



# Civil Resolution Tribunal

Date Issued: September 24, 2024

File: ST-2023-001933

Type: Strata

Civil Resolution Tribunal

Indexed as: *Hurren v. The Owners, Strata Plan 1150*, 2024 BCCRT 947

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

ALANNA HURREN

**APPLICANT**

**A N D :**

The Owners, Strata Plan 1150

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Maria Montgomery

### **INTRODUCTION**

1. This dispute is about charges for pest control treatments.
2. The applicant, Alanna Hurren, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan 1150. They say the strata unfairly charged back \$4,588.50 to their strata lot account for cockroach treatments throughout the strata. They say

there is no evidence that cockroaches originated from their strata lot. They say they have paid the charged amount. I infer they request that the strata pay them back.

3. The strata denies Mrs. Hurran's claim. It says the pest control management company identified their strata lot as the source of the infestation and that Mrs. Hurran did not take appropriate action to address the problem.
4. Mrs. Hurran is self-represented. The strata is represented by a member of the strata council.

## **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)*. 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.
6. The CRT conducts most hearings in writing, but it has discretion to decide the format of the hearing, including by telephone or videoconference. In this dispute, the parties do not explicitly question each other's credibility, but they disagree on fundamental facts like the extent of the cockroach infestation in Mrs. Hurren's strata lot and whether the laundry room was ever infested. Neither party requested an oral hearing, and in the circumstances of this dispute, I find that cross-examination is unlikely to assist in answering these questions. I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that the benefit of an oral hearing does not outweigh the efficiency of a hearing by written submissions.

7. 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.
8. 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.
9. Mrs. Hurren did not provide evidence or reply submissions though they were provided an opportunity to do so. I was unable to open three pieces of evidence provided by the strata so it was asked to resubmit them. Once it did so, Mrs. Hurren was given an opportunity to respond.

## **ISSUE**

10. The issue in this dispute is whether the strata must repay the \$4,588.50 chargeback to Mrs. Hurren.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, Mrs. Hurren, as the 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 what I find necessary to explain my decision.
12. The strata was created in 1982 and consists of one building with 26 mostly side-by-side strata lots. Mrs. Hurren bought SL15 in 2019.
13. The strata filed a complete set of bylaws in the Land Title Office on March 6, 2015, which repealed and replaced all its bylaws, including the Standard Bylaws under the *Strata Property Act* (SPA). The strata later filed two more bylaws that are not relevant to this dispute. None of these bylaws authorize the strata to charge an owner for damage to common property. The strata filed a new set of bylaws on March 5, 2024, which includes Bylaw 16. Bylaw 16 provides that the strata must

invoice an owner who is responsible for damage to common property. As Bylaw 16 predates the facts of this dispute, I find that it is not applicable here.

14. In about early 2021, the strata became aware of complaints of cockroaches within some strata lots and asked a pest management company to treat them. The infestation grew to impact many strata lots resulting in a pest management company attending the strata many times throughout 2021 and 2022.
15. The strata says that the pest control company informed the strata verbally and in writing that Mrs. Hurren's strata lot was the originating cause of the infestation and that Mrs. Hurren's lack of cooperation prevented eradication of the cockroaches. Based on this opinion, the strata decided it was appropriate to charge Mrs. Hurren's strata lot for the cost of future treatments.
16. According to September 12, 2022, strata council meeting minutes, the strata sent Mrs. Hurren a letter regarding chargebacks for pest management services on September 6, 2022. Neither party submitted this letter as evidence. The strata provided 10 invoices that it says were charged to Mrs. Hurren's account, totalling \$7,733.25. As noted above, Mrs. Hurren brings this claim for \$4,588.50. Neither party explains the discrepancy in these amounts.
17. Ms. Hurren says the true origin of the infestation was a strata lot beside her, based on a conversation they had with the owner of that strata lot. They disagree with that the cost of pest management treatments should be charged to their strata account and disagree with the strata's assertion that they were not-cooperative in treatment efforts.
18. So, the question is whether the strata, having arranged and paid for pest management treatments, had the authority to charge back those costs to Mrs. Hurren.
19. The BC Supreme Court considered a strata's obligations specifically in relation to a bedbug problem in *The Owners, Strata Plan VIS 1437 v. Abolins*.<sup>1</sup> There, the court found that a strata's obligation to manage and maintain common property includes

the responsibility to protect common property from harm, including harm from insects and pests.

