



Civil Resolution Tribunal

Date of original decision: November 28, 2024
Date of amended decision: November 29, 2024

Files: ST-2022-002870
ST-2022-006735
ST-2022-006736

Type: Strata

Civil Resolution Tribunal

Indexed as: *Leung v. The Owners, Strata Plan LMS 2195*, 2024 BCCRT 1208

B E T W E E N :

M E I S L E U N G

APPLICANT

A N D :

The Owners, Strata Plan LMS 2195

RESPONDENT

AMENDED REASONS FOR DECISIONⁱ

Tribunal Member:

Micah Carmody

INTRODUCTION

1. Mei S Leung co-owns strata lot 40 (SL40) in the respondent strata corporation, The Owners, Strata Plan LMS 2195 (strata). These three related disputes arise from an August 2018 fire that originated in SL40 and spread to nearby common property and strata lots. Ms. Leung says the Civil Resolution Tribunal (CRT) previously ruled that she was not liable for the fire, so she should not have to pay any charges arising from it.
2. There is some overlap and duplication of claims, but I find they are best grouped as follows. First, the chargebacks. Ms. Leung asks me to order the strata to remove certain chargebacks from her strata lot account related to the fire and clean-up. The chargebacks range from \$192.78 for a cleaning invoice to \$20,830.97 for the strata's alleged insurance premium increase.
3. Second, the insurance money. Ms. Leung asks me to order the strata to pay her \$16,830.97 in insurance money that was designated for repairing her strata lot. She also says the strata's refusal to pay her the insurance money has prevented her from repairing her strata lot, for which she claims damages she estimated at the time of submissions at \$62,400.
4. Third, the bylaw contravention fines. Ms. Leung asks me to order the strata to remove several bylaw fines from her account, which she says total around \$35,000. Lastly, Ms. Leung asks for certain legal fees and expenses. Ms. Leung is represented by a lawyer, Fatima Noorullah Qamar.
5. The strata generally denies Ms. Leung's claims and says it complied with the *Strata Property Act* (SPA) and its bylaws. It says many of Ms. Leung's claims are out of time under the *Limitation Act*. The strata is represented by a lawyer, Corey Smith.

JURISDICTION AND PROCEDURE

6. 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). 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. It must also recognize any relationships between parties that will likely continue after the CRT process has ended.

7. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.
8. The CRT conducts most hearings in writing, but it has discretion to decide the hearing's format, including by telephone or videoconference. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. The key facts are largely undisputed, and credibility is not central to these disputes. 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. Under CRTA section 123, in resolving these disputes 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.

Late evidence

10. Ms. Leung provided evidence after the CRT's deadline. The evidence was an August 2, 2019 letter from her lawyer at the time to the strata, which I find relevant to the bylaw contraventions at issue in these disputes. The strata opposes admission of the late evidence, saying that Ms. Leung ought to have provided it by the deadline. I find the strata had the opportunity to comment on the late evidence, so there is no prejudice in admitting it. Given the CRT's mandate that includes providing flexible and informal dispute resolution services, I have admitted the late evidence and considered it in making this decision.

ISSUES

11. The issues in these disputes are:

- a. Are any of Ms. Leung's claims out of time under the *Limitation Act*?
- b. Must the strata reverse any of the chargebacks?
- c. Must the strata pay Ms. Leung the \$16,830.97 insurance money?
- d. Is Ms. Leung entitled to damages because the strata withheld the insurance money?
- e. Must the strata reverse any bylaw contravention fines?
- f. Is the strata responsible for Ms. Leung's legal fees and related expenses?

