



# Civil Resolution Tribunal

Date Issued: June 17, 2022

File: ST-2021-008258

Type: Strata

Civil Resolution Tribunal

Indexed as: *Chen v. The Owners, Strata Plan BCS2756*, 2022 BCCRT 708

BETWEEN:

SHI CHEN

**APPLICANT**

AND:

The Owners, Strata Plan BCS2756

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Nav Shukla

### INTRODUCTION

1. The applicant, Shi Chen, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS2756 (strata).
2. This dispute involves Ms. Chen's allegations that the strata and council members failed to comply with the *Strata Property Act* (SPA). Ms. Chen alleges that the strata

has not held council hearings that she has requested and that the strata has not provided her with council meeting minutes. Ms. Chen also takes issue with the strata's handling of a water leak in her strata lot. Further, Ms. Chen says that the strata council's actions towards her have caused her emotional distress.

3. Ms. Chen seeks reimbursement of a \$500 deductible she paid to her insurer for repairs relating to the water leak, damages for emotional distress, compensation for her medical expenses, and an order that the strata apologize to her. In total, Ms. Chen seeks \$50,000 from the strata. Ms. Chen also makes various allegations against the strata's property management company (FSR). However, FSR is not a named party in this dispute.
4. The strata says that Ms. Chen's Dispute Notice does not set out a reasonable cause of action against it. The strata also says that the Civil Resolution Tribunal (CRT) does not have jurisdiction to hear Ms. Chen's claims. Further, in its Dispute Response, the strata says that Ms. Chen's claims are out of time and barred by the *Limitation Act*. However, neither party made submissions with respect to the limitation period. So, I conclude that the strata abandoned its limitation defence.
5. Ms. Chen is self-represented. The strata is represented by a strata council member.

## **JURISDICTION AND PROCEDURE**

6. These are the CRT's formal written reasons. 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. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
9. 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.
10. 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.

### ***Preliminary Issues***

11. First, I note that some of Ms. Chen's allegations relate to an October 5, 2020 incident that occurred outside of FSR's office. Ms. Chen alleges, among other things, that FSR lied to the police, leading to Ms. Chen's arrest that day.
12. As mentioned, Ms. Chen has not named FSR or any individual representatives of FSR as parties to this dispute. Given FSR is not a named party in this dispute and did not have the opportunity to provide submissions, I decline to make any orders involving FSR. However, I find that FSR is an agent of the strata, which the strata does not dispute, and the law of agency applies here. In other words, the strata is responsible for its strata manager's actions when the strata manager is acting in its capacity as the strata's agent. So, to the extent any of Ms. Chen's allegations against FSR arise from situations in which FSR was acting in its capacity as the strata's agent, I have considered those claims as claims against the strata.

13. The strata says that Ms. Chen has not disclosed a cause of action against it. As I have already found that FSR was an agent of the strata, I disagree. Any claims that Ms. Chen makes against FSR in her Dispute Notice that relate to FSR carrying out the strata's statutory duties delegated to FSR are claims against the strata. So, I find that the Dispute Notice does disclose a cause of action against the strata.
14. The strata also says that Ms. Chen's claims are not captured by CRTA section 121 that describes the CRT's jurisdiction in strata disputes. For the reasons that follow, I disagree.
15. As mentioned, in her Dispute Notice, Ms. Chen alleges that the strata did not hold council hearings despite her request and that the strata did not provide her with requested meeting minutes. These claims require interpreting SPA sections 34.1, 35 and 36. Ms. Chen also alleges that the strata must reimburse her for the insurance deductible she paid relating to the water leak in her strata lot. This claim relates to the strata's duty to repair property under SPA section 72. Since these claims relate to SPA's interpretation and application, I find that these 3 claims fall within the CRT's jurisdiction under CRTA section 121(1)(a).
16. Ms. Chen also alleges that the strata caused her emotional distress and claims damages and compensation for medical expenses related to that. Ms. Chen's request for an apology from the strata presumably arises from the strata's alleged actions that allegedly caused her the claimed emotional distress. I find that these allegations fall under CRTA section 121(1)(e) since they arise out of alleged actions by the strata council in relation to her. So, I find that these claims are also within the CRT's jurisdiction.
17. In short, I find the CRT has jurisdiction to hear this dispute under CRTA sections 121(1)(a) and (e). Below, I consider each of Ms. Chen's claims described above.

