



# Civil Resolution Tribunal

Date Issued: May 17, 2018

File: SC-2017-003707

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McConnachie v. Scurr et al.*, 2018 BCCRT 192

**B E T W E E N :**

Peter McConnachie

**APPLICANT**

**A N D :**

Tonia Scurr and Christopher Scurr

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

### **INTRODUCTION**

1. This dispute is about who is responsible for a boat being disconnected from power, and the cost to repair that damage.

2. In late 2015, the respondents Tonia and Christopher Scurr were tenants on the applicant Peter McConnachie's waterfront property. It is undisputed that without the applicant's permission, in late October 2015 the Scurrs instructed workmen to move the applicant's 48 foot Pleasure Craft boat from its berth, who later returned it to the same berth. In doing so, those workmen failed to re-connect the boat to shore power, which ultimately led to significant damage to the boat.
3. The parties are self-represented.

### **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.
6. 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.
7. Under tribunal rule 126, 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**

8. The issues in this dispute are a) whether the respondents are responsible for the boat's disconnection from power and the subsequent damage, and b) if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

9. I have only commented on the evidence and submissions to the extent necessary to give context to these reasons. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities.
10. The respondents did not provide any evidence. Their submissions focus on complaints about rent increases and dredging costs, which are not issues before me in this dispute, bearing in mind the respondents did not file any counterclaim.

## **Liability**

11. The applicant left the country in early October 2015, travelling south for the winter. He left his boat in its berth at his property, where the respondents lived as tenants in a float home. The applicant returned to Canada on November 27, 2015. He discovered the boat's damage in December 2015.
12. 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.
13. The respondents owed the applicant a duty of care, as tenants on his property. I find the reasonable standard of care was that the respondents would not damage the applicant's boat, particularly as they had no permission to move it. I find it was foreseeable that the boat's disconnection from power could cause the damage and as discussed below, I find the boat's prolonged disconnection did so.

14. It is undisputed that the respondents hired a contractor to do dredging work on the applicant's property. As part of that contract, the respondents asked the contractor to re-position a shed or "studio", which they say was an eyesore. To do so required moving the applicant's boat and temporarily disconnecting its power. Based on the BC Hydro records, the disconnection occurred on October 27, 2015. The boat was returned to its slip but was turned 180 degrees. It was not reconnected to the shore power source and remained disconnected for about 3 to 4 weeks, until November 24, 2015.
15. The respondents expressly acknowledge that they went ahead and moved the studio without the applicant's permission, on the basis that when they had earlier asked permission he had said he would let them know and did not do so. It is undisputed that the applicant did not know the boat's power had been disconnected and not reconnected, until December 2015 after his return to Canada.
16. In particular, based on the BC Hydro records and the fact the boat sustained the significant damage it did, I find that the boat was not reconnected to power until November 24, 2015. This was 3 days before the applicant's return to the country, but after the damage was done. Both parties agree that it was the respondents' contractor who likely reconnected the power, and I find he did so on November 24, 2015 the day after he issued his November 23, 2015 bill to the respondents. Given the power consumption records, I reject the respondents' speculation that the boat's power was reconnected much earlier. While it does not change the outcome of this decision, I expect the respondents also did not know the boat's power had not been reconnected until the damage was done.
17. The central point in this dispute is that the respondents acknowledge they authorized the work that included moving the applicant's boat, without his permission. That unauthorized movement involved the boat's disconnection from its power source.

18. While it may be that the respondents trusted their prime contractor to “do his usual diligent job”, that does not absolve the respondents from responsibility for the boat’s prolonged disconnection from power. That contractor did the work at the respondents’ instruction and the respondents are responsible for that work. I find the respondents were negligent in failing to ensure the boat’s power was reconnected, given they gave the instruction that led to its disconnection without the applicant’s knowledge or approval. Nothing in this decision prevents the respondents from pursuing any claim against their contractor.

### **Damages**

19. It is undisputed that as a result of the boat being disconnected from power for 3 to 4 weeks, its onboard batteries became depleted and its bilge pumps stopped working. The applicant described the damage as follows, which I find is undisputed. The boat took on water and the low voltage damaged some of the electronics as well as submerging the macerator pump and damaging it beyond repair. The boat’s batteries were also damaged and service was required to restore power. The boat’s diesel heating system also failed as a result of the damaged motherboard.
20. The applicant claims a total of \$4,912.06: \$2,982.30 for electrical repairs, \$168 for a damaged macerator pump, and \$1,761.76. The applicant’s July 2016 invoice from Safe Harbour Marine matches the \$1,761.76 claim, but in the underlying evidence the applicant noted he allocated 1/3 of that amount to the respondents as the balance fairly related to maintenance. In this dispute, the applicant also appears to claim “a portion” of the \$1,761.76, which I find should be 1/3 or \$587.25. The applicant’s December 2015 invoice from The Marine Service Network matches the \$2,982.30 claim. The applicant did not provide an invoice for the macerator pump, but the other invoices reference its damage. I allow the \$168 claim as I find it is reasonable. The respondents did not dispute the amount of the applicant’s invoices for boat repairs.

21. In summary, I find the respondents must pay the applicant a total of \$3,737.55. I also find the applicant is entitled to \$64.27 in pre-judgment interest under the *Court Order Interest Act* (COIA), as follows: a) \$53.38, from January 31, 2016 on the \$2,982.30, and b) \$10.89, from July 31, 2016 on the \$755.25 balance, which I find are the most reasonable dates in the circumstances.
22. The applicant was successful. Under section 49 of the Act and the tribunal's rules, I find the respondents must reimburse the applicant \$175 in tribunal fees.

## **ORDERS**

23. Within 30 days of the date of this decision, I order the respondents to pay the applicant a total of \$3,976.82, broken down as follows:
  - a. \$3,737.55 as reimbursement for boat's repair costs related to the power disconnection,
  - b. \$64.27 in pre-judgment interest on the \$3,737.55, under the COIA, and
  - c. \$175 in tribunal fees.
24. The applicant is also entitled to post-judgment interest, as applicable.
25. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
26. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed,

a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Shelley Lopez, Vice Chair