



# Civil Resolution Tribunal

Date Issued: February 22, 2024

File: ST-2022-005952  
and ST-CC-2023-003503

Type: Strata

Civil Resolution Tribunal

Indexed as: *Crowley v. The Owners, Strata Plan LMS946*, 2024 BCCRT 172

B E T W E E N :

JOLENE CROWLEY

**APPLICANT**

A N D :

The Owners, Strata Plan LMS 946

**RESPONDENT**

A N D :

JOLENE CROWLEY

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Christopher C. Rivers

## INTRODUCTION

1. These two linked disputes are about a chargeback for plumbing repairs.
2. Jolene Crowley owns a strata lot in strata corporation The Owners, Strata Plan LMS 946. In October 2021, the strata hired plumbers to address a leak coming from Ms. Crowley's bathroom through her downstairs neighbour's ceiling. The strata paid the plumbers' \$1,392.77 invoice and later issued a chargeback for that amount to Ms. Crowley's strata lot account. As of October 2023, Ms. Crowley had undisputedly paid some, but not all, of the chargeback.
3. Ms. Crowley says the plumbers repaired common property pipes, so the strata is responsible for its invoice. She also argues the plumbers did not properly caulk the repairs, causing a further leak. Finally, she argues the strata did not follow the proper procedure in issuing her a chargeback. Ms. Crowley asks for an order that the strata reverse the chargeback.
4. The strata says the plumbers repaired Ms. Crowley's bathtub drain, which is not common property. It says it followed the required procedure under the *Strata Property Act* (SPA) and its bylaws to charge Ms. Crowley for the plumbers' repairs. While it initially claimed \$1,397.83 for the plumbers' invoice, it reduced its claim to \$692.77 to account for the correct invoice amount and payments Ms. Crowley made to the date of its submissions.
5. Ms. Crowley is self-represented. The strata is represented by a strata council member.
6. For the following reasons, I dismiss Ms. Crowley's claim and allow the strata's counterclaim.

## 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 *Civil Resolution Tribunal Act* (CRTA) section 121. 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 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.
11. In her final reply submissions, Ms. Crowley requests additional remedies that she did not raise in her application for dispute resolution. She asks that I order the strata remove a \$100 title search fee from her account, that the strata pay her back "the amount owing" (which I understand to mean the amount she has already paid toward the chargeback), and that I order a particular council member to step down from council. As these matters were only raised in her final reply, they are not properly before me, and I have not considered them in this decision.

## **ISSUE**

12. The issue in this dispute is whether the strata must reverse the \$1,392.77 chargeback to the owner's strata lot account or whether Ms. Crowley must pay the strata the amount still owing.

## EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, each party, as applicant, must prove their claims on a balance of probabilities, meaning 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.
14. The strata plan shows the strata was created in July 1993 under the *Condominium Act* and continues to exist under the SPA. The strata building is a three-story residential building, consisting of one-story units on the ground floor and two-story units on the upper floors. Ms. Crowley owns an upper-floor unit.
15. On October 21, 2021, the occupants of the strata lot below Ms. Crowley reported a water leak from their ceiling to the strata manager. The strata manager arranged for plumbers to investigate.
16. On the morning of October 22, Ms. Crowley says the plumbers called her to arrange for access to her unit. Ms. Crowley says she had no notice about the plumbers, so refused to arrange access to her unit until she could confirm they had been hired by the strata.
17. The plumbers' invoice shows two plumbers attended the strata on October 23 from 10:00am to 12:00pm. A statement from one of the plumbers says they opened the ceiling of the lower-floor unit to investigate the source of the leak. The plumbers decided they would need to enter Ms. Crowley's upper-floor unit to further investigate.
18. On October 25, the strata manager confirmed to Ms. Crowley the strata had arranged for the plumbers. Ms. Crowley granted them entry to her unit. The plumbers' invoice shows two plumbers attended the strata from 8:00am to 11:30am.
19. The plumber's statement and the invoice set out the scope of work. The plumbers removed Ms. Crowley's old tub drain and replaced it with a new one. They tested the drain and determined there were no leaks and that it drained well. I accept the plumbers' invoice accurately sets out the work they performed.