## ISSUES

18. The issues in this dispute are:

- a. Did the strata fail to hold council meetings contrary to SPA section 34.1?
- b. Did the strata fail to provide Ms. Chen with requested strata council meeting minutes?
- c. Is Ms. Chen entitled to a \$500 reimbursement from the strata for the insurance deductible she paid?
- d. Did the strata's actions cause Ms. Chen emotional distress?
- e. Is the strata liable for Ms. Chen's alleged medical expenses?
- f. Should I order the strata to apologize to Ms. Chen?

## EVIDENCE AND ANALYSIS

19. In a civil proceeding like this one, the applicant, Ms. Chen must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision. I note Ms. Chen filed 2 pieces of late evidence in this dispute. The strata had the opportunity to review and respond to this late evidence. Consistent with the CRT's mandate that includes flexibility, I find there is no prejudice to the strata in allowing the late evidence. So, I allow the late evidence, but it would not change my decision in any event.

### ***Did the strata fail to hold council meetings contrary to SPA section 34.1?***

20. Ms. Chen says that she requested a council meeting for a hearing in October 2020 as well as 3 times in October 2021, but the strata did not comply. The strata says it offered hearings to Ms. Chen but that she did not attend them until the most recent hearing on March 29, 2022.

21. SPA section 34.1 says an owner may request a council hearing by written application stating the reason for the request. If such a request is made, the strata council must hold a hearing within 4 weeks. Section 4.01 of the *Strata Property Regulation* defines a “hearing” under SPA section 34.1 as “an opportunity to be heard in person at a council meeting”.
22. A plain reading of SPA section 34.1 indicates a council hearing is mandatory. If the proper procedures are followed by an applicant, the strata does not have discretion to refuse a requested hearing. The CRT has routinely found this to be the case (see *The Owners, Strata Plan NES3135 v. T.R.F. Enterprises Ltd.*, 2021 BCCRT 271 and *Roberts v. The Owners, Strata Plan LMS 1901*, 2020 BCCRT 854).
23. The CRT has also found where an applicant’s request for a hearing is “unclear, conditional or ambiguous”, section 34.1 is not triggered: *Lee v. The Owners, Strata Plan EPS1290*, 2021 BCCRT 533 at paragraph 43.
24. Based on the email evidence before me, I find that Ms. Chen requested a council meeting on October 6 and 7, 2020. In her email requests, she outlined the questions she wanted addressed at the hearing. I note that many of these questions relate to the October 5, 2020 incident outside of FSR’s office. On October 7, 2020, the strata manager emailed Ms. Chen with an invitation for an October 8, 2020 virtual council meeting. The strata says that Ms. Chen did not attend this meeting and Ms. Chen does not dispute this. So, I find that the strata did not contravene SPA section 34.1 with respect to Ms. Chen’s October 6 and 7, 2020 hearing requests since it scheduled the October 8, 2020 meeting.
25. On October 15, 2021, Ms. Chen emailed TM, a council member, requesting that a council meeting be scheduled immediately. However, Ms. Chen did not state a reason for her request. So, I find that this request did not meet the requirements of SPA section 34.1.
26. The next day, Ms. Chen emailed the strata council, the building manager, the strata manager, and various other FSR personnel requesting an urgent hearing, setting out

the reasons for her request. She followed up on October 20, 2021 saying she had not heard anything.

27. On October 23, 2021, Ms. Chen wrote to the strata council again, setting out the reasons for her request. As before, many of Ms. Chen's questions related to the October 5, 2020 incident and her arrest.
28. On October 26, 2021, the strata manager sent Ms. Chen an email invitation for a virtual meeting on November 30, 2021. On November 26, 2021, Ms. Chen advised via email that she was not available for the November 30, 2021 meeting. The evidence shows that Ms. Chen continued to email FSR and the strata council about her meeting request but failed to respond to FSR's continued requests asking for her availability for the hearing.
29. Based on the evidence before me, I find that the strata contravened SPA section 34.1 when it failed to hold a meeting within 4 weeks of Ms. Chen's original request on October 16, 2021. Though the strata arranged for a meeting on November 30, 2021, this was not within the 4-week timeframe set out in section 34.1.
30. The SPA does not set out a specific remedy for a breach of section 34.1. I am empowered under section 123(2) of the CRTA to make orders related to findings of significant unfairness.
31. SPA section 164 sets out the BC Supreme Court's authority to remedy significantly unfair actions. The CRT has jurisdiction over significantly unfair actions under CRTA section 123(2), which has the same legal test as cases under SPA section 164: *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164. The test, established in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, is as follows:
  - a. What is or was the expectation of the affected owner?
  - b. Was that expectation on the part of the owner objectively reasonable?
  - c. If so, was the expectation violated by an action that was significantly unfair?

