



# Civil Resolution Tribunal

Date Issued: October 17, 2023

File: ST-2022-007433

Type: Strata

Civil Resolution Tribunal

Indexed as: *Deveau v. The Owners, Strata Plan EPS 6101*, 2023 BCCRT 884

B E T W E E N :

JASON DEVEAU

**APPLICANT**

A N D :

The Owners, Strata Plan EPS 6101

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. This dispute is about a chargeback for water damage in a strata building.
2. The applicant, Jason Deveau (owner), owns a strata lot in the respondent strata corporation, The Owners, Strata Plan EPS 6101 (strata). When water leaked into the

owner's strata lot from a strata lot above, the strata's contractor provided emergency services to minimize water damage. The contractor invoiced the strata \$3,260.25, and the strata imposed a chargeback for the same amount on the owner's strata lot account.

3. The owner says the chargeback is not valid. They ask for an order that the strata reverse it. The owner is self-represented.
4. The strata says the owner or their insurer must pay the charge. A council member represents the strata.
5. As I explain below, I find the strata did not have a legal basis to impose the chargeback and must reverse it.

## **JURISDICTION AND PROCEDURE**

6. 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.
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. Based on the evidence and submissions provided, I am satisfied that I can fairly decide this dispute without an oral hearing.
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. The CRT may also ask the parties and witnesses questions of and inform itself in any other way it considers appropriate.

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.

## **ISSUE**

10. The issue in this dispute is whether the strata must reverse the \$3,260.25 chargeback.

## **EVIDENCE AND ANALYSIS**

11. As the applicant in this civil proceeding, the owner must prove their claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision. The strata did not provide documentary evidence, despite having the opportunity to do so.
12. The strata was created in November 2019 and includes 55 strata lots in a single building. The owner's strata lot 8 is on the first floor, and the parties refer to it as unit 104. The parties agree that water escaped from an air conditioner in unit 204, which I infer is directly above unit 104.
13. On July 10 or 11, 2021, the owner noticed water leaking into their strata lot and contacted the strata manager. The strata manager dispatched Pro Carpet Care (PCC). The parties agree that the water damaged unit 104's bedroom ceiling, walls, and carpet, along with some laminate floor in the main living area.
14. The strata says PCC performed emergency response work in both unit 104 and unit 204. PCC's August 17, 2021 invoice is specific to the work it did in unit 104. There is no invoice for work in 204 before me.
15. PCC's invoice shows that starting July 11, 2021, PCC extracted water, pulled up carpet, installed fans and dehumidifiers, and used antibacterial spray. Unit 204's air conditioner leaked again before PCC removed its equipment. When everything was

dry on July 19, PCC re-installed unit 104's bedroom carpet and steam-cleaned it. The total cost was \$3,260.25. PCC's invoice noted that the ceiling and walls still needed repairs and painting and the laminate floor needed further repair or replacement, but the strata manager had instructed PCC that the owner or the owner's insurer was to do any further repairs.

16. The owner says they understood that they could make an insurance claim for their strata lot repairs, but they considered the damage minor and decided to address them privately rather than making an insurance claim.
17. On April 11, 2022, the strata, through a letter from the strata manager, asked the owner for reimbursement of PCC's \$3,260.25 invoice. The letter said the strata had paid the invoice on the owner's behalf. I note the invoice is made out to the strata, care of the strata manager, not to the owner.
18. The owner notified their insurer. A claims adjuster and the strata manager exchanged emails but could not reconcile their views on whether the chargeback was authorized under the strata's bylaws. The owner has not paid the chargeback.

***Was the strata entitled to impose the chargeback?***

19. The strata repeatedly says it followed a damage repair flow chart, which it did not provide in evidence. While flow charts can clarify responsibilities, they are only summaries of the law. Even accurate summaries can easily be misinterpreted.
20. The strata argues that the owner should have made an insurance claim, or the owner's insurer simply had to "[pass] those charges" to unit 204's insurer. However, the owner's insurance has no bearing on who is liable for repair costs.
21. The owner says there are 3 ways a strata lot owner can be responsible for repair costs, relying on *The Owners, Strata Plan K 407 v. Kelly*, 2019 BCCRT 789. In that decision, a CRT vice chair found that to hold an owner responsible for repair costs incurred by the strata, the owner must:
  - a. Have agreed to pay them,