EVIDENCE AND ANALYSIS

- 12. As the applicant in this civil proceeding, Ms. Leung must prove her claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
- 13. The strata was created in 1995. SL40 is on the fifth floor of a 22-storey building. Ms. Leung co-owns SL40 with her father. Her father is elderly and does not live in BC. Neither of them has lived in SL40 in the recent past.
- 14. In August 2018, a fire occurred in SL40 and damaged the strata lot, surrounding common property and nearby strata lots. The fire investigator determined that the fire started in SL40's kitchen, but the fire's cause was undetermined. SL40 has not been restored to a livable condition to date.
- 15. At the time of the fire, someone was living in SL40. Ms. Leung says it was an unauthorized intruder. The strata says Ms. Leung permitted this occupant to live there, against the strata's bylaws. As I explain below, nothing in these disputes turns on whether the occupant had Ms. Leung's permission to live there.
- 16. The strata imposed a \$5,000 chargeback on Ms. Leung's strata lot account for the strata's insurance deductible related to the 2018 fire. Ms. Leung paid \$4,000 of the

chargeback “under protest,” she says. The strata started a CRT claim seeking the remaining \$1,000 from Ms. Leung and her father.

17. On March 9, 2021, the CRT made its decision in *The Owners, Strata Plan LMS2195 v. Leung*, 2021 BCCRT 260. The CRT member found that for the strata to impose the insurance deductible chargeback under its bylaw 15, it had to prove an act or failure to act that caused the fire damage. The CRT member found that because the fire’s cause was undetermined, the strata had not proven that an act or failure to act caused the fire, and dismissed the strata’s claim.
18. In dismissing the claim, the CRT member noted that the owners alleged the strata wrongly required them to pay \$4,000 of the fire insurance deductible, misappropriated an insurance payment, and wrongly charged them an insurance premium increase. However, because the owners did not file a counterclaim, the CRT member found that those issues were not before her, but could be the subject of a new claim, subject to any applicable limitation period.
19. On September 19, 2022, Ms. Leung started the CRT disputes that are the subject of this decision. Although the strata did not raise it, I considered whether the legal principle *res judicata* (meaning already decided) applied to preclude Ms. Leung’s claims about the insurance deductible chargeback and possibly other claims. Ultimately, I find that I should hear the claims. Ms. Leung did not have the assistance of a lawyer in the previous dispute and her failure to file a counterclaim was not done for any improper purpose. Some leeway or flexibility should be provided in these circumstances (see *Hamada v. Northguard Mtge. Corp.*, 1985 CanLII 237 (BC SC)).

Are any of Ms. Leung’s claims out of time under the Limitation Act?

20. The strata says some of Ms. Leung’s claims about chargebacks and bylaw fines are out of time under the *Limitation Act*. The *Limitation Act* sets out limitation periods, which are specific time limits for pursuing claims. If the time limit expires, the right to bring the claim disappears, and the claim must be dismissed, even if it otherwise would have been successful.

21. Section 6 of the *Limitation Act* says that for claims arising after June 1, 2013, the basic limitation period is 2 years. This means a claim may not be started more than 2 years after the day on which it is discovered. A claim is “discovered” when the applicant knew or reasonably should have known they had a claim against the respondent and a court or tribunal proceeding was an appropriate remedy.
22. I begin by considering whether Ms. Leung’s claims for orders that the strata reverse certain chargebacks fit within the *Limitation Act*’s definition of a “claim”. The *Limitation Act* only applies to “a claim to remedy an injury, loss or damage that occurred as a result of an act or omission.” In *Mason v. The Owners, Strata Plan Strata Plan 200*, 2022 BCCRT 951, a CRT vice chair found that an owner’s CRT claim to reverse a chargeback was a “claim” under the *Limitation Act*. The vice chair reasoned that even if an owner has not paid a chargeback, it is a liability or debt on the owner’s account, and therefore essentially a debt or damage claim. The vice chair further noted that if the strata corporation had filed a claim seeking payment of the chargeback, it would be a debt claim and subject to the two-year limitation period. It would be unfair and unreasonable, the vice chair explained, for the strata’s claim to be subject to the *Limitation Act* but the owner’s claim not to be subject to any limitation period. Other tribunal members and vice chairs have followed this reasoning or similar reasoning (see, for example, *Lee v. The Owners, Strata Plan LMS3463*, 2024 BCCRT 517).
23. CRT decisions are not binding on me, and I respectfully disagree with the above reasoning. I find that an owner has not suffered an injury, loss or damage simply because the strata asks the owner to pay for something or alleges a debt on the owner’s strata lot account. The strata lot account is merely an internal bookkeeping record. The owner only suffers a loss if and when they pay the chargeback. At that point, the clock may start to run on the owner’s limitation period to dispute the chargeback. Before then, only the strata has suffered an alleged injury, loss or damage.
24. Outside the strata context, a creditor must enforce a debt claim within two years. There is no obligation on the debtor to challenge an alleged debt within two years or

