



# Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Tichborne v. The Owners, Strata Plan LMS 2385*, 2022 BCCRT 933

B E T W E E N :

BRUCE ALLAN TICHBORNE

**APPLICANT**

A N D :

The Owners, Strata Plan LMS 2385

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. This dispute is about damage to a strata corporation's exterior door and bylaw enforcement. The applicant, Bruce Allan Tichborne, co-owns strata lot 19 (SL19) in the respondent strata corporation, The Owners, Strata Plan LMS 2385 (strata). Mr. Tichborne claims reimbursement of \$683.54 for repairs he performed to a common property door. Mr. Tichborne also requests an order requiring the strata to stop

abusing its authority and stop harassing him with alleged retaliatory bylaw complaint notices and fines.

2. The strata denies Mr. Tichborne's claims. The strata says that the alleged door damage was pre-existing. Further, the strata says that Mr. Tichborne is not entitled to reimbursement because he repaired the door himself without the strata's approval.
3. Mr. Tichborne is self-represented. The strata is represented by the strata council vice president.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.
6. 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.

7. 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.

### ***Unviewable evidence***

8. The strata submitted a document that I was unable to view. The strata was given an opportunity to resubmit it and it did so. Mr. Tichborne was given an opportunity to respond to the resubmitted evidence, but did not do so. Since Mr. Tichborne had an opportunity to respond, I find that he has not been prejudiced and I have considered the strata's resubmitted evidence in my decision.

### ***Claims not raised in the Dispute Notice***

9. Mr. Tichborne raised new claims in his submissions. These new claims included the following:
  - a. A request for damages for allegedly reducing the marketability of SL19.
  - b. A request for an order requiring the strata to provide a Form B Information Certificate including specified parking rights.
  - c. A request for reimbursement of expenses related to allegedly inaccurate Form B Information Certificate provided by the strata.
  - d. A request for damages for allegedly damaging the door.
  - e. A request for repairs to an allegedly broken fence panel in front of Mr. Tichborne's strata lot.
  - f. A request for reimbursement for time spent participating in this dispute.
  - g. A request for an order removing a \$100 bylaw fine relating to his dog from his strata lot account.
  - h. A request for an order removing a \$100 title search fee from his strata lot account.

- i. A request for order requiring the strata to refund Mr. Tichborne's 2021/2022 strata fees.
  - j. A request for the CRT to investigate the strata council's conduct and the turnover of strata council members and property managers.
10. These claims were not included in the Dispute Notice. Though the CRTA and CRT rules permit applicants to request to amend the Dispute Notice to add new claims or remedies, Mr. Tichborne did not do so. I find the purpose of a Dispute Notice is to define the issues and provide notice to the respondents of the claims against them. CRT rule 1.17 says that the Dispute Notice will only be amended after the dispute has entered the CRT decision process where exceptional circumstances apply. I find no exceptional circumstances here that would justify adding new claims or remedies at this late stage in the CRT process. Therefore, I decline to address the new claims listed above.

## **ISSUES**

11. The issues in this dispute are:
- a. Must the strata reimburse Mr. Tichborne \$683.54 for door repair expenses?
  - b. Did the strata treat Mr. Tichborne significantly unfairly by enforcing bylaws against him in a biased manner? If so, what is the remedy?

## **EVIDENCE AND BACKGROUND**

12. In a civil proceeding like this one, Mr. Tichborne, 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 refer only to the evidence and argument that I find relevant to provide context for my decision.
13. The strata consists of 27 townhouse-style strata lots in multiple buildings. The strata filed a complete set of consolidated bylaws with the Land Title Office (LTO) in October

2016, which I find apply to this dispute. The strata filed subsequent bylaw amendments at the LTO which I find are not relevant to this dispute.

14. It is undisputed that strata council president, SHP, and another individual, RP, approached the front door of Mr. Tichborne's strata lot at approximately 8:45 pm on August 31, 2019. Mr. Tichborne claims they repeatedly pounded on the front door, breaking the door's glass panel. In contrast, the strata says that SHP and RP did not damage the door during this incident. Rather, the strata says that the door damage was pre-existing.
15. Mr. Tichborne says that he repaired the alleged door damage on September 1, 2019. He provided September 1, 2019 receipts from a hardware retailer totalling \$430.88 for replacement building materials and supplies. Mr. Tichborne sent the strata an October 1, 2021 invoice for \$93.44. In this invoice, Mr. Tichborne charged the strata for his time that he allegedly spent repairing the door. The invoice charges the strata for 2 hours of labour, at the rate of \$40 per hour, plus some supplies. Mr. Tichborne also provided a September 1, 2019 receipt for \$5.00 for waste disposal. Mr. Tichborne's repair invoices total \$529.32. It is undisputed that the strata has not paid any of the invoices.

