Civil Resolution Tribunal

Date Issued: September 18, 2025

Date Amended: September 22, 2025[1]

File: ST-2023-007398

Type: Strata

Civil Resolution Tribunal

Indexed as: *Featherstone v. The Owners, Strata Plan LMS 4025*, 2025 BCCRT 1307

B E T W E E N :

PAMELA ROSE FEATHERSTONE and GREGORY GEORGE SHERWOOD

APPLICANTS

A N D :

The Owners, Strata Plan LMS 4025

RESPONDENT

AMENDED[1] REASONS FOR DECISION

Tribunal Member: J. Garth Cambrey

INTRODUCTION

1. This strata property dispute is about an alleged unauthorized expense from a contingency reserve fund, or CRF.

2. The applicants, Pamela Featherstone and Greg Sherwood, jointly own a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 4025[1]. I will refer

to the respondent as the strata. Pamela Featherstone represents the applicants. A strata council member represents the strata.

3. The applicants say the strata has acted contrary to the *Strata Property Act* or SPA by spending money from its CRF without proper authorization. Specifically, they say the strata withdrew money from its CRF for non-urgent heat pump drain line repairs without the owners' approval. They value their claim at $175,000, which was the strata's estimate of the maximum expense. The applicants seek an order that the unauthorized withdrawal be restored.

4. The strata denies it acted improperly and says it has complied with the SPA. It says it had reasonable grounds to believe an immediate CRF expense was necessary to prevent significant loss or damage to the common property drain system. The strata also says the applicants' claims are frivolous and vexatious. It asks that the applicants' claims be dismissed and seeks reimbursement of $6,310.08 in legal fees as dispute-related expenses.

5. As explained below, I find in favour of the applicants.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal or CRT. The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* or 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. I find I am properly able to assess and weigh the documentary evidence and submissions before me. I am satisfied an oral hearing is not necessary in the interests of justice and decided to hear this dispute through written submissions.

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.

ISSUES

9. The issues in this dispute are:

    a. Who is responsible to repair and maintain the heat pumps and related parts?

    b. Did the strata act contrary to the SPA when it withdrew funds from its CRF to service the heat pumps?

    c. If so, what is an appropriate remedy?

BACKGROUND, EVIDENCE AND ANALYSIS

10. As applicants in a civil proceeding such as this, Pamela Featherstone and Greg Sherwood must prove their claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' submissions and evidence but refer only to information I find relevant to explain my decision.

11. The strata was created in October 1999 under the *Condominium Act* and continues to operate under the SPA. It consists of 100 strata lots located in 3 buildings. Heat pump locations are not identified on the strata plan.

12. The strata filed a complete set of bylaws with the Land Title Office on June 21, 2019. A subsequent amendment filed in June 2022 is not relevant to this dispute. Bylaw 2.1 requires an owner to repair and maintain their strata lot, except for things that the strata is responsible to repair and maintain under the bylaws. The relevant part of bylaw 8.1 requires the strata to repair and maintain common property and common assets. The bylaws do not identify who is responsible for heat pump repair and maintenance. In particular, the strata has not taken on the responsibility for in-suite heat pump maintenance through a bylaw.

13. The background is brief and undisputed. In October 2022, the strata determined there was an emergency situation with all heat pumps. Council meeting minutes dated October 24, 2022, state that failure to complete regular maintenance on the heat pumps created the emergency and that the strata had retained a plumbing contractor at an estimated cost of $175,000 to immediately complete significant repair work. The minutes also state the strata would consider whether to replenish the CRF at a future general meeting.

14. On October 26, 2022, the strata manager issued a notice to owners and residents that provided further details. I summarize them as follows:

    a. The strata has experienced multiple leaks in several suites due to heat-pump related issues such as drain pan clogs, drain line clogs, and hose leaks, and must complete significant repairs to prevent further leaks. The heat pumps are located in-suite.

    b. The majority of the heat pumps have never been serviced. For many heat pumps, the pan and drain has become clogged, and plastic hoses that connect each heat pump to the building's water loop system have become brittle.

    c. It is necessary to remove each heat pump to service the pan, drain, and heat pump coil, and replace the plastic hoses with stainless steel hoses.

    d. The strata accepts responsibility to ensure the drains, and their connections, are operating properly.

    e. It is in the strata's interest to change the filters, and this service will continue every 6 months.

    f. Replacement of heat pumps will be an owner's expense.

15. On October 27, 2022, Mr. Sherwood, emailed the strata manager and others, who I infer are strata council members, suggesting the $175,000 expense was not an emergency and that strata required ¾ vote approval of the owners under the SPA. There is no evidence the strata responded.

