



Civil Resolution Tribunal

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File: SC-2019-000982

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hilsabeck v. Canadian Northern Shield Insurance Company*, 2019 BCCRT
1357

B E T W E E N :

GAYLE HILSABECK

APPLICANT

A N D :

CANADIAN NORTHERN SHIELD INSURANCE COMPANY LE
BOUCLIER DU NORD CANADIEN, COMPAGNIE D'ASSURANCE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute about insurance coverage for damaged books.
2. The applicant, Gayle Hilsabeck, says several of her books were damaged when her townhouse flooded in February 2018. The applicant seeks to recover the cost of the damaged books from her insurer, the respondent, Canadian Northern Shield Insurance Company Le Bouclier Du Nord Canadien, Compagnie D'assurance. The applicant claims \$1,905.00 for cost of the water damaged books.
3. The respondent denies liability for the books.
4. The applicant is self-represented. The respondent is represented by an employee.

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.

ISSUES

9. The issues in this dispute are:
 - a. Were the applicant's books damaged in the February 2018 flood event?
 - b. If yes, to what extent, if any, is the respondent required to pay the applicant for the cost of the books?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proving her claims on a balance of probabilities.
11. The applicant says that a water valve broke and flooded her townhome on February 2018 (flood event).
12. The respondent, who I infer was her insurer, hired a 3rd party company, "Canstar", to pack-up the applicant's belongings. After packing her belongings into boxes, including some books, the boxes were stored in her garage and at an offsite facility. The applicant says she unpacked the boxes in May and discovered water damaged books. There is no dispute that the applicant found boxes of books with water damage. The applicant does not know exactly where the books were stored.
13. The applicant sought reimbursement for the damaged books from the respondent under the original February 2018 flood event claim. However, the respondent

disputed that the books were damaged by the flood event and refused to cover them under her original claim.

14. The applicant asks that I find the books were damaged in the flood event because the respondent has no “proof of a further water leak” and it is the “most logical explanation”. However, it is the applicant and not the respondent who carries the burden of proof. This means the applicant must establish that it is more likely than not that the books were damaged during the February 2018 flood event. For the following reasons, I find she has not done so.
15. The applicant did not provide many details about the books before the flood and did not explain how the books were damaged during the flood event. For example, she does not explain the books’ location in her townhouse in relation to the water leak. The applicant does not say she inspected the books immediately before or after the flood event. The applicant says she did not notice the damaged books until several months after the flood and after they were stored in another location. Further, the applicant provided no photographs about the condition of the books before the flood to corroborate her statement that they were originally undamaged.
16. The respondent provided a witness statement from one of the Canstar employees who packed up the applicant’s items after the flood event. The witness does not remember the applicant’s books. Therefore, there is no evidence from either party about the books at the time of the flood event. The witness explains Canstar’s general practice is to make a list of damaged items and that Canstar does not box up wet items. He says they also check the bottom of packed boxes for wetness. His statements are undisputed. It is also undisputed that the claimed books were not identified or listed as damaged items by Canstar.
17. Considering there is no evidence of the water damaged books until months later, I am unable to conclude that the flood event caused the damage. I find the fact that the applicant discovered water damaged books after the flood event does not necessarily mean that they were damaged in the flood event. I find there are equally plausible alternative explanations for the book damage, including that they may

have been damaged before or after the flood event. Therefore, I find the applicant has failed to establish her claim for the books.

18. As the unsuccessful party, I find the applicant is not entitled to reimbursement of her tribunal fees under section 49 of the CRTA.

ORDER

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

Trisha Apland, Tribunal Member