



# Civil Resolution Tribunal

Date Issued: January 16, 2025

File: ST-2023-001767

Type: Strata

Civil Resolution Tribunal

Indexed as: *Tran v. The Owners, Strata Plan BCS 2622*, 2025 BCCRT 66

B E T W E E N :

TUONG-VAN TRAN

**APPLICANT**

A N D :

The Owners, Strata Plan BCS 2622

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Peter Mennie

## INTRODUCTION

1. This dispute is about water ingress and a rodent infestation in a strata lot.
2. The applicant, Tuong-Van Tran<sup>1</sup>, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS 2622 (strata). Van says that water leaked into their unit from the strata's common property. They also say rodents

entered their strata lot from the strata's common property. They say the strata was negligent in repairing and maintaining its common property and treated them significantly unfairly. They claim a total of \$132,687 in damages for missed work, lost rent, damaged personal belongings, junk removal fees, repair costs, travel to and from Vancouver, expert reports, and legal fees.

3. The strata says it acted reasonably by hiring professionals to investigate and repair water leaks and an exterminator for the rodent infestation.
4. Van is self-represented. A strata council member represents the strata.

## **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 the *Civil Resolution Tribunal Act* (CRTA) section 121. 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. CRTA section 39 says the CRT has discretion to decide the format of the hearing. The strata requested an opportunity to cross-examine Van about their alleged damages for airfare, taxis, meals, and accommodation. However, I find that a cross-examination is not necessary. In *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the BC Court of Appeal recognized that oral hearings are not necessarily required where credibility is in issue. Deciding whether to hold an oral hearing requires weighing the advantages of an oral hearing and cross-examination against the CRT's mandate to resolve disputes in an accessible, speedy, economical, informal, and flexible manner. I find that a cross-examination would delay this decision and is not necessary given my findings below. So, I have decided this dispute based on the written submissions and documentary evidence before me.

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.

***Preliminary Issue – Late Evidence***

9. Van submitted late evidence after the CRT's deadline. The strata opposes the admission of this late evidence. It says that Van already uploaded over 150 pieces of evidence. It says Van should not be allowed to add late evidence and refer to it in their reply submissions when it will not have a chance to respond.
10. The strata argues that a different tribunal member should have identified and removed any inadmissible late evidence before I was given access to this matter. I reject this argument because it would require two tribunal members to review the same dispute which includes a large volume of materials. This would be inefficient, would add another procedural step delaying this decision, and would be contrary to the CRT's mandate to provide speedy, economical, informal, and flexible dispute resolution.
11. CRT Rule 1.2(2) says the CRT can waive the application of a rule or timeline "to facilitate the fair, affordable, and efficient resolution of disputes." As I discuss below, I exercise my discretion to allow some of Van's late evidence.
12. Van provided photos of drywall removed from their strata lot's walls as well as moisture meter readings of the walls. The parties agree that the strata removed drywall from the strata lot, so I find the photos are not relevant to anything at issue in this dispute. A friend of Van did the moisture testing. However, I find that moisture testing is a matter outside ordinary knowledge and must be done by an expert. Van's friend does not have any expertise in moisture testing. So, I find that the

moisture meter readings are inadmissible generally. I do not admit this late evidence.

13. Van provided a 2017 assessment report of the building envelope. I find that this report does have some relevance by providing background and context for the building's subsequent envelope renewal. There is nothing prejudicial to the strata in the report. So, I admit this late evidence.
14. Van provided photos of repaired concrete which was part of the building's envelope renewal. They say the repair was "obviously sloppy" because it has holes and uneven surfaces. However, this allegation was raised in their reply submissions and the strata did not have an opportunity to respond. I find that the condition of the building's envelope renewal is not an issue properly before me, so I do not admit this late evidence.
15. Van provided a mold assessment report of their strata lot from 2022. They originally only provided the invoice and the strata invited me to make an adverse inference for failing to produce the report. I admit the 2022 mold assessment report because it is relevant and goes directly to Van's damages claim. I find that there is no prejudice to the strata in admitting this late evidence. On the contrary, as I discuss below, the 2022 mold assessment is helpful evidence for the strata.
16. Van provided an article from BC Housing's website about building envelope repair renovations and contractor warranties. I find this article refers to the *Building Envelope Renovation Regulation*. I do not need to admit this late evidence because I can refer directly to the applicable regulation.