16. On November 21, 2022, the strata council president provided an update notice to all residents on the work stating that 61 heat pumps, or about 30%, had been serviced. Of the 61 heat pumps, 17 were found to have issues, including 5 that were not operating. The notice also estimated that four hundred hoses needed replacement at a cost of $200 per hose. The notice concluded by stating that performing this preventative maintenance will prolong the life of the heat pumps, decrease maintenance requests, and prevent costly emergency repairs.

17. The strata council issued a final notice about the heat pumps in February 2023. The strata reported the project was complete and that all 207 heat pumps had been serviced. In particular, the strata reported all heat pumps and drain pans were cleaned, the drains were flushed, the filters were changed, new hoses were installed, and all horizontal condensate drains in the parking area were flushed. The report also identified that 18 heat pumps were found not to be working and that the strata lot owners had been notified.

18. The notice goes on to say that the in-suite heat pumps and enclosures are an owner's responsibility, and that the strata is responsible for air filters and drains.

19. Finally, the notice set out a service plan that the strata intended follow which included changing individual heat pump filters, cleaning associated drain lines, and flushing horizontal building drain lines on a regular basis.

Who is responsible to repair and maintain the heat pumps and related parts?

20. I will first determine who is responsible for repairing and maintaining the heat pumps and related parts as I find it necessary to do so before considering the money the strata withdrew from the CRF.

21. I again note the strata's bylaws do not specifically address heat pumps. Given the strata serviced 207 heat pumps and there are only 100 strata lots, I find it reasonable to infer each strata lot has at least 1 heat pump. There are likely heat pumps that service the lobby and amenity areas in the buildings, which I find are the strata's common property or common assets. SPA section 72 and bylaw 8.1 clearly

confirm these heat pumps are the strata's responsibility.

22. The location of the in-suite heat pumps is not entirely clear, but from the strata's description of the leaks, I find they are likely located in ceiling spaces. I also find it likely that the in-suite heat pumps service only the strata lot in which they are located. That means the in-suite heat pumps are the individual owner's responsibility, as the strata suggests in its notices. The applicants do not contest this.

23. I turn now to the strata's described service of the heat pumps, which is also not contested by the applicants. According to the 2022 and 2023 notices, all heat pumps and drain pans were cleaned, the drains were flushed, the filters were changed, and hoses connecting the heat pumps to the buildings' water loop system were replaced. From photographs provided, I find the drain pan sits below the heat pump and connects to the drain line. Based on the strata's submissions and evidence, I infer the drain line connects to a common riser with other heat pump drain lines in the building, similar to any building drain line, and the common riser connects to the horizontal drain lines in the building's parking area.

24. SPA section 1(1) states that pipes and other facilities for the passage of water are common property if they are capable and intended to be used in connection with the enjoyment of another strata lot.

25. In *Taychuk v. Owners, Strata Plan LMS 744*, 2002 BCSC 1638 at paragraph 28, the BC Supreme Court stated that pipes that are connected to pipes that service all the units, such that they are intended to be used in connection with the enjoyment of another strata lot, are common property that were the strata corporation's responsibility to repair and maintain.

26. Similarity, the BC Provincial Court in *Fudge v. Owners, Strata Plan NW 2636*, 2012 BCPC 409 confirmed that a component that forms part of an overall system is common property even if it is located wholly within a strata lot. *Fudge* considered a water backup from a washing machine inside a strata lot, where the washing machine's discharge hose was connected to a common drainpipe installed in the wall. The court found that the discharge pipe from the washing machine was

integrated with the pipe system in the walls and was therefore capable of being used in connection with the enjoyment of the common property. The court determined that the building's entire drainage system was an integrated whole that fell within the definition of common property.

27. Following *Taychuk* and *Fudge*, I find the drain pans and drains for the heat pumps are all connected, so I find they are common property and the strata's responsibility to repair and maintain. I reach the same conclusion about the hoses that connect the heat pumps to the building's water loop system.

28. I find the heat pumps themselves and the filters are not common property or a common asset, so I find the strata is not responsible for heat pump service and filter changes.

Did the strata act contrary to the SPA when it withdrew funds from its CRF to service the heat pumps?

29. I turn now to the SPA requirements for spending CRF money.

30. The parties agree, and I find, that the SPA sets out only how money can be spent or withdrawn for the CRF. The relevant parts of SPA section 96 say the strata must not spend CRF money unless it is consistent with purposes of the fund as set out in section 92(b) ***and*** it is first approved by a ¾ vote at a general meeting or authorized under section 98.

