



# Civil Resolution Tribunal

Date Issued: December 3, 2018

File: SC-2018-001068

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Milic v. Sanghera et al*, 2018 BCCRT 787

**B E T W E E N :**

Mary Milic

**APPLICANT**

**A N D :**

Baljit S. Sanghera, Gajander K. Sanghera, and Simerpreet S. Sanghera

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Shaun Ramdin

## INTRODUCTION

1. This is a dispute about damage caused to the applicant's property when a tree in the neighbouring respondents' backyard fell over. The applicant is represented by her son-in-law, Zeljko Plavcic. The respondents are self-represented.

## **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. 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.
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.

## **ISSUE**

6. The issue in this dispute is to what extent, if any, are the respondents responsible for the damage caused by their tree falling onto the applicant's property.

## EVIDENCE AND ANALYSIS

7. The parties reside in Surrey, British Columbia. The applicant is the registered owner of her residential property. The respondents are the registered owners of the neighbouring residential property. The backyards of their respective properties share a property line.
8. On March 13, 2016, a tree in the respondents' backyard fell over the shared property line, damaging their shared fence and the applicant's backyard shed. On March 14, 2016, the respondents had the fallen tree removed from the applicant's property.

### ***The applicant's position:***

9. The applicant's position is that the respondents are liable for the damage to her property caused by the fallen tree. She says they knew or ought to have known that the tree was at risk of falling and causing damage.
10. In particular, the applicant states that the respondents should have known that their tree in issue was at risk of falling because in February 1996, the City of Surrey issued a Hazardous Tree notice to the previous owners of the respondents' property. The applicant also states that the City of Surrey's, Surrey Tree Protection Bylaw, 2006, No. 16100, makes property owners liable for any damage caused by their trees.
11. The applicant therefore claims for the following amounts as damages resulting from the respondents' fallen tree:
  - a. \$2468.00 to purchase a new shed (including shipping and installation);
  - b. \$393.75 as reimbursement for landscaping to repair the damage to her backyard caused by the tree falling;
  - c. \$189.99 to replace her outdoor fire pit;

- d. \$579.99 to replace miscellaneous items: two shelving units; two mirrors on fence shared with respondents; restoration of one photo; six 4"x6" photo frames; bird bath;
- e. \$50.00 for reinstallation and staining of three fence panels damaged by the falling tree;
- f. \$19.00 as reimbursement for their copy of the tree removal permit obtained from the municipality;

12. The applicant also seeks reimbursement for claim-related expenses as follows:

- a. \$34.02 for reimbursement of registered mail fees required to serve the respondents with their claim; and
- b. \$175.00 for reimbursement of tribunal filing fees.

***The respondents' position:***

13. The respondents do not dispute that the tree was on their property, that the tree fell over on March 13, 2016, and that it damaged the applicant's shed when it fell. However, they say they are not liable for any damages, as the tree falling over was caused by natural disaster. Further, they state that they were not aware of the 1996 Hazardous Tree notice issued to the previous property owners, as they bought the property in 2009 and the notice was never brought to their attention.
14. The respondents also note that they took steps to remove the tree once they realized it was hazardous. They state that they noticed on March 9, 2016 that the tree was tilted and they accordingly requested a permit from the municipality to remove the tree. The permit was issued on March 11, 2016.
15. Further, the respondents dispute that the applicant incurred any damages beyond the shed itself, as they assisted her with clean-up after the tree fell and they did not notice that the other items claimed were damaged.

