



# Civil Resolution Tribunal

Date Issued: October 15, 2018

File: SC-2018-001627

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lynch v. Curley*, 2018 BCCRT 621

**BETWEEN:**

Charles Rodger Brian Lynch

**APPLICANT**

**AND:**

Nancy Curley

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Maureen Abraham

## **INTRODUCTION**

1. This is a dispute over the cost of repairing a broken tooth.
2. The applicant Charles Rodger Brian Lynch and the respondent Nancy Curley are both self-represented.

## **JURISDICTION AND PROCEDURE**

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property 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 requiring 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 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**

7. The issue in this dispute is whether the respondent broke the applicant's tooth.

## EVIDENCE AND ANALYSIS

8. The applicant and respondent are siblings. In December 2017, both were involved in caring for their elderly, terminally ill mother. This was an emotionally charged and difficult time for their family.
9. The applicant says that on December 7, 2017, the respondent slapped the left side of his face in anger and broke his tooth. Although the respondent admits that she slapped the applicant, she says the slap was in self-defence.
10. Neither party provided witness statements with respect to the altercation or subsequent events, except for letters from dentists.
11. The applicant asks for an order that the respondent pay him \$5,000 for his dental expenses and apologize to him for their altercation. He also asks for reimbursement of his tribunal fees. The respondent says the claim should be dismissed.
12. I do not consider it appropriate to order an apology, as a forced apology would serve little purpose. The issue in this dispute is whether the applicant has proven causation with respect to his broken tooth. In other words, the onus is on the applicant to establish that it is more likely than not that her slap caused or contributed to the applicant's broken tooth.
13. Although the parties have different versions of events surrounding the slap, both say the slap occurred in the course of a heated discussion between them. It is not disputed that it was an open-handed slap and that the respondent was not wearing any jewelry on her hand.
14. Approximately one week after the slap, on December 14, 2017, the applicant visited his dentist (Dr. B). He was complaining of a sore tooth on the upper left side of his mouth. X-rays did not evidence any damage to the tooth.
15. On January 11, 2018, the applicant returned to Dr. B. An X-ray and photograph taken on that date show that his upper left molar was broken in half. The broken

tooth was extracted at that visit, and the applicant says a dental implant is now needed. The applicant acknowledges that Dr. B is his personal friend and that his family and Dr. B went on a 3-week vacation together between the December 14 and January 11 appointments.

16. In support of his claim, the applicant has provided a letter from Dr. B, copies of his X-rays of December 2017 and January 2018, a photograph of his tooth taken January 2018, and Dr. B's estimate of fees (estimate). The estimate sets out the costs related to investigation, removal and a dental implant. The applicant has dental benefits coverage. The estimate appears to set out what fees Dr. B expects will be covered by insurance.
17. Dr. B's letter sets out a brief summary of the applicant's treatment and an opinion on the cause of the fracture. She states that the tooth was previously healthy. She took an x-ray of the applicant's tooth on December 14, 2017, "1 week following assault" when the applicant reported pain with biting and chewing. In his submissions, the applicant states that he told Dr. B he had been attacked and "[hit] hard across the left side of [his] face".
18. Dr. B states that she adjusted the applicant's bite at his December 14, 2017, appointment and had no sufficient findings for other treatment. The applicant says his face was swollen and that he had ongoing pain and intense jolting sensations in his tooth and jaw, although this is not referenced in Dr. B's letter.
19. Dr. B states that the applicant returned for another visit on January 11, 2018. An x-ray taken on January 11, 2018, showed a deep fracture. She states that restoration would have had a poor prognosis so the tooth was extracted on that day. She then states that "the blow to the face" likely contributed to the tooth fracture and subsequent loss.
20. What Dr. B was told by the applicant about the slap is not clear. Dr. B does not detail her own understanding of the assault, mechanism of how the slap could have caused or contributed to the broken tooth in January 2018, and to what

extent, or her observations of the applicant between December 14, 2017 and January 11, 2018. She does not comment on why no fracture is shown in the December 2017 x-ray.

21. The respondent has provided a letter from her dentist, Dr. S., who reviewed Dr. B's letter, the X-rays and the photograph. Dr. S sets out his understanding of the background, and states his opinion that it is unlikely that a slap to the face would cause the kind of fracture shown in the x-rays and photograph. Dr. S states that there is evidence of crestal bone loss consistent with clenching and that there are signs of clenching. He says that the likely cause of the fracture is an underlying clenching issue, which would have been exacerbated with stress.
22. In his submissions, the applicant takes issue with Dr. S's opinion and explains why he believes the x-ray of December 12, 2017 did not show a fracture. However, the applicant has not provided any evidence to indicate that he is qualified to assess and provide a personal opinion capable of challenging Dr. S's. None of the applicant's explanations are set out in Dr. B's letter.
23. Dr. B's evidence is that no damage to the tooth was evident at the September and December 2017 visits. Her rationale in connecting the slap to the fracture is unclear. Dr. S says that the January 2018 fracture may have been caused by an unrelated condition. Without an explanation of how and why Dr. B reached her conclusion and what facts she relied on to reach that conclusion, the evidence that the applicant has provided is insufficient, particularly in the face of Dr. S's contrary opinion, which I prefer.
24. I find that the applicant has not proven his claim.

## **ORDER**

25. I order that the applicant's claims, and therefore this dispute, is dismissed.

---

Maureen Abraham, Tribunal Member