



# Civil Resolution Tribunal

Date Issued: June 7, 2024

File: ST-2022-009074

Type: Strata

Civil Resolution Tribunal

Indexed as: *Lee v. The Owners, Strata Plan LMS3463*, 2024 BCCRT 517

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

CHIU YING LEE

**APPLICANT**

**A N D :**

The Owners, Strata Plan LMS3463 and Residential Section of The Owners, Strata Plan LMS3463

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr, Vice Chair

## **INTRODUCTION**

1. This dispute is about responsibility for repair expenses after a pipe leaked. Chiu Ying Lee is a former co-owner of strata lot 80 in the respondent strata corporation, The Owners, Strata Plan LMS3463. The strata is divided into sections. The Residential Section of The Owners, Strata Plan LMS3463 is the other respondent.

2. Mr. Lee is represented by a non-lawyer family member. The strata is represented by a strata council member. The residential section is represented by a section executive member. Despite being represented by different people, the respondents provided joint submissions and evidence.
3. Mr. Lee says that the respondents improperly imposed a \$6,548.82 chargeback on his strata lot account after a water leak. He denies responsibility for the repair and restoration costs. He asks for an order that the strata refund the chargeback.
4. The respondents say that the leak came from a shut-off valve in strata lot 80 and was therefore Mr. Lee's responsibility. They ask me to dismiss Mr. Lee's claim.

## **JURISDICTION AND PROCEDURE**

5. 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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law.
6. 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 have considered the potential benefits of an oral hearing. Here, there are no credibility issues and I am properly able to assess and weigh the documentary evidence and submissions before me. So, the CRT's mandate to provide proportional and speedy dispute resolution outweighs any potential benefit of an oral hearing. I find that an oral hearing is not necessary in the interests of justice. I therefore decided to hear this dispute through written submissions.
7. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.
8. Mr. Lee asks for a different remedy in his submissions than in the application for dispute resolution he filed in late 2022. At that time, the chargeback was on Mr. Lee's

strata lot account but he had not paid it. Mr. Lee sold strata lot 80 in early 2024. As part of that sale, he paid the chargeback. He initially asked for an order that the strata cancel the chargeback, but now he wants to be reimbursed the amount he has paid. The respondents do not say anything in their submissions about the change in requested remedy.

9. In effect, Mr. Lee is asking that his Dispute Notice be amended. CRT rule 1.19(3) says that the CRT will not amend a Dispute Notice during the tribunal decision process except in extraordinary circumstances. In deciding whether to amend a Dispute Notice, CRT rule 1.19(2) says that the CRT will consider the nature of the change and any prejudice to the parties.
10. Here, the underlying legal and factual basis for the remedy and the dollar value at stake are unchanged. So, I find that the amendment is minor and the respondents are not prejudiced. Given the CRT's mandate for flexibility, informality, and speed, I find that amending the Dispute Notice is appropriate. So, I will address Mr. Lee's claim for a refund.
11. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the tribunal 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

12. The issues in this dispute are:
  - a. Is Mr. Lee's claim out of time under the *Limitation Act*?
  - b. Is the pipe that leaked common property?
  - c. Can the respondents charge back any emergency restoration or repair expenses to Mr. Lee under the *Strata Property Act* (SPA) and bylaws?
  - d. Which respondent is responsible for any refund?

## BACKGROUND

13. In a civil claim such as this, Mr. Lee as the applicant must prove his claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
14. The strata filed a complete set of bylaws on September 11, 1998. The bylaws are divided into four parts. There were no relevant amendments before the January 2020 leak. I address the relevant bylaws where necessary.
15. Strata lot 80 is known as unit 810. It shares a wall with unit 809 on the 8<sup>th</sup> floor of the strata's residential tower. The leak occurred on January 20, 2020. On July 28, 2020, the strata manager wrote to Mr. Lee and his co-owners imposing chargebacks for two invoices arising from the leak: a \$4,040.48 plumbing invoice from DMS Service Mechanical and a \$2,418.34 emergency restoration invoice from Platinum Pro-Claim. The total of the chargebacks was \$6,548.82. In its letter explaining the chargeback, the strata manager said that the leak came from the "shut off valve from your unit" and, as a result, the invoices were not "a Strata Corporation expense".

### ***Is Mr. Lee's claim out of time under the Limitation Act?***

16. Mr. Lee started this dispute in November 2022. This was more than two years after the respondents imposed the chargeback, so it may have been out of time under the *Limitation Act*. This is because asking for an order that a strata corporation remove a chargeback is a "claim" under the *Limitation Act* subject to a two-year limitation period. However, for the reasons that follow, I find that recent events after November 2022 mean that the claim is not out of time.
17. Mr. Lee sold unit 810 in January 2024. He says that it was unacceptable to the buyer to have a disputed chargeback on the strata lot account. So, on December 13, 2023, he paid \$6,146.63 to bring the strata lot account to zero. Mr. Lee says that the reason he had to pay less than the \$6,548.82 chargeback was that through inadvertence, his father (who was a co-owner) had been overpaying strata fees since May 2022. This

resulted in a monthly reduction in the outstanding amount owing. Mr. Lee provided a portion of unit 810's strata lot account from around May 2022 that shows when the overpayments started, so I accept this explanation.

18. Based on the above, I find that Mr. Lee's amended claim for a refund is not out of time under the *Limitation Act* because all of the payments towards the chargeback were after November 2020. The respondents did not argue otherwise.

