



# Civil Resolution Tribunal

Date Issued: June 21, 2018

File: SC-2017-006582

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Crockart v. Turcotte*, 2018 BCCRT 276

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

Sierra Crockart

**APPLICANT**

**A N D :**

Alex Turcotte

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. The applicant Sierra Crockart says the respondent Alex Turcotte's waterline burst, and that the resulting flooding caused the applicant's property to settle and sink. The applicant also says the respondent excavated the burst pipe, dug a trench and raised the grade of his yard, further damaging her yard and leaving it sunken.

2. The applicant seeks reimbursement of \$910.88, the amount she paid to a landscaper to fix the damage. The parties are self-represented.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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, and I note that neither party requested an oral hearing.
5. 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.
6. 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**

7. The issue in this dispute is to what extent, if any, the respondent owes the applicant \$910.88 for landscaping repairs she made to her yard after the flooding caused by the respondent's broken waterpipe?

## **EVIDENCE AND ANALYSIS**

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. It is undisputed the respondent's water main to his house broke in mid-September, 2016. The respondent says the repairs were completed on September 21, 2016.
10. The applicant says that on or about September 13, 2016, she noticed a large pool of water in her front yard, which was a shock because it had never happened before. The applicant notes her front yard was level when she purchased the property in 2015, as stated in the listing realtor's recent email in evidence. The photo attached to that email is somewhat grainy, but appears to show a level front yard, although some of the yard is obscured by the fence at street level.
11. The former owner of the applicant's property also confirms in her text messages in evidence that the property was level and completely re-done after a 2014 waterline break. The 2014 waterline repair is shown in the District of Kitimat service record in evidence. The respondent submits that these repairs to the applicant's yard involved a new driveway with a slope towards the respondent's house. Before the 2014 repair, the yard sloped to the driveway that was on the side of the yard adjacent to the applicant's other neighbour, not the respondent. The respondent submits that with the 2014 repairs the front yard was completely enclosed by the applicant's new driveway, "forcing it to create a natural pool within that front yard". The respondent submits that these 2014 repairs created a depression beside the cedar fence and was not levelled, as proved by the fence that was cut to match the slope.
12. I find little turns on the 2014 repair to the applicant's yard, although I do accept that it was repaired as described by the applicant and the former owner of her property. The material point is that the respondent's waterline burst in 2016 and caused

damage to the applicant's yard. There is no evidence before me that the applicant's yard had water pooling in it before the respondent's waterline burst.

13. The photos in evidence show the respondent's house, after the respondent's waterline burst, with a large amount of water pooling on the property line adjacent to the applicant's property. Other photos show water pooling on the applicant's side and near her front fence. Another photo shows what I find was the trench dug by the respondent after the burst pipe was removed.
14. When she saw the water in her yard on September 13, 2016, the applicant contacted the District of Kitimat who attended to investigate. The applicant says the District determined that the cause of the water in her yard was the respondent's main waterline, which had broken and been leaking for an undetermined amount of time.
15. As noted above, the applicant says the respondent's leaking waterline caused her adjacent yard to settle and sink. While the respondent fixed the waterline, the applicant says his excavation of the burst pipe caused extensive damage to her front yard. She says the trench he dug also continued to funnel water into her now sunken property. She says the respondent left the trench for months until he finally decided to fix his property in August 2017, 11 months later. The applicant says that after giving the respondent reasonable amount of time to fix the problem, she had no choice but to hire a landscaper to fix the damage.
16. Here, it is undisputed that water escaped from the respondent's yard, which is in his exclusive control, onto the applicant's yard. The case law is clear that I may draw an inference on all the evidence that the respondent is liable in negligence for the escaped water, unless the respondent can provide an explanation to show otherwise (*Westsea Construction v Billedeau*, 2010 BCPC 109 at paragraph 39, and *Fontaine v ICBC* [1998] 1 SCR 424). In other words, in this scenario there is a reverse onus of proof. The respondent has not provided a sufficient or reasonable explanation.

17. In particular, I find the most likely scenario is that the flooding seen in the applicant's front yard almost immediately after the respondent's water line burst was in fact caused by that burst water main. Even if there is some slope to the applicant's front yard, the material point is that there was no flooding in that yard before the pipe burst, and there clearly was flooding afterwards. I do not accept the respondent's submission that there has been since 2014 a "natural pool" of water in the applicant's front yard. Further, the respondent does not particularly dispute the applicant's evidence about the trench, which is evident from the photos. I find the respondent is responsible in negligence for the water that escaped from his yard and flooded into the applicant's yard.
18. I find the applicant's evidence supports her damages claims, particularly the photos and the evidence from her home's former owner. The applicant's invoice dated November 8, 2017 is for \$910.88, the amount claimed in this dispute. The invoice describes materials and labour to level out the applicant's front yard and re-seed the damaged section. I find the applicant is entitled to an order that the respondent reimburse her this amount. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$910.88, from November 8, 2017.
19. In accordance with the Act and the tribunal's rules, I find that the successful applicant is entitled to reimbursement of \$125 in tribunal fees and \$10.50 for the registered mail expense in serving tribunal documents on the respondent. While the applicant did not provide a receipt for the \$10.50 claim, I allow it as this is a typical amount for such an expense.

## **ORDERS**

20. Within 14 days of the date of this decision, I order the respondent to pay the applicant a total of \$1,052.47, broken down as follows:
  - a. \$910.88 as reimbursement for the landscaping repairs,
  - b. \$6.09 in pre-judgment interest under the COIA,

- c. \$125 in tribunal fees, and
  - d. \$10.50 in dispute-related expenses.
21. The applicant is also entitled to post-judgment interest, as applicable.
  22. 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.
  23. 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