



# Civil Resolution Tribunal

Date Issued: August 15, 2019

File: SC-2019-000880

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *A.B. v. J.B. et al*, 2019 BCCRT 975

BETWEEN:

A.B.

**APPLICANT**

AND:

J.B. and D.B.

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about damages from vandalism.
2. The applicant, A.B., says the respondent, D.B. (D), a minor, vandalized his under-construction home with graffiti. The respondent, J.B., is D's mother and litigation

guardian. The applicant seeks payment of \$2,073.64, being \$294.94 to repair the vandalized property and \$1,778.70 for security costs. The respondents say there is insufficient evidence proving D caused the damage and that, even if he did, the damages sought are excessive and are not recoverable under the *Parental Liability Act* (PLA).

3. The applicant is self-represented. Both respondents are represented by Ms. B.
4. In the published version of this decision I have anonymized the parties' names to protect the identity of the parties involved, one of whom is a minor.

## **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* (CRTA). 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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 that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.
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, where permitted by section 118 of the CRTA:
  - 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 is entitled to reimbursement for security and repair costs for the alleged vandalism by the minor respondent.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. On June 4, 2018, the applicant's home, which was under construction at the time, was vandalized by extensive graffiti, specifically "tagging". Police suspected D, as the graffiti matched other vandalized properties which D had been found responsible for.
12. Initially, in their Dispute Responses, neither Ms. B nor D disputed that D had done the tagging, and only said the claimed damages figure was excessive. Later, in her submissions, Ms. B stated she disagreed with what was stated in her Dispute Response that she said had been prepared by someone she had hired, and argued

there is no “direct, reliable evidence” that her son was responsible for the vandalism.

13. Several police records are in evidence. In the file related to the June 4, 2018 incident in issue, the police determined D was the suspect due to “the same tag” used in another graffiti incident. Included in evidence were 3 other incidents involving D and similar tagging he did on a recreation centre and a local business. D was referred to, and in December 2018 completed a restorative justice program as a result of the prior incidents. Although named by police as a suspect, it does not appear that D was criminally charged for the vandalism to the applicant’s property.
14. Also in evidence are contracts between D and Ms. B, which Ms. B says show her attempts to control her son’s behaviour. A document dated February 1, 2018 notes D was not to touch lighters or matches, other people’s properties, or paint. Another contract dated April 17, 2018 says D agrees not to leave the house without permission, “will not tag or paint other people’s property”, and will not damage other people’s property. A June 5, 2018 document titled “[D.B.] Rules” says, among other things, “no graffiti”, “no leaving”, and “no damage”.
15. Based on the evidence, on a balance of probabilities I am satisfied that D was responsible for the graffiti vandalism to the applicant’s property as it is unlikely a specific tag known to be used by D would have been used by someone else on the applicant’s property. I turn then to whether the applicant is entitled to reimbursement for the costs associated with the vandalism.
16. The common law in British Columbia does not prevent civil claims against a minor. As I have found D responsible for the damages to the applicant’s property, it follows that D is liable for the applicant’s losses. I will now consider the liability of Ms. B.
17. The *Parental Liability Act* (PLA) applies to this dispute. Section 3 of the PLA says that if a child intentionally takes, damages or destroys another person’s property, a parent of that child is liable for the loss of or damage to the property. I find Ms. B is

liable for D's intentional damage to the applicant's property. However, Ms. B has a possible defence, discussed below.

18. Under section 9 of the PLA, Ms. B has the burden to prove that she (a) exercised reasonable supervision over D at the time he engaged in the June 4, 2018 vandalism, and (b) made reasonable efforts to prevent or discourage D from engaging in vandalism.
19. Section 10 of the PLA goes on to outline factors I may consider in making an assessment under section 9 as to the reasonableness of the parental supervision and efforts made to discourage the child from committing this kind of conduct. Not all factors are relevant to each case (see: *O v. N*, 2004 BCPC 410; *ST and VT v. SH and GH*, 2008 BCPC 226). The factors relevant to this dispute are as follows:
  - a. **The age and maturity of the child:** D is 12 years old and Ms. B submits he presents as much younger due to his disabilities. I find this factor weighs in favour of Ms. B.
  - b. **The prior conduct of the child:** It is clear from the evidence that, prior to the June 4, 2018 incident in issue, D had a history of vandalism and graffiti specifically, requiring police involvement. I find this factor weighs in favour of finding liability against Ms. B.
  - c. **The likelihood that the activity would result in property loss:** It is reasonable to assume that "tagging" and graffitiing another person's property would result in property loss, because at minimum there would be a need to clean and possibly re-paint the property.
  - d. **Psychological or medical disorders, psychological, physical or learning disabilities or emotional disturbances of the child:** Ms. B says D has been diagnosed with several psychological, developmental and behavioural issues and, over the years, has been under the care of a pediatrician, developmental pediatrician, and a child and youth counsellor. Since July 2018, after the incident in issue, D has been seeing a behavioural intervention specialist

focusing on discouraging tagging and for other concerns. I find this factor weighs in favour of Ms. B.

