



Civil Resolution Tribunal

Date Issued: August 19, 2019

File: SC-2018-007096

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Horga v. Travelers Insurance Company of Canada*, 2019 BCCRT 983

B E T W E E N :

Calin Mircea Lucian Horga

APPLICANT

A N D :

Travelers Insurance Company of Canada La Compagnie D'Assurance
Travelers Du Canada DBA Travelers Canada

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant, Calin Mircea Lucian Horga, bought a newly built home in March 2017. At the same time, he bought a home warranty issued by the respondent, Travelers Insurance Company of Canada La Compagnie D'Assurance Travelers Du Canada DBA Travelers Canada.

2. In December 2017 the applicant made a warranty claim with the respondent for water accumulation in his garage, which he says is a builder's defect. The respondent denied the claim. The applicant claims \$5,000 for the cost of installing a garage drain track to repair the water accumulation issue. The respondent says the water accumulation in the garage is not covered by the warranty.
3. The applicant is self-represented and the respondent is represented by an employee or principal.

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* (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.
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 make one or more of the following orders, where permitted under 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

- 8. The issue in this dispute is whether the water accumulation in the applicant's garage is covered by his home warranty provided by the respondent.

EVIDENCE AND ANALYSIS

- 9. 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.
- 10. 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.
- 11. On March 31, 2017 the applicant bought a new house and at the same time bought a home warranty with the respondent issued under the *Howeowner Protection Act* and *Homeowner Protection Act Regulation* (warranty).
- 12. In the summer of 2017 the applicant noticed concrete cracks and water accumulating in the garage. He says water pours into the garage every time it rains, causing flooding and mold.
- 13. The warranty covers defects in the materials and labour provided by the builder.
- 14. The warranty defines a "defect" as "any design or construction that is contrary to the Building Code or that requires repair or replacement due to the negligence of a builder or person for whom the builder is responsible at law."
- 15. The warranty defines "materials and labour" as "materials and labour supplied by the builder for construction of the new home."

16. Section A.1.0.1.2 of the warranty states that non-compliance with or violation of the Building Code is considered a covered defect only if: a) the non-compliance or violation constitutes an unreasonable health or safety risk or b) has resulted in or is likely to result in material damage to the new home. The warranty defines “material damage” as damage that materially and adversely affects the use of the new home.
17. Returning to the relevant chronology, on December 10, 2017 the applicant submitted a warranty claim to the respondent. The applicant stated that, among other unrelated issues, water was “penetrating in the garage when raining,” particularly on the right-hand side of the garage door.
18. On January 8, 2018 the applicant modified his claim and notified the respondent that the water penetrating the garage “is not due to the Garage Doors. It is the concrete slope that is towards the garage as opposed to going away from it.”
19. On February 5, 2018 the applicant obtained a home inspection report from a home inspector. It is unclear which day the inspection took place, but the report indicates that water was getting inside the garage from the concrete pad and pooling near the garage door. It said water was dripping onto the concrete pad from the deck above the garage. It also said the concrete is slightly sloped toward the garage on the last few inches of the concrete pad. The report does not describe how the inspector measured the concrete slope or set out the exact measurements.
20. The report suggested that the applicant’s options were to cut a channel into the concrete sloping away from the garage to direct water away from the garage; install a gutter under the drip cap to catch water dripping down from the deck; or retain a concrete specialist to advise a solution. The report recommended hiring a concrete specialist.
21. On February 21, 2018 the applicant obtained a \$5,040 estimate from a concrete company to cut open the concrete in front of the garage and the sidewalk to install a drain outlet.