## **Analysis**

16. 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 reasonable 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 caused by trees, the 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*, 2001 BCSC 1760 (CanLII)).
17. As noted above, the respondents do not dispute that their tree fell over and damaged the applicant's shed. I acknowledge the respondents' submissions that they were not aware of the February 1996 notice from the municipality regarding hazardous trees on their property, and that they moved quickly to obtain a permit to remove the tree once they realized, on March 9, 2016, that it had tilted. Nonetheless, when looked at as a whole, the evidence supports a finding that the respondents knew or ought to have known that the tree was at risk of immediately falling and they did not take reasonable steps to remedy this.
18. In particular, and in their own evidence, the respondents acknowledge that when they realized the tree was tilted on March 9, 2016, they were very concerned it would immediately fall over and cause harm, including to themselves. Further, they say they visited the permit office a couple of times because they viewed the matter as an emergency. However, their view was that they were not allowed to cut the tree without the permit. They say that once they obtained the permit on March 11, 2016, they called a few tree removal services who would not perform tree cutting because of windy weather conditions. A service was ultimately booked, though it is

not clear for when, but the tree fell on March 13, 2016 prior to the removal service arriving.

19. Section 7 of the City of Surrey Tree Protection Bylaw, 2006 No. 16100 provides that a tree removal permit is not required if the tree is in immediate danger of falling and causing injury to persons or property due to natural causes. Rather, for safety, the owner can cut the tree down and report it to the city the next day. The city will then review the matter, including tree removal. Given this, and the respondents' own safety concerns as late as March 9, 2016, I do not find that it was reasonable for the respondents to wait days for the permit before scheduling the tree cutting. I therefore find that the respondents knew of the nuisance and did not take reasonable steps to remedy it.
20. I therefore find that the respondents are liable to the applicant for the following damages to the applicant's property:
  - a. \$2468.00 to replace the applicant's shed. In support of this, the applicant provided photographs of the tree's damage to her shed, which was extensive, and an estimate from the merchandiser to replace the shed (including shipping and installation);
  - b. \$393.75 as reimbursement for the applicant's landscaping fees. In support of this, the applicant provided the invoice for services which expressly noted the landscaping work was performed to repair damage to her yard caused by the respondents' tree;
  - c. \$199.99 to restore a photo damaged by the fallen tree. In support of this, the applicant provided an estimate from a photo restoration company; and
  - d. \$19.00 as reimbursement of the applicant's cost to obtain her copy of the tree removal permit. In support of this, the applicant provided a receipt.
21. Based on the evidence before me, however, I do not award damages for the remaining amounts claimed by the applicant. I acknowledge that the applicant

provided photographs of damage to some of these claimed items. However, there is insufficient evidence to quantify the extent of these damages.

22. As regards the fire pit, the mirrors, and the fishing rods, the applicant only provided photographs of price-tags of what she claims are comparable items. As regards the shelving units, the photo frames, the bird bath, and the reinstallation and staining of damaged shared fence panels, the applicant did not provide any evidence quantifying the damages claimed. In the absence of evidence indicating the value of the actual items damaged, or independently confirming their replacement or repair costs, I cannot establish the extent of the damages actually incurred by the applicant in respect of them. I am therefore unable to find the damages claimed for these items as owing.
23. Given all of this, and in accordance with the Act and the tribunal's rules, I am satisfied that the applicant is entitled to an order for a damages award in the amount of \$3,080.74. As set out in my order below, the applicant is also entitled to pre-judgment interest on this amount under the *Court Order Interest Act* (COIA) from March 14, 2016, which I find to be the most appropriate date in the circumstances.
24. Further, under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I therefore find that the applicant is entitled to an award of \$209.02, comprised of her \$175.00 in tribunal filing fees and \$34.02 for registered mail costs, for which she provided receipts.
25. The respondents are jointly and severally liable the above-noted awards to the applicant. The applicant is entitled to post-judgment interest on the awards under the COIA.

## ORDERS

26. Within 30 days of the date of this order, I order the respondents to pay the applicant a total of \$3,366.01, broken down as follows:
- a. \$3,080.74 in damages;
  - b. \$76.25 in pre-judgment interest under the COIA; and
  - c. \$209.02 for tribunal fees and dispute-related expenses.
27. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
28. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Shaun Ramdin, Tribunal Member