any time. If the creditor fails to take any enforcement action within the limitation period and the debtor does not acknowledge the debt as set out in section 24 of the *Limitation Act*, the creditor loses their right to pursue the claim. I see no reason strata corporations, with unilateral control over owners' strata lot accounts, should not be subject to the same requirement. So, I find it is not unfair or unreasonable that owners' claims about chargebacks are not subject to limitation periods like strata corporations' chargeback claims are.

25. This approach is consistent with SPA sections 114 and 115. Section 115 is about the certificate of payment a strata corporation must give an owner or purchaser upon request, typically before a strata lot is sold. The strata corporation is only required to prepare the certificate of payment if the owner does not owe money to the strata, or if the owner owes money but it has been paid into court or to the strata corporation in trust under section 114. Section 115(4) and (5) make clear that a certificate of payment can only include amounts owing under a certificate of lien (such as strata fees and special levies), as well as fines and the costs of remedying a contravention of a bylaw or rule under section 131. The Continuing Legal Education Society of BC's *Strata Property Practice Manual* says that strata corporations must ensure that the certificate of payment does not include amounts the strata corporation is not entitled to collect as a result of a limitation period expiring, or claims of damages that have not been determined by a court or the CRT (see section 10.26). I find this is an accurate statement of the law.
26. I acknowledge that I explicitly endorsed the reasoning in *Mason* in *Xu v. The Owners, Strata Plan BCS 2012*, 2022 BCCRT 1319, at paragraph 34. However, in that decision the issue was whether it was significantly unfair for the strata corporation to demand payment of a disputed chargeback from the owners' mortgagee bank. I found it was unfair in part because the strata knew it was barred from claiming the chargeback under the *Limitation Act*. *Xu* did not involve an owner's claim to remove a chargeback. So, nothing in *Xu's* endorsement of *Mason* is inconsistent with the present decision.

27. I find that owners, at any time, may bring a CRT claim to dispute a chargeback they have not paid. Such claims easily fit within the CRT's jurisdiction under CRTA section 121(1)(d) over claims concerning money owing under a bylaw, or (e) and (f) over claims concerning an action, threatened action or decision by the strata corporation. I find that is what Ms. Leung has done here, and so I find her claims about the chargebacks are not barred by the *Limitation Act*.
28. I find Ms. Leung's claims 2, 3, and 4 in ST-2022-002870 are actually one claim seeking three different remedies. She seeks orders that the strata return the \$4,000 she undisputedly paid under protest, remove the \$1,000 remainder from her strata lot account (which the account ledger shows the strata did after she submitted her claim), and remove the December 28, 2018 \$5,000 insurance deductible chargeback from her account. These remedies all turn on liability for the insurance deductible chargeback that was found to be invalid in the March 9, 2021 CRT decision. In the circumstances, I find that if Ms. Leung's claim about the deductible chargeback is subject to any limitation period, it started to run no earlier than March 10, 2021. That is the earliest date she could have confirmed whether the strata would remove the balance of the chargeback or refund her \$4,000. As she started these claims less than two years later, I would find she is not out of time to challenge the insurance deductible chargeback.
29. Lastly, I consider the claims about bylaw contravention fines. The strata says it relies on *Mason*, cited above, in support of its position that the *Limitation Act* bars Ms. Leung's claims to reverse bylaw fines. However, in *Mason* the vice chair noted that the BC Supreme Court has held that a claim to enforce a bylaw fine under the SPA is not subject to any limitation period. This is because a "claim" under the *Limitation Act* does not include a penalty, which is what a bylaw fine is (see *The Owners, Strata Plan KAS 3549 v. 0738039 B.C. Ltd.*, 2015 BCSC 2273, affirmed in 2016 BCCA 370.) The CRT has applied this reasoning to requests to reverse unpaid fines (see *Johnson v. The Owners, Strata Plan LMS 1685*, 2024 BCCRT 042). I agree with that reasoning and apply it here. I find the bylaw fine claims are not barred by the *Limitation Act* and I consider them below.

