



# Civil Resolution Tribunal

Date Issued: December 6, 2023

File: ST-2022-009891

Type: Strata

Civil Resolution Tribunal

Indexed as: *Dixon v. The Owners, Strata Plan EPS6407*, 2023 BCCRT 1066

B E T W E E N :

BRENT DIXON

**APPLICANT**

A N D :

The Owners, Strata Plan EPS6407

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about a stolen air conditioner.
2. The applicant, Brent Dixon, rents a strata lot in the respondent strata corporation, The Owners, Strata Plan EPC6407 (strata).

3. Mr. Dixon says someone stole an air conditioning unit that he was storing in the common property storage locker assigned to his strata lot. He says the thief broke into the storage locker area using a key fob, and that the strata determined the identity of the key fob owner but refused to provide him with their contact information. Mr. Dixon seeks an order for the strata to provide the key fob owner's contact information so that he can bring a claim against them for his stolen air conditioner. In the alternative, Mr. Dixon seeks \$481.02 for the cost to replace his air conditioner.
4. The strata admits that it has the requested contact information and says that it provided the information to the police. However, the strata says it has no obligation to provide the key fob owner's personal information to Mr. Dixon. The strata also says it is not responsible for Mr. Dixon's stolen air conditioner because it has no duty of care over a tenant's personal belongings. The strata says the subject matter of this dispute falls outside the jurisdiction of the Civil Resolution Tribunal (CRT).
5. Mr. Dixon is self-represented. The strata is represented by a strata council member.

## **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). 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. 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. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
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.
10. 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.

### ***Preliminary decision***

11. In a September 8, 2023 preliminary decision, a CRT vice chair considered Mr. Dixon's request for the strata to produce certain evidence he argued was relevant to this dispute. Specifically, Mr. Dixon requested the strata provide a statement from its building manager, the date the break-in occurred, the date the strata disabled the key fob used for the theft, any photos or videos of the thieves, and photos or videos of Mr. Dixon placing the air conditioner in the storage locker.
12. The vice chair found that there was no legal justification for the strata to prevent the building manager from providing a statement. However, the vice chair declined to order the strata to produce a statement from the building manager, noting that the proper process was for Mr. Dixon to issue a summons on the building manager under the CRT's rules. The CRT could then order the building manager to comply with the summons if they did not do so voluntarily. I agree with that decision. I note that despite the preliminary decision, there is no evidence Mr. Dixon issued a summons for the building manager to provide a statement for the purpose of this dispute.
13. The vice chair also did not order the strata to produce video of Mr. Dixon moving the air conditioner into the storage unit, as the exact date was unknown. The vice chair found it would be disproportionate to the amount at stake to require the strata to review video footage, if any existed, for that evidence. I agree with that decision.

14. Finally, the vice chair ordered the strata to disclose the date of the break-in, the date the strata deactivated the key fob used in the break-in, and video footage of the alleged thieves entering and exiting the storage locker area, if available. The strata then provided this information and evidence, and I have considered it where relevant below.

## **ISSUES**

15. The issues in this dispute are:
- a. Should I order the strata to disclose the key fob owner's contact information?
  - b. Is the strata responsible for Mr. Dixon's stolen air conditioner such that it is required to pay him the claimed \$481.02?

## **EVIDENCE AND ANALYSIS**

16. In a civil proceeding like this one, the applicant Mr. Dixon must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all of the parties' submitted evidence and arguments, but I refer only to what I find is necessary to explain my decision. I note that the strata did not provide any documentary evidence in this dispute, other than what the vice chair ordered it to produce in the preliminary decision discussed above.
17. Mr. Dixon bought an air conditioner on April 11, 2022, for the claimed \$481.02. He says he put the air conditioner in a common property storage locker assigned to the strata lot he rents. On about June 22, 2022, Mr. Dixon says he went to retrieve the air conditioner from the storage locker and discovered it was missing. He says it appeared someone had tampered with the storage locker door.
18. Mr. Dixon provided a statement from his roommate at the time, AM, who was present for both the air conditioner purchase and the attempt to retrieve the air conditioner from the locker. AM's statement is consistent with Mr. Dixon's evidence.

19. The strata does not dispute the background facts as Mr. Dixon set them out. It says that in about mid-June 2022, multiple residents reported personal belongings had been stolen from their storage lockers. After receiving these reports, the strata reviewed its surveillance footage and determined that a break-in likely occurred on June 3, 2022. It is undisputed that the suspected thieves were not strata residents, but they had used a key fob to gain access to the storage locker area, and to use the elevators.
20. As noted, the strata provided the relevant surveillance footage. It shows 2 individuals entering an elevator at 5:01 am on June 3, 2022. One is carrying a large plastic bin full of various items, and the other is pushing a larger, heavy item draped with a sheet. Mr. Dixon says the larger covered item is likely his air conditioner, though he acknowledges that he cannot know for sure.
21. In a July 12, 2022 email, the strata told Mr. Dixon it had provided the surveillance footage and key fob log to the police. When Mr. Dixon requested that the strata provide him with the contact information for the key fob owner, the strata advised him that he would have to obtain that information from the police. The strata essentially maintains that position in this dispute.

