



Civil Resolution Tribunal

Date Issued: October 5, 2018

File: SC-2018-000344

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hart v. Neal*, 2018 BCCRT 595

BETWEEN:

Michael Hart

APPLICANT

AND:

Elizabeth Throsby Neal

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This small claims dispute is about damage claims arising from a bathtub leak. The applicant, Michael Hart, owns a strata lot directly below that of the respondent, Elizabeth Throsby Neal. Mr. Hart says the respondent's bathtub overflowed and

damaged his ceiling. He seeks \$600 for ceiling repairs, \$500 for mould testing, and \$900 for mould remediation if black mould is found.

2. The respondent says she is not responsible for the claimed ceiling repairs, mould testing, or mould remediation. She says a plumber repaired a leak in her bathtub overflow mechanism in February 2016, and through the strata council, she paid for all repairs to the applicant's strata lot. She says there was no further damage after that, and there was no mention of mould at the time of the repairs. The respondent also says the applicant filed his dispute outside the statutory limitation period.
3. Both 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 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 issues in this dispute are:
 - a. Are the applicant's claims barred under the *Limitation Act*?
 - b. Is the applicant entitled to \$600 for ceiling repairs?
 - c. Is the applicant entitled to \$500 for mould testing?
 - d. Is the applicant entitled to an order that the respondent pay \$900 for mould remediation if black mould is found?

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.

Limitation Period

10. The respondent says the limitation period for the applicant's claims has expired. The *Limitation Act* applies to disputes before the tribunal. The *Limitation Act* sets out limitation periods, which are specific time limits for pursuing claims. If the time limit expires, the right to bring the claim disappears, and the claim must be dismissed.
11. Section 6 of the *Limitation Act* says that the basic limitation period is two years, and that a claim may not be commenced more than two years after the day on

which it is discovered. I find that this two year limitation period applies to the applicant's claims.

12. Under section 14 of the *Civil Resolution Tribunal Act*, the limitation period stops when the Dispute Notice is issued. The tribunal issued the Dispute Notice for this dispute on January 24, 2018.
13. Section 8 of the *Limitation Act* says a claim is "discovered" on the first day that the person knew or reasonably ought to have known that the loss had occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate means to seek to remedy the loss.
14. In *Michael (Bruce) Woytuik v. The Owners, Strata Plan VIS 5970*, 2017 BCCRT 3, a decision that is not binding on me but which I find persuasive, a tribunal member stated as follows in paragraphs 44-46:

The limitation period begins on the first day that a person had knowledge of the matters in the claim or reasonably ought to have known about the claim.

Knowledge means the person claiming (a) knew that an injury, loss or damage occurred; (b) knew the loss, injury or damage was caused by an act (or failure to act); (c) knows who did the act (or who failed to act); and (d) knows that a tribunal proceeding is an appropriate means to seek a remedy for the loss, injury or damage.

In *Tender Choice Foods Inc. v. Versacold Logistics Canada*, 2013 ONSC 80, ("*Tender Choice*"), the Ontario Supreme Court [at para. 56] reviewed Ontario legislation with almost identical wording to section 8 of the *Limitation Act*. In *Tender Choice*, the court said that the limitation period commences when the person making the claim learns the underlying material facts or when the person ought to have discovered those facts by the exercise of reasonable diligence.

15. The applicant says he discovered the water damage on his ceiling on February 18, 2016, while repainting. I disagree. The applicant clearly knew about some amount of water damage when he went to the respondent's door about the leak, and when the plumber came on February 5 and 12, 2016. However, the parties disagree about when the applicant first told her about the leak. The respondent says the applicant came to her door to inform her about the leak on January 21, 2016. The applicant disputes this, but did not actually say when he first told the respondent about the leak.
16. As the respondent has not provided any evidence to support her assertion that the applicant told her about the leak on January 21, 2016, I do not accept it. In particular, she has not explained why the plumber did not come for another 2 weeks, on February 5, 2016.
17. I find that the evidence before me does not establish that the applicant's water damage claims were discoverable before January 24, 2016. I therefore find that the applicant's dispute is not barred under the *Limitation Act*.

