



Civil Resolution Tribunal

Date Issued: May 14, 2019

File: SC-2018-005913

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *SODICAN (BC) INC. v. Dr. Paul Pocock Inc.*, 2019 BCCRT 583

B E T W E E N :

SODICAN (BC) INC.

APPLICANT

A N D :

Dr. Paul Pocock Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Sodican (BC) Inc. says the respondent Dr. Paul Pocock Inc. failed to pay repair costs for a plumbing issue in its rental office. The applicant claims \$1,909.58 for the repair work.

2. The applicant also claims expenses for a plumbing expert report (\$455.70) and legal fees of \$907.20.
3. The respondent says that the lease between it and the applicant provides that the applicant is responsible for repair and maintenance of the landlord-owned building drainage system. The respondent says that the blockage was located 65 feet from the tenant's toilet, meaning it must have been in the building drainage system and not inside the tenant's suite. The respondent denies responsibility for the repair and asks that the dispute be dismissed.
4. The applicant is represented by employee or principal Zakir Shamji. The respondent is represented by principal or employee Jan Myles.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.

8. Under tribunal rule 9.3(2), 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

9. The issue in this dispute is whether the applicant or respondent is financially responsible for plumbing repairs completed at the office suite.

EVIDENCE AND ANALYSIS

10. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them below only to the extent necessary to explain and give context for my decision.
11. The applicant says the problem originates in the plumbing installed by the respondent's tenant, or a previous tenant, and is therefore not its responsibility.
12. The respondent says the problem is a blockage located 65 feet away from the toilet, which it says is within the main sanitary stack, and is the applicant landlord's responsibility.
13. The applicant leases the office space to the respondent under a September 1, 2004 lease.
14. The lease says that the applicant is responsible for repair and maintenance of "pipes...and plumbing" installed by it "or otherwise providing utilities or services to the Building."

15. The lease also says that the respondent is responsible for repair and maintenance of “all Leasehold Improvements”. Leasehold Improvements are defined as any fixtures or improvements or alterations installed by the tenant or any previous tenant.
16. There was no evidence proving precisely what distance of plumbing was installed by the respondent tenant or its predecessor, as distinct from the plumbing that the applicant had in place. However, the parties appear to agree, and I find, that the building’s main sanitary stack plumbing is the applicant’s responsibility.
17. On April 18, 2018, the respondent had a plumber, Modern Drainage Ltd. (Modern Drainage), attend to inspect a plugged toilet in its suite. Modern Drainage plunged the toilet and it tested okay, but then returned to the site because the toilet plugged again. Modern Drainage noted that it tested the toilet, basin and shower and found the “main sanitary sewer line is plugged (building problem)”.
18. The respondent advised the applicant landlord of the issue.
19. The applicant called a plumber, Ainsworth, who attended and fixed the issue on April 19-21, 2018. The applicant paid the plumber’s \$1,909.58 invoice.
20. Ainsworth’s invoice says the major problem was identified “approx. 65 feet down.” Ainsworth could not get to the problem with its shorter machine, opting to bring in a 100-foot drain machine the next day.
21. Ainsworth also noted that the clean out was “seized” and that it repaired a broken water supply shut off, though it did not separate out the costs associated with the repair of the shut off. I find that the repair costs associated with the broken water supply shut off were minor, given that the invoice talks about the blockage being the “major problem.”
22. On December 18, 2018, the respondent asked Modern Drainage to return because the toilet was plugged again. On this occasion, Modern Drainage found remnants of a paper pack blockage found about 70 feet from the office toilet, again in the

building's main sanitary sewer line. Modern Drainage offered an opinion that it was "likely" both the April 2018 and December 2018 blockages were caused by a paper pack in the same area of the building's main sanitary sewer line.

