



# Civil Resolution Tribunal

Date Issued: August 31, 2023

File: ST-2022-004657

Type: Strata

Civil Resolution Tribunal

Indexed as: *Almasry v. The Owners, Strata Plan EPS1991*, 2023 BCCRT 750

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

KAREEM ALMASRY

**APPLICANT**

**A N D :**

The Owners, Strata Plan EPS1991

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Megan Stewart

## INTRODUCTION

1. This dispute is about a water leak in a strata corporation. It is 1 of 2 linked disputes about this issue. However, the linked dispute falls solely in the Civil Resolution Tribunal (CRT)'s small claims jurisdiction and involves different parties. So, I have written a separate decision for the linked dispute (SC-2022-004398).

2. The applicant, Kareem Almasry, used to rent a strata lot (unit 1903) in the respondent strata corporation, The Owners, Strata Plan EPS1991 (strata). Around January 28, 2022, there was a leak in neighbouring unit 1905 that caused damage to unit 1903's flooring and drywall. During restoration work, Mr. Almasry had to move out of unit 1903, and stayed in a series of short-term accommodations. Eventually, he moved into a new permanent rental unit. Mr. Almasry claims \$2,678.76 for the increased rental costs he incurred for short-term accommodation and moving costs, on the basis that the strata was negligent and breached its duty of care to him.
3. The strata denies Mr. Almasry's claims. Specifically, the strata says the leak originated from an individual strata lot and not from common property that the strata has a duty to repair and maintain. The strata also says Mr. Almasry's claim falls outside of the CRT's jurisdiction because he was not a tenant in the strata at the time the Dispute Notice was issued. The strata asks me to dismiss Mr. Almasry's claim.
4. Mr. Almasry is self-represented. The strata is represented by a strata council member.
5. For the following reasons, I dismiss Mr. Almasry's claims.

## **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.
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. 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.
9. 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**

10. The issues in this dispute are:
  - a. Does the CRT have jurisdiction over Mr. Almasry's claim against the strata?
  - b. If so, did the strata breach its repair and maintenance obligations under the *Strata Property Act* (SPA) and the strata's bylaws?
  - c. If so, must the strata reimburse Mr. Almasry \$2,678.76 for his increased rental and moving costs due to water leak damage?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, the applicant Mr. Almasry 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 that which I find necessary to explain my decision.
12. The strata was created in June 2014 under the SPA and includes a residential section and a commercial section.
13. On June 6, 2014, the strata filed different bylaws to the SPA's standard bylaws with the Land Title Office. The strata has filed several bylaw amendments since then, none of which apply to this dispute. I discuss the relevant bylaw below.
14. As noted above, around January 28, 2022, a water leak originated in unit 1905, causing damage to the strata's common property and several strata lots, including

unit 1903. Unit 1905 is next to unit 1903. As a result, Mr. Almasry had to move out of unit 1903 so that restoration work could be performed. None of this is disputed.

### **CRT's jurisdiction**

15. The strata says under CRTA section 189.1, the CRT does not have jurisdiction over Mr. Almasry's claims because he was no longer a tenant in the strata on June 19, 2022 when the Dispute Notice was issued. The evidence shows Mr. Almasry confirmed he "officially" moved out in June 2022, and Mr. Almasry does not dispute he was no longer a tenant when he applied to the CRT for dispute resolution.
16. The CRT only has jurisdiction over specific persons and types of disputes as set out in the CRTA and the SPA. SPA section 189.1 allows a "strata corporation, owner or tenant" to request that the CRT resolve a strata dispute under its jurisdiction. The SPA defines a tenant as "a person who rents all or part of a strata lot".
17. In support of its position, the strata relies on *Kelly v. The Owners, Strata Plan K 218*, 2018 BCCRT 412, a decision in which a tribunal member found the CRT did not have jurisdiction to decide a dispute filed by a former tenant who was not living in the strata when they applied to the CRT for dispute resolution.
18. However, in a later CRT preliminary decision, *Gill v. The Owners, Strata Plan EPS 4403*, 2020 BCCRT 228, a vice chair considered the question again, in light of the court's discussion of SPA section 189.1 in *Downing v. Strata Plan VR2356*, 2019 BCSC 1745. The issue in *Downing* was whether the court or the CRT should hear the petitioner's claims about water damage repairs to a strata lot. The court concluded the CRT should decide the dispute, and said that even if the petitioner sold the strata lot and became a "former owner", that would not "render her no longer an 'owner'" for the purpose of SPA section 189.1, and would not "oust" the CRT's jurisdiction to decide the dispute. In *Gill*, the vice chair found that reasoning applied equally to a tenant in SPA section 189.1. She found that a party's status as an owner or a tenant at the time of a disputed action is relevant in determining whether the CRT has jurisdiction under that section.

19. Since *Gill*, tribunal members have adopted the same broader meaning of “tenant” under SPA section 189.1 (see, for example, *Gill v. The Owners, Strata Plan EPS4403*, 2020 BCCRT 725, *Eaton v. The Owners, Strata Plan BCS 3648*, 2020 BCCRT 329, *Yang v. The Owners, Strata Plan VR732*, 2020 BCCRT 361, and *Janciova v. The Owners, Strata Plan BCS 183*, 2021 BCCRT 255). While previous CRT decisions are not binding on me, I too find the reasoning in *Gill* persuasive, and I adopt it here. I find the CRT has jurisdiction over this dispute, even though Mr. Almasry moved out of unit 1903 before filing his application for dispute resolution.

