DANGERS OF USING AI AT THE CIVIL RESOLUTION TRIBUNAL

The *Civil Resolution Tribunal Act* (the "Act") allows a strata lot owner to file a claim against the Strata Corporation before the Civil Resolution Tribunal (the "CRT") when there is dispute about a decision made by the Strata Corporation (the "Strata") in relation to an owner of a strata lot. If the strata lot owner is successful in the claim, the CRT can make orders to remedy a Strata's significantly unfair decisions.

In a recent CRT Decision, the applicants claim about a Strata Corporation's refusal to retroactively approve alterations to the applicants' strata lot being significantly unfair to the applicant was denied.

By the time the applicants purchased the strata lot in a hotel condominium in October 2020, the alterations to the strata lot had already been made by the previous without obtaining permission from the Strata. These alterations included adding fire sprinkler heads, moving a fire alarm, and adding a loft. In January 2020, the previous owner requested retroactive approval for the alterations, but the Strata refused. Among the reasons given by the Strata for the refusal were that the alterations would affect the operation of the Strata as a hotel condominium, the loft alternation affected the rentability of the Strata Lot, and approving the retroactive alterations would set a precedent for other owners to demand similar approvals.

Before the purchase, the applicants were provided with the documents that indicated the alterations the previous owner made were done without permission from the Strata and without authorization from the local district. After the purchase, the applicants requested the alterations be retroactively approved by the Strata on the basis that the applicant was able to rent the strata lot, the Strata refused this application, the applicants requested a reconsideration of this decision, and the Strata confirmed the refusal reinstating that the Strata did not want to set a precedent.

The issue in this dispute involved determining whether the Strata's refusal to retroactively approve the alterations made by the previous owner to the applicants' strata lot was significantly unfair, and if so, what remedy was appropriate.

The CRT mentioned that test to assess whether a Strata's actions or decisions were significantly unfair was mentioned in *Kunzler v. The Owners*, Strata Plan EPS 1433, 2021 BCCA 173, where the court confirmed that significantly unfair actions or decisions are those that are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust, or inequitable. When applying this test to the circumstances, the owner's objectively reasonable expectations are a relevant factor but are not determinative.

When considering whether the decision was significantly unfair in this dispute, the CRT assessed whether the previous owner was required to obtain the strata's prior written approval before adding the loft to the strata lot, and after determining that prior approval was required the CRT analyzed whether the Strata's decision to refuse approval for the retroactive alteration was significantly unfair. The Strata provided the same arguments made previously when refusing to approve retroactive alterations and the CRT considered the arguments to be valid considerations.

In opposition, the applicants referred to ten decisions that supposedly stated that strata corporations could not force the removal of alterations made to the strata lots. The CRT realized that the decisions were provided by an AI chatbot, which provided false or misleading information to the applicants, as nine of the decisions mentioned did not exist, and the remaining decision was not related to unauthorized alterations to strata lots.

The importance of this decisions is that it cautions parties to a CRT claim, by indicating that parties should be cautious about identifying the applicable law correctly, and in analyzing how the relevant law applies to their circumstances. In this case, the CRT mentions that by reviewing recent decisions the applicants could have identified the tendency of the CRT decisions to determine that owners can not reasonably expect retroactive approval for alterations done without the strata's prior authorization.

When considering whether to file a claim before the CRT, the interested party should access CanLii[1] to search for decisions made in strata property claims, and carefully review the content of the decisions to identify if facts in the decision are similar to the interested party's circumstances and whether the argument the party considers using has merit. The interested party should also consider that CRT decisions are useful to assess how the CRT has analyzed specific topics, but that previous CRT decisions are not binding on the CRT when assessing a claim.

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[1] https://www.canlii.org/en/

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