



# Civil Resolution Tribunal

Date Issued: April 12, 2024

File: ST-2023-001571

Type: Strata

Civil Resolution Tribunal

Indexed as: *Zhang v. The Owners, Strata Plan BCS 282*, 2024 BCCRT 350

B E T W E E N :

XIN ZHANG

**APPLICANT**

A N D :

The Owners, Strata Plan BCS 282

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. This strata property dispute is about damage to a parking garage entrance gate.
2. The applicant, Xin Zhang, is a former tenant of a strata lot (unit 211) in the respondent strata corporation, The Owners, Strata Plan BCS 282 (strata). The owner of unit 211 is not a party to this dispute.

3. On November 15, 2022, Ms. Zhang rolled a vehicle down the entrance driveway to the strata's underground parking garage and into the overhead parking gate. The strata initially gave the "resident" of unit 211 notice they would be responsible for the gate repair expenses quoted at \$6,137.25. Later, the strata notified the owner of unit 211 they would be responsible for the repair expenses, but the strata ultimately filed a claim with the Insurance Corporation of British Columbia (ICBC), which reimbursed the strata the repair amount.
4. Ms. Zhang does not dispute the incident occurred, and she admitted responsibility. However, she says the strata:
  - a. Failed to provide her with a written complaint or opportunity to respond, contrary to *Strata Property Act* (SPA) section 135,
  - b. Made unreasonable repairs to the parking gate, contrary to SPA section 133, and
  - c. Acted significantly unfairly by imposing the high cost of unjustified gate repairs on her.
5. Ms. Zhang seeks an order that the strata withdraw the ICBC claim or, alternatively, reimburse her \$6,137.25 for the amount of the gate repair. Ms. Zhang is self-represented.
6. The strata disagrees with Ms. Zhang. It says that Ms. Zhang was not a tenant in the strata, but rather an occupant or resident. Therefore, it says Ms. Zhang did not have authority to start this Civil Resolution Tribunal (CRT) proceeding. The strata also says Ms. Zhang's claim is moot (of no legal relevance) because ICBC has settled the claim and paid the strata, so there is no longer any live issue. Finally, the strata says it acted in accordance with its SPA requirements. The strata asks that the CRT refuse to resolve or dismiss Ms. Zhang's claims. A strata council member represents the strata.
7. As explained below, I dismiss Ms. Zhang's claims and this dispute.

## **JURISDICTION AND PROCEDURE**

8. 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, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
9. 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. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the written evidence and submissions provided.
10. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

### ***Preliminary Issue – Standing (legal authority)***

11. As noted, the strata says the Ms. Zhang was not a tenant in the strata. Under CRTA section 189.1, only a strata corporation, separate section, owner, or tenant may apply to the CRT for dispute resolution. If Ms. Zhang were not a tenant, she would not have standing to start a CRT dispute under the CRT's strata property jurisdiction.
12. However, Ms. Zhang provided a copy of a tenancy agreement between her and the unit 211 registered owner for a 6-month period starting November 15, 2022. She referred to herself as a tenant in email communications with the strata manager and the strata manager also referred to her as a tenant. Even though the unit 211 owner referred to Ms. Zhang as a roommate, I find it is more likely than not that she is a tenant under SPA section 1(1), which defines tenant to include a person who rents all or part of a strata lot. Therefore, I find the Ms. Zhang has standing to start this proceeding.

## **ISSUES**

13. The issues in this dispute are:
  - a. Are Ms. Zhang's claims moot?
  - b. Did the strata act contrary to the SPA?
  - c. Did the strata treat Ms. Zhang significantly unfairly?
  - d. What remedies, if any, are appropriate?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

14. In a civil proceeding such as this, Ms. Zhang must prove her claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' submissions and evidence but refer only to information I find relevant to explain my decision.
15. The strata was created in March 2003 under the SPA and consists of 232 mixed-use strata lots.
16. The strata's owner developer filed bylaws with the Land Title Office (LTO) that wholly replaced and repealed the Standard Bylaws under the SPA. The filed bylaws create separate commercial and residential sections as permitted under the SPA. Several other bylaw amendments have been filed with the LTO, but most are not relevant. The bylaws relevant to this dispute are as follows:
  - a. Bylaw 2(3)(2) that says an owner or tenant must not cause damage to common property or common assets, and
  - b. An unnumbered bylaw filed with the LTO on August 15, 2005, that says an owner or tenant who negligently or intentionally causes damage to common property shall be liable to the strata for the cost of repair or replacement up to the amount of the strata's insurance deductible.

