



# Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Chen v. The Owners, Strata Plan EPS2546*, 2025 BCCRT 731

B E T W E E N :

LING LINDA CHEN

**APPLICANT**

A N D :

The Owners, Strata Plan EPS 2546

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about hot water. The applicant, Ling Linda Chen, owns an assigned leasehold interest in strata lot 52 (SL52) in the respondent strata corporation, The Owners, Strata Plan EPS2546. I will refer to the respondent strata as Altitude because the parties do so.

2. Altitude has a building-wide hot water system. Ms. Chen says that Altitude has unfairly failed to address hot water issues affecting SL52 and Altitude as a whole. She says the lack of hot water negatively affects her health. She also says Altitude minimized or belittled her complaints. She claims for an order that Altitude permit her to install an electric tankless hot water heater in SL52, and for Altitude to reimburse her the cost of doing so. She states a claim value of \$3,000, which I infer is the approximate cost of the heater. In submissions Ms. Chen alternatively suggests an order that the strata reimburse Ms. Chen strata fees for the months she did not have access to hot water at all. She did not say how much this would be.
3. Altitude disagrees. It acknowledges the hot water supply requires upgraded capacity during peak usage hours. These hours start in the late afternoon last until early evening. Altitude says that its council is in the process of addressing the hot water issues for all strata lots. It says it has hired an engineer to make recommendations. It also denies Ms. Chen's allegations that it treated her disrespectfully or ignored her complaints.
4. Ms. Chen represents herself. A council member represents the Altitude.
5. For the reasons that follow, I dismiss Ms. Chen's claims.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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. 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.

8. 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.
9. 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.

### ***Ms. Chen's Status as an Owner***

10. I will briefly comment on why Ms. Chen is an owner under the *Strata Property Act* (SPA) as she is not the typical owner of a freehold estate interest in a strata lot. Under SPA section 189.1, an owner may ask the CRT to resolve a strata property dispute. The SPA defines an owner to include a person that is a leasehold tenant if the strata lot is in a leasehold strata plan. SPA section 199 defines a leasehold tenant as a person registered in the land title office as a tenant under a strata lot lease. It also defines a leasehold strata plan as a strata plan in which the land shown is subject to a ground lease.
11. Altitude's strata plan shows SL52 is a leasehold strata plan. Ms. Chen is the registered owner of a leasehold interest. So, I am also satisfied that she is a leasehold tenant under the SPA. Ms. Chen is therefore entitled to apply for dispute resolution. No party says otherwise.

### ***The Limitation Act***

12. Ms. Chen says her claims are not out of time. Altitude did not dispute this. I will briefly address the issue. CRTA section 13 says that the *Limitation Act* applies to CRT claims. Section 6 of the *Limitation Act* says that the basic limitation period to file a claim is two years after the claim is "discovered". At the end of the two-year

limitation period, the right to bring a claim ends, even if the claim otherwise would have been successful.

13. Section 8 says a claim is discovered on the first day the person knew, or reasonably ought to have known, that the loss or damage occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate way to remedy the damage.
14. Based on the evidence and submissions, Ms. Chen claims for an alleged ongoing lack of hot water. She also did not request a remedy for anything that happened more than two years ago. So, I find the discovery date for new incidents is essentially ongoing as well. In reaching this conclusion I put some significance on the fact that Altitude did not say Ms. Chen's claims were out of time. So, I will consider them on their merits.

## **ISSUE**

15. Must Altitude permit Ms. Chen to install an electric tankless hot water heater in SL52, and reimburse her for the cost of doing so?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

16. In a civil proceeding like this one, Ms. Chen as the applicant must prove her claims on a balance of probabilities. This means 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.
17. Ms. Chen became the registered owner of her leasehold interest in SL52 in April 2015. Altitude's property includes 2 residential high-rise towers. SL52 is located on level 6 of 16 of one of these towers. Altitude filed a complete set of bylaws in the Land Title Office in August 2019. There are some filed amendments, but they are not relevant to this dispute. I discuss the relevant bylaws below.

