



# Civil Resolution Tribunal

Date Issued: May 24, 2019

File: SC-2018-009527

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *KOROLCZUK v. QIU*, 2019 BCCRT 624

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

**ANNA KOROLCZUK**

**APPLICANT**

**A N D :**

**HONG WEI QIU**

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sarah Orr

### **INTRODUCTION**

1. The applicant, ANNA KOROLCZUK, hired the respondent, HONG WEI QIU to repair a blockage in a bathroom pipe in her strata property (unit 902). She says the respondent broke his plumbing tool inside the pipe causing damage to it, and that she had to pay for a plumber to open the ceiling in the unit below hers (unit 802) to clear the blockage in her pipe. She then had to pay for a contractor to repair the

hole in the ceiling in unit 802, and she wants the respondent to reimburse her \$1,300.95 for the cost of this work.

2. The respondent says he was not negligent in operating his tool. He says the applicant's pipe was already blocked before he operated his tool, and his broken tool did not cause the damage to her pipe.
3. Both parties are self-represented.

## **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. 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.
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 9.3 (2), 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.

8. The applicant initially claimed reimbursement of \$842.10 for the cost of the plumber's work to open the ceiling in unit 802 and clear the blockage in her pipe. She has since withdrawn that claim.

## **ISSUE**

9. The issue in this dispute is whether the respondent is required to reimburse the applicant \$1,300.95 for the cost of the contractor's work repairing the hole in the ceiling in unit 802.

## **EVIDENCE AND ANALYSIS**

10. 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.
11. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claims.
12. In February 2018 the applicant had a blockage in one of her bathroom pipes which was causing flooding. On February 17, 2018 she hired the respondent to repair the blockage. The respondent used a drain snake that was 5/16 inches in diameter. He says at the "P trap" area of the pipe the snake hit something hard that was blocking the pipe. The applicant says the respondent did not stop using the snake when he hit the blockage, and he kept pushing the snake in until part of it broke off inside the pipe. In contrast, the respondent said he stopped operating the snake as soon as it hit the hard object, but his snake was already tangled in the hard object and it broke. The respondent determined that the applicant would need to hire someone else to cut open the bathroom ceiling in unit 802 to access the blockage in the applicant's pipe.

13. On February 20, 2018 the applicant's strata hired Ashton Service Group (Ashton) who opened the ceiling in unit 802 and cleared the blockage in the pipe. Ashton's invoice states that on February 20, 2018, the "snake stuck in tub drain of unit 902...disconnected drainage but was unable to see the snake in the trap or down the trap arm." The invoice states that Ashton returned on February 22, 2018 and "found major blockage" which they were able to remove. It is unclear if this "major blockage" was the broken part of the respondent's plumbing snake, or something else. However, based on the diameter of the snake, and the fact the applicant's pipe was blocked before she hired the respondent, I find I can reasonably infer that it is unlikely a plumber in these circumstances would refer to the broken end of a plumbing snake as a "major blockage."
14. In April 2018, the applicant's strata paid a contractor \$1,300.95 to repair the ceiling in unit 802. In May 2018 the applicant's strata corporation notified her that she was responsible for the cost of clearing the pipe and the associated repairs. In July 2018 the applicant's insurer denied coverage for the cost of the repairs. As noted above, this \$1,300.95 is what the applicant claims in this dispute.
15. On December 11, 2018, the applicant's strata manager notified her that Ashton suspected the blockage in her pipe was caused by either hardened cement or hardened caulking. The letter says Ashton "tried to unclog the drain but were unable to do so – as a result they had to disconnect the drain in the ceiling of the unit below. They had to use extreme force to break through the blockage (cement?)." The letter goes on to state that in the strata council's opinion the snake part breaking off into the pipe made no difference to the outcome. The applicant says that none of the council members are plumbers, so theirs is not a qualified opinion.
16. The applicant says that as a professional plumber the respondent was negligent in leaving her with a bigger problem than before she called him and leaving her without a solution. She says the respondent could have referred her to a roto-router or plumbing company that had the equipment to deal with "bigger problems." She says it was the respondent's responsibility to remove the tool from the pipe and that

he failed to do so. The respondent says the applicant did not give him the opportunity to remove the broken tool from the pipe. He says cutting out and repairing the ceiling in unit 802 is outside the scope of his profession, which is why he advised the applicant to call someone else to cut open the ceiling in unit 802. He says he told the applicant she could call him to remove the blockage once the ceiling was cut open, but she never did.

17. I find the evidence before me does not establish that the respondent was negligent. The parties gave conflicting evidence about how the respondent reacted when his snake hit the blockage, but there were no witnesses and there are no expert opinions in evidence as to whether the respondent should have done anything differently in the situation. The applicant says that if Ashton had been the initial plumber to attend to her pipe blockage instead of the applicant, Ashton may have handled the blockage differently. However, I find this assertion is speculative and the applicant has provided no evidence to support it.
18. The applicant says she spoke to a plumber in December 2018 who told her that if the respondent had used a power snake with a cutting head instead of the snake he used, and if he had accessed the blockage through the 3-inch water closet pipe rather than the bathtub, it is possible the respondent could have removed the blockage without removing the ceiling in unit 802. However, the applicant did not provide a statement from this plumber, and therefore this evidence is hearsay. While the tribunal may accept hearsay evidence, I place little weight on it in the circumstances, as the applicant has not explained why she could not provide a statement from the plumber. Additionally, as the respondent points out, the applicant says she “described the whole situation” to the plumber and showed her his bathroom, however I cannot be certain what exactly the applicant told the plumber, and whether the information he relied on was accurate.
19. Given the technical nature of the plumbers’ work in this case, I find the standard of conduct in the circumstances is beyond the knowledge and experience of an ordinary person, and I find expert evidence is necessary to establish the standard of

care (see *Bergen v. Guliker*, 2015 BCCA 283 (CanLII)). In the absence of such evidence, I find am unable to determine the respondent's standard of care in the circumstances, or whether the respondent breached that standard.

20. The applicant says the respondent's snake appeared well-used and she suggests this is the reason it broke but provided no evidence to support this claim. She also suggests that the tool Ashton used was better than the respondent's since they were successful in repairing the blockage. Ashton's receipt indicates they used a "k38" and the respondent says he used a similar tool, a "K45", however there is no evidence to establish precisely what these tools are or the difference between them. In any event, there is insufficient evidence to establish Ashton used a "better" tool, or that its choice of tool affected the results.
21. The applicant says the respondent is responsible for the fact that the ceiling in unit 802 had to be cut open. She says Ashton's invoice states that the reason they had to open the ceiling in unit 802 was because of the broken tool in the pipe. I disagree. It is undisputed that the applicant's pipe was blocked before she called the respondent. Ashton's receipt indicates they were informed of a broken tool inside the pipe, but upon further investigation they discovered "major blockage." The strata manager's letter clearly states that the blockage was caused by something hard (likely concrete or caulking) other than the snake. On balance, I am satisfied that the "major blockage" was something other than the respondent's broken snake. I also note that it was ultimately Ashton who decided to and did cut open the ceiling, not the respondent.
22. On balance, I find the applicant has not established the respondent was negligent, or that there is any basis on which he is required to reimburse her for the contractor's work to repair the ceiling in unit 802. I dismiss this claim.
23. Under section 49 of the Act, and tribunal rules, since the applicant was unsuccessful I find she is not entitled to reimbursement of her tribunal fees or dispute-related expenses.

## **ORDER**

24. I dismiss the applicant's claims and this dispute.

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Sarah Orr, Tribunal Member