



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Khlystov v. The Owners, Strata Plan LMS 2446*, 2025 BCCRT 867

B E T W E E N :

NIKOLAI KHLYSTOV

APPLICANT

A N D :

The Owners, Strata Plan LMS 2446

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. Nikolai Khlystov owns a strata lot in The Owners, Strata Plan LMS 2446. The gate to the strata's underground parkade closed on the front of Mr. Khlystov's vehicle, damaging both the gate and the vehicle. The strata charged Mr. Khlystov the \$894.60 it cost to repair the gate. Mr. Khlystov denies responsibility for the damage because he says the strata failed to reasonably maintain the gate and posted a

misleading sign. He asks for orders that the strata reverse the chargeback, alter the gate sensors to better detect vehicles, and improve the signage around the gate. He also asks for an order that the strata reimburse him \$2,489.31 for the damage to his vehicle. Mr. Khlystov is self-represented.

2. The strata says Mr. Khlystov breached its bylaws by failing to wait for the gate to close when he was following another vehicle into the parkade. The strata says there is nothing wrong with the gate or the sign. So, it says that the costs to repair both the gate and the vehicle are Mr. Khlystov's responsibility. The strata asks me to dismiss his claims.

JURISDICTION AND PROCEDURE

3. 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). 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 dispute parties that will likely continue after the CRT's process has ended.
4. CRTA section 39 of the CRTA gives the CRT discretion to decide the hearing's format, 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 therefore decided to hear this dispute through written submissions.
5. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.
6. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the tribunal 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.

ISSUES

7. The issues in this dispute are:
 - a. Is Mr. Khlystov responsible for the cost of repairing the gate?
 - b. Is the strata responsible for the cost of repairing Mr. Khlystov's vehicle?
 - c. Did the strata reasonably maintain the gate?
 - d. Must the strata change its sign?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, Mr. Khlystov as the applicant must prove his claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. The strata consists of 233 strata lots in a high-rise building. It has an underground parkade accessed through a gate at the bottom of a ramp. The gate is common property.
10. The incident occurred on April 29, 2023. There is strata security footage and Mr. Khlystov's dashcam footage showing what happened, and the parties agree on the details. Mr. Khlystov was following another vehicle into the parkade. The other vehicle opened the gate and Mr. Khlystov followed. The gate started closing just as Mr. Khlystov began driving under it. He noticed and stopped. However, the gate's safety sensor did not trip because the vehicle's chassis is higher than the sensor, and he was not far enough forward for his wheels to trip it. The gate kept lowering, sliding down a narrow space between Mr. Khlystov's front bumper and a front-mounted rack with auxiliary lights. There, the gate stopped. About a second later, Mr. Khlystov reversed, but the gate caught on the front rack and broke off its track.
11. The gate was non-functional, so the strata called a contractor for an after-hours repair. On May 1, 2023, the strata manager wrote Mr. Khlystov that it intended to

charge the repair cost to him. That letter relied on bylaw 37.17, which requires residents to “always wait for the gate to close before entering or exiting the parkade.” Mr. Khlystov concedes that he breached this bylaw.

12. On May 9, 2023, the strata manager wrote Mr. Khlystov informing him that the gate repair had cost \$894.60. The strata manager said the amount had been charged to Mr. Khlystov’s strata lot account.
13. Under SPA section 72 and the strata’s bylaw 12.1, the strata must repair and maintain common property. There are three ways for the strata to legitimately hold an owner responsible for common property repair costs:
 - a. The owner agreed to pay them.
 - b. The owner was responsible under the SPA or the strata’s bylaws.
 - c. The owner was negligent.

See *The Owners, Strata Plan VR824 v. Moise-Hanover*, 2024 BCCRT 1139.

14. The strata relies on Mr. Khlystov’s admitted breach of bylaw 37.17. However, that bylaw does not contain any consequences for a breach other than a fine. So, for the strata to hold charge the repair costs to Mr. Khlystov, it must follow the procedural requirements set out in SPA section 135. Those provisions set out what a strata must do to charge the costs of remedying a bylaw contravention to the owner.
15. Here, the strata did not follow that process. Its first letter simply informed Mr. Khlystov that he was responsible for the repair cost. The strata did not give Mr. Khlystov the right to answer the complaint before making its decision, as required by SPA section 135(1)(e). I recognize that the strata did send Mr. Khlystov a May 3, 2023 letter informing him that it was contemplating a fine, which did comply with SPA section 135. However, that letter came after the strata’s decision to charge the repair cost to Mr. Khlystov. SPA section 135 clearly states that the strata must give the owner a reasonable opportunity to answer a complaint before requiring the owner to pay costs to remedy a bylaw contravention.