Ceiling Repairs

18. The applicant says the respondent's bathtub overflow has been slowly leaking since her bathtub was replaced in 2009. He says she is negligent, as she failed to have a qualified plumber install the bathtub.
19. The respondent admits that a leak in her bathtub overflow was repaired on February 12, 2016, but she says that leak was small and recent. She says that if there had been a leak since 2009 there would have been mould, which was not present. The respondent says she paid for all plumbing repairs, and also paid for all drywall repairs in the applicant's strata lot. She says there was no cost to the applicant.
20. As noted above, the applicant bears the burden of proving his claims. Based on the evidence before me, I find he is not entitled to payment for ceiling repairs.

21. In his February 5, 2016 report, the plumber said he cut the drywall ceiling in the applicant's strata lot. He said that after testing the bathtub upstairs, he found a leak on the pop-up and overflow mechanism. The February 12, 2016 plumbing report says there was a small leak from the overflow on the respondent's bathtub. The plumber said he removed and replaced the entire drain and overflow.
22. The applicant emailed the strata council on February 12, 2016 and said the leak from the tub overflow had been repaired and tested. The respondent provided copies of invoices showing that she paid for plumbing repairs, as well as drywall repairs in the applicant's strata lot. The drywall repairs were billed to her through the strata corporation.
23. The applicant provided 2 photos of his bathroom ceiling from February 2016, shortly after the bathtub overflow and the ceiling drywall were repaired. These photos show some bubbled areas on the paint surface. Strata council member JH looked at these paint bubbles after they formed. In a February 19, 2016 email, she said the bubbles had disappeared. She said it seemed to her like a paint reaction issue.
24. On September 18, 2016, the applicant emailed the strata council stating that his bathroom ceiling was not properly repaired after the bathtub overflow leak. He said he wanted it to be repaired, and he wanted to know whether the strata council or the respondent was responsible.
25. The applicant provided 2 more photos, which he says were taken on May 27, 2018. These show cracks on the surface of the bathroom ceiling. However, there is no evidence before me to confirm that these cracks are due to water damage in general, or water leaked from the respondent's bathtub specifically. There is no discolouration on the ceiling paint, and the cracked areas appear dry. The cracks could have been caused by a faulty paint application, or to moisture from the shower. I note that based on the location of the shower curtain rod, the cracks appear to be in the immediate area of the shower.

26. I also note that the January 17, 2017 ceiling repair quote refers to repairing the damaged drywall on the bathroom ceiling, but does not mention the cause of the damage.
27. Based on the evidence before me, I conclude that the applicant has not met the burden of proving his claim for ceiling repair costs. In making this finding, I place significant weight on JH's February 19, 2016 email, which says the paint bubbles had gone away, and appeared to be a paint reaction issue. The applicant has not provided contrary evidence to establish that the May 2018 cracks, which are different in appearance from the February 2018 bubbles, are due to the respondent's bathtub leak.

Mould Testing and Remediation

28. I find the applicant has also not met the burden of proving his claims for mould testing or remediation. There is no evidence before me to establish the presence of mould in or near the applicant's strata lot. Rather, the February 12, 2016 plumbing report specifically says the plumber did not see any mould.
29. The applicant says there might be mould, so the respondent should pay for mould testing. I do not agree. This claim is speculative, and not supported by evidence. The plumber, who looked into the matter, said there was no mould. The plumber also noted that the leak was small, and that there were no other leaks. Based on that evidence, and the lack of contrary evidence, I decline to order mould testing or remediation.
30. Even if there were evidence suggesting the presence of mould, I would not order the \$1,400 claimed by the applicant for mould testing and remediation, as that amount appears to be speculative, and is not supported by evidence such as a written estimate.
31. 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 and dispute-related expenses.
The respondent did not pay any fees and did not claim dispute-related expenses.

ORDERS

32. I dismiss the applicant's claims and this dispute.

Kate Campbell, Tribunal Member