17. I infer unit 211 is a residential strata lot within the residential section. I have considered whether the residential section should be a named respondent in this dispute and find that it should not. I say this because there is no issue the parking gate is located on common property for which the strata is responsible. Therefore, the strata is responsible to repair and maintain the gate whether the gate is common property or a common asset. Given the issue in this dispute does not solely relate to the residential section, I find the strata is the correct respondent.
18. According to the tenancy agreement, Ms. Zhang's rental of unit 211 started on November 15, 2022, and was to end on May 15, 2023. Video evidence provided by the strata shows a vehicle rolling into the parking gate on November 15, 2022.
19. In a November 17, 2022 letter, the strata manager wrote to the "residents" of unit 211 alleging they caused the damage in contravention of bylaw 2(3). I find the unnumbered bylaw noted above also applies. The letter stated the resident must respond to the complaint or request a hearing within 2 weeks, that the resident may be fined or charged with the cost of remedying the bylaw infraction, and that the owner could be held responsible for a tenant's cost to remedy the bylaw infraction.
20. I note the unit 211 owner confirmed in a 2023 email to the strata manager that Ms. Zhang moved out of unit 211 on November 25, 2022. I accept this is accurate as Ms. Zhang did not dispute it.
21. In a November 27, 2022 email to the strata manager, Ms. Zhang confirmed her vehicle damaged the parking entrance gate on November 15, 2022, when she was moving into unit 211. She also said she accepted responsibility.
22. On December 2, 2022, the strata wrote to the "owner" of unit 211 requesting payment of \$498.75 for gate repairs as set out on an invoice from Precision Door & Gate Service Ltd. for that amount. It is unclear whether the Precision invoice was attached to the December 2, 2022 letter, but the unit 211 owner emailed Ms. Zhang a copy of the invoice on December 9, 2022. The invoice was dated November 24, 2022, and noted that a quotation was attached to it. The attached quotation was also dated November 24, 2022, and quoted replacing the bottom section of the aluminum gate

including a new “safety reversing bottom edge” at a cost of \$5,638.50, including taxes.

23. In a December 12, 2022 email to the strata manager, the unit 211 owner denied any liability for the gate repair. They said Ms. Zhang should be responsible and that she agreed to pay the \$498.75 repair but not the additional \$5,638.50. Ms. Zhang confirmed this in subsequent emails.
24. On December 21, 2022, the strata wrote to the “residents” of unit 211 following its November 17, 2022 letter. The strata said it had decided to charge all costs of the gate repair to unit 211. About the same time, the strata became aware Ms. Zhang had moved out of unit 211. It also filed a claim with ICBC and on December 22, 2022, ICBC requested details of the gate damage and vehicle involved from the strata.
25. In January 2023, Ms. Zhang requested a council hearing in response to her receipt of correspondence from ICBC seeking recovery of the gate repairs. Ms. Zhang sought the strata’s withdrawal of its ICBC claim. The council hearing was apparently held on February 1, 2023. Although the results of the hearing are not before me, I find it obvious the strata denied Ms. Zhang’s request.
26. On March 16, 2023, ICBC issued a cheque for \$6,137.25 to the strata for the gate damage.

***Are Ms. Zhang’s claims moot?***

27. The substance of Ms. Zhang’s claims are that the initial \$498.75 repair to the garage gate was adequate and the additional cost of \$5,638.50 was unnecessary because the gate was in good working condition. As noted, she seeks an order that the strata withdraw the ICBC claim or, alternatively, reimburse her \$6,137.25 for the amount of the gate repair. For the following reasons, I do not find Ms. Zhang’s claims are moot.
28. A claim is considered moot when something happens after a legal proceeding starts that removes any “present live controversy” between the parties. See *Binnorsley v. BCSPCA*, 2016 BCCA 259.

29. While the strata's claim with ICBC is complete, I find the strata's actions to abandon recovery of the gate repair costs from Ms. Zhang falls within her significant unfairness claim, which I discuss below. Therefore this claim is not moot.
30. I also find Ms. Zhang's claim for reimbursement of the repair expenses the strata received from ICBC is not moot for the same reason.

***Did the strata act contrary to the SPA?***

31. Ms. Zhang says the strata acted contrary to SPA sections 133 and 135. For completeness and Ms. Zhang's benefit, I briefly address each in turn. However, I find the strata did not act contrary to the SPA because it did not ultimately charge any repair expenses to Ms. Zhang. Rather, it filed an ICBC claim instead.