### ***Strata’s alleged negligence***

20. Mr. Almasry says, and the strata does not dispute, that the water leak in unit 1903 was caused by unit 1905’s tenants hanging clothing from a sprinkler head in the unit. As set out in detail in my decision in SC-2022-004398, I find that someone hanging a coat hanger from the sprinkler head likely caused it to fail, resulting in the water leak. Briefly, in that decision I found that expert evidence in the form of an engineering report indicated it was more likely than not the leak was caused by someone hanging a coat hanger on the sprinkler head, even though the report raised possible alternative causes of the leak. The engineering report is also in evidence in this dispute.

21. Mr. Almasry says the strata owed him a common law duty of care which it breached. He says the strata should reimburse him \$2,678.76 for the increased short-term accommodation and moving costs he incurred while the water damage in unit 1903 was being repaired. He says the strata was negligent because it:

- a. Failed to tell unit 1905’s tenants not to hang anything from the sprinkler head.
- b. Failed to inspect unit 1905.
- c. Failed to maintain the sprinkler system in unit 1905 and ensure it was not defective.
- d. Failed to investigate or respond to the water leak.

22. The strata says that since the leak undisputedly originated in unit 1905 and not in the common property, it is not responsible for Mr. Almasry’s claimed expenses. The strata

maintains that Mr. Almasry has not proven the strata breached its repair and maintenance obligations, and so he has not proven it was negligent.

23. CRTA section 121 says that the CRT has jurisdiction over claims “in respect of” the SPA. In previous CRT decisions, tribunal members have found that the CRT cannot decide common law tort claims like negligence under its strata property jurisdiction because they are not in respect of the SPA (see, for example, *Alameer v. Zhang*, 2021 BCCRT 435, *Tran v. The Owners, Strata Plan NW468*, 2022 BCCRT 575, and *Wright v. The Owners, Strata Plan BCS2143*, 2023 BCCRT 738).
24. However, the same situation can give rise to various legal claims. In *Ryan-Glenlon v. Section 1 of The Owners, Strata Plan LMS 2532*, 2021 BCCRT 871, a now vice chair found that where the same situation gives rise to multiple legal claims and can be brought alternatively under the SPA or under the common law, it is in respect of the SPA. I agree.
25. Applying that reasoning to this dispute, I find that even though Mr. Almasry framed his claim in negligence as a breach of the common law duty of care, his submissions focus on the strata’s compliance with the SPA, specifically, compliance with the strata’s repair and maintenance obligations. I find that while this dispute could proceed as a tort claim, it is also a claim in respect of the SPA and within the CRT’s strata property jurisdiction.
26. The strata’s obligations with respect to repair and maintenance are set out in the SPA and the strata’s bylaws. SPA section 3 says the strata is responsible for managing and maintaining the common property for the benefit of the owners. SPA section 72(1) requires the strata to repair and maintain common property. The definition of common property in SPA section 1 includes pipes and other facilities for the passage or provision of water, located wholly or partially within a strata lot, if they can be used and are intended for use in connection with the enjoyment of another strata lot or the common property. I find that in the context of protecting the safety of all of the strata’s occupants, the sprinkler system, including sprinkler heads in owners’ individual strata lots, is for the enjoyment of all the strata lots and the common property. So, I find the

sprinkler system is common property that is the strata's responsibility to repair and maintain.

27. Bylaw 3.1 also requires the strata to repair and maintain common property that is not limited common property.
28. The strata's obligation to repair and maintain common property is measured by the test of what is reasonable in all the circumstances (see *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784).
29. Turning back to Mr. Almasry's specific allegations, I find the strata's repair and maintenance obligations do not extend to instructing occupants not to hang things from sprinkler heads, as Mr. Almasry suggests the strata should have done. It is common knowledge that a sprinkler head is not for hanging things on, and I find it obvious that a reasonable person would know not to hang things from a sprinkler head.
30. I accept it is reasonable that the strata would have its sprinkler system inspected on a regular basis. However, I find that performing routine inspections of the strata's sprinkler system does not reasonably extend to spot-checking units to see if occupants are hanging things from the sprinkler head. So, I find Mr. Almasry has not proven the strata failed to properly inspect unit 1905.
31. Next, Mr. Almasry says the strata failed to ensure the sprinkler head in unit 1905 was free from defect. I find this argument inconsistent with his assertion that the leak was due to unit 1905's tenants hanging clothing from the sprinkler head and the sprinkler head discharging. As I have noted above, the expert report confirms this was likely the cause of the sprinkler's failure. So, by his own admission, Mr. Almasry recognizes that the leak was not the result of any defect of the sprinkler system or the sprinkler head. It follows that whether the strata checked the sprinkler head in unit 1905 for defect does not matter for the purpose of establishing causation and therefore liability in this dispute.

32. Finally, Mr. Almasry provided no evidence that the strata failed to respond promptly to the leak, which he says he reported to it immediately. Had the strata not been responsive, I would have expected Mr. Almasry to have explained how he attempted to engage the strata when he discovered the leak, and how the strata failed to act on his report in a timely way.
33. On balance, I find Mr. Almasry has not proven the strata breached its obligations under the SPA and the bylaws. So, I dismiss Mr. Almasry's claim for damages.
34. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The strata was successful but did not pay CRT fees, and neither party claimed dispute-related expenses.

## **ORDER**

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

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Megan Stewart, Tribunal Member