



Civil Resolution Tribunal

Date Issued: September 25, 2018

File: SC-2017-006626

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ehmann v. Nixon*, 2018 BCCRT 558

BETWEEN:

Bernard Ehmann

APPLICANT

AND:

Garth Nixon and Linda Nixon¹

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

¹ The Dispute Notice and Dispute Response forms identify the respondent in this dispute as "Garth Linda Nixon". However, the evidence shows that Garth Nixon and Linda Nixon are 2 separate people, so I have amended the style of cause accordingly.

INTRODUCTION

1. The applicant, Bernard Ehmann, says a tree from the respondent's property fell on his roof, resulting in damage and an insurance claim. He seeks \$1,000 for the insurance deductible.
2. The respondents, Garth Nixon and Linda Nixon, say they have complied with all the applicant's requests, including removal of additional fees. They say they are not liable for applicant's insurance deductible.
3. The applicant is self-represented. Linda Nixon represents both respondents.

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.
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 do or stop doing something;
- b. order a party to pay money;
- c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issue in this dispute is whether the respondents must pay the \$1,000 insurance deductible.

EVIDENCE AND ANALYSIS

9. 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.
10. The parties agree that part of a pine tree from the respondent's property fell on the applicant's home during a storm on July 23, 2017 and caused damage. Photos show damage to the roof, gutter, and interior ceiling.
11. The parties also agree that the applicant's home was repaired, and the applicant paid a \$1,000 insurance deductible for the repairs. The applicant provided an invoice and receipt showing the \$1,000 deductible.
12. On September 7, 2017, the applicant's lawyer wrote to the respondents asking them to remove several trees that the applicant felt were a risk for causing further damage. The letter said the applicant would pay to have the trees removed.
13. The applicant also wrote to the respondents on September 8, 2017 to advise them that a large cottonwood tree in their yard could reach his house and damage it in the event of a storm. He said its removal was the respondents' responsibility.
14. The respondents say they are not responsible to pay the deductible because they complied with these written requests and removed 15 trees. The respondents also

say that in the past they allowed the applicant to fell trees from their property to use as firewood, and he still has some of this wood. While I accept that evidence, I find it is not determinative of this dispute.

15. In a civil claim such as this the law of nuisance applies. The general principle is that people are entitled to use and enjoy their land without unreasonable interference. When there is actual physical damage, there is a strong indication that the interference is not reasonable and that a claim for damages should succeed (*Royal Ann Hotel Co. v. Ashcroft*, 1979 CanLII 2776 BCCA). However, in the area of nuisance from trees, case law indicates that an award for damages may not always follow just because there is actual damage. An award of damages will depend upon whether the nuisance was known or ought to have been known and whether reasonable steps were taken to remedy the nuisance (*Hayes v. Davis* 1991 CanLII 5716 BCCA and *Lee v. Shalom Branch #178 Building Society*, CanLII 2001 BCSC 1760).
16. *Hayes v. Davis* involves a claim in nuisance for damages after 2 trees fell onto a neighbour's property and injured an occupant. The court found that the trees' owner had been warned five or six months before the incident about a cluster of trees, including the 2 that fell, bending quite significantly as if they were going to snap. The Court of Appeal found that the owner knew or ought to have known that the trees posed a hazard, and was therefore liable for damages as he took no steps to abate or prevent the known and foreseeable risk.
17. Nuisance from trees does not give rise to what is known in law as "strict liability". This means the respondents are not legally responsible for the damage simply because it was caused by a tree from their property: *Reynolds v. Delta municipality / corporation*, 2018 BCCRT 381. Instead, in order for the respondents to be liable, the evidence must show that they knew or ought to have known that the tree, or part of it, was at risk of falling and causing damage.
18. The burden of proof in this dispute is on the applicant. Based on the evidence before me, I find the applicant has not proven that the respondents knew, or ought

to have known, that the tree that fell was at risk of falling. While the applicant warned the respondents about numerous trees after the July 2017 storm, he did not do so before then. The applicant did not provide evidence that the tree was damaged, unhealthy, leaning, or otherwise unusually risky before the storm, or that the respondents knew about such risks. The applicant did not indicate that he had discussed this tree or others with the respondents before the storm.

19. For that reason, I find the respondents were not aware of the potential for damage, and are therefore not liable to pay the insurance deductible.
20. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss his claim for reimbursement of tribunal fees. The respondent did not pay any fees and there were no dispute-related expenses claimed by either party.

ORDERS

21. I dismiss the applicant's claim and this dispute.

Kate Campbell, Tribunal Member