



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Carson v. The Owners, Strata Plan NW 2594*, 2022 BCCRT 878

B E T W E E N :

BRIAN CARSON and DAVID CARSON

APPLICANTS

A N D :

The Owners, Strata Plan NW 2594

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This strata property dispute is about a chargeback for common property repairs.

2. The applicants are father and son. The son, David Carson, owns strata lot 21 in the respondent strata corporation, The Owners, Strata Plan NW 2594 (strata). The father, Brian Carson, lives in strata lot 21.
3. The strata imposed a \$1,349.41 chargeback against strata lot 21 for paint splatters in a common property stairwell. Although Brian Carson paid the chargeback, the applicants now say that by imposing the chargeback, the strata did not comply with the *Strata Property Act* (SPA) and was significantly unfair to them. The applicants seek cancellation of the chargeback and a refund of the money paid.
4. The strata says the common property repair was a direct result of Brian Carson's admitted act of vandalism, for which he agreed to pay. I infer the strata asks me to dismiss the dispute.
5. Although the Dispute Notice says the chargeback was \$1,348.41, I find there was a typo and the chargeback was \$1,349.41. I find nothing turns on this \$1 difference as the parties operated as if the correct amount was stated in the dispute notice.
6. Brian Carson represents the applicants in this dispute. A strata council member represents the strata. For the reasons set out below, I allow the applicants' claim and order the strata to reimburse Brian Carson for the chargeback.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.

Based on the evidence and submissions provided, I am satisfied that I can fairly decide this dispute without an oral hearing.

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 the parties and witnesses questions of 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.
11. In his final reply submissions, Brian Carson said he could not access the strata's evidence. Because I have decided the dispute in favour of the applicants and granted their requested remedy, I find no unfairness arises from this irregularity.

ISSUE

12. The issue in this dispute is whether the strata validly imposed the \$1,349.41 chargeback.

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities, meaning more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
14. The strata was created in 1987 under the *Condominium Act* and continues under the SPA. It includes 21 apartment-style strata lots in a 4-storey building.
15. It is undisputed that on December 24, 2020, an owner reported to the strata council "paint vandalism" in the south stairwell at the third and fourth floors. Photos show that 2 colours of paint were splattered onto several walls and baseboards, carpeted stairs and landings, and at least 1 banister.

16. The December 30, 2020 strata council meeting minutes show that council wanted to investigate solutions to remove the paint from the carpet. A council member volunteered to facilitate painting of the walls and banister. The strata's undisputed evidence is that 2 owners volunteered 18-19 hours to complete the sanding, repainting and other work. When the strata concluded that the paint could not be cleaned from the carpet, the strata decided to have that section of the carpet replaced. The invoice from Surdel Carpets was for \$1,266.90. Other invoices show the strata spent \$82.51 for supplies, making up the \$1,349.41 chargeback.

Did the strata validly impose the chargeback?

17. On July 8, 2021, the strata wrote to David Carson about the carpet and wall damage. The strata asserted that "your tenant Brian" agreed to pay for the remediation. The strata attached invoices and advised that it would be charging \$1,349.41 to David Carson's strata lot. Brian Carson says he paid the chargeback on David Carson's behalf. It is not clear exactly when or how he paid the chargeback, but the strata does not dispute this submission, so I accept it. I find that Brian Carson paid in response to the strata's imposition of the chargeback and its demand for payment, in the context of his relationship with David Carson. I find it was not a voluntary payment.

18. I will first consider whether Brian Carson initially agreed to pay for the remediation expenses. It is undisputed that on January 6, 2021, Brian Carson asked 2 strata council members, MC and KT to meet with him. At that meeting, he admitted that he splattered the paint in the stairwell. He provided various reasons, but it is unnecessary to discuss those reasons here.

19. MC and KT provided written statements. KT said Brian Carson's opening statement at the January 6, 2021 meeting was an "admission of guilt" and a "voluntary offer of restitution." MC was more specific and said Brian Carson assured them "he would pay for the cost of the paint and the replacement of the carpet."

20. In contrast, Brian Carson says he offered to "help" with the repairs and "help pay" for expenses with the understanding that the owners were repairing the paint damage themselves, and he did not anticipate the contractor's expensive bill. Brian Carson

also wrote to the strata on March 24, 2021, retracting all statements made during the January meeting. So, Brian Carson now says he does not admit liability and is not responsible for any vandalism or resulting repair costs. On the evidence before me, I find that Brian Carson splattered the paint. However, the issue is whether the strata validly imposed the chargeback on the basis that Brian Carson agreed to pay it, or any other basis.

