



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Chan v. The Owners, Strata Plan LMS 4580*, 2025 BCCRT 1325

B E T W E E N :

CAMELLIA HO CHAN

APPLICANT

A N D :

The Owners, Strata Plan LMS 4580

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This strata property dispute is about a leak.
2. The applicant, Camellia Ho Chan, co-owns a strata lot (unit 303) in the respondent strata corporation, The Owners, Strata Plan LMS 4580.

3. Mrs. Chan says the strata wrongfully imposed a \$11,345.56 chargeback on her strata lot account, following a common property leak that damaged her strata lot. She says she is not responsible for the chargeback because the strata negligently failed to address the leak. She also says the strata does not have authority under its bylaws to impose the chargeback.
4. Mrs. Chan requests an order that the strata reverse the chargeback, plus \$2,588 in damages for lost rental income.
5. The strata says it was not negligent, and Mrs. Chan is responsible for the chargeback because it is for repairs that only benefitted Mrs. Chan's strata lot. The strata also says it is not responsible for Mrs. Chan's rental business losses.
6. Mrs. Chan is represented by a family member, who is not a lawyer. A strata council member represents the strata.
7. For the reasons set out below, I find in favour of Mrs. Chan in this dispute.

JURISDICTION AND PROCEDURE

8. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction (authority) over strata property claims under *Civil Resolution Tribunal Act* (CRTA) section 121. 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.
9. 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. So, I decided to hear this dispute through written submissions.
10. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.

ISSUES

11. The issues in this dispute are:

- a. Is Mrs. Chan responsible for the \$11,345.56 chargeback?
- b. Is Mrs. Chan entitled to \$2,588 for lost rent?

BACKGROUND

12. As applicant in this civil dispute, Mrs. Chan must prove her claims on a balance of probabilities. This means more likely than not.
13. The strata had an opportunity to provide evidence, but only provided a written submission. I have reviewed all the provided evidence and submissions, but I only refer to what is necessary to explain my decision.
14. Around August 14, 2022, Mrs. Chan's tenant reported that a leak had damaged unit 303's bathroom drywall. The strata promptly hired Phoenix Restoration to investigate the leak's source. The investigation included cutting a large hole in unit 303's bathroom ceiling. Photos and other evidence show that Phoenix also placed a large fan in the bathroom, to reduce moisture and mold.
15. For reasons that I discuss further below, the investigation took a relatively long time. Around September 13, 2022, a month after the leak was first reported, Phoenix cut more holes in unit 303 bathroom ceiling and walls. Video evidence shows the leak into unit 303 continued after this.
16. The strata provided no evidence about when the leak was finally located and repaired. Mrs. Chan says the leak was stopped by October 25. Since the strata provided no contrary evidence, I accept this as true.
17. The parties agree that the leak came from a common property pipe. The strata says it was a pinhole leak due to the pipe's age. That is not disputed, so I accept it.

18. Mrs. Chan's representative continued to call and email the strata to find out when unit 303's bathroom would be repaired. According to Mrs. Chan, the repairs were not substantially completed until April 26, 2023, and not finally completed until June 26.
19. On June 5, 2023, the strata emailed Mrs. Chan a copy of Phoenix's invoice for unit 303 repairs, totalling \$11,345.56. The email's subject line indicated that the strata had charged the invoice amount back to Mrs. Chan's strata lot account.

REASONS AND ANALYSIS

Is Mrs. Chan responsible for the \$11,345.56 chargeback?

20. Mrs. Chan says the strata must reverse the chargeback, because the leak came from common property, she never agreed to pay for the repairs, the strata did not notify her that she would have to pay, and the strata has no bylaw that authorizes the chargeback.
21. The strata says that under its bylaws, Mrs. Chan is responsible to pay for repairs to her strata lot.
22. For the following reasons, I order the strata to reverse the chargeback.
23. If an owner has breached a bylaw or rule, a strata corporation can charge back strata lot repair expenses to a strata lot owner under *Strata Property Act* (SPA) section 133. This requires advance notice of the chargeback, as set out in SPA section 135.
24. There is no suggestion in this dispute that Mrs. Chan breached any bylaw or rule. Also, the strata did not give advance notice. So, section 133 does not authorize the chargeback.
25. Aside from section 133, a strata corporation cannot charge back repair expenses to an owner without the authority to do so under a valid and enforceable bylaw or rule that creates the debt. See for example *Rintoul et al v. The Owners, Strata Plan KAS*

2428, 2019 BCCRT 1007 and *Hurren v. The Owners, Strata Plan 1150*, 2024 BCCRT 947.

