



Civil Resolution Tribunal

Date Issued: August 10, 2018

File: SC-2018-001796

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Barone v. JDC Property Management Ltd.*, 2018 BCCRT 445

B E T W E E N :

Carminuccio Barone

APPLICANT

A N D :

JDC Property Management Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about water damage to personal property owned by the applicant, Carminuccio Barone. The applicant says there was a flood in the storage locker hallway of his apartment building and the water entered his locker and damaged various items, which he values at \$3,500. The applicant says the respondent, JDC

Property Management Ltd., was negligent in failing to notify the building's tenants about the flood and thus the applicant lost the opportunity to salvage his items sooner before greater damage occurred.

2. The respondent says it was not negligent because it did not have access to the tenants' storage lockers and reasonably believed the lockers remained dry. The applicant is self-represented, and the respondent is represented by Rolly Skov, an employee or principal.

JURISDICTION AND PROCEDURE

3. These are the tribunal's formal written reasons. 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, because I find that there are no significant issues of credibility or other reasons that might require 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 the Act and 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.

ISSUE

7. The issue in this dispute is whether the respondent was negligent in failing to advise tenants about the flood in the storage locker hallway, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicants bear 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. I note the respondent says that the tribunal does not have jurisdiction as this is a *Residential Tenancy Act* matter. The respondent did not elaborate, other than noting the tribunal's jurisdiction under section 3.6(3)(a) does not include residential tenancy matters. I disagree with the respondent. I find this dispute is narrowly about property damage, within the tribunal's jurisdiction. In support of this conclusion, I note the respondent is the property manager, not the applicant's landlord.
10. Next, the respondent property manager says it is not a proper respondent, because the claim should have been made against the landlord. The evidence before me is unclear whether the property manager was acting on the landlord's instructions in terms of dealing with the flood. In any event, nothing turns on it given my conclusion below that the respondent was not negligent.
11. Based on the limited evidence before me, the flood in the storage locker hallway occurred sometime in late January 2018. The respondent's fundamental argument was that the water damage was an accident and that it was not negligent in dealing with the flood. For the reasons set out below, I agree.
12. It is undisputed that the respondent is not responsible for the flood itself. This dispute is about the fact that the respondent did not notify the building tenants about the flood, which the applicant says prevented him from checking his locker

and possibly preventing the damage that occurred. The applicant stored guns and some hiking equipment in his locker, though he only has partial receipts for the amounts claimed and photo evidence of damage to only guns, a gun case, and what appears to be a belt. I pause to note that nothing turns on the applicant's tenancy agreement that prohibits storage of dangerous items, such as guns. That clause does not bear on the respondent's liability in negligence for the water damage caused to the guns.

13. The applicant's position is that the respondent would regularly post notices in the building about building security, garbage disposal, and questions why the respondent made the decision that the flood did not warrant a similar notice. It is undisputed that the respondent, the building's property manager, did not notify the building's tenants about the flood in the storage locker hallway. I do not accept the applicant's speculation that the lack of notification was further to an objective to evade liability. The evidence before me simply does not support that conclusion.
14. The applicant attended his storage locker on February 21, 2018 to clean his 2 guns, about 3 weeks after the flood. The applicant says "if I had been given the opportunity to salvage my property, my losses would have been minimal".
15. The respondent says they have no access to tenants' lockers, but that the building manager who dealt with the flood had no reasonable expectation that water entered any of them. The respondent says there was about 1" of water in the deepest part of the floor, but the camber of the floor was away from the lockers so there was less than 1/2" near the lockers. Further, the building manager confirmed that no water had entered an empty locker beside the applicant's locker. In addition, each locker has a 2 x 4 footer at the base of each door that the respondent says would act as a barrier for water in the hallway. Given all of these factors, the respondent says the building manager reasonably assumed the lockers remained dry. In reply, the applicant says it is "ludicrous" to believe that the 2 x 4 at the door's base would prevent water entry.

16. First, the building's rules, which the applicant signed and acknowledged, state that the building's owner is not responsible for loss due to water damage. I find this clause does not assist the respondent if the applicant proved the respondent had been negligent.
17. I find the central issue is whether the applicant has proved the respondent was negligent in failing to notify the tenants about the flood, which if so would lead to the conclusion that the respondent unreasonably believed the water had not entered the lockers. Certainly, in hindsight it would have been better to notify the tenants, as it is undisputed the applicant's locker contents were damaged. But that is not the legal test. Given the respondent's evidence described above, including the evidence about the empty locker being dry, I find the applicant has not proved negligence.
18. Even if I had found the respondent had been negligent in failing to inform tenants of the flood, I would not award the applicant the damages claimed. He admits he threw out the gun cases, leather boots, and a backpack, without thinking of preserving evidence. He only has receipts for gun repair, totaling about \$800. There is no other evidence before me about the value of the other damaged items. I find the applicant's claims must be dismissed.
19. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful I find he is not entitled to reimbursement of the \$175 paid for tribunal fees.

ORDER

20. I order the applicant's claims, and therefore this dispute, dismissed.

Shelley Lopez, Vice Chair