Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Mo v. The Owners, Strata Plan EPS5758*, 2025 BCCRT 1283

B E T W E E N :

LESTER GEE MAN MO

APPLICANT

A N D :

The Owners, Strata Plan EPS5758

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Peter Nyhuus

INTRODUCTION

1. The applicant, Lester Gee Man Mo, owns strata lot 63 (SL63) in the respondent strata corporation, The Owners, Strata Plan EPS5758. Mr. Mo says the strata unjustifiably applied a chargeback to their strata account for the costs of hiring a technician to repair SL63's air conditioner. They seek an order for the removal of the $804.63 chargeback. Mr. Mo is represented by their rental agent.

2. The strata denies Mr. Mo's claims. It says it was entitled to apply the chargeback for the repair costs to Mr. Mo's account. A strata council member represents the strata.

3. For reasons I will explain, I dismiss Mr. Mo's claims.

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. In some respects, the parties call into question the credibility, or truthfulness, of the other's evidence. Under the circumstances, I find that I am properly able to assess and weigh the evidence and submissions before me without an oral hearing. In *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the court recognized that oral hearings are not necessarily required where credibility is in issue. Neither party requested an oral hearing. So, bearing in mind the CRT's mandate for proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

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.

ISSUES

7. The issues in this dispute are:

a. Did the strata validly impose the chargeback for the repair costs?

b. Was it significantly unfair for the strata to impose the chargeback?

EVIDENCE AND ANALYSIS

8. As the applicant in a civil proceeding like this one, Mr. Mo 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.

9. I begin with the undisputed facts. On June 7, 2023, Mr. Mo's tenant, CS, reported to Mr. Mo's rental agent that SL63's air conditioner had stopped working 2 weeks earlier. Mr. Mo says they or the rental agent then authorized CS to fill out and provide to the strata a "Request for Strata Assistance Form". In this form, CS described the problem as "AC not working". I note that the form says the following, in clear lettering:

> The Strata Corporation maintains the common areas only but is here to provide support and guidance to Owners. The Strata's trades are not paid by the Strata Corporation to conduct in-suite work. All charges related to the servicing of in-suite issues are to be paid by the Strata Lot Owner. Your authorization is required in order to proceed with the service call. The amount of the charges is a direct charge from the third party service provider and their invoice will be provided along with a chargeback letter.
>
> If the problem is found to be with/or related to the common areas, the costs may be covered by the Strata Corporation.
>
> Please sign below with your permission based on this understanding in order to proceed with the service call.

10. I note that CS signed the form above a line marked "Signature of Unit Owner". CS is the unit's tenant, not its owner. However, since Mr. Mo admits they or the rental

agent authorized CS to fill out and sign the form, I find CS signed the form on Mr. Mo's behalf and that Mr. Mo is bound by its terms.

11. The strata then hired an HVAC technician to attend SL63. In the technician's invoice, they reported attending SL63 on June 9 and 14. The technician found that a fuse had failed and that they were unable to identify the failure's cause. The technician picked up replacement parts and fixed the unit. The invoice's total is $804.62, which includes labour, truck charges, materials, and GST.

12. On July 17, the strata manager sent to Mr. Mo and the rental agent a chargeback letter with the technician's invoice attached and a request for payment. On July 21, the rental agent emailed the strata manager to say she was surprised to receive the technician's invoice and that Mr. Mo would not pay it.

13. I turn to Mr. Mo's argument for why the chargeback is improper. Mr. Mo says the unit's air conditioner only began to malfunction after the strata turned off the building's main air conditioner to repair "some leakage issue" in the building. Mr. Mo says when the strata turned the main air conditioner back on, their unit's air conditioner stopped working. They say this caused the fuse in their air conditioner to blow.

14. In support, Mr. Mo says the strata's concierge told CS that several other units were affected by the strata turning the main air conditioner off and on. Mr. Mo also says that the HVAC technician told the rental agent and CS while servicing SL63 that this was a "building issue".

15. Over the next 3 months, the rental agent and strata manager continued to correspond about the invoice. On October 18, 2023, Mr. Mo or the rental agent attended a strata council meeting to dispute the chargeback. On November 3, the strata manager wrote to Mr. Mo and the rental agent to confirm that the $804.63 chargeback will remain on their strata account, since the technician confirmed it to be an in-suite issue.

16. On November 7, 2023, Mr. Mo filed their CRT application for dispute resolution.

Did the strata validly impose the chargeback for the repair costs?

17. For the strata to chargeback repair costs to a strata lot account, it must have authority to do so under a valid and enforceable bylaw that creates the debt. See *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512 at paragraphs 40 to 41.

18. Mr. Mo says the strata does not have a bylaw authorizing it to chargeback repair costs. I disagree. The strata registered a complete set of bylaws in the Land Title Office in December 2019. It registered amendments to the bylaws in 2021, 2022, and 2023. In July 2021, it amended bylaw 38, which is about insurance deductibles and chargebacks. The relevant parts of bylaw 38.1(b) say that the owner of a strata lot is obligated to pay the strata corporation its costs repairing any physical damage to a strata lot that the strata chooses to repair if the source of the damage originated in that owner's strata lot.

19. I note this section does not apply if the damage originated from common property within the strata lot. However, since neither party argues that the malfunctioning air conditioner is common property, I accept that it was part of the strata lot.

20. I find this bylaw means that the strata was entitled to apply a chargeback to Mr. Mo's strata account for the repair costs if the damage to the air conditioner originated in Mr. Mo's strata lot. I find this bylaw is consistent with the form that CS signed, which says that the strata will charge owners the amount invoiced by third-party service providers for servicing in-suite issues unless the problem is found to relate to the strata's common areas.