## **REASONS AND ANALYSIS**

### ***Must the strata reimburse Mr. Tichborne for the door repairs?***

16. Mr. Tichborne says that the door in issue is located at the top of an exterior stair landing, which the strata does not dispute. This landing area is designated as common property on the strata plan. SPA section 68(1) says that the boundary of a strata lot is the midway point in the walls between the strata lot and the common property. Since Mr. Tichborne's door is on an exterior wall, facing common property, I find that this door is common property.
17. SPA section 72 and strata bylaw 10.1 say the strata must repair and maintain common property. The strata does not dispute this obligation. However, the strata

argues that it is not responsible for Mr. Tichborne's repairs because he did so without strata approval.

18. Previous CRT decisions have addressed situations where owners perform common property repairs without strata authorization. In *The Owners, Strata Plan NW 1017 v. Ahern et al*, 2019 BCCRT 617, a CRT member dismissed the owner's claim for reimbursement of the cost of replacing a fence that the strata corporation had to maintain and repair under its bylaws. The CRT member wrote at paragraph 44 that in some circumstances it might be necessary for an owner to conduct repairs that are the strata corporation's responsibility and seek reimbursement, such as an emergency. However, the CRT member noted that if owners could unilaterally decide to repair common property, they would usurp the strata corporation's ability to prioritize repair and maintenance for the benefit of the owners and within a budget. Similarly, in *Trkla v. The Owners, Strata Plan KAS3099*, 2020 BCCRT 533 and *Guo v. The Owners, Strata Plan NW 1975*, 2020 BCCRT 1324, the CRT found that the strata was not responsible for owner expenses incurred to repair common property before the strata corporation had an opportunity to consider the owner's repair request. Though previous CRT decisions are not binding on me, I find the reasoning in *Ahern*, *Trkla* and *Guo* persuasive and I apply that reasoning here.
19. In this dispute, I find that Mr. Tichborne repaired the door himself before giving the strata any opportunity to investigate or consider a reasonable repair. As stated above, Mr. Tichborne says the incident occurred at approximately 8:45 pm on August 31, 2019, which was a Saturday night. Mr. Tichborne provided a handwritten note that says he tried to call the strata's property manager to discuss the incident at 10:02 pm that night and again at 12:05 pm the next day. Though neither party provided the property manager's business hours, I infer that it is likely that the property manager was not available for telephone calls on Saturday nights or Sundays, when Mr. Tichborne called. Further, Mr. Tichborne's notes say that he did not know how to contact the strata. Based on Mr. Tichborne's notes, I accept that he was unable to contact the property manager or the strata on August 31 or September 1, 2019.

20. However, despite being unable to contact the strata, Mr. Tichborne says he performed the repairs on September 1, 2019. Mr. Tichborne's hardware store receipts say that he purchased the repair materials and supplies at 12:17 pm and 12:22 pm on September 1, 2019. This is only 18 minutes after Mr. Tichborne's 12:05 pm telephone attempt to the property manager on September 1, 2019. Based on Mr. Tichborne's actions, I find that he did not make a reasonable attempt to request strata repairs before he unilaterally performed them himself. Rather, I find that he proceeded to perform the repairs almost immediately.
21. Mr. Tichborne argues that he needed to perform the repairs on an emergency basis. He says the door damage let moisture and insects enter the building. He says the damage also enabled access to the front door lock, which he says left his strata lot vulnerable to intruders. Mr. Tichborne provided photographs appearing to show some small cracks in the door's glass pane and the door frame.
22. The strata says the door's glass panel was already broken before this incident, which would suggest the repairs were not likely an emergency. The strata provided a statement from DP, a previous strata resident. DP wrote that SL19's previous owners broke the door glass, which was never fixed. Without additional evidence, I am unable to determine whether Mr. Tichborne's submission that the door was broken on August 31, 2019 is more likely than DP's statement that the door was previously broken. However, even if the door damage occurred on August 31, 2019 as Mr. Tichborne claims, I find that he has not proved that repairs were needed on an emergency basis for the following reasons.
23. Though the photographs appear to show cracks in the glass and door frame, Mr. Tichborne did not provide evidence showing that moisture or insects were actually entering into his strata lot or explain why the cracks could not be temporarily sealed until he could contact the strata. Further, I find that the photographs do not show that door lock was compromised by the incident. On balance, I find that Mr. Tichborne has not established that emergency repairs were immediately needed.