20. The plumbers invoiced the strata for \$1,392.77 for investigating and repairing the leak. The strata later charged this invoice back to Ms. Crowley and that invoice is the subject of this dispute.
21. Later that evening, Ms. Crowley emailed the strata manager that the plumbers had attended earlier in the day and fixed the leak. However, she said after having a bath at 5:00pm, her downstairs neighbours complained of flooding again at 6:20pm.
22. Ms. Crowley says she could not find an emergency contact for the strata manager, so she reached out to the plumbers herself. For the second time on October 25, the plumbers attended the strata. An emailed statement from one the plumbers said the issue was a rusted bathtub overflow, unrelated to their installation of the drain earlier in the day. The plumber says they caulked the overflow which would prevent future overflow-related leaks.
23. In her submissions, Ms. Crowley argues the plumber was responsible for the October 25 leak. She says the plumber told her they forgot to caulk the bathtub drain and overflow, causing the leak. However, I do not need to determine the cause of the October 25 leak because the invoice does not list any charge for the evening attendance.
24. In a November 22, 2021, letter, the strata wrote Ms. Crowley, saying it was charging \$1,392.77 to her account for the plumbers' invoice. It included a copy of the invoice, setting out details of the repair, but it did not specify what bylaw Ms. Crowley had allegedly breached. The strata advised Ms. Crowley she had the right to dispute the chargeback under SPA section 135. I address SPA section 135 in greater detail below, but in brief, it sets out the process when a strata wishes to attempt to charge owners for breaching a bylaw.
25. Ms. Crowley argues the strata first had notice of the leak in March 2021, prior to her purchase of the strata lot. However, she acknowledges she bought the strata lot 3 months after that, and there were no reports of leaks from July to October. To the extent there were any previous leaks prior to Ms. Crowley purchasing the strata lot, I find they are distinct from the leak that is the subject of this dispute.

### ***Applicable Bylaw***

26. In its submissions, the strata argues bylaw 4.1 establishes Ms. Crowley's responsibility for the plumbing expense. The strata cites a version of the bylaw repealed in 2019, prior to the leak at issue. The current version of bylaw 4.1 says, in part, that if an owner is responsible for loss or damage to a strata lot or common property, the owner must indemnify the strata for the cost of any maintenance, repair or replacement rendered necessary to the strata lot, common property, limited common property or common assets.
27. Responsibility, as set out in bylaw 4.1, does not require the owner to have been negligent or directly caused the leak.<sup>1</sup> Since Ms. Crowley is responsible under bylaw 115(3) to maintain her strata lot, it is enough that the leak originated in her strata lot for the strata to be able to charge back the expenses, so long as they fall under maintenance, repair, or replacement.
28. The plumbers undisputedly repaired Ms. Crowley's bathtub, which I find is part of her strata lot. The plumbers' investigation to determine the source of the leak was necessarily incidental to the repair. So, I find the strata's bylaws authorized the chargeback for the plumbers' invoice.

### ***Strata Must Act Reasonably***

29. Ms. Crowley provided a number of Google reviews criticizing the strata's plumbing company. I infer she is arguing the strata breached did not act reasonably in responding to the leak by hiring an unprofessional plumber.
30. Here, the strata was aware that Ms. Crowley might be liable for the contractor's invoice under its chargeback bylaw. Owners like Mrs. Crowley who are subject to chargeback bylaws are in a precarious position. They do not select the contractor, so they have no opportunity to shop around or negotiate better prices. Since an owner is not a party to the contract, they generally have no right to direct the contractor's

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<sup>1</sup> While not binding on me, a CRT member recently applied the same approach in *Zhang v. The Owners, Strata Plan EPS4634*. I find that reasoning persuasive, and adopt it here.

work or challenge invoices. For these reasons, I find the strata, knowing that Ms. Crowley could be liable under its bylaws, had an obligation to act reasonably in selecting contractors, authorizing their work, and reviewing their invoices prior to payment.

