



# Civil Resolution Tribunal

Date Issued: May 27, 2019

File: SC-2019-000104

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *MULTISERVICES VANCOUVER HOUSEHOLD MAINTENANCE LTD. v. TSANG*, 2019 BCCRT 642

B E T W E E N :

MULTISERVICES VANCOUVER HOUSEHOLD MAINTENANCE LTD.

**APPLICANT**

A N D :

HENRY TSANG

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

## INTRODUCTION

1. This is a dispute about a flooded storage space. The applicant, MULTISERVICES VANCOUVER HOUSEHOLD MAINTENANCE LTD., says that it sustained damages when a storage unit rented to it by the respondent, HENRY TSANG,

flooded. The applicant says the respondent's negligence caused losses of \$1,060.00 and seeks an order for that amount. The respondent denies that he is responsible for the damages claimed by the applicant.

2. The applicant is represented by Sonia Zebadua, who I infer is a principal. The respondent is self-represented.

## **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. 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.
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 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**

7. The issue in this dispute is whether the respondent must pay the applicant \$1,060.00, as follows:
  - a. \$750 as a refund for rent paid for December 2018 and January 2019; and
  - b. \$310 for the cost of new storage in December 2018 and January 2019.

## **EVIDENCE AND ANALYSIS**

8. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The parties provided submissions and evidence in support of their respective positions. While I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.
9. The applicant and the respondent entered into a rental agreement for a garage storage space on December 22, 2017. The term of the lease began on January 1, 2018, and the rent was set at \$375 per month. The applicant moved business-related equipment and supplies and some personal items into the garage.
10. At some point in January of 2018, the garage flooded. A drain in the laneway appeared to be malfunctioning and the grade of the lane directed the water onto the respondent's property, including the garage.
11. The applicant says it made a claim under its own insurance and paid for the flood-related damages on the condition that the respondent took appropriate measures to ensure that the garage was properly secured and protected against further damage. Documentation from the municipality confirms that the respondent's spouse contacted it several times about the drain and water diversion issue. It is not clear how much work the municipality performed on the drain, but it would appear that the municipality adjusted the grade in the lane on 2 occasions in 2018.
12. The garage flooded again in November of 2018. The applicant says it contacted the respondent, who stated that the "city was supposed to take care of it". On

December 13, 2018, there was another flood in the garage that the applicant says damaged its property. The applicant says it moved its property to another storage unit, and incurred charges for this new storage unit as well as the cost of moving its property and cleaning the garage.

13. The applicant says the respondent did not find an appropriate solution to protect the garage and then kicked them out of the garage. The applicant states that the respondent offered to void the rent for the month of January, but then charged it rent for both December and January. The applicant says that the respondent was negligent and refused to cover the damages it sustained as a result. The applicant's position is that it should not have had to pay rental charges at the garage in December of 2018 and January of 2019, and that the respondent should be responsible for the cost of obtaining a new storage space.
14. The respondent denies that he was negligent, and says that he took steps to address the water ingress. He says that he installed a barrier around the garage (which was removed when it proved to be ineffective). The respondent says that he decided that he needed to have full access to the garage in order to deal with the water issue. According to the respondent, in late November of 2018, he gave the applicant the requisite 2 months' notice to vacate the garage. The respondent says he offered to refund 2 months of rent, but the applicant refused. After the December flood, the respondent says he installed a sump pump and removed the water with a shop vac and dehumidifier. He says he made another offer of 2 months rent and \$400 for moving expenses, but this offer was rejected on 2 occasions. The respondent says that the agreement he signed with the applicants explicitly states that the applicants take sole responsibility for their belongings and that they waived all claims against him.
15. The applicant's position is that the respondent was negligent in failing to address the water issues in the garage. In order to be successful in a claim for negligence, the applicant must establish that the respondent had a duty of care to it, failed in that duty, and that the failure caused the loss.

16. There is no indication that the respondent was the source of the water that caused the flooding to the garage. The evidence supports that rainwater entered the garage from the lane, which is municipal property. The evidence before me shows that the respondent took steps to address the water issue at the time of the first flood, and before the more damaging flood at the end of 2018. The respondent's attempt to install a flood barrier proved unsuccessful. The respondent's spouse contacted the municipality on several occasions between January and March of 2018 and again in November of 2018 to ask for assistance with the water entering the property. At some point after this call, the municipality appears to have performed some work in the lane. The spouse emailed the applicant on December 12, 2018 to request access to the garage in order to assess whether the municipality's work in the lane had affected the situation. The final and worst flood occurred the next day.
17. Although the respondent attempted to have the municipality deal with the source of the water problem, he could not control the municipality's response to the matter. Based on the evidence before me, I find that the respondent took reasonable steps to address the water issue that started on municipal property. Accordingly, I find that there was no negligence on his part.
18. Even if the respondent had been negligent, I find that the applicant would not be able to recover its claimed damages. The agreement between the parties states that the renter must provide their own insurance to cover contents and liability, as the landlord does not provide such coverage. The agreement also contains the following clause, which was initialed by the applicant's signatory:

The renter agrees that the owner shall not be liable or responsible in any way for any personal injury or death that may be suffered or sustained by the renter or by any person associated with the renter, who may be upon the premises, or for any loss or damage or injury to any property, including cars and contents thereof. The renter acknowledges that the use of the premises and related facilities by renter, or by any person associated with

the renter, is entirely at their own risk, and waives all rights to any claim against the landlord.

19. By accepting this term, I am satisfied that the respondent assumed all the risks associated with the use of the garage.
20. I find that the applicant was responsible for the rent contemplated by the agreement, and is not entitled to a refund from the respondent. I also find that the respondent is not responsible for the rent the applicant paid at an alternate storage facility. I dismiss the applicant's claims in this regard.
21. 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. As the applicant was unsuccessful, I dismiss its claim for reimbursement of tribunal fees.

## **ORDER**

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

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Lynn Scrivener, Tribunal Member