### ***Preliminary Issue - Jurisdiction***

17. Van makes a claim for lost rent. The strata's Dispute Response says that the CRT has no jurisdiction over this claim because it is a matter between Van and their former tenant. I disagree. Van alleges that they lost rental income because the strata failed to repair common property and treated them significantly unfairly. This claim falls directly within the CRT's jurisdiction under CRTA section 121(1)(a). So, I

reject the strata's submission and find that the CRT does have jurisdiction to decide this matter.

## **ISSUES**

18. The issues in this dispute are:
  - a. Was the strata negligent in repairing common property?
  - b. Did the strata treat Van significantly unfairly?
  - c. Was the strata negligent in dealing with the rodent infestation?

## **EVIDENCE AND ANALYSIS**

19. In a civil proceeding like this one, Van 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 the evidence and argument that I find necessary to explain my decision.

### ***Background***

20. The strata consists of two high-rise towers with 339 strata lots. Van owns a strata lot on the third floor of the pedestal of one of the towers. Above Van's strata lot is a roof garden which is the strata's common property.
21. The strata was built in 2007. In February 2020, the strata received a brief from MH Engineering which says that the building is 13 years of age and building envelope repairs are expected between 10 and 15 years. MH Engineering noted there were cracks in the building's concrete exterior and recommended a building envelope renewal.
22. Notes from the strata council meeting in July 2020 say that the building's envelope renewal was delayed because of the cost and a recent increase in the strata's

insurance premiums. The strata council resumed discussions about the envelope renewal in spring 2021.

23. Van's tenant first reported water entering the strata lot on January 3, 2022. The strata's caretaker visited the strata lot on January 6, 2022, to assess the damage. On February 13, 2022, the caretaker removed the strata lot's drywall to try and find the source of the water.
24. The strata's minutes from its January 2022 meeting say that water was leaking into several strata lots. The strata council agreed to hire contractors to repair the leaks. The minutes also say the building envelope renewal was discussed and a bulletin would be put up to request feedback from owners.
25. On March 25, 2022, West Coast Building Restoration (WCBR) provided quotes for water testing and repair for the strata lots with leaks. The strata council approved a quote for water testing in Van's strata lot. WCBR was scheduled to attend Van's strata lot on June 17, 2022, however they had to reschedule because WCBR needed dry weather for its testing.
26. On July 28, 2022, the strata's caretaker found a leak in the vent stack on the roof above Van's strata lot. They repaired the vent stack and thought this might stop water ingress in the strata lot. However, on August 6, 2022, the caretaker performed more water testing and found water was still entering the strata lot.
27. On August 16, 2022, WCBR provided a quote to repair the water leaks affecting Van's strata lot. The strata approved the quote two days later. WCBR completed repairs on September 13, 2022. Van's tenant reported that water was still entering the strata lot. The strata's caretaker emailed WCBR to ask for further repairs.
28. WCBR did more water testing and repairs on the strata lot on October 20, 2022. On November 10, 2022, WCBR returned to reseal areas in the strata lot. The strata caretaker did more water testing on November 17 and 21, 2022. They found water was still entering the strata lot and did additional repairs.