Must the strata reverse any of the chargebacks or pay Ms. Leung \$4,000?

30. The chargebacks Ms. Leung disputes are as follows:

- \$192.78 “Clean & Green” invoice chargeback added on September 17, 2018.
- \$5,000 “Phoenix Restoration Ltd.” chargeback added on December 28, 2018 (the insurance deductible chargeback)
- \$21,279 chargeback for the strata’s insurance premium increase added on December 10, 2019.
- \$574.05 “Strata Electric” chargeback added on February 11, 2020.

31. At the outset, I note that following my reasoning above on the limitation periods applicable to chargebacks, it could be argued that all the chargebacks should be removed from Ms. Leung’s strata lot account because the strata failed to bring claims for payment before the applicable limitation periods expired. However, Ms. Leung did not make that argument, and I conclude that the chargebacks must be removed for other reasons.

32. It is undisputed that all the chargebacks relate to the 2018 fire and related clean-up. The strata does not explain its authority for the chargebacks, but I find it must have relied on bylaws 11.2 or 15.2, both of which require an “act or omission” by an owner or guest. As noted, the CRT found in its March 9, 2021 decision that the owners were not liable to pay the fire insurance deductible because the fire was not caused by an act or omission of the owners or their guests. The strata rightfully does not challenge that finding here. To do so would be a collateral attack and an abuse of process. Further, although Ms. Leung raised the validity of the chargebacks in submissions, the strata did not provide any evidence to support the chargebacks, such as invoices, or in the case of the insurance premium chargeback, documentation to prove the premium increase and what amount of the increase was attributable to the 2018 fire.

33. I therefore order the strata to reverse all the chargebacks, with one exception. Following the CRT's decision dismissing the strata's claim for the \$1,000 balance of the deductible chargeback, the strata credited \$1,000 to Ms. Leung's strata lot account. Therefore, I order the strata to credit Ms. Leung's strata lot account the remaining \$4,000 it was never authorized to charge.

Must the strata pay Ms. Leung the \$16,830.97 insurance money?

34. SPA section 149 requires the strata to obtain and maintain property insurance on, among other things, original fixtures built or installed on a strata lot. After the 2018 fire, the strata made an insurance claim and restored damaged common property and strata lots, except for SL40. Emails document that repairs to SL40 were delayed for multiple reasons. Ms. Leung failed to remove damaged personal contents from SL40 for several months. Ms. Leung also was frustrated by the restoration contractors' alleged refusal to return her calls and emails. The strata says Ms. Leung eventually told the contractors to stop working, but Ms. Leung denies this.
35. I find the best evidence of what happened is a September 9, 2019 email from the strata manager to Ms. Leung. That email documented that the strata agreed with its insurer or claim adjuster that a "cash out" was the best solution. The strata manager told Ms. Leung that she would receive a cheque in her name and would be able to choose her own licensed contractors to finish the repairs.
36. On April 22, 2020, ClaimsPro paid the strata a lump sum payment that included \$16,830.97 specifically identified to restore SL40. Ms. Leung asked for those funds on May 4, 2020, and periodically thereafter, but the strata declined to pay. The strata's position is that it does not have to pay Ms. Leung until after she restores her strata lot. The strata does not intend to bring back contractors to complete the LS40 repairs. It wants Ms. Leung to do the work before it pays Ms. Leung the insurance money. Ms. Leung wants the insurance money so she can start the work.
37. As an owner, Ms. Leung is a named insured in the strata's insurance policy under SPA section 155. SPA section 156 says that insurance payments generally must be

paid to the insurance trustee designated by the bylaws, or if an insurance trustee is not designated, as is the case here, to the strata corporation in trust until paid out under section 157.