26. I find the reasoning in these cases persuasive, and I apply it here.
27. The evidence shows that before filing this dispute, Mrs. Chan's representative repeatedly emailed the strata asking it to provide the bylaw that authorized the chargeback. The strata did not do so, but instead said the owner was responsible for strata lot repairs below the insurance deductible's amount.
28. I agree that generally, under the bylaws, an owner is responsible to repair their own strata lot. However, following the reasoning in *Rintoul* and *Hurren*, the strata may not simply proceed with strata lot repairs and then impose a chargeback on the owner, unless there is a bylaw that permits it.
29. In this dispute, I find there is no bylaw that authorized the chargeback. I also accept Mrs. Chan's evidence that she was never informed of or consented to the chargeback. This is reflected in the email correspondence with the strata, and the strata provided no contrary evidence showing that it notified Mrs. Chan that it would charge her for the repairs, or that she agreed.
30. So, I find the strata was not entitled to impose the chargeback.
31. Also, previous CRT decisions have said that a strata must repair investigation and access holes it creates to perform common property repairs. For example, in *Lorenz v. Strata Plan NW 2001*, 2017 BCCRT 65, a common property shower diverter failed, and the strata's contractor cut open the applicant's bathroom wall to investigate and repair it. The CRT vice chair ordered the strata to return the owner's bathroom to paint-ready condition. Similarly, in *Thompson v. The Owners, Strata Plan LMS 2349*, 2018 BCCRT 759, the strata's contractor cut holes in the applicant's strata lot ceiling to inspect and repair a leaking common property pipe. The CRT member found that the strata intentionally damaged the ceiling in order to carry out its duty to repair and maintain common property. So, the member ordered the strata to repair the damage at its own expense.

32. Based on these previous cases, which are not binding but which I find persuasive, I find the strata had a duty to return the walls and ceiling holes it opened up to a “paint-ready” condition”. This means that even if a bylaw permitted a chargeback, the strata was still not entitled to charge back the entire cost of strata lot repairs to Mrs. Chan without her consent.

33. For these reasons, I order the strata to reverse the \$11,345.56 chargeback.

Is Mrs. Chan entitled to \$2,588 for lost rent?

34. Mrs. Chan provided emails to her tenant which show that she agreed to her tenant’s request to waive rent for September 2022 and reduce rent by 50% for March 2023, due to the inconvenience of the ongoing bathroom repairs. These reductions equalled \$2,587.50.

35. Mrs. Chan says the strata should compensate her for this lost income, because the strata unreasonably delayed repairing the leak, and then unreasonably delayed repairing the bathroom. Mrs. Chan says the tenant was frustrated because the bathroom was unusable for months.

36. The strata says the bathroom was usable before the repairs were complete. Based on the photos in evidence, I find the tenant would have been significantly inconvenienced. There are large holes in the ceiling and walls, no mirror, no cabinet doors, and a very large fan unit sitting in front of the toilet, partially blocking access to the shower. Later, the toilet was removed.

37. The evidence shows that the tenant was very frustrated, complained to Mrs. Chan’s representative, and requested the rent reduction. Based on the bathroom’s condition, and Mrs. Chan’s uncontested assertion that the bathroom repairs were not substantially complete until April 26, 2023, 8.5 months after the leak was reported, I find the rent reductions were reasonable in the circumstances.

38. However, the problem for Mrs. Chan is that the BC Supreme Court has said in cases such as *Globalnet Management Solutions Inc. v Aviva Insurance Company*,

2017 BCSC 1580 that legally voluntary payments cannot be recovered as damages. See paragraph 308 of *Globalnet*.

39. Based on the email correspondence with the tenant, I find that the rent reductions, while reasonable, were voluntary. By that, I mean that Mrs. Chan was not legally required to reduce the rent. For this reason, I dismiss Mrs. Chan's lost rent claim.

CRT FEES AND EXPENSES

40. As Mrs. Chan was substantially successful in this dispute, under the CRTA and the CRT's rules I find she is entitled to reimbursement of \$225 in CRT fees. Neither party claimed dispute-related expenses, so I order none.
41. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses to Mrs. Chan.

ORDERS

42. I order that:
- a. The strata must immediately remove the \$11,345.56 chargeback from Mrs. Chan's strata lot account.
 - b. Within 30 days of this decision, the strata must reimburse Mrs. Chan \$225 for CRT fees.
43. Mrs. Chan is entitled to postjudgment interest under the *Court Order Interest Act*.
44. I dismiss Mrs. Chan's claim for lost rent.

45. This is a validated decision and order. The CRT's order can be enforced through the British Columbia Supreme Court (CRTA section 57). 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 (CRTA section 58). Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Kate Campbell, Vice Chair