



Civil Resolution Tribunal

Date Issued: July 5, 2023

File: ST-2022-005967 &
ST-2023-001395

Type: Strata

Civil Resolution Tribunal

Indexed as: *Regan v. The Owners, Strata Plan LMS 1716*, 2023 BCCRT 565

BETWEEN:

BARIE REGAN

APPLICANT

AND:

The Owners, Strata Plan LMS 1716

RESPONDENT

AND:

BARIE REGAN

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about bylaw enforcement. It involves 2 linked disputes with the same parties that I find represent a claim and counterclaim, so I will

issue 1 decision.

2. The applicant, Barie Regan owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 1716 (strata). Mr. Regan is self-represented. A strata council member represents the strata.
3. In dispute ST-2022-005967, Mr. Regan says the strata improperly charged him \$1,921.50 to replace 4 large flowerpots at the entrance to the strata's main building after his partner allegedly damaged 1 of the pots on July 1, 2021. He does not necessarily dispute that his partner damaged the flowerpot but says the damage, if any, was not bad enough to justify replacing the flowerpot. He says the strata could have re-used the flowerpot and disagrees it was necessary to replace all 4 pots. Mr. Regan asks that the CRT order removal of the \$1,921.50 the strata assessed against his strata lot.
4. The strata says the flowerpot was damaged and required replacement. It also says it was unable to find a suitable replacement pot to match the other pots, so it was necessary to replace all 4 pots.
5. In the strata's counterclaim, dispute ST-2023-001395, the strata seeks an order for Mr. Regan to pay the \$1,921.50 for replacing the 4 flowerpots. Mr. Regan disagrees for the reasons he put forward in ST-2022-005967.
6. As explained below, I find in favour of Mr. Regan and order the chargeback amount removed from his account. I dismiss the strata's claim that Mr. Regan must pay it \$1,921.50.

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. 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.
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 section 123 of the CRTA and the CRT rules, 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.

The Strata's Counterclaim

11. CRT rule 3.2 requires a respondent to make a counterclaim within 30 days of providing a Dispute Response Form. However, under rule 1.17(1), the CRT can extend that timeline, which the CRT Deputy Registrar did in this case to allow ST-2023-001395 to be linked to ST-2022-005967. I note the parties provided no evidence in ST-2023-001395 and in their respective brief submissions they each stated they relied on the evidence provided in ST-2022-005967.

ISSUE

12. The sole issue in these disputes is what amount, if any, must Mr. Regan pay the strata for damage to the flowerpot?

BACKGROUND, EVIDENCE AND ANALYSIS

13. As applicant in a civil proceeding such as this, Mr. Regan must prove his claims on a

balance of probabilities, meaning more likely than not. The strata must prove its counterclaim to the same standard. I have considered all the submissions and evidence provided by the parties, but refer only to information I find relevant to explain my decision.

14. The strata is a mixed strata corporation of 127 strata lots created in November 1994 under the *Condominium Act*. It continues to exist under the SPA. The strata comprises a total of 124 residential strata lots in a 30-storey high rise and 3 non-residential strata lots in 3 separate buildings. Mr. Regan's strata lot is on the 10th floor of the high rise.
15. The strata has filed several bylaw amendments with the Land Title Office (LTO) since it was formed. Given the strata has never repealed the Standard Bylaws under the SPA, I find the strata's bylaws consist of the Standard Bylaws except to the extent other bylaws have been filed with the LTO that conflict with the Standard Bylaws. See *Strata Property Regulation* section 17.11.
16. It is undisputed that Mr. Regan's partner, who lives with him in the strata, was intoxicated at the main entrance to the high rise building in the early hours of July 1, 2021. Video evidence from the strata's entrance camera shows Mr. Regan's partner manipulating a plant in a flowerpot at the building's entrance. A photograph of the entrance area taken later on July 1, 2021 shows the pot tipped on its side with a plant and soil from the pot strewn about the area. Although the video evidence does not show how or when the flowerpot was tipped on its side or when the plant and soil was removed from the pot, I find it likely that Mr. Regan's partner was responsible for both.
17. The strata says its building supervisor found the flowerpot was cracked in 2 locations and determined the cracks "had weakened the pot's integrity" such that it would not be able to withstand changes in temperature and seasonal moisture. Based on this, the supervisor determined the pot should be replaced. In submissions, the strata says it was reasonable for the strata council to infer the cracks on the pot were directly related to the rough handling of the pot by Mr. Regan's partner caught on video. While I agree the strata's inference was reasonable, I discuss below the lack of evidence that the pot was cracked.

