Civil Resolution Tribunal

Date Issued: June 5, 2018

File: SC-2017-007400

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Li et al v. Song*, 2018 BCCRT 232

B E T W E E N :

Song Li and Jinwen Yu

APPLICANTS

A N D :

Lebing Song

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Mary Childs

INTRODUCTION

1. The applicants Song Li and Jinwen Yu own a strata unit which was damaged by a water leak. The water had leaked from a unit above theirs, owned by the respondent Lebing Song. The applicants want the respondent to pay for the repairs to their unit. All parties are self-represented.

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.

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 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

6. The issues in this dispute are:

    a. Is the respondent responsible for paying to repair the damage done to the applicants' unit?

b. If the respondent is responsible for the repairs, how much should she pay?

EVIDENCE AND ANALYSIS

7. On June 12, 2017, a shower diverter valve in the respondent's strata unit malfunctioned. Water leaked into several other units, including the applicants'. The strata council called Platinum ProClaim Restoration (ProClaim) to do emergency repairs. ProClaim cut holes in the applicants' ceiling and wall as part of that emergency repair work. The applicants want the respondent to pay for the cost of repairing and painting the drywall. The respondent says she was not negligent and is therefore not responsible for the damage caused by the leak. She also says that the damage to the applicants' unit should be repaired by the strata council and that if the strata council sends her an invoice for those repairs she will ask her insurance company to pay.

8. The respondent points to the strata's bylaws, which say that a unit owner is responsible for repairing their own property. I find that does not necessarily prevent the owner of a unit having a claim against another party for the cost of such repairs.

9. In a civil dispute, like this one, the applicant bears the burden of proving their claim on a balance of probabilities. The applicants have not provided any evidence that the respondent's carelessness caused the leak which gave rise to the damage. That means they have not proven that the respondent was negligent.

10. In deciding this dispute I considered the law of nuisance as well as the law of negligence. In law, a nuisance is a significant interference with use and enjoyment of property: *Royal Anne Hotel Co. Ltd. v. Village of Ashcroft* (1979), 1979 CanLII 2776 (BC CA). If something an owner does on their property causes water to damage a neighbouring property, they may have to pay for the damage: *McDonald v. B & W Meatmarket Ltd.,* 1994 CanLII 10377 (NL SC). But if they are not aware of the problem, and had no reason to know of it, they will not be liable: *Kraps v. Paradise Canyon Holdings Ltd.,* 1998 CanLII 6650 (BC SC); *Theberge v. Zittlau*,

2000 BCPC 225 (CanLII). The applicants did not provide any evidence that the respondent knew of, or ought to have known of, the problem with the diverter valve. I find, therefore, that they have not proven that she should be responsible under the law of nuisance. For that reason I dismiss the applicants' dispute.

ORDER

11. The applicants' dispute is dismissed.

Mary Childs, Tribunal Member