18. A July 12, 2024 engineering report from Falcon Engineering describes Altitude's hot water system. I find it is expert evidence under CRT rule 8.3 as the author, Tyler Kraft, is identified as a project manager, and the report's reviewer, Andrew Springer, is identified as a professional engineer.
19. Altitude uses a centralized hot water system. The hot water heat source and storage are located in Altitude's mechanical room inside one of the tower parkades. In addition to that, Altitude receives hot water from a district energy system. I find this means Altitude does not rely on individual hot water tanks in strata lots to provide hot water to residents.
20. The report notes that residents are dissatisfied with the performance of the hot water system. It says the central hot water system is currently undersized and requires increased storage, heating rate, and distribution efficiency to satisfy building loads. The July 2024 report says the system is currently not broken in any way. Rather, the issue is insufficient capacity.
21. I turn to the chronology. Ms. Chen says she has been complaining about the hot water issues since 2016. On May 11, 2022, Ms. Chen emailed Altitude's strata manager to complain about lack of hot water for the last month from 6 to 9 p.m. On that particular night, the water was cold and could not reach even lukewarm temperatures. The strata manager said it was aware and had dispatched a contractor to rectify this.
22. Ms. Chen complained about hot water again in November 2022. The strata manager replied that this was a building-wide issue related to heavy demand during the peak hours of 6 to 9 p.m. It said it would ask its utility provider to temporarily increase the flow of hot water to Altitude.
23. Ms. Chen replied in December 2022 that the water remained lukewarm. She requested a strata council meeting. The strata manager said it would forward this request. Ms. Chen replied that she was dissatisfied with this response, and I find she essentially withdrew her request. Contrary to Ms. Chen's submission, I find the Altitude did not deny her request for a meeting.

24. From June to October 2023, Ms. Chen exchanged text messages with the Altitude's council president about the hot water. She provided photos of temperature readings. The president provided lengthy replies filled with technical details I need not repeat here. They said Altitude was considering auxiliary electric heating or asking for more hot water flow from Altitude's utility provider. The president also said that they had been on council for years, and there was no history of complaints of chronically cool hot water, excluding mechanical failures.
25. I find Ms. Chen's complains about disrespect are partially related to these text messages. In one text messages, the president made a joke that providing temperature readings on a Saturday night might indicate a lack of social life. Subsequently, the president implied that Ms. Chen posted "childish notes" that claimed Altitude was irresponsible and contained 3 false allegations about insufficient hot water. The president told Ms. Chen not to text them again.
26. Overall, I find the text messages are insufficient to show bad faith or significant unfairness. I find the joke was mildly offensive at worst, and only then if Ms. Chen imputed bad motives behind it. I also find the president cut off personal text contact based on a seemingly sincere belief that Ms. Chen had acted in an antagonistic manner. Consistent with this, Ms. Chen admits she posted a public notice on October 2023. Its exact wording is not in evidence.
27. In October 2023, Ms. Chen continued to email the strata manager. She provided more photos of temperature readings. I find they show her shower generally reached a temperature in the mid-thirties Celsius.
28. The strata called a contractor, Aerco, to visit SL52. On October 23, 2023, Ms. Chen asked the strata manager if she could install an electric tankless water heater or an electric showerhead. The strata manager suggested that Aerco adjust the shower handle to allow for maximum hot water flow. Aerco's October 24, 2023 invoice shows it did this work. On October 27, 2023, Ms. Chen asked the strata manager if Aerco could install an electric tankless water heater. The strata manager said it would forward the email to Aerco for review. The evidence and submissions do not

show if Aerco responded to this request. Ms. Chen subsequently applied for dispute resolution on October 31, 2023.

***Must Altitude permit Ms. Chen to install an electric tankless hot water heater in SL52, and reimburse her for the cost of doing so?***

29. Ms. Chen says that Altitude's actions are unfair. The CRT has the authority to make orders that prevent or remedy a significantly unfair act or decision under CRTA section 123(2). Significantly unfair actions are those that are burdensome, harsh, wrongful, lacking in probity and fair dealing, done in bad faith, or inequitable. In applying this test, the owner's reasonable expectations may be relevant, but are not determinative. See *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126 and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.
30. As noted earlier, Ms. Chen asked Altitude if Aerco could install an electric tankless water heater in October 2023. This request could be framed as an alteration request under the bylaws. So, I will consider this first.
31. Bylaw 6 says that an owner must obtain Altitude's written approval before making an alteration to a strata lot that involves, among other things, the structure of a building, common property located within the boundaries of a strata lot, or those parts of the strata lot which Altitude must insure under SPA section 149.
32. Bylaw 7(1) says that an owner must obtain Altitudes written approval before making an alteration to common property.
33. Bylaw 8(1) says that an owner intending to apply for permission to alter a strata lot or common property may be required to submit, in writing, several documents. These include a detailed written description of the intended alteration, an indemnity to cover any damage to common property or other strata lots as a result of the alterations, permits, licenses and approvals from appropriate government authorities, a signed assumption of liability agreement, and other documents or information with the council may reasonably require.

