



Civil Resolution Tribunal

Date Issued: May 8, 2018

File: SC-2017-003007

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hambley v. Canadian Northern Shield Insurance Company Le Bouclier Du Nord Canadien, Compagnie D'Assurance*, 2018 BCCRT 174

B E T W E E N :

Jarret Hambley

APPLICANT

A N D :

Canadian Northern Shield Insurance Company Le Bouclier Du Nord
Canadien, Compagnie D'Assurance

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Vivienne H. Stewart

INTRODUCTION

1. The applicant, Jarret Hambley, owns a home where a water line burst on November 14, 2016 causing damage to the applicant's kitchen and basement. The

applicant made an insurance claim to the respondent Canadian Northern Shield Insurance, which is more formally known as Canadian Northern Shield Insurance Company Le Bouclier Du Nord Canadien Compagnie D'Assurance.

2. There is no dispute about the respondent's repair or replacement of water-damaged walls and floors.
3. The respondent agreed to replace the applicant's lower kitchen cabinets with cabinets of "like kind and quality." The applicant says the original cabinets were fir. The respondent says they were old style plywood boxes with painted pine or plywood doors. Fir cabinets are more expensive than painted plywood or pine cabinets.
4. The applicant says that the flood also caused drywall to fall from the ceiling in the basement, damaging his dryer. The applicant had to replace the dryer and wants the respondent to pay the \$200 cost. The respondent refused to allow this claim.
5. Both parties represented themselves.

JURISDICTION AND PROCEDURE

6. 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.
7. 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. Neither party requested an oral hearing.

8. 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.
9. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Should the respondent pay the difference in replacement cost of \$2,317.00 for the new cabinets the applicant wanted and the new cabinets the respondent agreed to cover?
 - b. Should the respondent pay \$200.00 for replacement of the damaged dryer?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
12. The applicant was not yet living in his home when the pipe burst. On November 15, 2016, the respondent's restoration company came to the applicant's home to

look at the damage. They took photographs which I have studied carefully along with the photographs sent to the tribunal by the applicant.

Kitchen cabinets

13. The applicant said that the kitchen cabinets were original to the house. He has installed a temporary kitchen for about \$300-\$400 so that he can use the kitchen until this dispute is resolved.
14. I find that the respondent's photographs of the kitchen cabinets show that they were clearly 'old style'. One photograph shows the lower cabinets with the doors open. The outside of the doors were painted white. The inside of the doors was not painted. The wood surface was bare. The respondent's contractor told the respondent that the lower cabinets were plywood boxes with solid pine doors, all painted. It is not possible to see for certain whether the lower cabinet doors were fir, pine or plywood. The photo is slightly out of focus but this section of the lower cabinets does look like a plywood box.
15. The respondent's contractor took out the lower cabinets and the applicant took out the upper cabinets. The parties disposed of both the lower and upper cabinets before the dispute about the wood doors arose. I find that there is no evidence that would resolve the dispute about what kind of wood the cabinets were made of.
16. The respondent was given a quote for \$7,547.40 including GST to provide "kitchen – lowers incl. p/l countertop". The quote is "as per plans discussed." I accept that this quote was not for solid fir.
17. The applicant obtained his own quote which included separate amounts for replacing both lower and upper cabinets. The quote that related to the lower cabinets was for \$5,805.00 plus GST to supply, deliver and install lower cabinets with solid fir painted doors, pre finished birch interiors, standard drawer hardware and no countertops. The applicant says that the difference in the replacement

value between the fir cabinets that he wants and what the respondent will pay for is \$2,317.00.

18. I accept the evidence of the respondent's contractor that what he removed were not fir cabinets. I do not accept the evidence of the applicant's neighbour that these had to have been fir cabinets because, historically, the houses in the area were all built of fir. There is no evidence that the applicant's neighbour had actually seen or inspected the applicant's cabinets and I find that he did not.
19. I find that the applicant is not entitled to replacement of fir cabinets. This is the applicant's claim so he must provide enough evidence to prove that the damaged lower cabinets were made of fir. I find that he has not done so.
20. I dismiss the applicant's claim for \$2,317.00.

Damage to the dryer

21. The applicant says the flood caused a sheet of dry wall to fall from the basement ceiling onto his dryer. He says the dryer was damaged and he had to pay \$200 to replace it with a used dryer. .
22. The damage to the dryer as shown in the photographs consists of minor damage to the right hand front top corner of the dryer and a missing door handle. However, one photograph showed that this handle was missing on November 15, 2016, after the flood but before anyone removed the drywall or the drywall came down. This photograph also showed that there was already damage to the same corner of the dryer that the applicant says was damaged by falling drywall. I find that both types of damage to the dryer happened before the flood.
23. I dismiss the applicant's claim for \$200 to replace the dryer.
24. The applicant was not successful on either claim and therefore I find he is not entitled to reimbursement of his tribunal fees.

ORDER

25. I dismiss the applicant's dispute.

Vivienne H. Stewart, Tribunal Member