23. On January 11, 2019, Modern Drainage wrote a letter explaining that it discovered the blockage was "well inside the building's main sanitary sewer line and not in the connecting line between Dr. Pocock's toilet and the main sanitary sewer line."
24. Ainsworth wrote a June 21, 2018 email in which it stated that there was damage to the toilet shutoff, likely done by "previous plumbers". Ainsworth goes on to say that it is difficult "in any building to know where all water lines, drainage lines...go and where they travel, which direction they travel, once the walls are up and drywalled." I find this explanation unhelpful, particularly as there are likely building plans available, though the applicant did not file any in evidence. In any event, nothing in this opinion supports a conclusion the respondent is at fault.
25. Ainsworth then says that the suite is the highest in the building, and if the main drain was clogged, other plumbing fixtures in the building would be backed up. Ainsworth offers its opinion that it is "extremely" unlikely that this clog would be in the building's main drain.
26. Ainsworth does not address how the clog could be within the plumbing of the respondent's suite, when it originally identified the clog being 65 feet away from the respondent's toilet.
27. Yet another plumbing firm, Pacific Mechanical Systems Ltd. (Pacific Mechanical), attended at the suite, after both blockages had been cleared, and tried to determine "if any of the floods coming from the toilet were caused by base building services backing up into the tenant's toilet."
28. Pacific Mechanical examined the drainage serving the suite, albeit after both blockages had been cleared. Pacific Mechanical offered its opinion that although the drainage serving the suite was to code, it could be improved to make a back up

less likely, by increasing the grade of drainage above the minimum diameter, and by installing a longer and sweeping bend at one location.

29. Pacific Mechanical says that the drain line is connected to another bathroom using a double Y joint. Pacific Mechanical then offers that it is “highly unlikely the backup was caused downstream of the double Y. If it were caused downstream, the sewage would have backed up into the other tenant’s bathroom floor drain”, which is 14 to 16 inches lower. The applicant asks me to assume that these aspects of the plumbing were installed by the respondent but provided no evidence that they were.
30. Pacific Mechanical prepared a hand drawn sketch that it says shows the distance from the affected bathroom to the building’s main sanitary stack. Because the applicant did not specify the distance between the toilet in the respondent’s unit and the building’s drainage system precisely, I am left to estimate the distance with some reliance on the incomplete drawing.
31. Looking at the drawing, it does not provide a distance from the toilet to the next two junctures in plumbing. It then shows 30 feet to another turn, and then a further 20 feet to the main sanitary stack. Looking at the scale of the drawing, the main sanitary stack appears to be less than 60 feet from the unit. On that basis, I find that any blockage more than 60 feet from the toilet is likely within the building’s main sanitary stack.
32. For this reason, I prefer the respondent’s evidence that the blockage is located 65 feet or more from the unit’s toilet. As such, I find it is the responsibility of the applicant landlord. Put differently, I find the applicant has not shown it was more likely than not that the blockage was less than 60 feet from the building’s main stack. This conclusion is supported by the distances provided by Ainsworth and Modern Drainage, who are the only plumbing firms that provided evidence based on direct observation at the time of the blockages, rather than after the fact. Ainsworth originally identified the blockage being at least 65 feet from the toilet itself. I prefer this evidence to its later opinion.

33. Given that the blockage was identified 65 feet away from the toilet, the blockage was outside the area of the system for which the respondent is responsible under the lease. As well, the lease language provides that the landlord is responsible for pipes that provide utilities or services to the Building, regardless of their distance from a tenant's suite.
34. For completeness, I have considered the applicant's argument that, because the suite is the highest in the building, the main stack could not be the source of the blockage or back ups would have been seen in other suites. However, in the evidence there was a reference to a backup in another suite (belonging to a Dr. V.) that the applicant did not address directly. I therefore draw an adverse inference against the applicant on this point and prefer the respondent's account as to what occurred. As well, the location of the blockage was pinpointed near the top of the main sanitary stack.
35. Given my conclusions, I find that the applicant has not met the burden upon it to prove its claim on a balance of probabilities. I dismiss the applicant's claims and this dispute.
36. 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. As the respondent paid no tribunal fees, I make no order in this regard. I dismiss the applicant's claim for reimbursement of tribunal fees.

ORDER

37. The applicant's claims and this dispute are dismissed.

Julie K. Gibson, Tribunal Member