*SPA section 133*

32. Section 133 says a strata corporation may do what is reasonably necessary to remedy a bylaw contravention, including doing work to common property or a common asset, such as the parking gate.
33. Ms. Zhang says it was unreasonable for the strata to replace the lower section of the gate and "safety reversing bottom edge" because, in her opinion, the gate was operating fine after the initial \$498.75 repair. The strata essentially says it was reasonable to complete the additional repair based on the advice of its contractor, Precision.
34. The courts have recognized that strata corporations are entitled to rely upon and be guided by professional advice. See for example *Oldaker v. The Owners, Strata Plan VR 1008*, 2007 BCSC 669 and *Kayne v. The Owners, Strata Plan LMS 2374*, 2013 BCSC 51.
35. Here, the evidence is clear that Precision recommended the strata complete the additional gate repairs because the bottom section of the gate was "bent and twisted" and could not be repaired. Therefore, I find the strata acted reasonably by proceeding with Precision's recommend repairs.

### SPA section 135

36. SPA section 135 sets out procedural requirements the strata must follow to remedy a bylaw contravention. Under SPA section 135(1), before remedying the contravention, the strata must have received a complaint, and given the owner and tenant written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if one is requested. Under section 135(2), the strata must give the owner written notice of its decision to impose fines “as soon as feasible”.
37. First, I find Ms. Zhang contravened bylaw 2(3)(2) when her car rolled into the parking gate. I find the strata’s November 17, 2022 letter addressed to the residents of unit 211 complied with section 135(1). I also find the strata’s follow up letter dated December 21, 2022 complied with section 135(2). I disagree with Ms. Zhang’s argument that the date of the December 21, 2022 letter was not “as soon as feasible” because she did not provide any evidence to support her assertion.
38. For the above reasons, I find if the strata did charge Ms. Zhang with the cost of the gate repairs, it would have complied with SPA sections 133 and 135.
39. In any event, I dismiss Ms. Zhang’s claims that the strata acted contrary to the SPA.

### ***Did the strata treat Ms. Zhang significantly unfairly?***

40. Ms. Zhang says the strata treated her significantly unfairly by imposing the high cost of unjustified gate repairs on her, noting she was a recent graduate student. I have also considered whether it was significantly unfair for the strata to abandon its collection of the gate repairs from either the unit 211 owner or Ms. Zhang. In both cases I find it was not. My reasons follow.
41. The CRT has authority to make orders remedying a significantly unfair act or decision by a strata corporation under section 123(2) of the CRTA. The legal test for significant unfairness is the same for CRT disputes and court actions. See *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113.
42. The basis of a significant unfairness claim is that a strata corporation must have acted in a way that was “burdensome, harsh, wrongful, lacking in probity or fair dealing,



done in bad faith, unjust or inequitable.” See *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.

43. In *Dollan*, the BC Court of Appeal established the following reasonable expectations test:

- a. Examined objectively, does the evidence support the asserted reasonable expectations of the owner?
- b. Does the evidence establish that the reasonable expectation of the owner was violated by the action that was significantly unfair?

44. In *King Day Holdings Ltd. v The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the Court of Appeal determined the reasonable expectations test set out in *Dollan* is not determinative. Rather, the Court found the test is a factor in deciding whether significant fairness has occurred, together with other relevant factors, including the nature of the decision in question and the effect of overturning or limiting it.

45. Here, there is no doubt that Ms. Zhang’s car damaged the parking gate. As noted, I have found the strata correctly followed the requirements of the SPA when it initiated action against Ms. Zhang under SPA sections 133 and 135 for the full cost of the gate repair. Ms. Zhang’s financial status, and that she was a recent graduate student, does not matter. On this basis, I find Ms. Zhang’s expectation that the strata could or should not charge her \$6,137.25 was not reasonable. Nor do I find the strata’s actions to initially charge her were harsh, wrongful, unfair, or unjust. The strata was entitled to a working garage door that was in the same or similar condition as it was before the damage occurred.

46. As for the strata’s decision not to reimburse Ms. Zhang for the gate repair costs, there is no evidence that Ms. Zhang paid that amount or any amount for the gate repairs. Although Ms. Zhane claims the strata’s ICBC claim affected her car insurance is, she provided no direct evidence this was case.

47. Finally, I considered the strata's decision to abandon collection of the gate repair cost from Ms. Zhang in favour of an ICBC claim. There is nothing in the SPA or bylaws that prevents the strata from taking such action. Even if the strata charged the expenses to unit 211 and collected it from the owner, the owner would still have the authority to collect the expenses from Ms. Zhang under SPA section 131. In those circumstances, section 131(2) says Ms. Zhang, as a tenant in unit 211, owes the owner the amount. As a result, the outcome would likely have been the same.

48. I find the strata did not act significantly unfairly as Ms. Zhang suggests.

49. For all of these reasons, I dismiss Ms. Zhang's claims and this dispute.

### **CRT FEES AND EXPENSES**

50. 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. The strata was the successful party but did not pay CRT fees nor claim dispute-related expenses. Therefore, I order none.

### **DECISION**

51. Ms. Zhang's claims and this dispute are dismissed.

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J. Garth Cambrey, Vice Chair