Civil Resolution Tribunal

Date Issued: February 19, 2019

File: SC-2018-003875

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ballantyne v. De Sousa*, 2019 BCCRT 198

B E T W E E N :

Paul Ballantyne

APPLICANT

A N D :

Corinna De Sousa

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. The parties are neighbours whose relationship has deteriorated. In this dispute, the applicant, Paul Ballantyne, says the respondent, Corinna De Sousa, then willfully damaged his rear fence and caused other mischief to his property. The applicant

claims $724.03, for the cost of a) repairing the rear fence, b) the installation of a side fence to stop the nuisance of the respondent's lawn mowing debris, and c) the cost of rebar to stop the respondent from knocking over his hedge trees when she mowed her lawn.

2. The parties are each self-represented. For the reasons that follow, I allow the applicant's claims.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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 also 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.

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: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

7. The issue in this dispute is whether the applicant is entitled to damages for the respondent's damage to his rear fence and for the applicant's installation of rebar and construction of a side fence.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.

9. During the construction of the applicant's residence between 2010 and 2013 they had a dispute over a boundary fence and the respondent's retaining wall that was discovered to be encroaching 18 inches onto the applicant's property. It is undisputed that the parties agreed that the respondent's new rebuilt wall would encroach about 2" onto his property.

10. The applicant installed a fence on his property, near the respondent's newly rebuilt retaining wall, which as noted above was located about 2" onto the applicant's side of the shared property line. The applicant says around this time the respondent texted him numerous times threatening to remove his fence, which prompted him to install a surveillance camera. The respondent raised no concern about video and audio recordings. They do not appear to show any "private communication" within the meaning of section 184 of the *Criminal Code*, as they are of the respondent in her rear or front yard, at times swearing at the applicant by name or gesturing towards his camera. The applicant denies ever trespassing on the respondent's property, as apparently alleged by the respondent in the past.

11. In her Dispute Response filed at the outset of this proceeding, the respondent gave a general denial that the applicant needed to install a side fence due to her lawn mowing. The respondent also stated the rebar "is a joke", but provided no other explanation. The respondent further stated that she "made a mistake removing what I thought was a protective coating" but stopped when the applicant told her "that is how the fence is".

12. The respondent provided no documentary evidence and no submissions for this decision, despite multiple reminders of the opportunity to do so. In the circumstances here, I find the applicant's position is assumed to be correct where the respondent chose not to respond to it. This is similar to the situation where liability is assumed when a respondent is in default. I reject the respondent's assertions in her Dispute Response, which were non-specific apart from her admission to damaging the applicant's rear fence.

13. The applicant alleges the respondent has harassed his family in a variety of ways over the past few years, and the evidence before me is some evidence of that. Again, the respondent chose to provide no evidence and no submissions. I accept the applicant's evidence, which I find is supported by the video clips and photos before me that includes video of the respondent shoving garbage from her property through the applicant's hedge and onto the applicant's property. The video also includes numerous instances of the respondent yelling and swearing at the applicant and to some extent his family. They also show the respondent ramming her lawnmower into the applicant's hedge, visibly pushing the trees over.

14. I turn to the relevant chronology. I will deal with the rear fence repair first. The applicant's video shows that on June 6, 2016, the respondent used a knife to cut into the privacy screen on the back side of the applicant's fence, and then threw the material over the fence. The applicant says the respondent at the same time gouged out the fence board with deep knife cuts. As noted above, some damage was admitted by the respondent in her Dispute Response, although I reject her characterization of it as being her mistaken removal. The respondent knew it was

the applicant's fence and there would be no reasonable basis for her to think she was entitled to remove protective coating from the fence, even if I were to accept her Dispute Response statement. That said, I find the video makes it clear the respondent deliberately damaged the fence.

15. The applicant claims $156.07 for the rear fence repair, and on a judgment basis I allow this relatively nominal amount. The applicant provided a number of receipts towards this total plus a reasonable breakdown for the specific materials involved, including around $40 for about 2 hours of his own labour to fix the fence. I am satisfied the applicant's partial re-purposing of unused materials bought for other purposes was reasonable and cost-effective.

16. I turn to the side fence claim. The applicant says while the respondent mowed her lawn she then repeatedly purposely blew grass onto the applicant's side lawn. This went on for months, beginning after the applicant installed the hedge on the front lawn in order to stop the respondent from mowing "lawn circles" into his lawn. I find the applicant's photos and text messages with the respondent support his claim. The applicant repeatedly asked the respondent to stop leaving her grass mulch on his side path and to clean up her mess, but while the respondent clearly received his requests she continued the behaviour.

17. Given the parties' history, I find the applicant's construction of a side fence was reasonable to prevent the applicant's continued grass debris from being intentionally dumped on his side path. In particular, in the undisputed circumstances before me I find the grass debris amounted to a legal nuisance, which is an unreasonable interference with the right to enjoy one's property.

18. The applicant claims $526.76 receipt for the side fence installation, and on a judgment basis I allow this amount, which is largely supported by receipts in evidence. As with the rear fence, the applicant repurposed some materials and used his own labour.

19. Finally, I turn to the rebar. As noted, the applicant says the respondent repeatedly rammed her lawnmower into his hedge, and a few examples of this are shown on the video before me. I accept the applicant's evidence that the respondent repeatedly was intentionally careless, if not deliberate, in her uprooting of the applicant's hedge tree.

20. Again, given the applicant's hostile behaviour, I find the applicant reasonably installed rebar along the hedge length to prevent the respondent from using the applicant's hedge as a "bumper stop" for her lawnmower. The applicant claims $41.20 and I allow this amount. While the applicant's receipt and evidence indicates the rebar may have been closer to $47, the applicant's stated claim was $41.20 and so that is what I order.

21. In summary, I allow the applicant's total claim of damages in the amount of $724.03. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on that amount, from June 6, 2016, the date of the rear fence damage and which I consider most reasonable in all of the circumstances. In accordance with the Act and the tribunal's rules, I find the successful applicant is entitled to reimbursement of $125 in tribunal fees.

ORDERS

22. Within 14 days of this decision, I order the respondent to pay the applicant a total of $868.53, broken down as follows:

    a. $724.03 in damages,

    b. $19.50 in pre-judgment interest under the COIA, and

    c. $125 in tribunal fees.

23. The applicant is entitled to post-judgment interest, as applicable.

24. 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 final decision.

25. 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.

Shelley Lopez, Vice Chair