24. Based on the above, I find that Mr. Tichborne repaired the common property door without notifying the strata in advance. Further, I find that these immediate repairs were not urgently required by emergency conditions. So, I find that the strata is not responsible for the repair expenses.

***Did the strata treat Mr. Tichborne significantly unfairly by assessing bylaw fines against his strata lot in a biased manner?***

25. Mr. Tichborne claims the strata has abused its authority and harassed him with unfounded bylaw infraction notices and fines in retaliation for his door repair request. I find that Mr. Tichborne is essentially claiming that the strata has treated him significantly unfairly.

26. Under section 123(2) of the CRTA, the CRT has jurisdiction to consider whether an action listed under s. 121(1) (e) to (g) of the CRTA is significantly unfair (see *Time Share Section of The Owners, Strata Plan N 50 v. Residential Section of The Owners, Strata Plan N 50*, 2021 BCSC 486). I find that the strata's decision to send bylaw violation notices and impose bylaw fines are within the scope of the CRT's jurisdiction under CRTA section 121(1)(e) and(f).

27. Under CRTA section 123(2), the CRT can make orders to remedy a strata's significantly unfair actions or decisions. In *Reid v. Strata Plan LMS 2503*, 2003 BCSC 126, the BC Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable.

28. In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the BC Court of Appeal confirmed that the reasonable expectations of an owner may also be relevant to determining whether the strata's actions were significantly unfair. The test for assessing an owner's reasonable expectations is from *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44:

a. What was the owner's expectation?

b. Was that expectation reasonable?



c. Did the strata violate that expectation with a significantly unfair action or decision?

29. Mr. Tichborne claims the strata treated him unfairly by improperly enforcing bylaws against him in a biased manner, in retaliation for his door repair request. Mr. Tichborne provided August 17, 2020 strata council minutes which approved the issuance of a bylaw violation letter against him for allegedly installing a security camera and altering a fence without approval. The minutes also approved sending Mr. Tichborne a reminder to keep his dog on a leash. There is no evidence before me showing that the strata imposed bylaw fines relating to these alleged violations. Further, the strata imposed a \$100 bylaw fine against Mr. Tichborne's strata lot account on December 7, 2021 for allegedly letting his dog off leash. The strata also charged a \$100 fee against Mr. Tichborne's strata lot account on December 7, 2021 for a title search fee.
30. Mr. Tichborne also claims in his submissions that the strata unfairly failed to repair a fence near his strata lot. However, since this claim was not raised in the amended Dispute Notice, I find that this claim is not before me. So, I make no findings relating to alleged fence damage.
31. On balance, I find that Mr. Tichborne has not proved that the strata unfairly enforced its bylaws against him in a biased manner. I note that the strata sent Mr. Tichborne a reminder letter about keeping his dog on leash before later issuing a bylaw fine for an alleged subsequent incident. I find that the strata's decision to send a reminder letter rather than a bylaw violation notice in August 2020 is inconsistent with Mr. Tichborne's allegation that the strata council was aggressively enforcing bylaws against him. Further, the August 17, 2020 strata council minutes say the strata also sent a security camera installation bylaw violation notice to another strata lot owner. This suggests that the strata was not targeting its bylaw enforcement against Mr. Tichborne. I find that the evidence does not establish that the strata enforced its bylaws in a biased manner against Mr. Tichborne.

32. For the above reasons, I find that the strata has not treated Mr. Tichborne significantly unfairly and I dismiss this claim.

### **CRT FEES AND EXPENSES**

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. Since Mr. Tichborne was not successful, I find that he not entitled to reimbursement of CRT fees or dispute-related expenses. The strata did not request reimbursement of dispute-related expenses so I order none.

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

### **ORDERS**

35. I dismiss Mr. Tichborne's claims and this dispute.

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Richard McAndrew, Tribunal Member