22. On February 22, 2018 the respondent's representative S.T. inspected the applicant's home. The respondent submitted a sworn statement from S.T. in which he said he measured the slope of the right-hand side of the applicant's driveway and found that it was sloping away from the garage door. The statement does not describe how S.T. measured the slope or the measurements of the slope taken on that date.
23. The respondent says that when assessing coverage for a warranty claim it follows the standards set out in the Residential Construction Performance Guide issued by B.C. Housing (guide). As described in its introduction, the guide sets out the minimum standards required for new homes covered by home warranty insurance in British Columbia, and it goes beyond the requirements of the Building Code. The respondent relies on section 14.5 of the guide which states, "Doors between an unheated garage and the exterior are not required to be weather-stripped and may allow snow and water to enter the garage. Heated garages with weather-stripping may allow snow and water to enter the garage which is acceptable."
24. On March 7, 2018 the respondent notified the applicant that based on section 14.5 of the guide water getting into the garage was not covered under warranty.
25. On September 10, 2018 the applicant paid a garage door company \$268.58 for general service and to replace the bottom rubber retainer on the garage door with a bigger 5-inch rubber.
26. The applicant says that despite his request during S.T.'s inspection, S.T. measured only the slope of the driveway away from the garage door, and not the slope directly underneath the garage door. The applicant says he measured the slope under the garage door on September 23, 2018 and April 7, 2019 and found that it slopes into the garage. He submitted photos to support this claim, however he did not submit the measurements he took of the slope of the concrete under the garage door. The photographs show some water pooling in the garage near the garage door.

27. On March 22, 2019 S.T. returned to the applicant's home for a second inspection. He said he measured the middle and left-hand side of the applicant's driveway and found that the entire driveway is sloped away from the garage door. S.T. said the concrete used for the driveway and garage floor was poured separately, so he took measurements where the 2 sections meet. S.T. said he used a 4-foot carpenters' level to measure the slope and found it to be an average of half an inch 4 feet away from the garage door. S.T. said he determined the slope was acceptable because most of the water would flow away from the garage. The respondent submitted photographs S.T. took during the inspection which support his statement.
28. The applicant relies on section 14.6 of the guide which states, "Depressions exceeding 12mm within 3m are unacceptable. Garage floors should be sloped to drain to the exterior, minor variations in the surface of the floor that may impede immediate drainage are acceptable. Minor ponding of water is considered to be acceptable...Garage floors not meeting the Acceptable Performance/Condition are to be rectified."
29. The respondent relies on the tribunal's decision in *Vytasek v. Cressey (Vidal) Development LLP et al*, 2019 BCCRT 382, in which the tribunal said a warranty is not a performance bond or a guarantee if the homeowner is unhappy with an aspect of their new home. The respondent says the applicant's claim for the garage drainage track constitutes a claim or new construction or "missed" work, and such claims are not covered under the warranty. However, I find the applicant's claim stems from the uncontested pooling of water in his garage which is a claim for a defect, not for new or missed construction. However, for the following reasons I dismiss the applicant's claim.
30. The only evidence of the measurement of the slope of the concrete near the garage door is from S.T.'s inspection on March 22, 2019. This measurement indicates the concrete on the driveway was not sloped towards the garage door. While some of the applicant's photographs indicate that the concrete on the garage floor may slope slightly into the garage, the applicant did not provide his measurements, so I am

unable to determine whether the measurement of the slope falls within the acceptable dimensions contemplated by section 14.6 of the guide. That section clearly states that minor pooling of water is acceptable, and the evidence before me does not suggest the pooling was more than a minor issue.

31. On the evidence before me I find there is insufficient evidence that any sloping of the concrete near the garage door falls outside the acceptable variations set out in section 14.6 of the guide. Therefore, I find the pooling of water in the applicant's garage is not in violation of the guide and as such it is not a defect as defined in the warranty. I find the applicant has not established that he is entitled to payment from the respondent to remedy the water pooling issue in his garage and I dismiss his claim.
32. Under section 49 of the CRTA, 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. Since the applicant was unsuccessful I find he is not entitled to reimbursement of his tribunal fees, and he did not claim any dispute-related expenses.

ORDER

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

Sarah Orr, Tribunal Member