38. SPA section 157 says the strata must use insurance money received for damaged property to replace the damaged property without delay, unless the strata decides not to in certain circumstances that do not apply here.
39. The courts and the CRT have not considered section 157 or its predecessor, section 55 of the *Condominium Act*. Section 157 places the obligation squarely on the strata to ensure that the repairs are completed without delay. The obvious way the strata can discharge that obligation is by working with its insurer to have qualified professionals do the repairs. Another acceptable way, I find, is to pay the insurance money to an owner who has agreed to do the repairs themselves, like Ms. Leung has here. But section 157 does not permit the strata to do neither and insist that Ms. Leung first repair her strata lot herself.
40. I therefore order the strata to pay Ms. Leung the \$16,830.97, within interest under the *Court Order Interest Act* (COIA) from April 23, 2020, as per my order below. This order will end the stalemate and ensure that Ms. Leung can repair SL40 without further delay.

Must the strata compensate Ms. Leung for withholding the insurance money?

41. Ms. Leung says the strata's wrongful refusal to pay her the insurance money as agreed means she was denied the rightful use and enjoyment of her strata lot. Although Ms. Leung did not use the term, I find she argues that the strata's decision to withhold the insurance money was significantly unfair. The CRT has authority to remedy a strata corporation's significantly unfair action or decision under CRTA section 123(2). The court has the same authority under SPA section 164 and the same legal test applies (see *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113).

42. In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, the court confirmed that significantly unfair actions or decisions are those that are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust, or inequitable. In applying this test, the owner's objectively reasonable expectations are a relevant factor but are not determinative.
43. Implicit in Ms. Leung's submissions is that she expected the strata to pay her the insurance money designated for SL40. I find this was an objectively reasonable expectation because paying her the insurance money was the strata's proposed solution. The strata manager told Ms. Leung that she would receive a cheque in her name and would be able to choose her own licensed contractors to finish the repairs. It is not clear why the strata backed out of that agreement, but I find that doing so violated Ms. Leung's reasonable expectation that she would be able to fund and direct the repairs in her strata lot. In the circumstances, I find this was significantly unfair for the strata to withhold the insurance money in the sense that it lacked in fair dealing.
44. I turn to the remedy. Where a strata corporation has made a significantly unfair decision, the remedy to address the unfairness may include damages. This is reflected in several CRT decisions where the CRT ordered a strata corporation to pay damages based, at least in part, on the loss of use and enjoyment of a strata lot (see, e.g., *Buschau v. The Owners, Strata Plan LMS 1816 et al*, 2018 BCCRT 413, and *Wu v. The Owners, Strata Plan LMS 474*, 2023 BCCRT 588).
45. Ms. Leung seeks damages based on what she says is the average monthly rent for a two-bedroom apartment in the area from April 2020 until today. She says this was at least \$2,080 per month, which she supports with objective evidence about average rental rates.
46. While rent is one way to measure a loss of use and enjoyment, Ms. Leung was not renting out SL40 immediately before the fire. She also did not live in SL40 and does not say she intended to after the fire. So, I find lost rent is not an appropriate measure of damages.