18. The strata also says it approved a proposal from its landscape contractor to replace all 4 pots because a suitable replacement pot could not be found. The July 22, 2021 strata council meeting minutes confirm this and also that the strata council instructed the strata manager to “assess the full invoice amount to the responsible party including a bylaw fine”. There is no evidence the strata assessed a bylaw fine, and if it did it was not argued, so I find the validity of any bylaw fines is not before me.
19. On August 30, 2021, the strata manager wrote to Mr. Regan to advise him of a complaint concerning the flowerpot damage on July 1, 2021, which they said contravened bylaw 9. The strata manager provided him 2 weeks to respond or request a council hearing. Bylaw 9 says that owners, residents and guests shall not do anything on common property likely to damage or prevent the reasonable growth of plants, bushes or flowers. It also says an owner is responsible for any damage to the common property and that the owner will save the strata harmless for all expenses of any maintenance, repair, and replacement of common property due to the acts of family members and guests, among others. The letter advised him the strata council would review the evidence of the complaint plus any submissions Mr. Regan made and make a decision, which might include:
 - a. Dismissing the complaint,
 - b. Imposing a fine, and/or
 - c. Requiring Mr. Regan to pay the cost of remedying the bylaw breach.
20. The strata received an August 31, 2021 invoice from its landscape contractor that included a charge of \$1,921.50 (\$1,830 plus GST) for “Front Entry Pot Replacements”. Given the invoice date is the day after the strata’s letter, I find the strata did not include a copy of the invoice with the letter.
21. The evidence shows a council hearing was held on September 8, 2021, but there is no correspondence from Mr. Regan before me that shows he requested a council hearing.
22. On September 20, 2021, the strata manager wrote to Mr. Regan and informed him the strata’s “chargeback for the replacement of the planter pots stands as is”. Mr.

Regan did not argue the strata's process violated SPA section 135. Given my conclusion, I find it unnecessary to address that potential issue.

23. Mr. Regan's position is that there is no evidence the flowerpot was cracked nor any evidence that the pot could not be re-used. I agree with Mr. Regan. On my review of the flowerpot photographs provided by the strata, I could not see any cracks in the damaged flowerpot. Further, the only documentary evidence about the pot being cracked is a written statement from the strata's building supervisor dated December 2, 2022, made over 17 months after the flowerpot damage allegedly occurred. I find it unusual for the strata not to take photographs of the pot that showed it was cracked before the strata discarded it. On the limited information available, I find the strata has not proven the flowerpot was cracked.
24. As for the strata's argument the flowerpot could not be re-used, there is no evidence that the strata's supervisor has the expertise to make such a determination, as Mr. Regan states. There is also no written statement from the landscape contractor to support that the flowerpot could not be re-used or that all 4 pots needed to be replaced. I also note the replacement pots were a different colour than the one that was allegedly damaged, which seems inconsistent with the strata's position that all 4 pots were replaced for uniformity.
25. For all of these reasons, I find the strata has not proven Mr. Regan's partner damaged the flowerpot to the extent it could not be re-used. Therefore, I find the strata was not entitled to charge Mr. Regan for the cost of replacing any flowerpots. I order the strata to immediately remove the \$1,921.50 charge from Mr. Regan's strata lot account and I dismiss the strata's counterclaim.

CRT FEES AND EXPENSES

26. Under CRTA section 49 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 not to follow these guidelines here. Therefore, I order the strata to reimburse Mr. Regan \$225, which is the amount he paid for CRT fees.

27. The strata claimed a registered mail expense of \$10.67 for its counterclaim. However, given the strata was not successful, I decline to order payment.
28. Under section 189.4 of the SPA, the strata may not charge any dispute-related expenses against Mr. Regan.

ORDERS

29. I order the strata to:
- a. Immediately remove the \$1,921.50 from Mr. Regan's strata lot account, and
 - b. Within 2 weeks of the date of this decision, pay Mr. Regan \$225 for CRT fees.
30. The strata's counterclaim is dismissed.
31. Mr. Regan is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.
32. 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.

J. Garth Cambrey, Vice Chair