



# Civil Resolution Tribunal

Date Issued: October 7, 2024

File: ST-2023-005201

Type: Strata

Civil Resolution Tribunal

Indexed as: *Stanescu v. The Owners, Strata Plan EPS1617*, 2024 BCCRT 996

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

IULIANA STANESCU

**APPLICANT**

**A N D :**

The Owners, Strata Plan EPS1617

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Amanda Binnie

## INTRODUCTION

1. This dispute is about heat pump repair and replacement. The applicant, Iuliana Stanescu, is an owner of strata lot 81 (SL81) in the respondent strata corporation, The Owners, Strata Plan EPS1617 (strata). Mrs. Stanescu claims the strata did not properly maintain central unit for the strata's heating system, which required her to replace SL81's heat pump after only after 4 years. She claims \$5,000 for the purchase of a mobile air conditioning unit and replacing the heat pump.

2. The strata says it is not responsible for the replacement of the heat pump or mobile air conditioning unit, as both the heat pump unit and a portable air conditioner are part of Mrs. Stanescu's strata lot, and it properly maintained the building's geothermal common property system.
3. Mrs. Stanescu is self-represented. The strata is represented by a strata council member.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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. I also find there is no significant credibility issues between the parties. 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.
6. 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.
7. 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.

## ISSUE

8. The issues in this dispute are:
  - a. Are Mrs. Stanescu's claims out of time under the *Limitation Act*?
  - b. Is the strata responsible for the maintenance of the heat pump unit within Mrs. Stanescu's unit?
  - c. If so, should the strata reimburse Mrs. Stanescu for the heat pump and mobile air conditioning unit she purchased?

## EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mrs. Stanescu must prove her 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 necessary to explain my decision.
10. The strata has 87 strata lots over 6 storeys, and was registered under the SPA in 2014.
11. The strata initially filed the Standard Bylaws to the *Strata Property Act* (SPA) in 2014, and only replaced certain sections. Subsequent amendments to the bylaws are not relevant to this dispute. So, I find the strata's bylaws are the Standard Bylaws, with certain replaced sections. I discuss specific bylaws below when relevant.
12. The parties agree on the general background to this dispute. The strata lots are heated by a geothermal system. This system is made up of a "central" unit on the roof of the building, which provides "fluid" at a certain temperature to individual heat pump units within each strata lot. These heat pumps then provide heating and air conditioning to each strata lot.

13. The strata says that the heat pumps are fully within each respective strata lot. Mrs. Stanescu does not dispute this, and I accept that the heat pumps themselves are within each strata lot.
14. I will first deal with Mrs. Stanescu's argument that the initial contract to service the geothermal system was "illegal" because it was signed by the same individual for both the strata and service provider. This initial contract is titled "Energy Utility Services Agreement" and was with Parc Riviera, which has since been taken over by Connect TES. Connect TES owns and operates the geothermal system, including supplying the fluid. However, based on Mrs. Stanescu's claimed remedies, I find the contract's validity is not relevant to this dispute.

***Are Mrs. Stanescu's claims out of time under the Limitation Act?***

15. The strata argues that Mrs. Stanescu's dispute is barred by the *Limitation Act*, since she first discovered the "illegal contract" the strata had with the maintenance provider in March 2021, and this dispute was not started until May 12, 2023. However, while Mrs. Stanescu raises the issue of the contract, I find she is not claiming any remedy for it. I also find though she initially repaired her heat pump in June 2019, she did not replace it until May 2022. She does not claim compensation for the June 2019 repairs.
16. Under section 13 of the CRTA, the *Limitation Act* applies to the CRT. The *Limitation Act* creates a two-year limitation period for most claims. Here, Mrs. Stanescu is claiming for the replacement of her heat pump, so I find her claims are not out of time. I also find her claims relate to the ongoing issue of responsibility for the in-unit heat pumps, which are also not out of time.

***Is the strata responsible for the maintenance of the heat pump unit within Mrs. Stanescu's unit?***

17. Mrs. Stanescu says both she and other owners have been having issues with their heat pumps, requiring early replacement. She says this is because of the temperature of the fluid coming from the central unit to each individual unit is not correct, which is causing the heat pumps units to work harder and wear out faster.

18. In support of this, she relies in submissions on her co-owner's, RS's, opinion. While I accept that RS is a mechanical engineer, they have not provided a report and though they are not party to this dispute, as a co-owner, I find they are not a neutral party capable of providing expert evidence. I also agree with strata that they have provided no support for their opinion, and so I do not rely on RS's opinion in coming to my decision.
19. However, this does not end matters because I must determine whether the heat pumps are common property.
20. SPA section 1 defines common property as:
  - a. That part of the land and buildings shown on a strata plan that is not a part of strata lot, and
  - b. Pipes, wires, cables chutes, ducts and other facilities for the passage or provision of water, sewage, drainage, gas oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, if they are located
    - i. Within a floor, wall or ceiling that forms a boundary (A) between a strata lot and another strata lot, (B) between a strata lot and the common property, or (C) between a strata lot or common property and another parcel of land, or
    - ii. Wholly or partially within a strata lot, if they are capable of being intended to be used in connection with the enjoyment of another strata lot or the common property.
21. Bylaw 2(1) says that an owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the strata's responsibility under the bylaws. Bylaw 8(d) says that the strata must repair some parts of a strata lot, none of which are relevant to this dispute.