21. The issue, then, is whether the strata's common property damaged the air conditioner. If Mr. Mo is correct in their theory that the strata building's central air conditioner caused the damage to their unit's air conditioner, then the source of the damage did not originate in Mr. Mo's strata lot, and the strata was not entitled to apply the chargeback.

22. The difficulty for Mr. Mo is that I find their assertion about the cause of the air conditioner's damage to be speculative and unproven.

23. To support their assertion that the strata caused the damage by turning its main air conditioner off and on, Mr. Mo provided an email from CS in which CS says the concierge and technician both told them this happened. I find this is hearsay evidence, meaning a statement made outside the CRT proceeding that a party seeks to use to prove the statement's truth. CS is not a party to this dispute, and neither are the concierge or technician who allegedly made these statements, so the evidence is double hearsay. Mr. Mo did not provide any direct evidence from the concierge or the technician asserting their opinions. The only direct evidence from the technician is their invoice, and it contradicts this alleged statement. Mr. Mo also did not provide any statements from the other units confirming they faced a similar issue with their air conditioners at this time. So, without any confirmatory evidence, I find this double hearsay evidence is too unreliable, and I give it no weight.

24. Mr. Mo argues the rental agent and CS had no reason to lie about what they heard, since Mr. Mo would be responsible for paying the invoice, not them. However, even if I accept that CS and the concierge are telling the truth about the statements they heard, this does mean that the statements themselves are true. For instance, it may be that CS and the concierge misunderstood each other, that the concierge misspoke, or that the concierge was mistaken about the issue. Similarly, when the technician told the rental agent and CS that it was a "building issue", they may have mistakenly thought that SL63's air conditioner was common property and the strata's responsibility. Alternatively, the technician may have been unaware of the possibility of a chargeback and incorrectly assumed the strata would be responsible for the invoice since the strata hired them. I also accept that the technician may have considered the damage's source further after leaving SL63 and reasonably changed their mind before providing their written opinion.

25. Expert evidence is generally required to prove technical matters that are beyond common understanding. This is because an ordinary person does not know the standards of a particular profession or industry (see *Bergen v. Guliker*, 2015 BCCA 283). I find that the cause of the air conditioner's blown fuse is a technical matter, requiring expert evidence to prove. Mr. Mo has not provided any expert evidence to

support their assertion that the strata's air conditioner damaged their own air conditioner.

26. I acknowledge that Mr. Mo says they tried to get opinion evidence from other air conditioner repair companies but that none were willing to provide any. They also say they could not speak with other unit owners with similarly damaged air conditioners because they are on different floors. I acknowledge that gathering evidence can be difficult, but this does not change the requirement that Mr. Mo prove their claim.

27. Based on the evidence, I find that the issue with SL63's air conditioner was the blown fuse within the air conditioner. I do not accept Mr. Mo's argument that the strata's own air conditioner caused the blown fuse, so I do not accept that the strata's common property caused the damage. Since the source of the damage was Mr. Mo's air conditioner in their own strata lot, I find bylaw 38.1 enabled the strata to validly impose the chargeback for the air conditioner repair costs to Mr. Mo's account.

Was it significantly unfair for the strata to impose the chargeback?

28. Mr. Mo argues that the chargeback was "extremely unfair". So, I will consider whether the strata acted significantly unfairly by imposing the chargeback.

29. CRTA section 123(2) says the CRT may make orders remedying a strata corporation's significantly unfair acts or decisions. The court has the same authority under section 164 of the SPA, and the same legal test applies. See *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113.

30. 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. See also *Dollan v. The Owners, Strata Plan 1589*, 2012 BCCA 44.

31. Mr. Mo makes various arguments about why the chargeback was unfair. Essentially, they argue it was unfair for the technician to change their opinion in their invoice after previously telling the rental agent and CS that the damage was caused by a "building issue". They say the technician is lying by saying they could not determine the damage's cause.

32. Mr. Mo also speculates that the strata was trying to avoid the repair costs after it discovered that multiple units incurred high air conditioner repair expenses. I infer they argue that the strata told the technician to lie in their invoice about the damage's cause. Mr. Mo admits they have no evidence to support this suspicion, and I reject it.

33. The strata says it must act in the best interests of all its residents and that this includes financial responsibility. It says that in deciding whether to chargeback the repair costs to Mr. Mo, the only documentary evidence it had was the technician's invoice. It says it acted reasonably by preferring this evidence over the alleged conversations between Mr. Mo's tenant, the concierge, and technician. I agree with the strata that the technician's invoice is stronger evidence and that it acted reasonably by choosing to prefer it.

34. Given the bylaw and the service request form that CS signed, I find Mr. Mo's expectation that they would not be charged to be unreasonable. I find the strata fairly followed its bylaws and the policy it laid out in its form. I find no evidence of bad faith or unfair actions by the strata. So, I find Mr. Mo has not proven the strata acted significantly unfairly by imposing the chargeback.

35. In summary, I find the strata validly and fairly imposed the chargeback to Mr. Mo's account and that Mr. Mo is liable for the repair costs. I dismiss Mr. Mo's claims.

CRT FEES AND EXPENSES

36. 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. Mr. Mo was unsuccessful, so I dismiss their claim for

reimbursement of CRT fees and dispute-related expenses. The strata did not pay CRT fees or claim dispute-related expenses, so I order none.

37. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mr. Mo.

ORDER

38. I dismiss Mr. Mo's claims.

Peter Nyhuus, Tribunal Member