



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VIS6012 v. G. Williams Plumbing & Heating Services Ltd.*, 2018 BCCRT 710

B E T W E E N :

The Owners, Strata Plan VIS6012

APPLICANT

A N D :

G. Williams Plumbing & Heating Services Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Darrell Le Houillier

INTRODUCTION

1. The applicant, The Owners, Strata Plan VIS6012, hired the respondent, G. Williams Plumbing & Heating Services Ltd., to repair a pipe in the building owned by the applicant. During work done on March 31, 2016, there was a water leak. The applicant says the respondent is responsible for the leak and seeks reimbursement

of its \$5,000 insurance deductible. The respondent says it should not have to pay because the applicant is responsible for the leak. The applicant is represented by Rachel DeMott, who I infer is a strata council representative. The respondent is represented by Glynne Williams, either an employee or principal.

JURISDICTION AND PROCEDURE

2. 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.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. There is a dispute between the parties as to how the leak occurred. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by personal demeanour in a courtroom or tribunal proceeding. Assessing which account is most likely depends on its harmony with the rest of the evidence. In this dispute, I find that I am able to properly assess and weigh the documentary evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.
4. 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.

5. 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

6. Is the respondent responsible for any losses that the applicant suffered as a result of the water leak on March 31, 2016?

EVIDENCE AND ANALYSIS

7. On March 17, 2016, the applicant called the respondent to investigate a leak in its building. The respondent's plumber attended the building and located a leak in a pipe. The leak was temporarily patched with a rubber gasket and a gear clamp.
8. After some delay, on March 31, 2016, the respondent's plumber attended the building to repair the leak. The plumber shut off what he thought was the water system in the building and tried to drain the system of water. According to the applicant, the plumber wanted to access all the suites so he could drain the system but not enough notice had been given to the owners of the suites. The suites were not accessible so the system could not be fully drained. When the plumber cut into the pipe, an estimated 60 to 75 gallons of water spilled out and caused damage.
9. According to the respondent, the plumber drained the system of water. Not all suites needed to be accessed. Taps were opened on the lowest level and water stopped flowing out of them, indicating the system was drained. The respondent says the problem was that the leaking pipe was separate from the main water system for the building and was without a shut-off valve. The respondent says this was not a typical plumbing setup and the applicant did not inform the plumber or the

respondent about this setup. When the plumber cut into the pipe, water spilled out. The applicant disputes these statements.

10. A considerable amount of water flowed down into a ground-floor space rented to a retail store. The retail store reportedly suffered in excess of \$25,000 in damages, including lost revenues resulting from closure of the store.
11. In May and June, 2016, the respondent's plumber returned to the building to complete the repairs. The pipe was fully repaired on June 2 or 3, 2016. An invoice lists materials used in three visits between June 2 and 13, 2016, including two ball valves. A ball valve is a kind of shut-off valve.
12. The applicant had insurance, which covered some of the water damage. The insurer attempted to recover the deductible from the respondent but abandoned the effort. There is some question about whether the insurance company understood the facts correctly when abandoning its efforts. The applicant was left out-of-pocket for its \$5,000 deductible.
13. The applicant says the respondent has provided inconsistent explanations for the water remaining in the leaking pipe when its plumber cut into it. First, the respondent said the plumber confirmed the pipe was drained in the presence of a property manager and a second plumber. Next, the pipe was reportedly separate from the system that had been shut down and drained. Next, the respondent said it was not told how to properly drain the system. Next, the damage reportedly resulted not from the cutting of the pipe but the prolonged leak that led to the respondent being called. The applicant says it hired a professional plumber to carry out the repairs and the plumber did not act with all due care.
14. Specifically, the applicant argues that the plumber could have tested to ensure the pipe was drained before cutting into it. The applicant also states that the pipe likely had been part of the system that had been shut off, given that the leak continued for a limited time. The applicant says this suggests the system was off but not fully

drained. The applicant says the respondent should repay the \$5,000 deductible on the applicant's insurance policy.

15. The respondent says that its plumber took all due care and used standard procedures to drain down the water system in the building. The respondent says it is therefore not responsible for any damage caused by cutting the pipe. The respondent noted its own insurer did not find the plumber to have been negligent.
16. Because the parties disagree about what led to the release of water on March 31, 2016, I must address the disagreement. The applicant bears the burden of proof.
17. The applicant says the pipe was part of the system the plumber had shut down but it was not drained of water. The applicant says this explains the limited amount of water released once a cut was made into the pipe. This makes sense but ignores that there may be other explanations for how only a limited amount of water could have been released. Additionally, it is not clear to me that the applicant's representative has any expertise in plumbing.
18. The respondent says the pipe was part of a separate system that did not have a shut-off valve. The invoices from the respondent indicate that shut-off valves were installed in June 2016. They were not installed on March 31, 2016. No explanation was provided for why shutoff valves were installed, but the installation of such valves suggests either there was no shutoff valve on the pipe that was repaired or that the valves were not in proper working order. That they were installed in June 2016 and not March 31, 2016 may reflect that some temporary solution was used to stop the leak on March 31, 2016.
19. Based on the evidence before me, I find it more likely than not that the pipe was not connected to a functional shutoff valve. Given that neither party has suggested there were non-functional shutoff valves used on March 31, 2016, I find that the pipe cut into on March 31, 2016 did not have a shutoff valve. I recognize that the respondent seems to have offered different explanations of how the leak occurred. It is not clear who offered each explanation, but even if the respondent offered

inconsistent explanations, it does not matter. The installation of shutoff valves, along with the rest of the submissions, is sufficient for me to conclude that the leaking pipe could not be shut off on March 31, 2016.

20. The respondent is responsible to reimburse the applicant for its deductible if its plumber was negligent in carrying out the repair to the pipe and the applicant suffered damages as a result. Negligence requires four elements to exist: a duty of care, falling short of the standard of care, foreseeable damages, and causation.

21. I find that the respondent was not negligent because its plumber took reasonable care to ensure that he did not cause a larger water leak while repairing the damaged pipe. The standard is not perfection. The plumber took reasonable steps to ensure that the pipe he was repairing was drained of water before cutting into it. The respondent communicated with the applicant to ensure the water system in the building was shut off and was not made aware that there was a separate system, including the pipe to be repaired. I find the plumber and, by extension, the respondent, to have exercised reasonable care in these circumstances. I therefore find the applicant has not proved the respondent was negligent. The applicant's claims must therefore be dismissed.

ORDER

22. I dismiss the applicant's claims and, as a result, this dispute.

Darrell Le Houillier, Tribunal Member