31. Section 92(b) says the purpose of the CRF is to establish a fund for common expenses that usually occur less often that once per year.

32. Section 98 addresses unapproved or emergency expenses. It says a CRF expense can be made without passing a ¾ vote only:

    a. When there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise, ***and***

    b. If the expense does not exceed the minimum amount needed to ensure safety or prevent significant loss or damage.

33. Based on the language used in these provisions, I find they are mandatory and do allow for any discretion by the strata. For the following reasons, I find the strata breached these SPA provisions.

34. First, as noted, the purpose of the CRF is to establish a fund for ***common expenses*** that usually occur less often that once per year. I have found the heat pump cleaning and filter replacement expenses are not the strata's responsibility. Therefore, those expenses are not captured by the definition of common expenses set out under SPA section 1(1), which requires the expense to relate to common property, a common asset, or some other obligation of the strata. I also note the strata notified owners that it would change filters every 6 months, which, even if changing filters was the strata's responsibility, twice yearly filter changes are contrary to the purpose of the CRF.

35. Second, the strata argues the expense was an emergency under section 98. I disagree for 2 reasons. The strata submits that maintenance on the condensate drainage system and inspections of water hose connections had never been done during the 23-year life span of the heat pumps. It also admits that such maintenance is the strata's responsibility. At a minimum, I find it disingenuous for the strata to admit it did not complete required maintenance of the heat pump drain pans and drains for decades and then state its failure to perform reasonable maintenance caused the emergency repair.

36. More importantly, based on the strata's own evidence, I find the repairs were not as urgent as it claimed. The evidence is clear that water leaks were occurring in the buildings, and the sources of the leaks were difficult to determine. I accept that the strata properly investigated the water leaks and determined there were leaks caused by heat pump drains and hoses. I also accept that it was prudent for the strata to proceed with a preventative maintenance program to generally investigate the remaining heat pumps. However, I do not accept it was an emergency situation. In its own submissions, the strata states it was first aware of leaking drain lines in September 2022, and further investigation led it to realize the water hoses were failing. It also submits that testing of some hoses indicated the hoses were so worn that moving the heat pumps to service drain pans and drain lines could cause the

hoses to leak. The strata also submits that it confirmed that many of the hoses were leaking slowly adding to the drain problems. Finally, it submits that it determined the likelihood of the issues being limited to only a few heat pump installations was low, so it decided to complete service on all heat pumps. These submissions confirm to me that the strata must have investigated some of the leak issues before it decided that all heat pumps should be serviced as it could not have know these details unless it completed some investigation. My conclusion is further supported by the strata's admission that it had obtained 2 quotations for the heat pump maintenance work before it determined the work was an emergency.

37. Further, the strata says it reasoned that time was of the essence because of the lead time to order the hoses and that servicing heat pumps was best completed before the spring while the heat pumps were not operating fully. Although the strata argued significant damage might have occurred, it provided no supporting objective evidence, such as a contractor's report.

38. The strata says it decided to proceed with servicing the heat pumps at its October 24, 2022 council meeting. It notified the owners that work would start on October 31, 2022, and be complete by December 15, 2022. This tight timeframe supports a conclusion that the hoses were not difficult to obtain and that a short delay to have the strata owners consider a ¾ vote to approve the expense would not have saved the strata significant repair expenses, if any. I estimate the time required to hold a general meeting to consider these things would be about one month, factoring in the required notice period and the time needed to draft resolutions. The strata's own evidence confirms it knew about the cost of the maintenance work in October 2023, so I find that a delay of one month to consult with owners at a general meeting, would not have materially affected the order time for the hoses nor delay the serving past the spring of 2023. More importantly, this would have ensured compliance with the SPA. I find this demonstrates that the strata did not have reasonable grounds to determine immediate servicing of the heat pumps was necessary.

39. The strata cites case law which it says supports its view that the loss or damage need not be imminent but can be to prevent loss or damage that is uncertain but foreseeable. See *Thurlow & Alberni Project Ltd. v the Owners, Strata Plan VR 2213*,

2022 BCCA 257 and *The Owners, Strata Plan LMS 1383*, 2015 BCSC 1816. The strata's argument focuses on the word significant in section 98 in the context of loss or damage. But, as I have mentioned, I have found the strata's basis for determining immediate action was required was primarily determined by the alleged lead time for ordering hoses and the time of year. While I agree the potential for loss or damage existed, the strata did not provide any objective evidence to support the heat pump servicing was necessary to avoid significant loss or damage. Therefore, I do not find this caselaw of any assistance to the strata.

