



# Civil Resolution Tribunal

Date Issued: November 25, 2022

File: ST-2022-001708

Type: Strata

Civil Resolution Tribunal

Indexed as: *Chen v. The Owners, Strata Plan EPS6022, 2022 BCCRT 1277*

**B E T W E E N :**

WEI CHEN

**APPLICANT**

**A N D :**

The Owners, Strata Plan EPS6022

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about liability for items discarded from a storage or bike locker, and strata fees. The applicant, Wei Chen, owns strata lot 2 (SL2) in the respondent strata corporation, The Owners, Strata Plan EPS6022 (strata). Mr. Chen says he had to move out while the strata's contractors fixed water damage in SL2. He claims for reimbursement of strata fees paid for 4 months, which equals \$2,684. Mr. Chen also

says that the strata wrongfully discarded his items from a locker while he was away. He claims \$32,346.72 as compensation. Finally, Mr. Chen also claims \$2,430.44 as reimbursement for lawyer's fees spent before he commenced this dispute.

2. The strata denies liability. It says Mr. Chen is obligated to pay strata fees despite temporarily moving out. The strata admits it discarded Mr. Chen's belongings. However, it also says Mr. Chen placed his belongings in the wrong locker, and the strata is not responsible. The strata says it acted reasonably throughout.
3. Mr. Chen represents himself. A strata council member represents the strata.
4. For the reasons that follow, I dismiss Mr. Chen's claims.

## **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. 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. 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 as follows:
  - a. Must the strata reimburse Mr. Chen any strata fees?
  - b. Is the strata liable for the items it discarded from the storage locker?
  - c. Must the strata reimburse Mr. Chen for any legal expenses?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, Mr. Chen as the applicant must prove his claims on a balance of probabilities. This means 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. Notably, Mr. Chen provided no evidence or final reply submissions, though he was given opportunities to do so.
11. As background, the strata plan for the strata was registered in the Land Title Office (LTO) in 2019. Mr. Chen became the registered owner of SL2 in January 2020. His submissions indicate that he moved into SL2 at around this time.
12. The strata registered a complete set of bylaws in November 2019. Bylaw 32 states the owner developer, 0754999 B.C. Ltd., leased bike lockers in the strata's parking facility to Pacific Place Developments Corporation (Pacific). Further, Pacific currently has the option to assign those lockers to others for their use. Bylaw 32(3) says that once the strata plan is registered, the strata automatically assumes the owner developer's obligations, including maintaining an accurate list of all bike locker allocations. As the strata plan is registered in the LTO, I find the strata must keep an accurate list of locker allocations.

13. The strata's undisputed submission is that 0754999 B.C. Ltd. and Pacific are both affiliates of Concord Pacific Developments Inc. (Concord), and that Concord was the developer of the lands and buildings forming the strata. I find this is likely true, as it explains why the strata exchanged emails with Concord, discussed below.

***Issue #1. Must the strata reimburse Mr. Chen any strata fees?***

14. A September 16, 2020 contractor's quote shows that at some point, the strata experienced a water leak affecting multiple strata lots, including SL2. The report said the leak originated from a defective valve in a ceiling water supply line.

15. Mr. Chen says, and I accept, that he moved out of SL2 in July 2020 to await repairs, and then returned in October 2020. Mr. Chen says that he should be reimbursed 4 months' worth of strata fees because he moved out for about that period of time. The strata disagrees.

16. I turn to the applicable law. In *Stewart v. The Owners, Strata Plan KAS 2601*, 2020 BCSC 809, at paragraph 106, the BC Supreme Court confirmed that payment of strata fees is mandatory for all strata owners under the *Strata Property Act* (SPA) and cannot be waived or withheld in protest of strata actions.

17. Similarly, bylaw 1(1) of the strata's bylaws says an owner must pay monthly strata fees.

18. In *Norry v. The Owners, Strata Plan 953*, 2022 BCCRT 866, the applicants requested reimbursement of strata fees. They alleged that the strata failed to repair leaks in their strata lot in a timely manner. Citing *Stewart* at paragraph 51, the Vice Chair held that the applicants were not entitled to the claimed refund, regardless of whether the strata was negligent in fixing the leaks.

19. I am bound by the court's decision in *Stewart*. I also find the reasoning in *Norry* applicable, although it is not binding. The strata fees are mandatory and cannot be withheld. Further, Mr. Chen did not allege or claim damages for any negligence by the strata. There is no evidence that the strata mishandled its repair and maintenance obligations in connection with the leak.

20. Given my findings, I dismiss Mr. Chen's claim for reimbursement of strata fees.

***Issue #2. Is the strata liable for the items it discarded from the storage locker?***

21. The strata's undisputed submissions are as follows. Mr. Chen purchased SL2 from Concord under the terms of a contract of purchase and sale. The contract mistakenly said that Concord or its affiliates would assign Mr. Chen locker #59. At some point, Concord advised the parties in this dispute that this was an error, and the right locker was #60. The strata was not a party to the contract of purchase and sale and relied on Concord to tell the strata who Concord allocated each locker to.