32. In *Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, the Court defined a significantly unfair action as one that is “burdensome, harsh, wrongful, lacking in probity or fair dealing, or has been done in bad faith”.
33. The right to a hearing within 4 weeks of a written request is mandatory, and not optional on the strata’s part. Based on the mandatory wording of section 34.1, I find Ms. Chen had a reasonable expectation that the strata would grant her a hearing within 4 weeks of October 16, 2021. As mentioned, the strata did propose a meeting for November 30, 2021 but Ms. Chen said she was unavailable. Ms. Chen also did not respond to later requests asking for her availability to schedule the meeting. So, I find that the strata’s actions were not significantly unfair as they were not burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in bad faith. Based on the evidence before me, the strata made efforts to obtain Ms. Chen’s availability for the hearing, albeit after the 4-week requirement had passed, but Ms. Chen did not respond. So, I find that the strata’s breach of SPA section 34.1 was not a significantly unfair action and I dismiss this claim.

***Did the strata fail to provide Ms. Chen with requested strata council meeting minutes?***

34. As mentioned above, on October 7, 2020, Ms. Chen received an email invitation to a council meeting scheduled for October 8, 2020. In that same email, the strata manager asked Ms. Chen to refrain from harassing the building manager or loitering in the lobby. Ms. Chen says that she requested the minutes from the October 8, 2020 meeting, which she refers to as the “harass hearing”, from council but has not received them.
35. The emails in evidence show that Ms. Chen requested the October 8, 2020 meeting minutes on March 12, 2021. On March 15, 2021, the strata manager replied with a link to the strata’s community website where meeting minutes and other documents can be found. The following day, Ms. Chen replied saying she did not see the minutes on the website. On March 17 and March 22, 2021, Ms. Chen requested the “harass hearing” minutes again. On March 22, 2021, the building manager replied saying there was no hearing.



36. Under SPA section 35(1)(a), the strata is required to keep minutes of all council meetings. SPA section 36(1) says the strata must make these meeting minutes available for inspection and provide copies to an owner within 2 weeks of the request.
37. The strata has made no submissions about whether the requested meeting minutes exist. From the evidence, it appears that a meeting may have taken place on October 8, 2020. However, the matters discussed at that meeting are not in evidence.
38. Since it is unclear based on the evidence before me whether the “harass hearing” took place, I make no finding about whether the strata has contravened SPA sections 35 or 36. To bring this matter to an end, however, I order the strata to provide Ms. Chen with minutes from strata council’s October 8, 2020 meeting, if a council meeting took place that day.

***Is Ms. Chen entitled to a \$500 reimbursement from the strata for the insurance deductible she paid?***

39. As mentioned, Ms. Chen claims a \$500 reimbursement from the strata for the insurance deductible she says she paid to her insurer in relation to a September 2020 water leak in her strata lot. It is undisputed that the water damage in Ms. Chen’s strata lot resulted from a sprinkler leak. The November 1, 2020 deductible invoice is in evidence. However, the document does not specify what work the invoice relates to.
40. The strata says that FSR and the building manager worked together to address the water leak issue between September 17, 2020 and October 9, 2020 but that Ms. Chen was not cooperative. The strata says that the sprinkler that caused the water damage was repaired and that there is no evidence that the strata was negligent or that such negligence led to the leak. So, the strata says that it is not liable for any of Ms. Chen’s costs relating to the water leak, including the \$500 deductible.
41. Ms. Chen’s Dispute Notice and submissions do not set out why she claims the strata is liable to reimburse her for the \$500 deductible. Under SPA section 72(1), the strata is responsible for repairing common property. As mentioned, the strata says that the sprinkler, which I find to be an extension of the fire protection infrastructure for the entire building and therefore common property under SPA section 1, was repaired. In

order to find the strata liable for damage to Ms. Chen's strata lot arising from the sprinkler leak, Ms. Chen must prove that the strata was negligent (see *John Campbell Law Corp. v. Strata Plan 1350*, 2001 BCSC 1342).