***Should I order the strata to disclose the key fob owner's contact information?***

22. Mr. Dixon did not set out the legal basis that would require the strata to disclose the key fob owner's contact information. He argues that he has a claim in negligence against the key fob owner for either giving away their key fob or losing it and failing to report it lost to the strata. However, this dispute is not about whether the key fob owner was negligent and must compensate Mr. Dixon for his air conditioner. Rather, the question is whether the strata must provide Mr. Dixon with the key fob owner's identity so that Mr. Dixon might bring a claim against them.
23. Mr. Dixon does not specifically argue there are any SPA provisions or strata bylaws that require the strata to disclose the key fob owner's contact information. On my

review of the bylaws, I find there are no relevant bylaws that would compel the requested disclosure.

24. I also find there are no provisions in the SPA or the *Strata Property Regulation* that require the strata to provide the requested contact information. Section 35 of the SPA sets out what records and documents a strata corporation is required to prepare and keep. Section 36 of the SPA says the strata must make the records and documents in section 35 available for inspection and provide copies on request to an owner, a tenant who has been assigned a landlord's right to inspect and obtain copies of records and documents, or a person authorized in writing by an owner or an assigned tenant.
25. I find that Mr. Dixon has not requested a document or record that the strata is required to prepare and keep under section 35 of the SPA. That is, the log and identity of a particular key fob owner is not a record the strata is required to provide to owners and tenants under the SPA. In *Kayne v. Strata Plan LMS 2375*, 2007 BCSC 1610, the court said a record or document that is not set out in section 35 of the SPA is generally not available to an owner or tenant.
26. Further, even if Mr. Dixon had requested a document listed in SPA section 35, I find there is no evidence that Mr. Dixon, as a tenant, has been authorized by his landlord or been assigned his landlord's right to inspect and obtain copies of records and documents under SPA section 36. So, I find the strata is not obligated under the SPA to disclose records in section 35 to Mr. Dixon in any event.
27. For these reasons, I find Mr. Dixon has not established he is entitled to any record disclosing the key fob owner's contact information. I dismiss this claim.

***Must the strata reimburse Mr. Dixon for the cost of his air conditioner?***

28. Again, Mr. Dixon did not set out any legal basis in the Dispute Notice for why the strata is responsible for the cost of his air conditioner. In his initial submissions, Mr. Dixon says only that the strata should either provide him with the key fob owner's

contact details so he can pursue a claim against them or pay him the claimed damages itself.

29. It is only in Mr. Dixon's final reply submissions that he raises for the first time an allegation that the strata might have been negligent, if the key fob owner had reported the fob lost before the June 3, 2022 theft and the strata failed to disable it. I note that Mr. Dixon did not include a request for the strata to disclose whether the key fob had been reported lost in his preliminary request for evidence from the strata. As Mr. Dixon only raised this allegation of potential negligence in his final reply submissions, the strata did not have any opportunity to respond to it. So, I find it would be procedurally unfair to consider it.
30. In any event, even if Mr. Dixon had raised this allegation earlier, I find the CRT does not have jurisdiction to decide it. Section 121 of the CRTA says the CRT's strata property jurisdiction is limited to "claims in respect of the SPA". I find that a tort claim under the law of negligence is not a claim in respect of the SPA. Mr. Dixon did not identify any other basis under the bylaws or the SPA that the strata is responsible for reimbursing him for his allegedly stolen air conditioner.
31. Under section 10(1) of the CRTA, the CRT must refuse to resolve a claim that it considers is not within the CRT's jurisdiction. So, I refuse to resolve Mr. Dixon's claim that the strata compensate him for his allegedly stolen air conditioner.

## **CRT FEES AND EXPENSES**

32. 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. As Mr. Dixon was unsuccessful, I find he is not entitled to any reimbursement. The strata did not pay fees or claim dispute-related expenses.
33. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the Mr. Dixon.

## **ORDER**

34. I refuse to resolve Mr. Dixon's claim for the strata to compensate him for his allegedly stolen air conditioner because that tort claim is outside the CRT's jurisdiction.

35. I dismiss Mr. Dixon's remaining claims, and this dispute.

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Kristin Gardner, Tribunal Member