



Civil Resolution Tribunal

Date Issued: March 1, 2019

File: SC-2018-009204

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Larrivee v. Milosevic et al*, 2019 BCCRT 244

BETWEEN:

Chantal Larrivee

APPLICANT

AND:

Boris Milosevic and Zeljko Susac

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Mary Childs

INTRODUCTION

1. The applicant, Chantal Larrivee, is the owner of a strata unit located beneath another unit owned by the respondents, Boris Milosevic (Mr. Milosevic) and Susac Zeljko. In October 2015 and February 2016 water entered the applicant's unit from the unit

owned by the respondents. The applicant says the respondents should pay for the cost of repairs done to fix damage caused by that water. The respondents say they should not be required to pay for the repairs. All parties 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 118 of the *Civil Resolution Tribunal 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 whether the respondents are required to reimburse the applicant for all the amounts she paid for repairs to her strata unit as a result of water leaks from the respondents' strata unit.

EVIDENCE AND ANALYSIS

7. The applicant says that on October 1, 2015 water leaked (Leak #1) into her strata unit from the unit upstairs owned by the respondents. The leak flowed into the applicant's kitchen. An email to the applicant from Mr. Milosevic dated October 5, 2015 contains his apology for the water leak and the statement "I accept full responsibility for this incident and want to offer you to fix the damage (everything) on my expense." In that email, Mr. Milosevic indicated that the strata's handyman Ned was available to do the work at the applicant's convenience.
8. On or about February 24, 2016 there was a second leak (Leak #2) of water from the respondents' unit, which again caused damage to the applicant's unit. This time the leak was from the respondents' bathroom. The water caused damage to the ceiling of the applicant's bathroom.
9. The parties submitted a number of emails between them showing that for many months they were communicating with each other about repairs to the applicant's unit. They disagreed on the scope and cost of the repairs. Mr. Milosevic disagreed with the applicant's statement that the wall between her kitchen and living room required opening to ensure that mold was not growing in the wall. He suggested that instead he compensate her for both leaks by paying to install new tiles in her kitchen. Eventually the parties rejected this option and the applicant insisted that the respondents pay for the costs of repairs to her living room drywall and bathroom ceiling.
10. Although the parties had originally agreed that Ned would do the work, by the time they had agreed on the scope of work, in July 2017, he was unavailable and fully booked until October 2017. Emails between the parties indicate that for a number of months the applicant had tried without success to get Ned to do the repairs. Boris

emailed the applicant on July 10, 2017 to say that the applicant should engage another contractor to do the drywall repairs from leak #1, and Ned would do the final inspection. He then said the damage to the applicant's bathroom ceiling which had been caused by Leak #2 were minimal and should not be repaired until the applicant was remodeling her bathroom, whether then or 5 years in the future. At that time, Boris said, he would send Ned to replace half the ceiling, tape and sand the edges and repaint the whole ceiling. He refused to pay before the applicant was remodeling because he said the work required would be too expensive.

11. On July 18, 2017 the applicant emailed the respondents to say that she was going to have her bathroom ceiling, which had been damaged by Leak #2, repaired by Artisan Plumbing, the company engaged by the strata council to do all plumbing work in the building. She said she was prepared to wait for Ned to do the repairs to the kitchen/living room wall (which had been damaged by Leak #1) as long as she had a firm guarantee of a date when he would do the work. Mr. Milosevic replied saying she should have that work done in the summer because the windows would have to be open the whole time. He indicated that he could not guarantee that Ned would be available.
12. On August 1, 2017, the applicant emailed the respondents to advise them that the bathroom renovations were to be done on August 14 and 15.
13. The applicant hired TB Contracting (TB), a contractor recommended to her by Artisan Plumbing, to repair her bathroom ceiling. TB repaired the applicant's bathroom ceiling and also repaired the drywall in her living room. On August 30, 2017 the applicant emailed two invoices from TB to the respondents. The invoice for repairs to the bathroom ceiling was for a total of \$672.68. The invoice for replacing the living room drywall was for \$581.43.
14. On September 2, 2017 the applicant emailed the respondents to say that they had not responded to her request for payment. She indicated that she would apply to this tribunal on Tuesday September 5.
15. On September 12, 2017 Boris replied to her email, saying that he did not want to pay

the invoices because he had not approved any estimates in advance. He argued that the amount charged for the bathroom ceiling repairs was too high and offered to pay \$262.50 of the invoiced \$672.68. He made no offer to pay anything for the other work.

16. The respondents now say there is no proof of any damage caused by Leak #1. I do not accept that submission. The respondents agreed that the applicant could open the drywall to check for moisture and mold. The invoice of TB supports the claim that the work was done. Regardless of whether the opening of the drywall revealed the presence of mold or not, the opening of the drywall and its repair was a foreseeable and natural consequence of Leak #1. The respondents also acknowledged responsibility for Leak #1 and promised to pay for the repairs.
17. The law of negligence says that if one party's fault causes foreseeable damage to the property of another, then the party at fault must compensate the other party sufficiently to put them back in the position they were in before the damage occurred. The respondents have not disputed responsibility for the damage caused by Leak #1 and Leak #2.
18. The respondents have not provided evidence to show that the invoiced amounts were excessive, other than some information about costs of certain materials. They have argued that the hourly rate charged by TB was too high, but they have not provided evidence of what other contractors would charge, other than their own assertions that others charge less. They have not provided written estimates of labour and materials provided by contractors familiar with this type of work. Although they asked the applicant to provide them with estimates for approval, she did not agree to that request and I find that she was not obliged to obtain their approval of estimates before the work was done. On balance, I accept the invoices provided by the applicant as a reasonable amount for the repairs to her property.
19. For the reasons set out above, I order the respondents to pay the applicant a total of \$1,254.11 for the repairs to her unit.
20. 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 find the applicant is entitled to reimbursement of \$225.00 in tribunal fees. The applicant has also claimed \$21.42 as the cost of registered mail necessary to serve the application on the respondents. The applicant has not provided any evidence to prove the cost of that expense, but the amount has not been disputed by the respondents. I find that the applicant is entitled to reimbursement of \$21.42 in dispute-related expenses.

ORDERS

21. Within 30 days of the date of this decision, I order the respondents to pay the applicant a total of \$1,539.29, broken down as follows:
 - a. \$1,254.11 as reimbursement for the costs of repairs to her unit,
 - b. \$38.76 in pre-judgment interest under the *Court Order Interest Act*, calculated from October 1, 2015 on \$581.43 and from February 24, 2016 on \$672.68, and
 - c. \$225.00 in tribunal fees and \$21.42 for dispute-related expenses.
22. The applicant is entitled to post-judgment interest, as applicable.
23. 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.

24. 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..

Mary Childs, Tribunal Member