29. On November 23, 2022, the strata held a special general meeting and approved a building envelope renewal at an estimated cost of \$2,100,000.
30. On December 16, 2022, the strata caretaker tested and found no water leaks. The caretaker provided a dehumidifier and asked Van's tenant to run it. The strata provided photos of the dehumidifier's running hours showing that Van's tenant likely turned it off for an extended period.
31. On February 2, 2023, the strata's caretaker found another leak in the strata lot. The strata hired Harvard Industries Ltd. to repair the roof where water was entering. It did repairs on March 27, 2023. The strata also hired Kallio Restoration to reseal the windows.
32. Van's tenant moved out on March 31, 2023. They said they left because of water ingress and mold. The strata lot has been vacant since Van's tenant left.
33. In March and April 2023, the strata put forth a tender for the envelope renewal. The strata approved the renewal project at an AGM on June 29, 2023. This required a \$1,900,000 special levy and the use of \$350,000 in contingency reserve funds.
34. Van says they discovered more leaks in April 2023. The caretaker tested and found more water ingress from the strata lot's patio. The caretaker sealed this on June 1, 2023, as a temporary measure until the building envelope renewal was completed. MH Engineering and Prostar Contracting repaired the patio membrane in October and November 2023 which was part of the envelope renewal.
35. The strata says it found no evidence of water ingress after November 2023. It obtained a quote in January 2024 to replace the drywall that was removed for water leak investigations. Van refused to allow access to their strata lot. They demanded a report and a warranty from MH Engineering stating that all water leaks were fixed.

***Issue 1 - Was the strata negligent in repairing common property?***

36. *Strata Property Act* (SPA) section 72 requires the strata to repair and maintain common property. Van argues that the strata breached this duty by failing to

complete the building envelope renewal in a timely manner. They also say that the strata used “band-aid” fixes, did not employ qualified professionals, and did not obtain warranties from the repair companies.

37. The Supreme Court of British Columbia in *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113, summarized the principles about a strata’s duty to repair common property:

- a. deference must be given to strata decisions on how to fulfill this duty to repair and maintain common property,
- b. the strata must act in the best interests of all owners and endeavour to achieve the greatest good for the greatest number by implementing necessary repairs within a budget that the owners as a whole can afford,
- c. the standard against which the strata’s actions are to be measured is objective reasonableness, not perfection, and is to be assessed by considering the circumstances at the time without the benefit of hindsight,
- d. as strata councils are made up of lay volunteers and are not expected to have expertise in the subject matter of their decisions, latitude is justified when a strata council’s conduct is being scrutinized,
- e. a strata is entitled to rely upon professional advice, and if those who are hired to carry out work fail to do so effectively, the strata will not be held responsible so long as it acted reasonably in the circumstances,
- f. as there can be “good, better or best” solutions available to deal with repair and maintenance problems, choosing a “good” solution rather than a “best” solution is not unreasonable, and
- g. a strata is not an insurer, and the presence of a problem within a strata unit does not establish strata liability.

38. I start with Van’s argument that the strata failed to repair the common property in a timely manner. They say that the strata building envelope renewal was started in



2023 when the building was 16 years old. Van points to the MH Engineering brief which says that envelope renewals are typically done in the 10-15 year range.

39. Van relies on *Chu v. The Owners, Strata Plan NWS 3412*, 2019 BCCRT 1439 and *Hill v. The Owners, Strata Plan KAS 510*, 2016 BCSC 1753. In *Chu*, the strata ignored a professional engineer's recommendation for "immediate corrective actions" to stop water leaks by repairing the building envelope. The owners also voted down a special levy that would have repaired the water leaks. In *Hill*, the strata ignored professional and legal advice and took over 8 years to fix the strata's structural defects. However, I find these cases are distinguishable because the delays in this case were reasonable and much less significant.
40. Here, the strata initially delayed the envelope renewal because of the cost and a recent increase to the strata's insurance premium. I find that cost was a proper consideration for the strata. The court in *Dolnik* noted that the strata must implement repairs within a budget that the owners can afford. While the MH Engineering brief says 10-15 years is typical for envelope renewals, nothing in the brief says that the strata's envelope renewal was urgent or must be done before 15 years. So, I find that the strata acted reasonably when it initially delayed the envelope renewal.
41. I also find that the strata acted reasonably in implementing the envelope renewal. As noted in *Dolnik*, the strata is held to a standard of reasonableness, not perfection, and is entitled to deference and latitude for its decisions. The envelope renewal was a large and complex project which required many steps and could not be rushed. The strata council's minutes show that the strata reached out to owners to provide information and gather feedback, obtained owner approval for the envelope renewal and a special levy, and went through a tendering process. There is nothing in evidence which suggests that the strata ignored professional advice or improperly delayed the envelope renewal. So, I dismiss Van's claim that the strata negligently delayed the envelope renewal.