22. Concord is not a party to this dispute. It did not provide a statement. No party provided a copy of SL2's contract of purchase and sale. However, I find the strata's version of events is likely true as it is consistent with the wording of bylaw 32. The wording states that Pacific, rather than the strata, assigns and allocates the lockers. As noted above, the strata said Pacific is Concord's affiliate. Consistent with my finding, Concord emailed the strata about the lockers, as discussed below. Further, Mr. Chen did not provide any evidence to contradict the strata. I infer he is currently allocated locker #60 as there is nothing to indicate otherwise.

23. I turn to more recent events. On September 23, 2020, Concord emailed the strata manager. Concord said that locker #59 had items in it, but the resident assigned locker #59 did not authorize those items to be stored in it. Concord asked the strata manager to issue a memo to the resident storing the belongings in locker #59.

24. The strata says it did not know whose contents were in locker #59. I find this was likely the case, as the strata manager did not reply to Concord by identifying the owner of the contents. Instead, the strata manager emailed Concord on September 24, 2020, to advise that they would issue a 72-hour notice, telling the owner of the contents to remove their items from locker #59. A copy of the notice says that the owner of the items in locker #59 had to remove them within 72 hours, otherwise they would be discarded. The strata manager's emails show it posted the notice in the building that same day. No one removed the items, so the strata instructed a contractor or employee by email to remove the items on October 1, 2020.

25. The strata says, and I accept, that it temporarily stored Mr. Chen's items in the building's clubhouse for 3 weeks. It is undisputed that nobody claimed the items, so the strata disposed of them through a regularly scheduled "junk haul".
26. Mr. Chen learned of his items' fate after they were gone. He requested a hearing that the strata held on January 13, 2021. The strata said in its January 21, 2021 letter that it would not compensate Mr. Cheng for the disposed items or reimburse any strata fees.
27. I now turn to the applicable law. Mr. Chen did not provide a legal basis for his claim. I considered whether the strata had breached bylaw 32(3) by failing to maintain an accurate list of locker allocations. However, Mr. Chen did not raise it as an issue, and there is no evidence on the matter.
28. Mr. Chen says that someone told him to use locker #59 when he first moved in. However, he did not identify who said it, and I find this unproven by evidence in any event. Further, Mr. Chen did not provide any evidence or submissions about the value of his lost items. He did not explain why compensation of \$32,346.72 was appropriate. Even if Mr. Chen had proven the strata's liability, I would have only awarded him a nominal amount for this reason.
29. I considered the law of bailment and negligence. However, my jurisdiction over strata property claims is limited to the matters set out under CRTA section 121(1). These include a claim in respect of the SPA, or the matters set out under SPA section 121(1)(a) through (g). I find these inapplicable to Mr. Chen's claims.
30. Even if I am wrong about my jurisdiction to consider claims under the law of bailment or negligence, I would still dismiss Mr. Chen's claims for the following reasons.
31. A bailment is a temporary transfer of property, where the personal property of one person, a "bailor", is handed over to another person, a "bailee". A bailee must exercise reasonable care for the goods in their possession in all of the circumstances. See *Harris v. Maltman and KBM Autoworks*, 2017 BCPC 273.

32. Here, I find Pacific was the bailee and Mr. Chen was the bailor. This is because the bylaws specifically state that Pacific leases the storage locker as a tenant of the strata, and controls assignment of the lockers. Consistent with this, Pacific's affiliate, Concord, emailed the strata in September 2020 to advise that someone was using locker #59 without authorization, and asked the strata to act. So, I find the strata is not liable under the law of bailment, as it was not the bailee.
33. In order to prove negligence, Mr. Chen must show that the strata owed him a duty of care, the strata breached the standard of care, and that the breach caused or contributed to reasonably foreseeable damage. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3.
34. I am satisfied that the strata owed owners like Mr. Chen a duty of care. I find the applicable standard was that of a reasonableness. See, for example, *Hirji v. The Owners Strata Corporation Plan VR 44*, 2015 BCSC 2043 at paragraph 146. However, I find the strata did not breach the standard of care. This is because the strata's undisputed submission is that its strata manager warned owners through the notice before acting. This included emailing the notice to the owners and posting them on the strata manager's online portal, throughout the building, and on locker #59 itself. The strata also kept Mr. Chen's possessions in storage for about 3 weeks. I find the strata's actions reasonable in the circumstances.
35. I acknowledge that Mr. Chen had likely moved out during this period of time. However, I find the strata nonetheless provided Mr. Chen a reasonable opportunity to take back his items. I find the strata could reasonably assume that owners in Mr. Chen's position would check their emails for the strata's notices and return occasionally to the strata's building to check their mail and ensure the security of their strata lot.
36. In summary, I dismiss Mr. Chen's claim for compensation for the discarded locker items. I note that I make no findings about any liability Concord or Pacific may have for the items.

***Issue #3. Must the strata reimburse Mr. Chen for any legal expenses?***

37. Mr. Chen claimed for reimbursement of legal fees spent before he applied for dispute resolution at the CRT. I find the claimed expenses of \$2,430.44 to be unproven. This is because Mr. Chen did not provide any evidence, as noted earlier. So, I dismiss this claim.

**CRT FEES AND EXPENSES**

38. 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 dismiss Mr. Chen's claim for reimbursement of CRT fees. The parties did not claim for any specific dispute-related expenses.

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

**ORDER**

40. I dismiss Mr. Chen's claims and this dispute.

---

David Jiang, Tribunal Member