



Civil Resolution Tribunal

Date Issued: April 2, 2019

File: SC-2018-006392

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Evard v. NOORT DEVELOPMENTS LTD.*, 2019 BCCRT 413

B E T W E E N :

Taivo Evard

APPLICANT

A N D :

NOORT DEVELOPMENTS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant, Taivo Evard, says the respondent, NOORT DEVELOPMENTS LTD., damaged the side of his house and property during their demolition and construction of a neighboring house. The applicant wants the respondent to pay him \$4,830 for the cost of repairing the damage.

2. The respondent admits to damaging the applicant's window sill and spilling concrete powder on the applicant's property, however they say the applicant refused their offer to repair the damage and remove the concrete. The respondent denies causing any other damage to the applicant's home or property.
3. The applicant is self-represented and the respondent is represented by an employee or principal.

JURISDICTION AND PROCEDURE

4. 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, they said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to 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 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.
6. 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.
7. 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

8. The issue in this dispute is whether the respondent is required to pay the applicant \$4,830 to repair the damage to his house and property.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.

Wall

11. The applicant says that during the respondent's demolition of a neighbouring house their workers taped and nailed tarps to the side of his house which they used as a "bumper" as they shoveled asphalt tiles off the roof of the neighbouring house. The applicant says this chipped paint and left asphalt marks along the west wall of his house. The applicant says he had repainted his house 2 years earlier and that it was in perfect condition before the respondent caused the damage. The applicant submitted many photographs of his house being painted, of the finished paint job before the alleged damages, and of the damages he says the respondent caused.
12. The respondent denies that any of their workers nailed or taped tarps to the applicant's house but says that if they did tape tarps to the house, this shows their workers were being considerate of the applicant's property. The respondent points to many visible black marks, a dent, and some missing or chipped paint in the applicant's photographs taken before the alleged damage occurred. The respondent says the applicant's paint job was not as perfect as he claims, and that many of the marks and stains on the wall of his house were preexisting before they bought the neighbouring property.
13. The respondent says that for the applicant's close-up photographs of marks and stains on the wall, there is no way of verifying which side of the house they were taken from. However, I place little weight on this argument, because I find that in order to zoom in on these marks it would be impossible to show with certainty in the photograph which wall of the house the photograph was taken from. Based on the other photographs in evidence, I am satisfied that the applicant's photographs of the damage to his wall are taken from the west side of house. The respondent says

some of the photographs show circular marks while others show lateral marks, and they question how falling debris could cause such marks. The respondent also says it is unlikely the tar from the shingles could have left such marks unless they struck the side of the house with great force, in which case the respondent says they would expect to see accompanying dents from the force of the shingles, which are not visible in the photographs. The respondent says many of the marks appear to be nothing more than bird droppings, and that the marks can be cleaned without requiring re-painting.

14. On the evidence before me, I find it is more likely than not that most of the marks on the wall of the applicant's house were caused by the respondent. I say this in part because the respondent's submissions were made by its principal who the applicant says was not always present at the property during all the work the respondent completed, which the respondent's principal does not deny. Therefore, I find much of the respondent's evidence to be speculative. I also find it unlikely that marks from asphalt shingles would only be left on the side of the house if they were accompanied by dents. However, I also find that the wall was not in perfect condition before the alleged damage occurred, contrary to what the applicant claims. The applicant submitted an estimate from College Pro painters to repair the wall for \$1,995, which includes pressure washing, scraping and scuffing, caulking and painting. The respondent does not dispute the amount of the estimate. While the respondent suggests that marks on the wall can simply be cleaned rather than repainted, they have submitted no evidence to support this claim.
15. However, since I have found the wall was already marked before the respondent caused damage to it, I find that if I require the respondent to pay the applicant the full cost of repairing the wall, the applicant will be put in a better position than he would have been in if the damage had not occurred. This is what is known in tort law as betterment. In *Nan v. Black Pine Manufacturing Ltd.*, 1991 CanLII 1144 (BC CA), the BC Court of Appeal said that in most cases the starting point for assessing tortious damage to property is the replacement cost, and this amount may be adjusted for pre-loss depreciation or post-reinstatement betterment, depending on what is reasonable in the circumstances. In this case the pre-loss depreciation is minimal, since the applicant repainted his home 2 years prior to the damage. Therefore, I find the respondent must pay the applicant \$1,496.25 to repair the wall, which is 75 percent of the full cost of repairing it.