21. While verbal agreements are generally enforceable, they are harder to prove than written ones. Contracts require a mutual exchange of promises and certainty of terms. I find Brian Carson could not have agreed to pay for carpet replacement. I say this because I find that as of January 6, 2021 the strata had not yet determined that the carpets would require replacement, or what that replacement would cost. Just a week earlier, the strata decided to investigate ways to remove the paint from the carpet. Surdel did not invoice until February 17, and did the work on April 27. So, I do not accept MC's evidence that Brian Carson agreed to pay for carpet replacement on January 6. I find the strata has not proved the existence of a binding contract with Brian Carson.
22. In addition, the strata has not explained how Brian Carson's promise bound David Carson and allowed the strata to impose the chargeback against David Carson's strata lot account. The strata does not say that Brian Carson was acting as David Carson's agent. In correspondence, the strata has specifically denied that Brian Carson had authority act on David Carson's behalf. So, I find the strata did not have authority for the chargeback under an agreement.
23. Strata corporations can impose chargebacks for repairs if they have a bylaw specifically authorizing it. However, the strata does not rely on any chargeback bylaw in this dispute, and I find that the strata here did not have a chargeback bylaw filed at the Land Title Office in late 2020 when the stairwell damage happened.
24. Although the strata did not argue it specifically, I considered whether the strata had authority to impose the repair costs under SPA section 133. SPA section 133 says the strata may require that the reasonable costs of remedying a bylaw contravention

be paid by the person who may be fined for the contravention under section 130. Section 130 says that the strata may fine an owner if the owner contravenes a bylaw and may fine a tenant if the tenant contravenes a bylaw.

25. In addition, the strata must follow the procedural requirements of SPA section 135.
26. Section 135(1) says that the strata cannot require a person to pay the costs of remedying a contravention unless it has:
 - a. Received a complaint,
 - b. Given the owner or tenant the details of the complaint, in writing, and
 - c. Given the owner or tenant a reasonable opportunity to answer the complaint, including a hearing if requested.
27. If the person is a tenant, section 135(1)(f) also requires the strata to give notice to the landlord and the owner. Section 135(2) says the strata must give the owner, tenant, and landlord as applicable its written decision about the fine as soon as feasible after the hearing.
28. The combined effect of these provisions is that the strata cannot impose remedial charges directly on an owner for a tenant's bylaw contravention without first giving the tenant the opportunity to address the bylaw contravention (see, for example, *Shepherd v. The Owners, Strata Plan EPS4114*, at paragraph 19).
29. As noted, the strata refers to Brian Carson as a tenant, but it imposed the remedial charges on David Carson, the owner. It is possible that Brian Carson contravened bylaw 3(2), which prohibits damage to common property. However, there is no evidence that the strata gave Brian Carson written notice of the complaint or any alleged bylaw contravention.
30. On July 28, 2021, Brian Carson requested a hearing to discuss the strata's July 8 letter to David Carson. He says he received no reply. The strata says that because Brian Carson had several issues already before the strata council, it included this new request with the other requests, and the hearing was held on July 29, 2021. However,

the strata's August 4 decision letter did not mention the charge for the stairwell repairs. On balance, I find Brian Carson did not have the opportunity to answer any complaint through a hearing as requested. I also find the strata did not provide its decision as required by SPA section 135(2).

31. Overall, I find the strata failed to comply with SPA section 135 and so it cannot rely on section 133 to impose the remedial chargeback against strata lot 21. The procedural requirements in SPA section 135 must be strictly followed (see *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449).
32. What remedy is appropriate? The applicants request "an order to reverse the charge back and return money paid." The strata acknowledges that Brian Carson paid the \$1,349.41 chargeback. I therefore order the strata to reimburse Brian Carson \$1,349.41. To remove any uncertainty, I also order the strata to remove any chargeback remaining on the strata lot 21 account relating to stairwell repainting and repair.

CRT FEES, EXPENSES AND INTEREST

33. 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 Brian Carson for CRT fees of \$225. Neither party claimed any dispute-related expenses.
34. The *Court Order Interest Act* (COIA) applies to the CRT. Brian Carson is entitled to prejudgment interest on the \$1,349.41 chargeback. I cannot determine from the evidence exactly when Brian Carson paid the chargeback. Relying on the strata's invoice that is stamped "received" September 29, 2021, I find interest owing from that date to the date of this decision. This equals \$6.77.
35. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDERS

36. I order the strata to, within 30 days of the date of this order, pay Brian Carson a total of \$1,581.18 , broken down as follows:
- a. \$1,349.41 as reimbursement of the chargeback
 - b. \$6.77 in pre-judgment interest under the COIA, and
 - c. \$225.00 in CRT fees.
37. I order the strata to remove the chargeback on David Carson's strata lot 21 account relating to stairwell repainting and repair, if any.
38. Brian Carson is entitled to post-judgment interest, as applicable.
39. 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