- e. **Whether the likelihood of property loss arising from the child's conduct was reasonably foreseeable by the parents:** I am satisfied, based on D's prior history of similar recent conduct, that Ms. B should have been able to foresee her son's conduct could likely lead to property loss. I find this factor weighs in favour of finding liability against Ms. B.
  - f. **Whether the child was under the supervision of the parent when the child engaged in the activity that resulted in the property loss:** The property damage occurred overnight on June 4 to 5, 2018. Ms. B says she checks on her son at 2 am, and again at 7 am. It is unclear whether the incident happened before or after 2 am, but I find nothing turns on that point. I find the incident took place while D was under the supervision of Ms. B. Therefore, I find this factor weighs in favour of finding liability against Ms. B.
  - i. **Whether the parent has sought professional assistance for the child, designed to discourage the activity of the kind that resulted in the property loss:** Although Ms. B provided evidence of the kinds of treatment and rehabilitation her son has been involved in over the years, it appears the only professional assistance directly related to vandalism and property damage began after the applicant's house was vandalized. I find this factor weighs in favour of finding liability against Ms. B.
20. Although I appreciate Ms. B's efforts in controlling her son's behaviour, I find the key efforts to try to prevent future property damage were not taken until after the June 4, 2018 incident. Further, I find Ms. B has not established that her son was reasonably supervised on the night of the incident. The evidence indicates that leaving the house unsupervised and without permission was an ongoing issue before the June 4, 2018 incident, and although Ms. B says she checked in on him at 2 am and 7 am, I find this was insufficient supervision in the circumstances.

21. As a result, I am satisfied the applicant has proven, on a balance of probabilities, that Ms. B is liable for her son's actions.
22. I am satisfied that the applicant is entitled to reimbursement for the expenses he incurred in repairing the property damage. The applicant sought \$294.94 for a tool he had to purchase to refinish the vandalized concrete. He submits he completed the labour himself and is not seeking reimbursement for his time.
23. The applicant also seeks \$1,778.70 for security services he hired for 11 nights starting June 5, 2018, the day after the incident. The applicant submits the police recommended he hire a nighttime security guard, and I find this is likely because of D's known history with vandalism in the area. On a judgment basis, I find the applicant is entitled to half of his claimed security expenses. I say this because it is unclear why the security services were required for 11 days. Ms. B says the security expenses are not technically "property loss" and therefore are not recoverable, however I reject this submission. Section 1 of the PLA says that "property loss" means a loss experienced as a result of loss of or damage to property. I am satisfied the security expense was a reasonably foreseeable loss that resulted from D's vandalism. I find the applicant was reasonable in hiring a security guard, although I find the duration arbitrary. The applicant is entitled to reimbursement of \$889.35 in security costs.
24. The applicant is also entitled to interest pursuant to the *Court Order Interest Act*, from July 19, 2018 for the \$294.94, the date the repair tools were purchased, and from July 16, 2018 for the \$889.35, the date the security services invoice was due. This totals \$22.22.
25. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicant was successful, I find that he is entitled to reimbursement of \$125 in paid tribunal fees. No dispute-related expenses were claimed.

26. As I have found both D and Ms. B liable for the applicant's loss, D and Ms. B are joint and severally liable for the loss. This means the applicant can recover from either D or Ms. B. Given the circumstances, I order Ms. B to pay the applicant.
27. I order that the public version of this decision anonymize all parties to protect the privacy and identity of one of the respondents, who is a minor.

## **ORDERS**

28. Within 60 days of the date of this decision, I order the respondent, Ms. B, to pay the applicant a total of \$1,331.51, broken down as follows:
- a. \$1,184.29 for expenses as a result of her son's property damage,
  - b. \$22.22 in pre-judgment interest pursuant to the COIA, and
  - c. \$125.00 in tribunal fees.
29. The applicant is also entitled to post-judgment interest under the COIA.
30. Under section 48 of the CRTA, 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.
31. Under section 58.1 of the CRTA, 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.



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Andrea Ritchie, Vice Chair