40. The strata also cites *Hodgson v The Owners, Strata Plan LMS 908*, 2017 BCCRT 66, where the CRT considered whether a strata corporation's decision to install security gates in their parkade after a series of break ins was an expense properly charged to the CRF under section 98. That decision includes discussion on foreseeability of damage or loss, which, again, is not the issue here.

41. For these reasons, I find the strata acted contrary to SPA sections 96 and 98 when it withdrew funds from its CRF to service the heat pumps.

42. The proper procedure the strata should have followed was to call a general meeting to propose an expense from the CRF by ¾ vote. The strata could also have easily addressed cleaning heat pumps and replacing filters at the same meeting by proposing a bylaw amendment to take on these owner responsibilities as it is permitted to do under SPA section 72.

43. Having found the strata failed the first part of the emergency test of section 98 in that it did not have reasonable grounds to believe that an immediate expenditure was necessary, I do not need to consider the second part of the section 98 test that the expense must not exceed the minimum amount needed to ensure safety or prevent significant loss or damage.

44. I also need not consider whether the applicants' claims are frivolous or vexatious as the strata suggests.

What is an appropriate remedy?

45. As the strata stated in it's notice to residents, the CRF money for the heat pump

serving was spent by February 2023, over 2 years ago. The work cannot be undone and the only way to restore the CRF is for the owners to approve a special levy for that purpose.

46. Although the applicants did not expressly request it, I have considered whether the CRT has jurisdiction to impose special levies without the need for the strata to pass a ¾ vote. I find the law is not settled on this matter. Some early CRT decisions suggest the CRT has such authority, such as *James MacArthur v. The Owners, Strata Plan K588*, 2016 BCCRT 2, *Dickson et al v. The Owners, Strata Plan K 671*, 2018 BCCRT 147, and my decision in *MacArthur v. The Owners, Strata Plan K 588*, 2018 BCCRT 491.

47. However, later CRT decisions suggest the CRT does not such authority. See for example, my decision in *Delcon (Plaza Del Mar) Investments Ltd. v. The Owners, Strata Plan VR 414*, 2024 BCCRT129 at paragraphs 107 and 108.

48. The earlier CRT decisions which ordered special levies without the need for a ¾ vote did so under the authority of CRTA section 123(1)(c), which allows the CRT to order a party to pay money. But those decisions did not consider CRTA section 122(1) that expressly states the CRT does not have jurisdiction over SPA section 173. That provision only permits the BC Supreme Court to impose a special levy for repair and maintenance of common property if a special levy resolution fails to pass by a ¾ vote majority but does pass by a majority vote. Put another way, section 173 suggests that it would be nonsensical for the CRT to have jurisdiction to impose a special levy in circumstances where the strata owners had not previously considered the resolution. I have also considered SPA section 165, which essentially gives the Supreme Court authority to make any orders it considers necessary. The same authority is not expressly available to the CRT.

49. In addition to being contrary to the legislation, I find it would be procedurally unfair to the strata's owners to be excluded from voting on a special levy.

50. Bearing all this in mind, I find the only reasonable conclusion is that the CRT does not have jurisdiction to impose a special levy without the need for a strata corporation owners to pass a ¾ vote as contemplated under SPA section 108.

51. Therefore, I order the strata to hold a general meeting to consider a special levy for the purpose of replenishing the CRF the amount of money the strata spent to service the heat pumps in 2022 and 2023. The strata must hold the general meeting within 60 days of the date of this decision.

52. The strata may also wish to clarify with its owners any future authority to service in-suite heat pumps.

CRT FEES AND EXPENSES

53. 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. The applicants were mostly successful and paid $225 in CRT fees, so I order the strata to pay them that amount.

54. The applicants did not claim disputed-related expenses. As earlier noted, the strata claimed legal fees as dispute-related expenses but was not successful, so I make no order for dispute-related expenses.

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

DECISION AND ORDERS

56. Within 15 days of the date of this decision, I order that the strata to pay the applicants $225 for CRT fees.

57. Within 60 days of the date of this decision, I order the strata to hold a general meeting to consider a ¾ vote to replenish the amount it spent from the CRF to service heat pumps in late 2022 and early 2023.

58. The applicants are entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.

59. This is a validated decision and order. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme

Court. Under section 58 of the CRTA, 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 an order of the court in which it is filed.

J. Garth Cambrey, Tribunal Member

[1] Amendment Note: Paragraph 2 was amended to correct an inadvertent typographical error under authority of *Civil Resolution Tribunal Act* section 61.