42. I turn to Van's argument that the strata used band-aid fixes rather than hire an engineering firm. With the benefit of hindsight, it is clear that the caretaker and WCBR were not able to fix all of the water leaks. However, as stated in *Dolnik*, a strata may have several options when dealing with repairs, its decision should not be assessed in hindsight, and the strata may choose a "good" solution rather than a "best" solution.
43. The strata hired WCBR and had its caretaker perform multiple water tests and repairs. While this was not the best solution, the strata's decision must be assessed in light of the ongoing envelope renewal which would eventually fix the water leaks. I find that the strata acted reasonably given these circumstances.
44. I do not accept Van's argument that the strata's caretaker was not qualified and the strata failed to use qualified professionals. The caretaker's uncontested evidence is that they have 13 years' experience providing building maintenance services, they have done many water tests and repairs, and they would hire external companies where the repair exceeded the caretaker's capabilities. The strata hired WCBR, Harvard Industries Ltd., Kallio Restoration, MH Engineering, and Prostar Contracting to repair the water leaks affecting Van's strata lot.
45. Finally, I turn to Van's argument that the strata should have obtained warranties from the companies that repaired the water leaks. They refer to a BC Housing article which says that building envelope renovators must be licensed and provide a warranty for their work.
46. I infer that Van is referring to the *Building Envelope Renovation Regulation*. Section 2 of the regulation says that a person must have a license to renovate a building envelope and section 10 says that a building envelope renovator must provide a warranty for materials and labour. However, sections 3(1)(e)(i) and 10(a)(2) both say these requirements do not apply where the total cost of the renovation is under \$2,000 for each self-contained dwelling unit within the residential building. As noted above, the strata has 339 strata lots. None of the invoices from the contractors are

above the required threshold. So, I find that the strata was not required to hire professionals with a specific license or warranty.

47. Even if I had found the strata was negligent, I would have dismissed Van's \$48,000 claim for past and future loss of rent and \$3,649 for insurance and utility fees. Van provided a mold assessment report dated December 12, 2022, which says mold concentrations are normal in the strata lot. I find the mold report shows that the strata lot could have been rented out so Van's claim for lost rent is unproven. I also would have dismissed Van's claims for missed work and their costs to travel to Vancouver. Van had a friend assisting them and did not need to personally visit the strata lot.

## **Issue 2 - Did the strata treat Van significantly unfairly?**

48. Van provided a list of ways they say the strata treated them significantly unfairly. I have summarized these as:

- a. The strata failed to provide documents within a 2-week request.
- b. The strata failed to regularly communicate on repair updates.
- c. The strata cut corners by relying on its caretaker and failed to use qualified professionals with licenses and warranties.
- d. The strata failed to replace the building envelope within 15 years.
- e. The strata refused to address the interior damage to the strata lot.

49. As discussed in *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, in order for the court (or CRT) to intervene, a strata corporation must act in a significantly unfair manner, resulting in something more than mere prejudice or trifling unfairness. 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."

50. I start with the document requests. I note that Van raised this issue in their Dispute Notice, but did not ask for a remedy or say the strata's actions were significantly unfair until they provided reply submissions. In any event, there is no prejudice to the strata given my findings below, so I will consider this issue as a part of Van's significant unfairness claim.
51. SPA section 36 and *Strata Property Regulation* section 4.2 address what documents can be requested, who can request them, and how much a strata corporation may charge to provide copies. The courts have found that a strata corporation is only required to provide access to or copies of records and documents that are listed in SPA section 35. It is not required to disclose or provide copies of any other records or documents (see *The Owners, Strata Plan NWS 1018 v. Hamilton*, 2019 BCSC 863).
52. Van requested records at a strata council meeting on February 7, 2023. The strata provided a response on February 15, 2023, which included a timeline of repair efforts and copies of contractors' invoices. The strata indicated that Van's counsel requested additional documents, however the volume of paperwork could mean that the copying charges would be over \$5,000. Van did not specify what other documents they or their counsel requested but did not receive. There is no evidence before me to suggest that the strata failed to provide documents that are listed in SPA section 35. So, I find that the strata complied with SPA section 35 and did not treat Van significantly unfairly.
53. I turn to Van's argument that the strata failed to update them regularly. I disagree. Van was clearly anxious about the water leaks and emailed the strata frequently. Though there was sometimes a delay, the strata did reply to Van's emails about the timeline for repairs and water testing. I find that these short delays in responding to emails does not rise to the level of significant unfairness.
54. I found above that the strata acted reasonably by hiring WCBR, having its caretaker conduct testing and repairs, and implementing the envelope renewal. If the strata acted reasonably, it cannot have acted significantly unfairly because this would