22. Bylaw 8(b) says that the strata must repair and maintain common property. I accept the strata's evidence that it regularly had the central unit serviced and repaired as required, which is supported by Modern Systems Management's regular maintenance reports. These reports show no issues with the central unit or its temperatures. So, I find I must only determine if the strata is also responsible for maintaining the individual heat pumps. Based on the above bylaws, if the heat pumps are common property, the strata must maintain them, and if they are part of the strata law, the owners must maintain them.
23. As the heat pumps are within the strata lots, to be common property, they must be "intended to be used in connection with the enjoyment of another strata lot or the common property".
24. In *Fudge v. Owners, Strata Plan NW2636*, 2012 BCPC 409, the court found that wastewater pipes were common property because they were in a network of pipes that connected individual units as part of an integrated whole.
25. CRT decisions relying on *Fudge* have found fan coil units (FCUs) in a strata lot were common property (see: *Bowie v. The Owners, Strata Plan VIS 5766*, 2020 BCCRT 733 and *Lin v. The Owners, Strata Plan LMS 4071*, 2020 BCCRT 690). In *Lin*, the CRT member found that a FCU in a strata lot was common property because it was connected to a common property hot water source. In *Bowie*, the CRT member found that an FCU was common property because it was part of an integrated whole as the FCU could not operate independently of the common property heat pump.
26. Here, the service reports describe the heating system as a "heat pump loop", and 2016 emails between Mrs. Stanescu and the strata show that when there was a problem with the rooftop central system, multiple strata lots' heat pumps were affected. So, I find Mrs. Stanescu's heat pump is part of an "integrated whole" and is common property.
27. As I have found the heat pumps are common property, the strata must maintain them under SPA section 72.

***Should the strata reimburse Mrs. Stanescu for the heat pump and mobile air conditioning unit she purchased?***

28. I begin with the mobile air conditioning unit. As Mrs. Stanescu provided no receipt, invoice or cost for this unit, I find she has not proven her claim for reimbursement and I dismiss it.
29. I turn now to the heat pump. Mrs. Stanescu provided an invoice for repairs she had done in 2019, which were for \$233. She does not claim reimbursement for this, but says she was told this repair would not last. She eventually replaced her heat pump in May 2022 for \$5,801.25.
30. The strata argues that if I find the heat pumps are common property, it should not be responsible for Mrs. Stanescu's choice to unilaterally replace the heat pump in her unit. It cites *Delcon (Plaza Del Mar) Investments Ltd. v. The Owners, Strata Plan VR 414*, 2024 BCCRT 129 for the proposition that strata lot owners cannot unilaterally make repairs to common property and expect the strata to reimburse them. This is so an individual owner does not take over a strata's ability to prioritize maintenance and repairs.
31. However, that case involved repairs to property the strata acknowledged was common property. Here, I find the strata refused to acknowledge the heat pumps were common property and told Mrs. Stanescu in May 2019 it was her responsibility to maintain. In *The Owners, Strata Plan NW 1017 v. Ahern et al*, 2019 BCCRT 617, the CRT acknowledged there would be times, such as an emergency, where a strata would be responsible for a owner's unilateral repairs.
32. I find Mrs. Stanescu acted reasonably by unilaterally repairing the heat pump because the strata told her it was her responsibility and she was without heat or air conditioning. She initially repaired it, an expense not claimed in this dispute, and did not replace it until almost three years later. There is no indication that during time that the strata was reconsidering its position that the heat pumps were common property. The undisputed evidence is other owners were replacing their heat pumps at their own expense. So, I find the strata has not proven Mrs. Stanescu took over

the strata's function by replacing the heat pump when she did. I find the strata must reimburse Mrs. Stanescu for the cost of replacing the heat pump.

33. The strata also argues that to reimburse Mrs. Stanescu the full cost of the heat pump would result in betterment, given she now has a new heat pump. Betterment is a legal term where a court (or CRT) reduces damages to acknowledge that a party receives new property to replace old property. However, the strata has provided no evidence that the heat pump could be repaired a second time.
34. As noted, Mrs. Stanescu only asked to be reimbursed for \$5,000 of the cost of the new heat pump. So, even though her damages were higher, I cannot order more than she claimed. I therefore order the strata to pay her \$5,000.

### **CRT FEES, EXPENSES AND INTEREST**

35. 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. I therefore order the strata to reimburse Mrs. Stanescu for \$225 in CRT fees.
36. Mrs. Stanescu also claims \$476.24 in both her and RS's time off work dealing with this dispute. However, RS is not a party to this dispute and under the CRT's rules time spent is generally not compensated except in extraordinary cases. This is not an extraordinary case, and I dismiss this claim.
37. The *Court Order Interest Act* (COIA) applies to the CRT. Mrs. Stanescu is entitled to prejudgment interest on the \$5,000 from May 28, 2022, the date of the invoice to the date of this decision. This equals \$476.82.
38. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mrs. Stanescu.



## ORDERS

39. I order that within 30 days of this decision, the strata pay Mrs. Stanescu a total of \$5,701.82, broken down as follows:

- a. \$5,000 in damages,
- b. \$476.82 in pre-judgment interest, and
- c. \$225 in CRT fees.

40. Mrs. Stanescu is also entitled to post-judgment interest, as applicable.

41. 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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Amanda Binnie, Tribunal Member