



Civil Resolution Tribunal

Date Issued: March 17, 2020

File: SC-2019-009379

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Uribe v. Cheung*, 2020 BCCRT 306

BETWEEN:

NANCY URIBE and JONATHAN RAYGADA-URIBE

APPLICANTS

AND:

AGUSTIN CHEUNG

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This small claims dispute is about damages resulting from an upstairs apartment's sink leak. The applicants, Nancy Uribe and Jonathan Raygada-Urbe, and the owner of the upstairs apartment, the respondent Agustin Cheung, agree that the

leak occurred on September 27, 2019 and that the water originated from Mr. Cheung's apartment, which he rents to tenants. The applicants seek \$400.61, which they say is their cost to fix the damage to their bathroom ceiling and wall.

2. Mr. Cheung says that while he admits the water leaked from his bathroom sink's water shut-off valve, he could not have reasonably known that the valve would fail. So, since he says the damage was not foreseeable, he says he is not responsible for the applicants' claimed repairs.
3. The parties are each self-represented.

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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

8. Is the respondent responsible for water damage to the applicants' apartment, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicants must prove their claim, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. As noted above, the parties agree that on September 27, 2019 the bathroom sink in Mr. Cheung's apartment leaked and caused damage to the applicants' apartment below. The applicants claim \$400.61, which is supported by photos, a video, a restoration site report submitted by Mr. Cheung, and a September 23, 2019 "Proposal" document for the patching and re-painting of the affected downstairs bathroom wall and ceiling.
11. There is no suggestion and no evidence that Mr. Cheung did something or failed to do something that led to the bathroom sink's leaking. In other words, there is no allegation that he was negligent. Mr. Cheung says he could not have foreseen the bathroom sink's leak, and so he should not be held responsible for the applicants' claimed damage. I accept he could not have foreseen the leak, which is not disputed.
12. So, the central issue in this dispute is whether Mr. Cheung is responsible for the water damage even though he had no reason to believe there would be a leak from his apartment. I find the answer is no, for the following reasons.
13. The applicants must prove the respondent is legally liable for the damage, either under the law of negligence or the law of private nuisance.

14. To establish a claim in negligence, the applicants must prove the respondent breached the applicable standard of care and that their resulting damages were reasonably foreseeable.
15. The applicants argue that the respondent was negligent because he did not see or stop the leak until it overflowed into their unit below. This argument has two problems. One, the respondent did not live in the property and so there would be no reasonable expectation he would see or stop the leak as soon as it happened. Two, the applicants provided no evidence to support a negligence claim. In particular, there is no evidence before me, such as from a plumber or restoration specialist, that would allow me to conclude the leak was ongoing for a lengthy period or time or that it would have been readily visible. I find this means there is insufficient evidence the damage to the applicants' unit was preventable. It is undisputed the leak originated from the shut off valve located inside the bathroom sink cabinet, which based on the photos was not readily visible to anyone using that bathroom. I dismiss the applicants' claim in negligence.
16. As for private nuisance, a nuisance occurs when a person substantially and unreasonably interferes with the use or enjoyment of another person's property. Once the interference is established, the onus shifts to the respondent to show his own use was "natural" and not unreasonable (see *Antrim Truck Centre Ltd. v. Ontario (Transportation)*, 2013 SCC 13 at paragraphs 19 and 29, citing *Fleming's The Law of Torts*).
17. As noted above, there is no evidence that the respondent knew or should have known that the sink's part would fail and cause a leak. There is also no evidence the respondent failed to address the leak once it was known.
18. Further, in disputes like the one before me, where the respondent did not actively create the nuisance, he will not be found liable unless he knew or ought to have known of the facts creating the nuisance. See *Sadowick v. British Columbia*, 2019 BCSC 1249 at paragraphs 91 and 92, *Lee v. Shalom Branch #178*, 2001 BCSC

1760 at paragraphs 17 to 22, *Zale et al v. Hodgins*, 2019 BCCRT 466, *Theberge v. Zittlau*, 2000 BCPC 225, and *Li et al v. Song*, 2018 BCCRT 232.

19. Next, to the extent the applicants may argue the tenant's actions caused the water leak and the respondent landlord is responsible, I disagree. In *Shahgaidi v. Zhang*, 2018 BCSC 2082, a BC Supreme Court decision overturning a previous Provincial Court decision, the court held that a landlord should not be held responsible for their tenant's acts unless the landlord directly authorized them. That case involved escaping water from one strata lot to another, and the court concluded the mere fact that water was included in the tenant's rent was an insufficient connection. In particular, the court held that the egress of water was not a necessary consequence of providing water for residential use. So, the landlord in that case was not liable in nuisance because they did not specifically contemplate the nuisance nor did they become aware that the nuisance was ongoing.
20. Given the case law cited above and the fact the respondent was not aware of the nuisance nor is there any evidence he should have known about it, I find the respondent cannot be held liable in either negligence or nuisance. I dismiss the applicants' claims.
21. I acknowledge the applicants' argument that the respondent had taken steps to remedy the damage but then refused compensation. However, I find those steps, which the respondent says were a courtesy, do not make the respondent legally responsible for the claimed repair costs.
22. Under section 49 of the CRTA and tribunal rules, as the applicants were unsuccessful I find they are not entitled to reimbursement of tribunal fees. The successful respondent did not pay fees and there were no dispute-related expenses.

ORDER

23. I order the applicants' claims, and this dispute, dismissed.

Shelley Lopez, Vice Chair