



# Civil Resolution Tribunal

Date Issued: June 22, 2018

File: SC-2017-004811

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bagot v. Chan*, 2018 BCCRT 277

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

Lynda Alice Bagot

**APPLICANT**

**A N D :**

John Chan

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

John Chesko

## **INTRODUCTION**

1. This dispute is about an invoice to repair water damage.
2. The applicant, Lynda Alice Bagot, suffered water damage to her apartment on October 16, 2016 when water leaked into her apartment from the apartment

owned by the respondent, John Chan. It is undisputed that water leaked from the respondent's unit into the applicant's unit below. The applicant claims the \$492.88 cost of repairing the water damage. The respondent has refused to pay any amount.

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 on whole there are no significant issues of credibility or other reasons that might require an oral hearing.
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 make one or more of the following orders:
  - a. order a party to pay money;
  - b. order a party to do or stop doing something;

- c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

8. The issues in this dispute are:
  - a. Is the applicant entitled to the cost of repairing water damage caused when water leaked from the respondent's apartment?
  - b. Is the applicant entitled to \$300 for time spent on this dispute?
  - c. Is the applicant entitled to be reimbursed \$125 for tribunal filing fees and \$20 for registered mail expenses?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, to succeed the applicant has the burden of proof on the balance of probabilities. That means the tribunal must find it is more likely than not that the applicant's position is correct.
10. I have reviewed all of the submissions and evidence, but only address the evidence and arguments to the extent necessary to explain my decision.
11. The respondent's apartment is located above the applicant's. It is undisputed that on October 16, 2016, there was a water leak in the respondent's apartment and the water travelled into the applicant's apartment. The evidence is the respondent's tenant notified the applicant about the water leak and said it was caused by a leaking faucet hose in the respondent's apartment. Pictures submitted by the applicant show water stains and pooled water in the applicant's apartment.
12. As manager of the respondent's apartment, the respondent's wife was contacted about the water leak and dealt with the issue. I find the respondent's wife was the respondent owner's legal agent.

13. The parties' evidence includes correspondence, emails and damage estimate reports and shows the respondent's wife was involved in dealing with the water leak and communicated with the other persons involved. I find the respondent's wife, on behalf of the respondent owner, received relevant information to make informed decisions. I do not accept the respondent's argument the applicant did not provide sufficient information about the water damage and the repair to the applicant's apartment.
14. I also note email correspondence from the respondent's wife confirming that the respondent would pay for the applicant's repair costs caused by the water leak. The November 18, 2016 email from the respondent's wife tells the applicant to "...go ahead and fix the damage..." and "...we will pay the amount of \$492.88...."
15. The respondent does not deny there was a water leak from his apartment that caused damage to the applicant's apartment. The respondent, however, says after the fact that the applicant did not adequately explain the repairs claimed in the \$492.88 invoice. The respondent further says the applicant was not open and forthright and did not provide requested documents.
16. In a situation such as this where the water escaped from the apartment in the exclusive control of the respondent or their tenant, the law allows me to 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. See *Westsea Construction v Billedeau*, 2010 BCPC 109 at paragraph 39 and *Fontaine v ICBC* [1998] 1 SCR 424.
17. Based on the evidence and submissions before me, I find on a balance of probabilities the respondent is liable for the water that escaped from their apartment. I find the \$492.88 claimed for repair of the water damage has been proven by the applicants and the respondent is liable to pay that amount. I do not accept the respondent's unsupported suggestion the applicant was not forthright. Indeed I find there was full communication about the events and the respondent, through his agent, was 'in the loop' and received all information they felt was

needed at the time. I accept the applicant's submission the respondent's wife would not have told the applicant to go ahead with the repair and agreed to pay if there were unanswered questions.

18. The applicant also claims \$300 for time and labour spent dealing with this dispute. Generally time spent dealing with disputes is not recoverable. I see no reason to deviate from the tribunal's rule 129 and its general practice in not making awards for a party's time spent in bringing a dispute. I dismiss the applicant's \$300 claim.
19. In accordance with the *Act* and the tribunal's rules, I find the applicant is entitled to reimbursement of the \$125 in tribunal fees and \$20 registered mail charges for dispute-related expense.
20. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) from November 18, 2016.

## **ORDERS**

21. Within 30 days of the date of this order, I order that the respondent pay to the applicant a total of \$644.55 as follows:
  - a) \$492.88 for the applicant's repair bill;
  - b) \$6.67 as pre-judgement interest under the COIA, and;
  - c) \$125 for reimbursement of tribunal fees and \$20 in dispute-related expenses.
22. The applicant is entitled to post-judgement interest under the COIA, as applicable.
23. 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.

24. 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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John Chesko, Tribunal Member