there was no imminent danger, it advised the strata to have its contractor find the source. It should not be surprising that Tower found the source after a more thorough investigation.
27. In Mr. Tanavoli’s July 21 email to the strata manager, he suggested that rain, rust, a loose fitting, or contact from a landscaper may have dislodged the gas hose’s cap. He also said he believed he was partially responsible “as the gas flow started from my patio (unintentionally)”.
28. Mr. Tanavoli now submits he was misled to believe the gas leak originated on his patio. He says the strata did not disclose Tower’s report until July 27. He says Tower’s report identified a gas leak found in the parkade gas line. While this is true, the report said the leak was small. Tower repaired it immediately, and the gas odour complaints continued. Mr. Tanavoli says evidence that there were multiple leaks is found in a July 17 email from Tower to the strata manager stating that Tower had located “some leaks but it appears not all leaks have been located”. I find the use of the plural in this brief email does not outweigh the more comprehensive Tower report and July 19 email that referred to a single small gas leak in the parkade gas line. More importantly, the gas odour complaints continued after the leak was repaired. I find the parkade gas leak was not likely, and certainly not solely, the source of the gas odour complaints.

29. Mr. Tanavoli does not identify another possible gas leak source. The gas odour complaints resolved after Tower removed Mr. Tanavoli's second gas hose on July 19. I find Tower's observations are the most reliable evidence about the source of the leak, and I accept them. Specifically, I accept Tower's finding that a gas hose Mr. Tanavoli connected to the gas outlet became uncapped and Tower found it discharging gas that was sucked into the air intake for the building. On a balance of probabilities, I find the source of the July 16-19, 2021 gas leak was the gas outlet near strata lot 4's patio, to which Mr. Tanavoli's gas hose was connected.

Chargeback

30. The strata charged Mr. Tanavoli \$8,631, which it says was his personal or pro-rated portion of the gas leak investigation expenses. Tower's first invoice was for \$9,513. Tower's second invoice was for \$8,631 after deducting 4 hours of labour for the time spent repairing the parkade gas leak.

31. The strata says its authority to charge the investigation expense to Mr. Tanavoli is found in bylaw 3.5.

32. The relevant part of bylaw 3.5 says:

An owner shall indemnify and save harmless the Strata Corporation from the expense of any maintenance, repair or replacement rendered necessary to the common property, limited common property, common assets or to any strata lot by the owner's act, omission, negligence or carelessness or by that of an owner's visitors, occupants, guests, employees, agents, tenants or a member of the owner's family, but only to the extent that such expense is not reimbursed from the proceeds received by operation of any insurance policy.

33. I find that in order for the strata to rely on bylaw 3.5, two conditions must be met. First, the expense must fall under "any maintenance, repair or replacement" of common property, common assets or a strata lot. Second, the expense must arise because of an "act, omission, negligence or carelessness".

34. On the second condition, I find Mr. Tanavoli was negligent by having a hose connected to the gas outlet, not attached to any gas appliance, near the air intake, and uncapped.
35. On the first condition, the strata says it had to incur the cost of Tower's investigation to repair limited common property. The strata does not say what limited common property it repaired. However, the strata argues that Mr. Tanavoli failed to repair and maintain his gas hose and failed to ensure it was capped and the gas was turned off when not in use. I infer the strata's position is that it either "repaired" strata lot 4's limited common property patio when Tower removed the uncapped gas hose, or "repaired" the common property gas outlet when Tower shut it off, or both. The expense charged to Mr. Tanavoli's strata lot was for the gas leak investigation, not for repairs.
36. The strata relies on *Sorokin v. The Owners, Strata Plan NW578*, 2020 BCCRT 971. In that decision, an owner unsuccessfully challenged a strata corporation's chargeback for demolition, remediation and water extraction expenses. The vice chair distinguished the bylaws in that dispute from those at issue in previous CRT decisions that held that plumbing leak investigation costs could not be charged back under bylaws that allow chargebacks for "maintenance, repair, or replacement" expenses: see *Robertson v. The Owners, Strata Plan NW 87*, 2017 BCCRT 37 and *The Owners, Strata Plan LMS 3824 v. Kulak*, 2020 BCCRT 427.
37. The bylaw in *Sorokin* said an owner must indemnify the strata for, among other things, "any loss, damage, or expense arising from the owner's strata lot". I agree with the vice chair's conclusion that the bylaw in *Sorokin* was worded more broadly than the bylaws in *Robertson* and *Kulak*. Bylaw 3.5 is worded narrowly, like the bylaws in *Robertson* and *Kulak*. Bylaw 3.5 applies to maintenance, repair and replacement expenses. Based on Tower's invoice, the strata did not pay Tower to maintain, repair or replace anything. It paid tower to investigate and identify the source of a gas leak. At most, Tower's repair work consisted of disconnecting a gas hose and turning off the gas outlet at the end of its investigation (Tower's 4 hours of repair work on the parking garage gas line was removed from the invoice charged to Mr. Tanavoli as it

was unrelated to the leak from strata lot 4's patio). The vast majority of Tower's time was spent investigating by tracing and testing gas lines in the main strata building and parkade.

