



Civil Resolution Tribunal

Date Issued: December 19, 2017

File: SC-2017-002921

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chapman et al v. Cape Mudge Campsites Ltd.*, 2017 BCCRT 142

B E T W E E N :

Allen Chapman and Cheryl Drake

APPLICANTS

A N D :

Cape Mudge Campsites Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicants, Allen Chapman and Cheryl Drake, have since 2013 rented their trailer to the respondent Cape Mudge Campsites Ltd. (Cape Mudge) during the summer months, so that Cape Mudge could re-rent the trailer to campers. The

applicants allege that after the 2016 summer season their trailer had water damage, and they claim \$5,000 in damages. The parties are self-represented, with Mr. Chapman providing submissions on behalf of both applicants.

JURISDICTION AND PROCEDURE

2. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. An oral hearing was not requested.
4. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
5. Under tribunal rule 121, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

6. The issue in this dispute is whether the respondent is responsible for damage to the applicants' trailer, and if so, what damages are payable.

EVIDENCE AND ANALYSIS

7. The evidence and the parties' respective submissions are brief. I have only commented upon them to the extent necessary to give context to these reasons. In a civil dispute such as this, the applicants bear the burden of proof on a balance of probabilities.
8. Based on the evidence before me, there was no written contract between the parties. The applicants' claim is that the respondent negligently caused damage to their trailer. While the applicants' submissions are not entirely clear, I find their claim is that the respondent failed to keep the trailer's slide-out roof free from needles and debris, which debris in turn caused the leak and the damage. I accept that the slide-out roof leaked and caused the damage, which is supported by a May 20, 2017 repair estimate for \$4,529.00 from Arbutus RV & Marine Sales Ltd. (Arbutus).
9. In an October 31, 2017 statement, Cape Mudge's administrator Brian Kelly wrote that prior to notifying the applicants the trailer was ready for pick-up it was cleaned and there was no sign of water intrusion or related damage. Mr. Kelly stated that it is the trailer owner's responsibility for the maintenance and condition of the trailer. He wrote that the trailer remained at Cape Mudge for 3 weeks following the respondent's request for it to be removed, and it should have been inspected at that time by the applicants. Mr. Kelly wrote that it was 20 to 30 days after the call for pick-up that the trailer was inspected, and that "a lot can happen in that length of time. We have no idea if the trailer was used or rented after it was picked up on September 24th".
10. The applicants provided evidence from Camp Mudge's former manager, Wendy Luscombe. Ms. Luscombe simply stated it was her policy to clean the slide-out roof each time it was closed and to be sure a trailer was cleaned before the owners picked it up. I find Ms. Luscombe's evidence is of little assistance, because I find Cape Mudge's submission is that the damage must have occurred after the call for pick-up was made.

11. In particular, Cape Mudge's defence is that the applicants took around 15 days to pick up their trailer after being notified by the respondent it was ready for pick up, and then a few further days before they inspected it. This timeframe is undisputed. Cape Mudge does not dispute that there was damage to the trailer nor does it expressly deny that the damage occurred while the trailer was in Cape Mudge's possession. Rather, Cape Mudge's submission is simply that it is not responsible for the damage because the applicants took an unreasonable length of time to pick it up and inspect it. I find the reasonable inference is that Cape Mudge submits that its responsibility to maintain the trailer ended when it contacted the applicants to pick up the trailer.
12. As noted, there is no written contract before me about the parties' agreement as to repair and maintenance of the trailer while it was in Cape Mudge's possession. The applicants have not provided any evidence that the water damage could not have occurred during the 15 days that the trailer was waiting for their pick-up. On a balance of probabilities, I find that the leak occurred during that 15 day period, and more likely a few days after the pick-up call as it would likely take some time for the needles to build up.
13. I turn then to the respondent's obligation, if any, to maintain the trailer during the period of time it was awaiting pick-up. That the applicants never had problems with damage in prior years is not determinative. Further, the applicants' own evidence is that they left the trailer to sit for a week before inspecting it, and it is reasonable to accept that the water damage, such as mould growth, only worsened during that period. I acknowledge the applicants' evidence that they found a few crayons and an ant trap in the cupboard, but I cannot conclude from that limited evidence that the trailer had not been generally cleaned before the call for pick-up was made.
14. The general elements of a negligence claim are: the respondent owes a duty of care, the respondent failed to meet a reasonable standard of care, it was reasonably foreseeable that the respondent's failure to meet that standard could cause the applicant's damages, and the failure did cause the claimed damages.

15. Certainly, the respondent owed a duty of care to prevent damage during the trailer's rental period. Holding the trailer for a day or two would not be unreasonable, and during such time the respondent would be obliged to continue to ensure no damage occurred to the trailer. But in the absence of other arrangements that were not made here, I find it was unreasonable of the applicants to simply leave their trailer in the possession of the respondent with the expectation that the respondent would continue to care for it. I find the respondent's obligation to provide maintenance of the slide-out roof ended after that reasonable "pick-up" window of a couple days.
16. In other words, I find the applicants have not proven that the respondent owed the applicants a duty of care to maintain their trailer after the call for pick-up was made. Even if Cape Mudge had such a duty of care, I find that the applicants have not established that the standard was to regularly sweep the slide-out roof to clear it of needles. I find the respondent was not negligent. Contrary to the applicants' submission, that the respondent previously made an offer to settle has no bearing on my decision. An offer to settle is not necessarily an admission of liability.
17. The applicants also addressed in their submissions their claim for a sink damaged in 2015, which Ms. Luscombe stated Cape Mudge had after the summer season agreed to replace. The Dispute Notice was issued in July 2017, so there is no issue of this claim being out of time. The respondent did not expressly address the sink issue, which I find is distinct from the water damage issue. I order the respondent to pay the applicants \$210 for the sink replacement, as per the Arbutus estimate. I do not order any interest on the \$210 as it appears it has not yet been replaced. I find there is insufficient evidence to support orders for any other maintenance or damages referenced in the applicants' submissions.
18. There was divided success. In accordance with section 49 of the Act and the tribunal's rules, I find the respondent must reimburse the applicants \$87.50, being half the \$175 paid in tribunal fees.

ORDERS

19. I order the respondent to reimburse the applicants a) \$210 for the replacement of their trailer's sink, and b) \$87.50 for tribunal fees paid, for a total of \$297.50.
20. The balance of the applicants' claims are dismissed. The applicants are entitled to post-judgement interest under the *Court Order Interest Act*.

Shelley Lopez, Vice Chair