- b. Be responsible under the *Strata Property Act* (SPA) or the strata's bylaws, or
  - c. Have acted negligently.
22. While previous CRT decisions are not binding on me, I agree that *Kelly* set out an accurate summary of the law. As noted by the owner, *Kelly* has been followed in several CRT decisions, such as *Hayes v. The Owners, Strata Plan BCS 4278*, 2022 BCCRT 179 and *Liang v. The Owners, Strata Plan NW 1374*, 2022 BCCRT 361.
23. There is no suggestion that the owner was negligent. The water came from unit 204's air conditioner and the owner alerted the strata right away.
24. There is also no suggestion that the owner agreed to pay PCC's invoice. The owner's evidence is that the property manager told initially said they would not have to pay for PCC's work. The strata denies this but says there were no discussions about who would pay. So, I find the owner did not agree to pay PCC's invoice.
25. The facts here are similar to those in *Hayes*. There, Mr. Hayes's strata lot was damaged after a water leak originating above it and the strata corporation imposed a chargeback for emergency restoration costs related to his strata lot. The strata corporation's bylaws made owners responsible for repair costs if they were negligent. Mr. Hayes was not negligent, so the CRT ordered the strata corporation to reverse the chargeback. The strata says the facts in this dispute are different in that Mr. Hayes did not authorize the repairs but here the owner called the strata's emergency line and therefore authorized the work. The strata says its strata manager advised the owner that PCC was being dispatched to prevent any further damage to the owner's strata lot, as opposed to common property or the building's structure.
26. I find the strata's emphasis on authorization is misplaced. The strata council exercises the powers and performs the duties of the strata corporation. A strata corporation does not need an owner's authorization to employ a contractor to mitigate water damage. Strata managers generally have authority to enter into contracts on behalf of the strata corporation, but there is no evidence that the owner gave the strata

manager authority to contract with PCC on their behalf. Again, the invoice is made out to the strata.

27. The strata says its initial responsibility upon being notified of a water leak was to ensure the leak did not cause further damage. The strata says once it determined that the leak originated in another strata lot, it advised the respective owners that the strata was not involved. I see nothing wrong with that approach, but discovering that unit 204 was the source of the leak and that common property was not damaged did not shift liability for PCC's invoice from the strata to the owner.
28. In *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512, the BC Court of Appeal said that without a bylaw or rule giving its authority to do so, a strata corporation cannot charge an owner for costs it has incurred. In *Ward*, the charge in question was for legal fees. However, in *Rintoul et al v. The Owners, Strata Plan KAS 2428*, 2019 BCCRT 1007, a CRT vice chair applied the reasoning in *Ward* in a dispute where the strata had charged strata lot owners for a damaged hydroelectric line. The vice chair concluded that because the strata had no bylaw allowing it to charge back the repair costs, the owners were not obligated to pay. He found the reasoning in *Ward* applied to repair charges, and not just to legal fees. Although *Rintoul* is not a binding precedent, I find its reasoning persuasive and I rely on it.
29. The strata does not say which bylaw gave it the authority to impose the chargeback. The strata confusingly has 2 bylaws labelled bylaw 5. I refer to them as "insurance bylaw 5" and "repair and maintenance bylaw 5".
30. I find insurance bylaw 5 does not apply. In all relevant subsections it says the strata can recover costs where the owner or other person was responsible for the damage or where the source of the damage originated in the owner's strata lot. Neither of those are the case here, as the water leak originated in unit 204.
31. Repair and maintenance bylaw 5 says an owner must repair and maintain their strata lot, with limited exceptions that do not apply here. So, the owner here is responsible for repairing their strata lot. That is not disputed. The owner does not expect the strata to pay for repairs to their ceiling, walls and floor.

32. However, repair and maintenance bylaw 5 does not require an owner to indemnify or reimburse the strata for repairs or other work the strata does in a strata lot. I reached the same conclusion interpreting a similar bylaw *Liu v. The Owners, Strata Plan LMS 2211*, 2023 BCCRT 540. So, even assuming PCC's emergency mitigation work can be considered repairs, the owner is not required to reimburse the strata for PCC's invoice under repair and maintenance bylaw 5.
33. In summary, as the owner was not responsible under the SPA or the bylaws, did not agree to pay and was not negligent, I find the strata had no legal basis to impose the \$3,260.25 charge on the owner's strata lot account. I therefore order the strata to reverse the charge.

## **CRT FEES AND EXPENSES**

34. As the owner was successful in this dispute, in accordance with the CRTA and the CRT's rules I find they are entitled to reimbursement of \$225 in CRT fees. Neither party claims dispute-related expenses.
35. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against the owner.

## **ORDERS**

36. I order the strata to immediately reverse the \$3,260.25 charge on the owner's strata lot account.
37. I order the strata to, within 30 days, reimburse the owner \$225 for CRT fees.
38. The owner is entitled to post-judgment interest, as applicable.

39. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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.

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Micah Carmody, Tribunal Member