42. Ms. Chen says that she reported the water damage to the strata for almost 2 weeks but did not hear back. She also says that the strata withdrew its drying equipment on October 9, 2020 without notice and that the letter the strata later gave her saying it was removing the equipment had the wrong date. Further, Ms. Chen says that the building manager cancelled a window water leak test without notice.
43. Based on the evidence before me, I find that Ms. Chen has not met her burden to prove the strata negligently handled the sprinkler leak. The evidence includes emails, quotes, and invoices that I find show the strata repaired the sprinkler leak in a reasonably timely fashion. Further, I note the strata acknowledges in its submissions that its letter to Ms. Chen advising that it was withdrawing its drying equipment was wrongly dated. Nothing turns on this, however, as Ms. Chen has not proven that the strata was required to provide her with the drying equipment or that she was entitled to notice before the strata removed the equipment.
44. The evidence shows that the strata did cancel the window water leak test at the last minute. However, Ms. Chen has not established that the test was necessary, or that it was related to the \$500 deductible she claims. In fact, the evidence suggests the window water leak test was related to condensation in the strata lot's windows, separate from the sprinkler leak issue.
45. Since I have found that Ms. Chen has failed to prove the strata negligently handled the sprinkler leak, I dismiss Ms. Chen's claim for the \$500 deductible's reimbursement.

***Did the strata's actions cause Ms. Chen emotional distress?***

46. As mentioned above, Ms. Chen claims damages from the strata for alleged emotional distress that she says it caused her. She says that the building manager and strata council, among others, have mistreated her for over a year. In her submissions, Ms.

Chen says that FSR manipulated the strata council which led to her emotional distress and anxiety. In particular, she refers to an October 7, 2020 encounter with 3 council members where she says she was “suddenly interrupted”, and that 1 council member talked about her possibly being deported. Ms. Chen also says that FSR’s unprofessional strata management work led to her emotional distress.

47. Ms. Chen says that she has nightmares, has lost her appetite, cannot sleep, cannot focus on her work, and that a medical procedure she was undergoing at the time was unsuccessful, all due to the trauma she experienced.

48. I find that the evidence does not establish that Ms. Chen has suffered emotional distress caused by the strata. Although the October 7, 2020 encounter described above may have been unpleasant, I find the evidence shows that the strata council, property manager, and building manager’s interactions with Ms. Chen were generally cordial and professional. Further, aside from an email showing that Ms. Chen was connecting with a counsellor after her October 5, 2020 arrest, Ms. Chen did not provide any objective proof she suffered emotional distress, such as a written statement from a doctor. Ms. Chen also did not provide any objective or expert evidence about the distress damages, so I find the claim is not substantiated. I accept that Ms. Chen’s October 5, 2020 arrest was traumatic for her, however, as I have already mentioned above, FSR is not a party to this dispute and I cannot make any orders against it. In short, I dismiss Ms. Chen’s emotional distress claim against the strata.

***Is the strata liable for Ms. Chen’s alleged medical expenses?***

49. Ms. Chen says the strata should pay for medical expenses that she has incurred. She has not claimed a specific amount for these medical expenses, nor has she otherwise explained what kind of medical expenses she incurred. I infer the medical expenses Ms. Chen claims relate to the emotional distress she says the strata caused her.

50. As set out above, I have already found that Ms. Chen has not proven that the strata caused her emotional distress. Further, I find there are no bylaws or SPA provisions that would make the strata responsible for Ms. Chen’s medical expenses. In any

event, Ms. Chen did not provide any receipts for these expenses. So, I dismiss Ms. Chen's claim for the strata to pay her medical expenses.

### ***Must the strata apologize to Ms. Chen?***

51. Lastly, Ms. Chen seeks an order that the strata issue her an apology. As a general rule, the CRT does not order apologies because forced apologies are not productive or helpful, and I agree (see *Wang v. Educare Systems Inc.*, 2019 BCCRT 527). So, I decline to order the strata to apologize to Ms. Chen.

### **CRT FEES AND EXPENSES**

52. 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. Here there was mixed success, with all but one of Ms. Chen's claims dismissed, so, in the circumstances of this dispute, I decline to order reimbursement of CRT fees or dispute-related expenses claimed by Ms. Chen.

53. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the Ms. Chen.

### **ORDER**

54. I order that within 14 days of this decision, the strata must provide Ms. Chen with a copy of the strata council's October 8, 2020 meeting minutes, if a strata council meeting took place that day.

55. I dismiss the rest of Ms. Chen's claims.

56. 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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Nav Shukla, Tribunal Member