47. I also find to that Ms. Leung was, to some extent, the author of her own misfortune. First, she delayed repair by failing to remove personal contents from SL40. Second, she says the strata told her in March 2021 that it was holding onto the insurance money designated for SL40 unless the CRT ordered otherwise. So, she knew the strata's position relatively early, despite her claims that the strata ignored her calls and emails for three years. She does not say why she waited so long to bring a claim for the insurance money.
48. Third, Ms. Leung did not establish that there was no other reasonable way to repair SL40 without the insurance money. She provided no evidence that her financial circumstances were such that she could not afford the \$17,000 repair expense or borrow the funds for a few months before the strata would reimburse her. The law requires a person to mitigate their damages, and I find Ms. Leung did not mitigate.
49. In the circumstances, I find Ms. Leung has not proven any damages. I find that my order that the strata release the insurance money corrects the unfairness of the situation and no additional compensation is warranted. With that, I dismiss this claim.

Must the strata reverse any bylaw contravention fines?

50. Ms. Leung makes three claims about bylaw fines. The first is about \$5,400 in fines the strata applied on July 22, 2019.
51. The strata account ledger describes these fines as "Bylaw Fine – Common Area". The strata did not submit copies of its correspondence with Ms. Leung about these fines. From the strata's Dispute Response and Ms. Leung's former lawyer's August 2, 2019 letter, I find that the strata alleged Ms. Leung contravened bylaw 3.7(n) by taking electricity from power outlets in the common areas of the building from August 9, 2018 to February 15, 2019. There was undisputedly no electricity at that time in SL40, which was unoccupied.
52. Bylaw 3.7(n) said that common property electrical outlets cannot be used except to vacuum a vehicle. Ms. Leung's former lawyer noted that the strata's restoration

company connected their equipment to the common property electrical outlets. The strata does not dispute this. I agree that it was not Ms. Leung or her guest who used the electrical outlets. So, I find she did not contravene bylaw 3.7(n). On that basis, I order the strata to reverse the \$5,400 in fines. This means it is not necessary to address Ms. Leung's arguments that the strata was procedurally unfair and did not comply with SPA section 135.

53. The next bylaw fine claims are about bylaw 5.1, which limits occupancy of a two-bedroom strata lot like SL40 to four persons. The strata imposed \$9,600 in fines in a lump sum on June 20, 2019. It also imposed weekly \$200 fines from June 2019 to May 2021. Ms. Leung says in submissions that the weekly and lump sum fines total \$30,200.
54. On November 24, 2022, after Ms. Leung started this claim, the strata reversed \$9,600 in occupancy bylaw fines, and another \$20,000 in occupancy bylaw fines. Ms. Leung says there is still a balance of \$600 on her account in occupancy bylaw fines. I have reviewed Ms. Leung's calculations and the account ledger. I find Ms. Leung arrived at \$30,200 by inadvertently failing to account for a May 28, 2021 \$200 reversal and by counting a March 1, 2021 \$200 reversal as a \$200 fine. I find the strata has correctly reversed all occupancy bylaw fines by providing credits of \$29,600. I therefore dismiss the claim about occupancy bylaw fines.
55. Despite reversing the occupancy bylaw fines, the strata argued the merits of the fines. I will briefly address those arguments to provide finality for the parties on the bylaw fine issue. Bylaw 5.1 prohibits owners, tenants, occupants and invitees from exceeding the "occupancy limit" in any strata lot. The occupancy limit was defined in bylaw 1.17 as, for a two-bedroom unit, four persons. There is no suggestion that more than one person ever lived in the strata lot, so Ms. Leung did not contravene that aspect of the bylaw. The bylaw also says that it does not prevent an owner from permitting a guest to stay in the strata lot for less than 30 days. The strata says Ms. Leung contravened the bylaw by allowing someone to live in SL40 for more than 30 days. However, bylaw 5.1 does not prohibit allowing someone to live in a strata lot for more than 30 days. Read in context, it only preserves owners' rights to have

short-term guests that would otherwise exceed the occupancy limit. So, Ms. Leung did not contravene bylaw 5.1.

Is the strata responsible for any of Ms. Leung's legal expenses?

