



Civil Resolution Tribunal

Date Issued: May 28, 2019

File: SC-2018-005287

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lowe v. Beacon Underwriting Ltd.*, 2019 BCCRT 647

B E T W E E N :

Rick Lowe

APPLICANT

A N D :

Beacon Underwriting Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This dispute is about insurance coverage for a water leak that occurred in spring 2016. The applicant, Rick Lowe, purchased an insurance policy for his mobile home from the respondent insurer, Beacon Underwriting Ltd. (insurer). The insurer says that the water damage was caused by a slow water leak that is excluded from coverage under the policy. Mr. Lowe says that the water damage was caused by a

sudden water leak, which is covered. He claims \$5,000 towards the cost of repairs for the water leak and other expenses.

2. Mr. Lowe is self-represented. The insurer is represented by an employee.

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*. 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.

7. As a preliminary matter, the insurer argues that Mr. Lowe has already been compensated for the damages he claims in this dispute in a Residential Tenancy Board (RTB) proceeding. Mr. Lowe brought an RTB proceeding against his former tenant on July 29, 2016. The tenant had vacated the mobile home in the summer of 2014. Mr. Lowe claimed, among other things, water damage to the floor that he says was caused by standing water from snowy boots and pet dishes. Mr. Lowe was awarded \$847.63.
8. While the insurer does not use this exact language, I find that its claim is that Mr. Lowe's claim is an abuse of process because he seeks damages for the same loss. The insurer's position appears to be based solely on the fact that both repairs were related to water damage to the floors, and it provides no evidence or submissions to support the assertion that it was the same damage. Indeed, the evidence is clearly to the contrary. Mr. Lowe repaired the damage from his tenants in August 2014, well before the events that caused the damage to the floor at issue in this dispute.
9. For these reasons, I find that the insurer's argument on this point has no merit. I find that this claim is not an abuse of process.

ISSUES

10. The issues in this dispute are:
 - a. Did Mr. Lowe start this tribunal proceeding too late?
 - b. Was the leak excluded under the policy?
 - c. Did Mr. Lowe need to provide a Proof of Loss to the insurer?
 - d. If Mr. Lowe has coverage under the policy, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Mr. Lowe must prove his case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
12. Mr. Lowe owns a mobile home in Cranbrook, which he rented out to long-term tenants. At the times relevant to this dispute, Mr. Lowe had a homeowners insurance policy for the mobile home from the insurer. The policy contains coverage for "sudden and accidental escape of water from plumbing". The policy also contains an exclusion for loss or damage "caused by continuous or repeated seepage or leakage of water" (water damage exclusion).
13. On June 29, 2015, the mobile home was struck by lightning, which caused a fire. Mr. Lowe made a claim under the policy for repairs, which the insurer covered. At that time, Mr. Lowe says that there was no evidence of any water damage.
14. On February 2016, a flooring contractor installed new vinyl plank flooring throughout the mobile home. No one had lived in the home since the fire. At this point in time, the water line was still turned off to avoid freezing. At a point in time that is not in evidence, someone, presumably a contractor, turned on the water. At the time the flooring contractor installed new flooring, there was no evidence of any water leak.
15. On April 20, 2016, Mr. Lowe was inspecting the repairs to the home and he noticed that when he stepped on the new vinyl floor next to the bathtub, water seeped up between the adjoining vinyl plank. He made a claim for water damage under the policy on the same day that he discovered the water damage.
16. On May 13, 2016, the insurer retained an independent adjuster to investigate the claim. The adjuster, in turn, hired a restoration contractor, Kootenay Disaster Restorations Ltd. (Kootenay), to determine the cause of the leak.
17. Kootenay provided a report dated May 14, 2016. Kootenay believed that the leak was caused by continuous or repeated water leakage. Kootenay said that there was

a leak between the siding and belly board of a bathroom window because the window frame was not properly sealed.

18. On May 14, 2016, the adjuster sent Mr. Lowe a letter enclosing a blank Proof of Loss and said that Mr. Lowe had 2 years from the date of the loss to commence a claim.
19. Mr. Lowe hired his own restoration contractor, Rainbow International Restoration of the Kootenays (Rainbow), for a second opinion about the cause of the damage. Rainbow wrote a report dated July 4, 2016. Rainbow said that the damage was caused by a leak in the service lines to the bathtub, which it observed from underneath the mobile home.
20. On July 21, 2016, the adjuster sent a letter advising Mr. Lowe that the insurer had denied their claim under the water damage exclusion based on Kootenay's report.
21. Mr. Lowe hired a contractor, DB, to redo some of the repairs from the fire damage, which he considered substandard. DB attended in late August 2016. DB tore out part of the wall underneath the bathroom window, where Kootenay said the leak originated. DB saw no evidence of a leak or water damage around the window frame. DB also opened the drywall near the water service connectors for the bathtub and when he turned on the water, there was an immediate leak. Mr. Lowe instructed DB to replace both fittings, which he did.
22. Faced with the insurer's denial of coverage and conflicting reports from Kootenay and Rainbow, Mr. Lowe retained Don Gamache of Concept Construction to provide an expert opinion. Mr. Gamache is a journeyman carpenter and general contractor with roughly 45 years of experience in the industry.
23. Mr. Gamache reviewed Kootenay's and Rainbow's written reports, DB's statement and the available photographs. He noted that there was no evidence of any water damage around the bathroom window. He concluded that the leak described by Kootenay was impossible given the location and pattern of discolouration and damage to the floor and walls as depicted in the photographs. He also concluded

that the pattern and location of water damage was consistent with Rainbow's opinion. Mr. Gamache also opined that the damage was likely caused by a sudden and brief leak from the water service lines.

24. Mr. Lowe therefore argues that the most likely explanation for the damage is that there was a problem with the water line connector and when the contractor turned on the water in the spring of 2016, there was a "sudden release of water" that pooled in the subfloor near the bathtub.

Did Mr. Lowe bring this dispute too late?

25. The insurer argues that Mr. Lowe brought this dispute too late. Section 23 of the *Insurance Act* provides for a 2-year limitation period for an insured to start a proceeding about an insurance contract. A limitation period is a deadline by which a person must bring a claim. If Mr. Lowe commenced this dispute after the expiration of the limitation period, his claims must be dismissed.
26. Section 23(a) of the *Insurance Act* says that the limitation period for cases of loss or damage to insured property starts running from the date that the insured knew that the loss or damage had occurred. This dispute is about damage to Mr. Lowe's mobile home, which is insured property.
27. Mr. Lowe did not address the insurer's argument about the 2-year limitation period, despite having the opportunity to do so. Mr. Lowe's submissions about the limitation period refer to renewal dates, which I find are irrelevant to this issue. I note that the adjuster's May 14, June 6 and July 21, 2016 letters all refer to the 2- year limitation period.
28. It is undisputed that Mr. Lowe discovered the loss or damage to his home on April 20, 2016, when he found the water seeping up through the bathroom floor. Mr. Lowe filed the Dispute Notice on July 19, 2018 and the tribunal issued the Dispute Notice on July 20, 2018. Therefore, the tribunal issued Mr. Lowe's Dispute Notice 2

months after the expiration of the limitation period. For this reason, I dismiss Mr. Lowe's claims.

29. Because of my conclusion about the expiration of the limitation period, I need not address the merits of this dispute.

ORDER

30. I dismiss Mr. Lowe's claims, and this dispute.

Eric Regehr, Tribunal Member