38. Although the strata did not raise it, I acknowledge that in 2 previous decisions, I found that reasonable expenses associated with investigating the source of plumbing leaks were captured by bylaws similar to bylaw 3.5 (see *Kerwin v. The Owners, Strata Plan LMS 819*, 2020 BCCRT 131 and *The Owners, Strata Plan NW1990 v. Au*, 2021 BCCRT 1303). However, those disputes involved repairs that could not have occurred without an investigation. In other words, the investigation to find the source and extent of the leak was necessarily incidental to the repair process. Here, I find Tower's work represented in the invoice charged to Mr. Tanavoli was emergency investigation to source the leak, and was not incidental to a repair process. I conclude that bylaw 3.5 did not authorize the gas leak investigation chargeback.
39. The strata also relies on bylaw 38.3, which says if an owner fails to maintain limited common property, the strata may give notice to require the owner to maintain it to an appropriate standard. If the owner still fails to maintain the limited common property, the strata may perform the maintenance and charge the cost to the owner. I find this bylaw does not apply. Like bylaw 3.5, it is about property maintenance, not emergency investigation. Even if bylaw 38.3 did apply here, it requires the strata to give the owner notice and an opportunity to bring the limited common property up to the required standard before the strata can do so and charge the cost to the owner. The strata did not give Mr. Tanavoli notice before incurring the gas leak investigation expenses, so it did not follow bylaw 38.3.
40. I conclude that the strata did not have authority to charge the July 2021 gas leak investigation expense to Mr. Tanavoli's account. I order the strata to reverse the charge.

Bylaw contraventions

41. On July 30, 2021, the strata wrote to Mr. Tanavoli about a complaint alleging an unspecified number of bylaw contraventions. The contraventions related to the gas

leak and a strata employee's report that Mr. Tanavoli was disrespectful and abusive on July 27, 2021.

42. The letter listed 3 bylaws Mr. Tanavoli was alleged to have contravened. Bylaw 3.1(a) prohibits owners from causing a nuisance or hazard to another person. Although the strata's letter was not explicit about the connection, the strata's position is that this bylaw prohibits both the alleged abusive conduct and the gas leak. The letter also listed bylaws 3.5 and 38.3, discussed above. The strata invited Mr. Tanavoli to respond in writing to request an in-person hearing.
43. On August 12, 2021, Mr. Tanavoli provided written submissions. As documented in its August 24, 2021 decision letter, the strata fined Mr. Tanavoli \$800 for 4 breaches of the bylaws.
44. I find that Mr. Tanavoli did not contravene bylaw 3.5. As noted above, bylaw 3.5 requires an owner to indemnify the strata for certain expenses caused by the owner's negligence. I found above that the gas leak investigation expense was not one of those expenses, so Mr. Tanavoli was not required to indemnify the strata.
45. I find Mr. Tanavoli did not contravene bylaw 38.3. The strata does not explain how an owner can contravene bylaw 38.3 given that it imposes no obligations on an owner. Bylaw 38.3 instead permits the strata to take certain action when an owner fails to do repair and maintain limited common property. An owner's obligation to repair and maintain limited common property is found in bylaw 2.2, but the strata does not allege Mr. Tanavoli contravened bylaw 2.2.
46. I find Mr. Tanavoli contravened bylaw 3.1(a) by causing or permitting an uncapped gas hose to be placed near the air intake grills. I find this caused a safety hazard to strata residents. The strata complied with the procedural requirements of SPA section 135. I find this fine was validly imposed.
47. I turn to the second fine the strata applied under bylaw 3.1(a), for being disrespectful or abusive to a strata employee. In Mr. Tanavoli's August 12, 2021 submissions, among other things, he denied the allegation and asked for a copy of the complaint

form or other supporting evidence for the complaint. It is not clear whether the strata ever gave Mr. Tanavoli the requested information, or whether the complaint was written or verbal.

48. In this dispute, the strata did not provide a copy of any written complaint. In its written submissions it appears to have pasted the text of an email from MK, a concierge, to JA, the head concierge and building manager.
49. Leaving aside the issues with providing evidence in this way, I agree with Mr. Tanavoli that the email does not show Mr. Tanavoli created a hazard or nuisance, real or perceived. The email recounted MK's conversation with Mr. Tanavoli but it did not indicate that MK felt Mr. Tanavoli was being disrespectful or abusive. Mr. Tanavoli admits he approached MK at the concierge desk on July 27 and asked questions, even repeating a question when he did not understand the answer, but says he was not disrespectful. Absent some evidence of abusive or disrespectful communication, or a statement from MK to that effect, I find there is insufficient evidence to support the July 27, 2021 contravention of bylaw 3.1(a).
50. In summary, I find the strata had authority to apply one \$200 fine for the breach of bylaw 3.1(a) associated with the gas leak. I order the strata to cancel the remaining three \$200 fines.

CRT FEES AND EXPENSES

51. 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. As Mr. Tanavoli was substantially successful, I order the strata to reimburse him for \$225 in CRT fees he paid. Neither party claimed dispute-related expenses.
52. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Tanavoli.

ORDERS

53. I order that:

- a. The strata immediately cancel or reverse the \$8,631 gas leak investigation charge from Mr. Tanavoli's account.
- b. The strata immediately cancel or reverse the following bylaw contravention fines from Mr. Tanavoli's account:
 - i. \$200 for contravening bylaw 3.1(a) on July 27, 2021.
 - ii. \$200 for contravening bylaw 3.5.
 - iii. \$200 for contravening bylaw 38.3.
- c. Within 30 days of the date of this order, the strata pay Mr. Tanavoli \$225 as reimbursement of CRT fees.
- d. Mr. Tanavoli's remaining claims are dismissed.

54. Mr. Tanavoli is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

55. 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.

Micah Carmody, Tribunal Member