16. However, this does not end the matter. Bylaw 35.1 requires an owner to indemnify the strata for repairing common property damage if the owner is responsible for the damage. I find this bylaw gave the strata direct authority to charge the repair cost to Mr. Khlystov as long he was “responsible” for it.
17. I recognize that the strata did not rely on bylaw 35.1 either in its initial correspondence with Mr. Khlystov or in this dispute. I decided not to seek submissions about the bylaw’s application for two reasons. First, the amount at stake is relatively low. Second, while the parties did not address bylaw 35.1 explicitly, their submissions do address Mr. Khlystov’s responsibility for the damage, which is the question I must answer.
18. Mr. Khlystov gives two reasons why the strata is responsible for the damage. First, he says that the sensors are positioned too low, such that they only register tires driving past and not the bottoms of vehicles. He argues that it is unreasonable for the strata to have the sensors configured in this way.
19. The strata’s duty to repair and maintain common property does not require the strata to make common property perfectly safe. Instead, it must make common property reasonably safe. I am not persuaded that the sensor’s configuration was unreasonably unsafe. There is no evidence that what happened is a persistent problem. The videos make it apparent that there was considerable bad luck involved in this incident: Mr. Khlystov’s vehicle had a front-mounted rack that most vehicles do not have, and he stopped at just the right spot for the gate to catch it. Also, there is no evidence from a gate repair expert that the sensor’s configuration is unreasonable or contrary to standard practice. Finally, there is no evidence about exactly where the sensors are positioned. Mr. Khlystov’s vehicle has a high clearance, typical of vehicles intended to be driven off road. Mr. Khlystov says that most cars would trip the sensor, but there is no supporting evidence of this. In any event, if the sensors catch most vehicles’ undercarriages, this would support the conclusion that the gate is reasonably safe.

20. Next, Mr. Khlystov takes issue with a sign above the gate, which says: “Please wait for the gate to close behind you before proceeding”. He says the sign should include the other requirement in bylaw 37.17, which is that drivers must wait for the gate to close before entering the parkade. He says that if the sign had said this, the incident would not have happened. That might be true, but I find that the strata has no affirmative obligation to post the complete bylaw above the door. Nor do I consider the existing sign to be misleadingly incomplete. Specifically, I do not believe that it implicitly encourages residents to try to follow other vehicles through the gate.
21. Mr. Khlystov relies on another CRT case about a person who unsuccessfully tried to drive under a gate after another person opened it, *The Owners, Strata Plan BCS 2583 v. Boyle*, 2021 BCCRT 1285. That case turned on the strata’s bylaws, which are different from the bylaws here, and whether the strata had complied with SPA section 135. The CRT did not make a finding about the driver’s actions or the gate sensors. So, I find that this decision does not assist Mr. Khlystov.
22. I find that Mr. Khlystov is responsible for the gate damage. My main reason for saying this is that it was not the gate closing on Mr. Khlystov’s vehicle that caused the damage, it was his decision to then suddenly reverse when the gate was stuck on his rack. While I appreciate he likely did not realize the gate was caught, I find that the word “responsible” in bylaw 35.1 does not require proof of negligence or fault. It is enough that his actions caused the damage. See *Cummings v. The Owners, Strata Plan LMS 2211*, 2025 BCCRT 702.
23. I therefore find that Mr. Khlystov must pay the chargeback for the gate repair. My conclusion also means there is no basis for the strata to pay for Mr. Khlystov’s vehicle repairs. Finally, for the reasons outlined above, I find that Mr. Khlystov has not proven that the strata must reconfigure the sensors or make a new sign. So, I dismiss Mr. Khlystov’s claims.

TRIBUNAL FEES AND EXPENSES

24. Under CRTA section 49, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mr. Khlystov was unsuccessful, so I dismiss his claim for CRT fees. The strata did not claim any dispute-related expenses or pay any CRT fees.
25. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Khlystov.

DECISION AND ORDERS

26. I dismiss Mr. Khlystov's claims.

Eric Regehr, Vice Chair