
Jurisdiction of the Civil Resolution Tribunal for Strata Property Claims

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The Civil Resolution Tribunal (CRT) has been accepting applications for strata property dispute resolution since July 2016. As at August 31, 2017, 614 applications for strata property dispute resolution have been accepted resulting in 63 resolutions by agreement and 83 binding decisions (19 by default). The CRT has refused to resolve 3 disputes and 102 disputes have been withdrawn or closed. There are 131 awaiting responses (where the dispute notice has been issued), 215 in facilitation, 14 in adjudication and 2 are suspended.

What types of strata property claims can the CRT decide?

The CRT's jurisdiction over strata property disputes is set out in the *Civil Resolution Tribunal Act* (Act). Under section 3.6(1) of the Act, the CRT has jurisdiction over a claim concerning one or more of the following:

- a) the interpretation or application of the *Strata Property Act*, its regulations, or a strata corporation bylaw or rule;
- b) the common property or common assets of the strata corporation;
- c) the use or enjoyment of a strata lot;
- d) money owing, including money owing as a fine, under the *Strata Property Act*, its regulations, or a strata corporation bylaw or rule;
- e) an action or threatened action by the strata corporation or council in relation to an owner or tenant;
- f) a decision of the strata corporation or council in relation to an owner or tenant;
- g) the exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.

There is no doubt that this jurisdiction covers a broad number of claims. However there are also certain restrictions regarding the CRT's jurisdiction over strata property claims contained in the Act. Section 3.6(2) of the Act sets out a number of provisions of the *Strata Property Act* that are expressly outside the jurisdiction of the CRT which may only be addressed by the Supreme Court of BC. These restrictions include orders for the forced sale of a strata lot, the appointment of an administrator, various orders regarding leasehold and phased strata corporations and orders regarding the winding up of a strata corporation.

Claims that fall under the *Residential Tenancy Act* and claims to which the parties have agreed the *Arbitration Act* applies are also outside the jurisdiction of the CRT. The Act allows for claims prescribed by regulation to be excluded from the CRT's jurisdiction but, at present, no such regulations have been enacted.

Other factors considered by the CRT regarding jurisdiction.

The *Limitation Act* applies to strata property disputes which generally bar an applicant from applying for dispute resolution if the incident giving rise to the claim was known, or ought to have been known, over 2 years before the application is made.

Additionally, the same dispute cannot be decided twice or heard simultaneously in different legal proceedings. If the dispute has already been decided through another process, the doctrine of *res judicata* applies and the CRT will not hear the dispute. Also, if the same parties to a dispute are involved in another legally binding process involving the same issues, the other process must be suspended to allow the CRT dispute to continue.

The CRT cannot hear a dispute that involves the Federal or Provincial government as a party or if the dispute involves a constitutional issue. While the CRT may apply the *Human Rights Code* at its discretion, it does not have jurisdiction over a question of whether there is a conflict between the *Human Rights Code* and other legislation. Under section 11, The CRT has the general authority to refuse to resolve a claim or dispute if it considers the claim or dispute:

- a) has been resolved through a legally binding process (e.g. court) or other dispute resolution process (e.g. another tribunal, arbitration or mediation);
- b) is unreasonable or is an abuse of process;
- c) the issues are too complex for the dispute resolution process of the CRT or otherwise impractical for the CRT to facilitate or resolve;
- d) may involve a constitutional question or the application of the *Human Rights Code*; or
- e) the CRT is satisfied that if the matter was brought before the Supreme Court, the Supreme Court would grant an order that the tribunal not resolve the claim or dispute under section 12.3 of the Act.

What orders can the CRT issue for strata property claims?

The CRT has general discretion under section 61, to make any order it thinks is necessary to achieve the objects of the tribunal in accordance with its mandate of providing dispute resolution services in a manner that is accessible, speedy, economical, informal and flexible and applies the principals of law and fairness recognizing any relationships between the parties that will likely continue.

Further, under section 48.1 and the CRT's rules, the CRT has very broad authority and may order a party to do or refrain from doing something, order a party to pay money or make an order that it considers necessary to prevent or remedy a significantly unfair action or decision of the strata corporation or council or in the case where one person holds more than 50% of the strata corporation's votes. However, the CRT cannot make an order requiring the sale or other disposition of a strata lot.

Jurisdictional decisions made by the CRT.

As the CRT continues to grow and evolve, jurisdictional issues will continue to be considered by the tribunal based on the merits of the dispute. Although not binding on future decisions, several jurisdictional decisions have already been made by the CRT that can provide some guidance to those working in the industry as well as owners and tenants living in strata corporations. Examples of these decisions can be found at www.civilresolutionbc.ca and include the following types of decisions:

- Limitation period (2017 BCCRT 3, 2017 BCCRT 48, 2017 BCCRT 50, 2017 BCCRT 55)
- Former owners (2017 BCCRT 28)
- *res judicata* or previously decided (2017 BCCRT 22, 2017 BCCRT 55)
- Suspension (2017 BCCRT 41)

What can you do if you're not certain a dispute is within the jurisdiction of the CRT?

If an owner tenant or strata corporation representative (council member) is not certain their claim falls under the jurisdiction of the CRT, they should first use the solution explorer. If, after completing their exploration they are still uncertain, they can make an application to the CRT. The CRT processes of screening, facilitation and adjudication will determine if the dispute is within the CRT's jurisdiction.

Please contact us at info@crtbc.ca if you have any questions or comments.