Window Sill

16. The parties agree that the respondent damaged the applicant's window sill, but the respondent says the applicant refused their offer to repair it. The applicant

submitted an estimate from Braybrook Projects for \$200 plus 5 percent GST to repair the window sill. The respondent submitted an estimate to repair and paint the window sill for \$250 plus GST.

17. The evidence before me indicates that the relationship between the parties was strained for much of the time the respondent was working on the neighbouring property. In the circumstances I find the applicant was not required to allow the respondent the opportunity to repair the windowsill, and the appropriate remedy is for the respondent to pay the cost of repairing the windowsill. I prefer the applicant's estimate both because it is the lower cost option, and because it is the contractor of the applicant's choosing. Therefore, I find the respondent must pay the applicant \$200 plus GST, which is \$210, to repair the window sill.

Concrete Strip

18. The applicant says that during the respondent's rebuilding of the neighbouring house their workers chipped and damaged a concrete strip on his property delineating the property line. The applicant submitted numerous photographs of the concrete strip before and after the alleged damage.
19. The respondent says the applicant's photographs taken before the damage show the concrete strip was not in good shape, and that there were missing pieces, broken edges, and at least 1 crack. The respondent submitted a photograph of the concrete strip showing a missing piece which the respondent says was missing before the construction.
20. I agree that the applicant's photographs taken before the alleged damage show the concrete strip was not in perfect condition, and that it was missing at least one large piece. However, many of the photographs show fencing and gravel from the respondent's work directly next to or on top of the concrete strip. Based on these photographs and the nature of the work involved, I find it is more likely than not that the respondent caused some of the damage to the concrete strip.
21. The applicant submitted an estimate from Braybrook Projects for \$2,500 plus GST to remove and replace the concrete curb. He says this contractor told him the concrete could not be repaired and had to be replaced. The respondent does not dispute the amount of the estimate. However, I find that if I require the respondent to pay the applicant the full cost of repairing the concrete strip the applicant will be put in a better position than he would have been in if the damage had not occurred. The evidence before me is that there was at least one piece of the concrete strip missing before the damage occurred, and the remainder of the concrete strip was

significantly weathered and quite old. Therefore, I find the respondent must pay the applicant \$1,312.50 to repair the concrete strip, which is 50 percent of the full cost of repairing it.

Spilled Concrete

22. The applicant says the respondent spilled concrete on his paving stones while installing a new fence, which the respondent acknowledges. The applicant says the respondent never cleaned the concrete off the paving stones, so it dried and hardened. The respondent says they offered to hose and sweep the concrete away, but the applicant refused this offer. The respondent says the “damage” shown in the applicant’s photographs of the pavers is very superficial and the dried concrete can be chipped out of a crack and wire-brushed or hosed off the surface of the pavers. The applicant says a wire brush would scratch his relatively new paving stones.
23. The applicant says the estimate he submitted from Braybrook Projects also includes work to replace the paving stones, however that is not indicated anywhere on the estimate. In the applicant’s June 28, 2018 letter to the respondent he estimated the cost of replacing the pavers at \$250 but provided no evidence to support the amount of this claim.
24. On the evidence before me I find the applicant has not established that the paving stones need replacing, or established the cost of cleaning the spilled concrete, and I dismiss this claim.
25. In total, I find the respondent must pay the applicant \$3,018.75 to repair the wall, window sill, and concrete strip. The evidence before me is that the applicant has yet to incur any of these expenses, and therefore I find he is not entitled to pre-judgment interest on this amount.
26. Under section 49 of the Act, and tribunal rules, as the applicant was largely successful I find he is entitled to reimbursement of his tribunal fees in the amount of \$175. He claimed \$21 in dispute-related expenses but provided no explanation as to what exactly these expenses were for. Without more I find the applicant is not entitled to reimbursement for these expenses.

ORDERS

27. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$3,193.75, broken down as follows:

- a. \$3,018.75 to repair the applicant's home and property, and
 - b. \$175 in tribunal fees.
28. The applicant is entitled to post-judgment interest, as applicable.
29. 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.
30. 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.

Sarah Orr, Tribunal Member