## **ANALYSIS**

### ***Is the pipe common property?***

19. Based on the invoices in evidence, the expenses at issue can be broken down into three categories: DMS's work repairing the leak, Platinum's emergency work in unit 809, and Platinum's emergency work in unit 810. Based on the applicable bylaws, I find that Mr. Lee cannot be held responsible for any expenses for work outside his strata lot if the pipe is common property. This is because part 3, bylaw 1.1(d) makes the residential section responsible for pipes used in connection with one or more strata lots within the residential section, while part 1, bylaw 2.1(e) makes the strata responsible for any other common property pipes.
20. The respondents do not address whether the pipe is common property in their submissions. Instead, they rely on a one sentence email from their lawyer asserting that the pipe is not common property. It is unclear what information the lawyer relied on when they gave that opinion. In any event, legal opinions are not, on their own, evidence of anything. It is the CRT's role to determine whether the pipe is common property based on evidence about the pipe.
21. SPA section 1(1) defines common property. Part of that definition is that pipes within a wall that forms a boundary between a strata lot and another strata lot are common property.
22. DMS's invoice includes a detailed description of what its plumbers observed and the work they did. The invoice describes the job as "Service Plumbing and Drainage –

main shut off valve between units 809/810 is leaking”. The invoice goes on to explain that while most of the damage was in unit 809, the plumber accessed the valve by opening a wall in unit 810. I find the invoice clearly indicates that the pipe was in a wall between units 809 and 810. This is consistent with photos from unit 809 and unit 810 and the strata plan. Based on the definition in SPA section 1, the pipe is common property and not Mr. Lee’s responsibility.

23. This is true even if, as the strata asserts, the shut-off valve only serviced unit 810. The strata is likely referring to the part of the common property definition that deals with pipes that are “wholly or partially within a strata lot”. Under that part of the definition, the pipes are common property only if they “are capable of being and intended to be used in connection with the enjoyment of another strata lot or common property”. However, the part of the definition dealing with pipes between strata lots does not include any criteria about the pipes’ function.
24. Since the pipe is not common property, there is no legal basis to charge any expenses associated with repairing the pipe or repairing damage in unit 809 to Mr. Lee.

**Can the respondents charge back any emergency restoration or repair expenses to Mr. Lee under the SPA and bylaws?**

25. That leaves the repairs to unit 810. Part 2, bylaw 1.1(c) requires owners to repair and maintain their strata lot. Generally, owners are responsible for repairing their strata lot even when it is damaged by a common property failure like a leak from a common property pipe. However, that alone does not give the respondents the right to impose chargebacks for strata lot repairs. The CRT has consistently held that there are three ways a strata corporation can hold an owner responsible for repair or maintenance expenses the strata incurs repairing a strata lot:
- a. The owner agreed to pay them.
  - b. The owner is responsible under the SPA or bylaws.

c. The owner was negligent.<sup>1</sup>

26. Other CRT decisions are not binding on me, but I agree with this reasoning. I find it applies equally to sections.
27. Here, there is no suggestion that Mr. Lee or any of his co-owners agreed to pay for the restoration work or that anyone's negligence caused the leak. SPA section 158 can authorize a chargeback but only if the damage was the owner's responsibility. This does not apply here because the common property pipe was not Mr. Lee's responsibility.
28. This leaves the bylaws. The owners passed a chargeback bylaw in 2021, but it does not apply retroactively. The respondents provided an email from their lawyer suggesting that part 2, bylaw 13.6 authorized the chargeback. The relevant part of that bylaw says that an owner must pay "additional assessments ... and any other expenses incurred to enforce these bylaws ... or any rule or regulation". I agree that the bylaw could authorize a chargeback, but only if there is a bylaw or rule breach. There is no suggestion that Mr. Lee or anyone else associated with unit 810 breached any bylaw or rule. So, the chargeback at issue has nothing to do with bylaw or rule enforcement. In short, I find that part 2, bylaw 13.6 does not apply.
29. The respondents' only argument in their submissions is that there was a similar leak on a different floor, and the owner in that situation paid the chargeback without complaint. I agree with Mr. Lee that another owner's decision to pay a chargeback is irrelevant.
30. For these reasons, I find that neither of the chargebacks was valid. Mr. Lee is entitled to a full refund.

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<sup>1</sup> See *The Owners, Strata Plan K 407 v. Kelly*, 2019 BCCRT 789.

***Which respondent is responsible for the refund?***

31. As noted, the bylaws divide responsibility for pipes between the strata and the residential section. Based on the leaking pipe's location, I find it was the residential section's responsibility because it serviced one or more residential strata lots.
32. Also, the evidence indicates that the strata had nothing to do with the chargeback. The strata manager's July 28, 2020 letter says they are writing as agent for "Owners of LMS 3463R – The Centro (Residential)". While the letter does not include the residential section's legal name, I find this clearly indicates that it was the residential section imposing the chargeback. This is also the name at the top of the statement of account showing the chargebacks. On that basis, I order the residential section to pay Mr. Lee \$6,548.82, and I dismiss Mr. Lee's claim against the strata.
33. As the successful party, Mr. Lee is entitled to reimbursement of \$225 in CRT fees under section 49 of the CRTA and CRT rules. He did not claim any dispute-related expenses.
34. The *Court Order Interest Act* applies to the CRT. Mr. Lee is entitled to pre-judgment interest on the chargeback. I find it reasonable to award interest on the entire chargeback amount from December 13, 2023, when he made the main payment. This is because there is insufficient evidence to determine when Mr. Lee's father made the strata fee overpayments. This equals \$156.34.

**DECISION AND ORDERS**

35. Within 30 days of this decision, I order the residential section to pay Mr. Lee \$6,930.16, broken down as follows:
  - a. \$6,548.82 in damages,
  - b. \$156.34 in prejudgment interest, and
  - c. \$225 in CRT fees.
36. I dismiss Mr. Lee's claims against the strata.

37. Mr. Lee is entitled to post judgement interest under the *Court Order Interest Act*, as applicable.
38. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, 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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Eric Regehr, Vice Chair