20. Common property is defined in the SPA as including certain items such as pipes and heating or cooling ducts located within a floor, wall or ceiling that forms a boundary between 2 strata lots. It is undisputed that pests such as cockroaches can spread through pathways provided by pipes, ducts and other common property that are located within strata lot walls, floors, and ceilings.
21. Here, I find that the strata was obligated to address the cockroach problem as part of its obligation to repair and maintain common property. However, the question remains as to whether the strata, after discharging its responsibility, had the authority to charge Mrs. Hurren for the cost of doing so.
22. In *Ward v. The Owners, Strata Plan VIS 6115*,<sup>2</sup> the court found that a strata corporation was not entitled to charge an owner legal fees without the authority to do so under a valid and enforceable bylaw or rule that creates the debt. While the court was dealing with a lien against a strata lot, I find this reasoning applies to other charges, consistent with the non-binding CRT decisions in *Zhang v. the Owners, Strata Plan BCS 3462*,<sup>3</sup> *Matthews v. The Owners, Strata Plan LMS 1335*,<sup>4</sup> and *Rintoul v. The Owners, Strata Plan KAS 2428*.<sup>5</sup> So, I find the strata could only charge Mrs. Hurren for the cost of pest management services if a bylaw allowed it to do so.
23. As noted above, the strata did not have a bylaw allowing it to charge Mrs. Hurren's strata lot when it sent her the chargeback letter on September 6, 2022. Bylaw 16 was not filed until March 2024. So, I find that the strata's chargeback is invalid, and I order that the strata repay Mrs. Hurren the amount of the chargeback they paid, which is \$4,588.50. I make no order about any other chargebacks because they are not properly before me.
24. Even if the strata had passed Bylaw 16 before it placed a chargeback on her strata lot account, I would still find that it was not authorized to charge Mrs. Hurren for the

pest treatments. This is because it has not proved that Mrs. Hurren caused the damage.

25. The strata submits that Mrs. Hurren is responsible for the cockroach infestation costs for two reasons: 1) the infestation originated within their strata lot and 2) they were not cooperative with treatments.
26. On the first reason, I find that determining the source of a cockroach infestation is a technical question which requires expert evidence. The strata's evidence that the infestation originated from Mrs. Hurren's strata lot is a statement from the pest management company's office assistant communicated by email dated March 3, 2023. It said that the technician's notes indicate that the infestation most likely originated in Mrs. Hurren's strata lot, based on the number of cockroaches there. The problem with this statement is that the qualifications of the technician are not included, as required by CRT Rule 8.3. The technician's notes have not been provided. A summary of the technician's notes completed by the office assistant, rather than by a qualified expert, is not sufficient, in this case, to prove the cause of damage to common property.
27. I will consider now the strata's second reason for charging Mrs. Hurren. I find the strata has not established Mrs. Hurren's lack of cooperation. The only indication that Mrs. Hurren was not cooperative is an email from the pest management company stating that Mrs. Hurren was a few days delayed in returning their phone call. Another email from the company acknowledged difficulties in treating neighboring strata lots if Mrs. Hurren's strata lot went untreated. The technician said that Mrs. Hurren had asked for a few weeks to dispose of items within her strata lot, at which time it could properly treat all strata lots. This appears to be a reasonable request, given what might be involved in dealing with a cockroach infestation.
28. In my view, the strata has not established that Mrs. Hurren was so uncooperative with pest management treatments that they could be considered the cause of further infestation. I note an email from the pest management company on December 10, 2022, stated that Mrs. Hurren was cooperative.

29. For these reasons, I find that the chargeback was invalid. Mrs. Hurren is entitled to a full refund.

## **CRT FEES AND INTEREST**

30. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Here, neither party paid fees or claimed dispute related expenses.

31. The *Court Order Interest Act* applies to the CRT. Here, Mrs. Hurren did not provide evidence of what date they paid the chargeback on the strata account, so I am not able to make an order for interest.

32. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mrs. Hurren.

## **ORDERS**

33. Within 30 days of this decision, I order the strata to pay to Mrs. Hurren \$4,588.50 in debt.

34. Mrs. Hurren is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

35. This is a validated decision and order. 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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<sup>1</sup> 2018 BCSC 2422.

<sup>2</sup> 2011 BCCA 512.

<sup>3</sup> 2020 BCCRT 114.

<sup>4</sup> 2020 BCCRT 1110.

<sup>5</sup> 2019 BCCRT 1007.