31. However, I note Ms. Crowley was not responsible for paying for the plumbers' return visit. Her liability is limited to the chargeback for the plumbers' initial visits, which were directly for the purpose of repairing the leak. There is no evidence the plumbers' invoice is unreasonable. The online reviews do not prove anything about the quality or cost of the work performed in this case. So, I find the strata acted reasonably in selecting the plumbers and paying their invoice.

### ***Section 135 of the SPA***

32. Ms. Crowley also argues that the strata did not meet its obligations under section 135 of the SPA prior to issuing her the chargeback. However, I find section 135 does not apply in this case.
33. As I briefly address above, Section 135 of the SPA allows the strata to require that an owner pay costs associated with a breach of the strata's bylaws. This creates a multi-step process, where the strata must learn of an alleged breach of a bylaw, give the owner notice of the alleged breach, and allow them an opportunity to respond. In this case, however, the strata does need to depend upon section 135, since it has authority to issue the chargeback directly under bylaw 4.1.
34. In other words, the strata is not seeking a remedy for a breach of a bylaw. There is no allegation that Ms. Crowley breached bylaw 4.1 or any other bylaw. Instead, the strata is issuing the chargeback as authorized by bylaw 4.1.
35. I acknowledge the strata provided Ms. Crowley with an opportunity to dispute the chargeback. The strata's letter shows it was under a mistaken understanding the strata was required to do so by SPA section 135. The strata then allowed Ms. Crowley to submit information and evidence disputing the chargeback on at least two

occasions. While the strata's explanation was confusing, Ms. Crowley cannot depend on an argument that the strata failed to meet its section 135 obligations.

36. Therefore, I dismiss Ms. Crowley's claim to reverse the chargeback. I find she must pay the chargeback. I address the amount of money owing below.

### ***Remedy***

37. As noted above, in its argument, the strata reduced its claim to \$692.77. This reflects \$700 in payments Ms. Crowley has made against the \$1,392.77 chargeback, with her final payment prior to submissions made on September 17, 2023.

38. Ms. Crowley is responsible for the chargeback, so I find she must pay the strata \$692.77.

39. Ms. Crowley says she has made payments further to a payment plan she set up with the strata's property manager. The strata says there is no payment plan. Other than her assertion, Ms. Crowley did not provide evidence of any agreement, such as emails or letters. Since she is the one asserting the parties' agreement, she has the burden of proving it, and I find she has not. However, it is obvious that whether or not the parties have an agreement, Ms. Crowley has been making consistent payments.

40. In the course of making my decision, I asked the parties to provide an updated list of payments made by Ms. Crowley. The parties agree Ms. Crowley has paid a further \$400 since their initial submissions. So, I find it obvious that Ms. Crowley is entitled to set off her \$400 in payments against the chargeback balance.

41. So, after offsetting Ms. Crowley's payments made after the parties' original submissions, I find Ms. Crowley must pay the strata \$292.77.

### **INTEREST, CRT FEES, and EXPENSES**

42. The *Court Order Interest Act* (COIA) applies to the CRT. The *Court Order Interest Act* applies to the CRT. The strata is entitled to pre-judgment interest on the \$292.77



award, calculated from November 22, 2021, the date it first notified Ms. Crowley of her obligation to pay the chargeback, to the date of this decision. This equals \$16.19.

43. 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. The strata conceded Ms. Crowley's payments in its submissions and obtained an order for the balance owing. I therefore order Ms. Crowley to reimburse the strata \$125 in paid CRT fees. I dismiss Ms. Crowley's claim for CRT fees. Neither party claimed dispute-related expenses.
44. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

## **ORDERS**

45. I order that, within 30 days of the date of this order, Ms. Crowley pay the strata a total of \$433.96, broken down as follows:
  - a. \$292.77 in damages,
  - b. \$16.19 in pre-judgement interest, and
  - c. \$125 in CRT fees.
46. The strata is entitled to post-judgement interest under the COIA, as applicable.
47. I dismiss the parties' remaining claims.

48. 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 in which it is filed.

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Christopher C. Rivers, Tribunal Member