34. The bylaws do not require Altitude to be reasonable in deciding whether or not to approve alterations. It follows that Altitude has considerable discretion to approve or reject alterations to both. That said, Altitude must not act in a way that is significantly unfair.
35. Bylaws 6 through 8 places the burden on owners to seek permission for alterations. Logically these are at the owners' expense. In this dispute, Ms. Chen requests that Altitude pay for the alteration. Given this, I find that Ms. Chen's expectation for both approval and for the strata to pay for the alteration is clearly unreasonable. It follows that the strata did not act significantly unfairly, or even unfairly, in rejecting her request.
36. In addition to that, Ms. Chen provided essentially no evidence about the electric tankless hot water heater she wishes to install, or what its installation might entail. The evidence does not show what impact it may have on the plumbing or its cost. The latter is particularly important since Ms. Chen wishes the strata to pay for it. Ms. Chen provides a claim value of \$3,000 but there is no documentary evidence to support this. So, I find she did not provide enough information to Altitude to have any reasonable expectation for approval.
37. I make no findings about any request Ms. Chen might make in the future to install an electric tankless hot water heater at her own expense. She did not request this remedy, as stated above.
38. Ms. Chen also says that Altitude failed to maintain the pipes and hot water system. Bylaw 11 and SPA section 72 require Altitude to repair and maintain common property, which I find includes the pipes and hot water system. I find Altitude has met this duty for the following reasons.
39. Various invoices and public notices show that Altitude hired contractors throughout the years to repair and maintain both the pipes the hot water system. These are documented in invoices from November and December 2022, January, February, and October 2023. Altitude also issued notices about repairs in May, June, and November 2022. At times the building lacked hot water entirely.



40. I find the invoices and notices generally support the conclusion that Altitude took reasonable steps to repair and maintain the pipes and hot water system. There is nothing to indicate that the frequency of breakdowns was Altitude's fault. The documentary evidence does not show that Altitude acted unreasonably slowly. The most recent evidence shows that nothing is broken. I find that Altitude is fulfilling its obligations under bylaw 11 or SPA section 72 in connection with the pipes and hot water system.
41. Ms. Chen says Altitude has a duty to provide owners with sufficiently hot water during peak usage hours. In other words, Altitude's repair and maintenance obligations include increasing the hot water capacity. She says that the strata must pay for the installation of the tankless hot water heater as a means of remedying this.
42. I find that Altitude's actions would potentially be significantly unfair if it ignored Ms. Chen's complaints about the hot water capacity issue. However, Altitude is taking steps to address this. Altitude obtained the July 2024 report as noted above. It includes an upgrade estimate. The report provides a project budget of \$297,050.
43. Altitude also obtained a separate December 21, 2023 draft technical memorandum from Kerr Wood Lidal Consulting Engineers. I find this is expert evidence under the CRT rules as its author is Luch Charron, a mechanical engineering technologist, and the reviewer Abby Dacho, a professional engineer. The memo echoes many of the same findings as the July 2024 report. The memo also suggests as options 1) changing the hot water tank capacity, 2) increasing the size of the heat exchanger to improve heat recovery, and 3) as a temporary measure, increasing storage temperature using a 3-way valve to temper distribution. The memorandum did not provide estimates.
44. Neither the report nor memorandum recommend that Altitude install tankless water heaters as a capacity solution.
45. Similar to common property repairs, I find the upgrade project involves consideration of how to achieve the greatest good for the greatest number at an

amount the owners can afford. I find the hot water supply upgrades and how to fund them should be addressed democratically by the owners as a whole and their elected representatives on the strata council. This process appears to be ongoing and may lead to a result Ms. Chen disagrees with. I make no findings on whether leaving the system as is would be significantly unfair as it is premature to make such a determination.

46. Ms. Chen also says that the lack of hot water for showers affects her health. I find it likely that, during peak usage hours at least, Ms. Chen's showers would be subjectively uncomfortable given the temperatures she recorded. However, there is no documentary evidence that shows the lack of hot showers caused or contributed to a medical condition or aggravated a pre-existing one. Such evidence might include a physician's or physiotherapist's note. That is not before me. Further, the documentary evidence does not suggest that Ms. Chen cannot take reasonably hot showers during off-peak usage hours. As noted earlier, the evidence shows Altitude has a capacity issue during certain times. So, I find Ms. Chen's submissions about health are unpersuasive.
47. In addition to that, the hot water capacity issue affects Altitude as a whole. So, I find Ms. Chen has not been singled out for unfair treatment by Altitude.
48. Ms. Chen also claims reimbursement of strata fees for periods where she was unable to access hot water. Strata fees are mandatory and cannot be withheld in protest of a strata corporation's actions. See *Stewart v. The Owners, Strata Plan KAS 2601*, 2020 BCSC 809, at paragraph 106. So, I find Ms. Chen is not entitled to a refund even if Altitude was somehow negligent in fixing the pipes or hot water system. See also the Vice Chair's non-binding decision of *Norry v. The Owners, Strata Plan 953*, 2022 BCCRT 866 at paragraph 51.
49. For all those reasons, I dismiss Ms. Chen's claims.

## **CRT FEES AND EXPENSES**

50. 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 dismiss Ms. Chen's claim for reimbursement of CRT fees. The parties did not claim any specific dispute-related expenses.

51. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Chen.

## **ORDER**

52. I dismiss Ms. Chen's claims.

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David Jiang, Tribunal Member