



# Civil Resolution Tribunal

Date Issued: July 22, 2020

File: ST-2020-001293

Type: Strata

Civil Resolution Tribunal

Indexed as: *Crelinsten v. The Owners, Strata Plan 1098*, 2020 BCCRT 811

**B E T W E E N :**

RONALD CRELINSTEN and IFFET OZKUT

**APPLICANTS**

**A N D :**

The Owners, Strata Plan 1098

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. The applicants, Ronald Crelinsten and Iffet Ozkut (owners) own a strata lot in the respondent strata corporation, The Owners, Strata Plan 1098 (strata). The owners say that deer were jumping over the common property front gate at the entrance of their townhouse. The owners say this caused a hazard. They sought an order allowing them to install a higher front gate.

2. Before this file was assigned to me for adjudication, the strata council approved the owners' request to alter the front gate. The strata accepted the owners' proposed design and the terms of a limited indemnity agreement. The substantive claim is therefore resolved. The sole issue in this dispute is who should pay for Civil Resolution Tribunal (CRT) fees of \$225.
3. The owners represent themselves. A strata council member represents the strata.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the 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.
5. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
6. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
7. Under section 123 of the CRTA and the CRT rules, 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.

## **ISSUE**

8. Should the strata reimburse the owners \$225 in CRT fees?

## EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the owners bears the burden of proof on a balance of probabilities. Although I have reviewed all the evidence and submissions, I have only addressed them to the extent necessary to explain my decision.
10. The background facts are undisputed. The strata consists of townhouse-style housing units. The owners' strata lot is one of 5 connected units. It has a front trellis gate that swings open to allow pedestrians access to a walkway leading to their strata lot's front door. The gate height is less than the adjacent hedges and fencing, as shown in the photos in evidence.
11. I will set out a brief chronology. On August 1, 2019, the owners requested that the strata install a taller gate and taller small trellis fence next to it. The owners explained their request was to prevent deer from jumping over the gate and fence. The strata council met on September 30, 2019, but the minutes do not address or acknowledge the owners' request.
12. On October 16, 2019, the owners repeated their request. Their lawyer also requested a hearing in a November 13, 2019 letter. The lawyer advised that the owners now only wished to extend the gate height. He also advised the owners were willing to pay for the cost of installing the new gate and indemnify the strata for any loss or damage arising from its installation.
13. The strata held a hearing on November 25, 2019, and the owners attended. According to the council meeting minutes, the council did not approve the owners' request. They asked the owners to provide a drawing of the proposed alteration to the gate. In a December 16, 2019 email, the owners emailed a photo of the proposed alteration. It resembled the current gate, except it had 3 extra rows of lattice, making it taller. The owners also attached a draft indemnity agreement.
14. At the January 17, 2020 council meeting, the strata council discussed the owner's request. The council decided to speak to the owners about the cost of the alterations and to speak with neighboring owners about whether they took issue

with the new design. The owners filed their application for dispute resolution on February 7, 2020.

15. On April 30, 2020, the strata's property manager advised the owners that the strata council had received input from the neighboring strata lot owners. The council decided to approve the owners' request for the new gate design.
16. The owners say they are entitled to the claimed CRT fees because the strata council unnecessarily delayed in responding to their request. The owners also say that the strata council unnecessarily sought feedback from their neighbors about the gate. They say that safety was an issue and the alteration request was relatively minor.
17. The strata disagrees that it should reimburse any CRT fees. The strata says the council needed time to complete its due diligence and this proceeding was unnecessary.
18. In *De Vuono v. Simpson*, 2018 BCCRT 33, a CRT Vice Chair considered whether the applicant was entitled to CRT fees and dispute-related expenses after the substantive claim was resolved. The respondent had already paid the applicant the substantive claim amount of \$110.
19. The Vice Chair decided that the applicant did not act unreasonably by commencing his claim for \$110 plus CRT fees. She noted that there was no requirement for an applicant to delay pursuit of a rightful claim. She found that the key consideration is that a successful party is entitled to reimbursement of their CRT fees. As the applicant was successful, he was entitled to reimbursement of the claimed CRT fees and dispute-related expenses totaling \$155.
20. CRT rule 9.5 states that if a dispute is not resolved by agreement, and a CRT member makes a final decision, the unsuccessful party will usually be required to pay the successful party's CRT fees, unless the CRT member decides otherwise. CRT rule 129, which was in force at the time the Vice Chair wrote *De Vuono*, provides substantially the same wording.

21. Although not binding I find the Vice Chair's reasoning persuasive and the analysis used applicable. I find the owners reasonably commenced their claim in February 2020. By then the owners had already attended a hearing with the strata council. The owners had also complied with the strata's request for further information. Their request was still not yet approved. The owners were not obligated to delay pursuit of their claim any further.
22. I find the owners are the successful party. They obtained the remedy sought in their substantive claim. The strata also reached its decision on its own, without resolving the matter by agreement. I therefore order the strata to reimburse the owners \$225 in CRT fees.

## **ORDERS**

23. Within 14 days of the date of this decision, I order the strata to pay the owners a total of \$225 as reimbursement for CRT fees.
24. Under sections 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. The order can also be enforced by the Provincial Court of British Columbia 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 that it is filed in.

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David Jiang, Tribunal Member