56. Ms. Leung claims \$750 for a retainer she paid to a law firm, Cleveland Doan, to review her claim and do legal work. Ms. Leung also seeks compensation for “at least 3 mos @29.99=79.99 plus tax” for Legal Shield review of her case and referral to Cleveland Doan.
57. Ms. Leung does not describe the nature of Cleveland Doan's work, but from the June 8, 2020 payment date, I find it was not about these disputes but the previous CRT dispute where she responded to the strata's claim. The CRT's facilitation process in that dispute ended in December 2020. I find that any claim for legal expenses should have been raised in the previous dispute as a dispute-related expense. I dismiss this claim as *res judicata*, with the exception of her legal fees for the present dispute, which I consider as a dispute-related expense below.

CRT FEES AND EXPENSES

58. As Ms. Leung was substantially successful in these disputes, in accordance with the CRTA and the CRT's rules I find she is entitled to reimbursement of her tribunal fees of \$475.
59. The strata did not pay CRT fees. The strata claimed “approximately \$180 in postage fees.” It did not explain this or provide any supporting evidence, so I dismiss this claim.
60. Ms. Leung seeks up to \$5,000 in legal costs related to these disputes. CRT rule 9.5(3) says the CRT will not order a party to pay another party's legal fees in a strata dispute unless there are extraordinary circumstances. Under rule 9.5(4), the CRT may consider a) the complexity of the dispute, b) the degree of involvement by the representative, c) whether a party's conduct has caused unnecessary delay or expense, and d) any other factors the CRT considers appropriate.

61. These disputes were not overly complex and there was limited evidence. That is a significant factor against awarding legal costs. The other two factors are neutral.
62. Ms. Leung points out that many CRT decisions have applied the law of special costs in the analysis. For example, the CRT has awarded reimbursement of legal costs where an element of deterrence or punishment was necessary because of reprehensible conduct during the CRT's proceedings (see *Mashinchi v. The Owners, Strata Plan BCS3165*, 2023 BCCRT 14, citing *Parfitt et al v. The Owners, Strata Plan VR 416 et al*, 2019 BCCRT 330).
63. Here, Ms. Leung says the strata has gone out of its way to target Ms. Leung despite being fully aware that Ms. Leung did not cause the fire. However, pre-litigation conduct is not relevant when considering an award of special costs (see *Smithies Holdings Inc. v. RCB Holdings Ltd.*, 2017 BCCA 177). I also must acknowledge that the strata reversed the majority of the fines after Ms. Leung started these claims. There is no element here of reprehensible conduct during the CRT proceeding. So, I dismiss Ms. Leung's claim for legal fees.
64. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Ms. Leung.

ORDERS

65. I order the strata to immediately reverse the \$5,400 in bylaw fines it applied to Ms. Leung's strata lot account related to bylaw 3.7(n) on July 22, 2019.
66. I order the strata to immediately credit Ms. Leung's strata lot account \$4,000 for the remainder of the \$5,000 insurance deductible chargeback.
67. I order the strata to immediately reverse the following chargebacks or credit Ms. Leung's strata lot account in the following amounts:
- a. \$192.78 chargeback on September 17, 2018.
 - b. \$21,279 chargeback on December 10, 2019.

c. \$574.05 chargeback on February 11, 2020.

68. Within 14 days of the date of this order, I order the strata to pay Ms. Leung a total of \$19,236.21, broken down as follows:

g. \$16,830.97 in insurance money,

h. \$1,930.24 in pre-judgment interest under the *Court Order Interest Act*,

i. \$475.00 in CRT fees.

69. Ms. Leung is entitled to post-judgment interest, as applicable.

70. I dismiss Ms. Leung's remaining claims.

71. This is a validated decision and order. 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 a court order.

Micah Carmody, Tribunal Member

ⁱ Amendments to paragraph 24 to correct inadvertent errors and clarify the decision under CRTA sections 51 and 64.