impose a higher standard than contained in SPA section 72, which is something that no owner could reasonably expect (see *Dolnik v. The Owners, Strata Plan LMS 1350*, 2024 BCCRT 88 at paragraphs 38 to 50). So, I find the strata did not act significantly unfairly here.

55. Finally, I turn to the interior damage to Van's strata lot. Interior repairs to a strata lot are generally the responsibility of the strata lot owner under a strata corporation's bylaws. However, CRT decisions have consistently found that interior repairs to a strata lot caused during a strata corporation's investigation, such as drywall removal, is a strata corporation's responsibility (see, for example, *Juhala v. The Owners, Strata Plan NW 2089*, 2022 BCCRT 1208). I agree with this approach. I find the strata must repair the walls in Van's strata lot where it removed drywall to do water testing.
56. Van provided an estimate from APL Restoration for \$19,217.53 which includes drywalling, disposal of furniture, mold remediation, and work on the floor and ceiling. The strata provided a much lower quote for drywall repair from Tri-Metro Drywall Inc. for \$3,150.
57. I will leave it to the strata to determine how best to restore the exposed wall to the condition it was in before the strata's water leak investigations. I note that Van previously refused to allow access to their strata lot for these repairs. The strata is relieved of its obligation to repair the drywall if the strata provides reasonable notice to enter the strata lot in accordance with the strata's bylaws and Van again refuses to allow access.

***Issue 3 - Was the strata negligent in dealing with the rodent infestation?***

58. Van's tenant reported seeing a mouse in the strata lot on July 13, 2021. Van forwarded the email to the strata the next day. The strata responded on July 22, 2021, and asked Van to schedule an appointment with the strata's exterminator.
59. Van visited the strata lot in April 2023 and found damage in their storage locker from a rodent infestation. I note that Van provided no evidence to quantify the value

of the damage. They provided a video which shows mice droppings and chewed bags but it is unclear whether any of their belongings were permanently damaged.

60. Pest prevention is part of the strata's duty to repair and maintain common property. As noted in *Dolnik*, the standard of care for repair and maintenance is reasonableness. A strata is not an insurer, and the presence of a problem within a strata lot does not establish strata liability.

61. I find that the strata is not liable for this damage. The strata's expenses show it pays for ongoing pest control. The strata responded promptly in 2021 when Van's tenant reported seeing a mouse. I agree with the strata that the rodent infestation appears to have been a one-time issue. There is no evidence to show that the strata should have done more or acted unreasonably. So, I dismiss this claim.

## **CRT FEES AND EXPENSES**

62. 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. Van was largely unsuccessful, so I dismiss their claims for CRT fees and dispute-related expenses. The strata did not pay any CRT fees and did not claim any dispute-related expenses.

63. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Van.

## **ORDERS**

64. Within 90 days of this decision, I order the strata to restore the exposed wall in Van's strata lot to the condition it was in before the strata's water leak investigations.

65. I dismiss Van's remaining claims.

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Peter Mennie, Tribunal Member

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<sup>1</sup> The CRT has a policy to use inclusive language. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure the CRT addresses them respectfully throughout the process, including in published decisions. Van did not provide their title. Intending no disrespect, I will use their preferred name, Van, to refer to them throughout this decision.