



Choosing the Civil Resolution Tribunal (CRT) as the best option to resolve Strata Disputes

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Written by: Tony Gioventu / CHOA

Without exception, the greatest barrier that has existed for strata corporations in BC since 1965 were the barriers to economically and procedurally resolve disputes. When the Civil Resolution Tribunal (CRT) came into effect in 2016, strata corporations, owners and tenants suddenly had an economical, accessible and level playing field to deal with the many common law issues that arose in their strata corporations.

In a nutshell the CRT has the ability to order a strata corporation, owner or tenant and their occupants to do something, stop doing something or to pay for something. One of the most common barriers for strata councils that existed before the CRT was the 3/4 vote barrier to commencing law suits.

Provincial/small claims court could deal with monetary disputes, but could not order compliance or enforcement with bylaws or the *Strata Property Act* and Regulations. If an owner decided to ignore the bylaws of the strata corporation, and only 1 or 2 other units were affected, it was impossible to get the remaining 55 owners to approve a 3/4 vote to proceed to arbitration or the Supreme Court to obtain an enforcement order. It was extremely rare that a large majority would support a small group of owners adversely affected by an owner as they were unwilling to be exposed to the costs of legal fees, the courts and the time delays. Within a year, the landscape for strata disputes has changed entirely.

The CRT does not have the jurisdiction to deal with matters involving land. Those include changes to the strata plan, schedule of voting rights, unit entitlement, easements and covenants on titles or registered with the strata corporation, the sale of strata lots, wind up and liquidation of strata corporations or the

appointment of an administrator. However, we all know these types of disputes have been extremely well served by the courts, and the recent decision from the Appeals Court in BC, *KAS 2428 v. Baettig*, has clarified that the costs to be recovered for court ordered sales will secure a greater scale of the financial risk to the strata of the legal and court costs. I would place those disputes in the 5% of strata legal matters. The balance of issues arise from strata corporations, owners and tenants not complying with the Act or Bylaws of each strata corporation, and monetary disputes over who pays what.

Many strata disputes appear trivial to the public, but they are not trivial to each community. They have the potential to fuel great conflict for long periods of time, destroy communities and strata communities become absorbed with the disputes and forget their real obligations to maintain and repair common property and assets and administer the business of their strata corporation. The quick, economic and fair resolution to many of the trivial disputes has definitely already helped many communities. While the CRT is a great solution it is not the magic bullet for all disputes. Remember that CRT decisions are very case specific. While common law decisions do influence tribunal decisions, the tribunal was intentionally created to consider and accommodate the unique sets of evidence and history of each strata dispute. While a decision may seem unusual, it is specific to that strata corporation and each owner, tenant and occupant and most important, tribunal decisions do not form case law that is binding on other tribunal hearings or court proceedings.

If you are a strata corporation using the CRT to seek an order for someone to do or stop doing something or to

pay for something such as fines, insurance deductibles or damages, there are a number of steps you have to take before you proceed.

Bylaw enforcement scenario: An owner is not complying with bylaws as they have significantly altered common property without permission. The strata council has sent out notices of complaint as required by section 135 of the Act, the owner has not responded or has requested a hearing and the strata has continued to determine the owner is not in compliance with the bylaws. The strata corporation has been imposing fines at a rate of \$200 per week for the violation and ordered the owner to pay for the cost of the restoration to the common property. After 2 months of fines and no changes the strata council should consider using the CRT to resolve the issue. The strata council convenes a meeting, discusses and votes on the action they are going to take against the owner to commence a CRT complaint. By majority vote the council decides on the action, sends the owner a written notice that if they don't resolve the matter within 14 days the strata will file the CRT complaint. The council appoints a council member to file the CRT complaint and act on behalf of the strata. While the strata is not permitted to retain legal counsel to act on their behalf, this is an excellent opportunity for the strata to consult with their lawyer about the scope of evidence, information and the process they will engage as they engage the CRT process. If your CRT application is well planned, contains accurate and detailed information, the case management process will have a higher likelihood of success and the adjudicators will have much better information to rely upon during a decision process. Your lawyer can coach you through the process and help you with responses during the process. Just remember to set aside an allocation each year in your budget to fund some basic legal fees and services for CRT actions.

The same basic conditions apply to an owner or tenant. Before you start your complaint you will be required to attempt to have a hearing with your strata council to resolve the matter. If not, the core of your complaint, the evidence and information associated with the complaint will all be key factors in your success. If your strata council is not complying with the Act because they are refusing to hold the annual general meeting no later than 2 months after the fiscal year end, you will need documents such as last year's minutes of the general meeting, financial information showing the

fiscal year end, and an attempt by the owners requesting to hold the AGM. While an owner or tenant is not required to give 14 days notice of commencing a claim with the CRT, they do have to request a hearing first.

CRT decisions and consent agreements may be registered in the Supreme Court registry and if the decision is against an owner and their tenants, the decision might be able to be registered on the title of the strata lot. This is another key benefit for strata corporations. When a Form F Payment Certificate is requested the strata corporation must provide the certificate within 7 days and it is valid for 60 days. The strata may identify and withhold the certificate until amounts owing are paid, or an arrangement satisfactory to council has been made. Here's the sticky part, a strata corporation is not permitted to include claims for insurance deductibles or damages on the Form F unless the strata corporation has a decision from the courts, an arbitrator's decision or the CRT. This is another excellent use of the CRT to ensure the strata can collect an insurance deductible or damages caused by an owner, their tenants or occupants. My view on damages and insurance deductibles though is don't wait. If you have a collections issue send a demand payment within weeks of the claim or damages and start the collection process and CRT complaint. The sooner the claim is filed and decided the better chance the strata corporation has to collect the outstanding amounts.

Like all disputes, using the Civil Resolution Tribunal requires clear evidence, communication between the parties, proper notice of actions and disputes, and a proactive business manner to simplify your strata corporation's collection worries, bylaw enforcement, and to help resolve disputes early to reduce conflict in your community.