Civil Resolution Tribunal

Date Issued: September 20, 2019

File: SC-2019-000599

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Corey Maidment (dba Precision 4x4 Center) v. B.F.H. Holdings Ltd.*, 2019 BCCRT 1117

B E T W E E N :

COREY MAIDMENT (Doing Business As PRECISION 4X4 CENTER)

APPLICANT

A N D :

B.F.H. HOLDINGS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Sarah Orr

INTRODUCTION

1. The applicant, Corey Maidment (Doing Business As Precision 4x4 Center), leased a commercial workshop space in a building owned by the respondent, B.F.H. Holdings Ltd.

2. The applicant says a leak in the building's roof in January 2018 damaged equipment in his workshop. He wants the respondent to pay him $2,720 to replace the equipment.

3. The respondent says there was no leak in the roof in January 2018, rather there was ice damming caused by extreme weather conditions which were beyond its control. It says it was not negligent or in breach of the lease, and it does not owe the applicant anything.

4. The applicant is self-represented and the respondent is represented by an employee or principal.

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. 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.

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 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

9. The issue in this dispute is whether the respondent landlord is required to pay the applicant $2,720 to replace equipment damaged by water ingress in his workshop in January 2018.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant must prove his 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 claim.

12. On March 1, 2006 the parties entered into a commercial lease agreement. A clause in the lease says the lessee would be responsible for the cost of gas heating and requires the gas to be turned on between September 15 and March 15 each year. This clause is crossed out, and "tenant agrees to be responsible for frost damage" is handwritten next to it. Both parties initialed this change.

13. On October 12, 2017, the respondent sent a reminder to all tenants that they were required to have the gas furnace lit in their unit from October 15 to March 15 to prevent the pipes from freezing. It also reminded the tenants to clear all items in

front of the units to allow snowplow access. The applicant says this notice is the respondent's acknowledgement that its building has insufficient insulation and roofing for winter weather. I disagree. I find this notice reflects what appears to be a standard term in the applicant's lease agreements that lessees are required to turn the gas on in their units during the winter months.

14. The respondent says in early January 2018 there was an extreme weather event which involved freezing at night and thawing during the day for many days in a row. The applicant says that on January 5, 2018 the roof over his workshop leaked causing flooding and damage to his equipment. The respondent admits there was water ingress on this date but says it was caused by extreme weather and ice damming, not a leak in the roof.

15. The applicant submitted photos which he says were taken on January 5, 2018 showing the water damage in his workshop. Several of the photos show a significant amount of water on the floor, and one of the photos appears to show water dripping from the ceiling. On the evidence before me I am satisfied that water ingress in the applicant's workshop on January 5, 2018 damaged some of his equipment. The question is whether the applicant is liable for the damage.

16. The applicant does not explain or provide evidence of the cause or mechanism of the water ingress, though he seems to imply it was caused by ice and snow buildup on the building's exterior. He submitted photos of the ceiling in the workshop which he says show the insulation drooping and the insulation tape falling off. It is unclear whether the applicant's position is that the allegedly drooping insulation caused the water ingress, or whether it was caused by the water ingress. While there does appear to be some tape hanging from the ceiling, I find the photos do not establish that the insulation was drooping, nor do they establish the cause of the water ingress.

17. The applicant also submitted a photo and video of the building's exterior which show a large buildup of snow next to it and many icicles hanging from the roof. However, I find this evidence is unhelpful in determining the cause or mechanism of

the water ingress or whether the respondent was negligent in addressing building maintenance that was its responsibility.

18. On the evidence before me, I cannot determine what exactly caused the water ingress or where on the building the leak occurred.

19. The respondent says it had the roof inspected before and after the incident and there was no evidence of any leaks, therefore it was not negligent. It also relies on the clause in the lease assigning liability for frost damage to the applicant. The applicant does not address this clause in his submissions.

20. The most recent evidence of a roof inspection prior to the January 2018 water ingress is a December 22, 2016 invoice from a roofing company for $250.20 showing it repaired all loose, stripped or missing screws on the building's roof and caulked areas of potential concern. Given the low price of this invoice, I find that any areas of concern were minimal.

21. The respondent also says its insurer conducted a loss control survey in May 2017 which found no issues with the roof, however it did not submit the survey or any documentation about it. I therefore place no weight on this evidence.

22. With respect to its roof maintenance after the incident, the respondent submitted a November 22, 2018 invoice from a roofing company for $273 showing it checked the roof and sealed any areas of concern. Given the low price of the invoice, I find that any areas of concern were minimal.

23. The respondent submitted an April 24, 2019 report from a roofing company indicating that the roof was in satisfactory condition and showed evidence of maintenance over its life. The report recommends having the roof inspected every 1 to 3 years.

24. On balance, I am not satisfied the respondent is liable for the applicant's damages, either in contract or in negligence. The parties' lease agreement specifically assigns liability for frost damage to the applicant while absolving the applicant from the

responsibility of keeping the gas turned on in the winter months. Given the context of these deleted and added clauses in the lease, I find that snow and ice damage are akin to frost damage in these circumstances. I find there is insufficient evidence to establish that the January 2018 water ingress was caused by anything other than snow and ice, and therefore the applicant is liable under the terms of the lease.

25. I also find the applicant has not established that the respondent was negligent. The April 24, 2019 roofing report recommends inspecting the roof every 1 to 3 years, and the evidence before me indicates that the respondent had the roof inspected just over 1 year before the incident, and 9 months after the incident. Neither of those inspections revealed any serious issues with the roof. I find the applicant has not established the respondent's standard of care with respect to the roof or established that the respondent breached the required standard.

26. I find the applicant has not established that the respondent is liable for his damages, and I dismiss his claim.

27. 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 has not claimed any dispute-related expenses.

ORDER

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

Sarah Orr, Tribunal Member