



# Civil Resolution Tribunal

Date Issued: March 24, 2020

Files: SC-2019-005218  
SC-2019-009183

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *L.D. v. The Owners, Strata Plan VR 2734*, 2020 BCCRT 328

B E T W E E N :

L.D.

**APPLICANT**

A N D :

The Owners, Strata Plan VR 2734

**RESPONDENT**

A N D :

M.O. as Litigation Guardian of J.D., Minor

**RESPONDENT BY THIRD PARTY CLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

## **INTRODUCTION**

1. These small claims disputes are about a garage door allegedly damaging a vehicle at a strata property.
2. In small claims dispute SC-2019-005218, the applicant, L.D., claims that his son, J.D., was involved in an accident while driving L.D.'s vehicle. L.D. claims the incident occurred on June 20, 2019, on the property of the respondent strata corporation, The Owners, Strata Plan VR 2734 (strata). He says the strata's garage door malfunctioned and crushed the roof of his vehicle, causing damage to the vehicle and personal injuries to J.D. L.D. says the strata was negligent and requests damages of \$4,981.25.
3. The strata denies that the incident occurred and argues that it was not negligent because it adequately maintained the garage doors.
4. In small claims dispute SC-2019-009183, the strata makes a third party claim against J.D.. The strata claims that J.D. was contributorily negligent by driving carelessly. The strata asks that, if it is found liable to L.D., any liability be shared with J.D. J.D. denies that he was contributorily negligent.
5. Although filed separately, the disputes have been linked pursuant to Rule 1.16 of the *Civil Resolution Tribunal Rules*. Accordingly, I have considered the evidence submitted in both disputes in my decision.
6. L.D. is self-represented. The strata is represented by a strata council member. J.D. is represented by a litigation guardian in the third party claim.
7. In the published version of this decision, I have anonymized L.D.'s name, J.D.'s name and the name of J.D.'s litigation guardian to protect the identity of minor, J.D.

## **JURISDICTION AND PROCEDURE**

8. 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.

9. 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.
10. 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.
11. 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.
12. I note that L.D. says that J.D. injured his back and sustained a severe shock in the incident. However, J.D. is not an applicant in this matter. Further, the dispute notice does not state a claim for damages arising from any personal injury. For these reasons, I find that an application has not been made on behalf of J.D. and I have not considered any relief relating to J.D.'s alleged personal injuries in my decision.

## **ISSUES**

13. The issues in this dispute are:
  - a. Is the strata liable in negligence for L.D.'s vehicle damage? If so, what is the appropriate remedy?

- b. Is J.D. partially responsible for the accident? If so, what is J.D.'s share of the liability?

## **EVIDENCE AND ANALYSIS**

14. In a civil claim such as this, L.D. bears the burden of proof on a balance of probabilities for his claim against the strata. The strata bears the burden of proof for its third party claim against J.D. I have only addressed the evidence and submissions below as necessary to explain my decision.
15. It is undisputed that L.D. owns a 2009 Chrysler PT Cruiser (vehicle).
16. L.D. says that, while J.D. was driving the vehicle into a parking garage on the strata's property on June 20, 2019, the garage door suddenly fell onto the vehicle.
17. L.D. provided photographs showing damage to the roof and windows of the vehicle.
18. L.D. provided an invoice or an estimate from an autobody repair company dated September 16, 2019 stating \$2,965.04 for vehicle repairs.
19. The strata denies the incident occurred, noting that there were no witnesses other than J.D. who did not provide a statement.
20. The strata also submits that it was not negligent because it conducted appropriate maintenance of the garage door.
21. The strata says it had a maintenance agreement with OD, a garage door contractor. The strata says OD provided semi-annual preventative maintenance of the building's garage doors. The strata provided a copy of the maintenance contract.
22. Strata provided garage door service records showing that OD serviced the garage doors on the following dates before the incident:
  - a. January 31, 2018
  - b. April 25, 2018

- c. July 31, 2018
- d. November 16, 2018
- e. January 6, 2019
- f. March 26, 2019
- g. April 2, 2019
- h. June 2, 2019

23. For the strata to liable in negligence L.D. must show that (1) the strata owed him a duty of care; (2) the strata breached the applicable standard of care; and (3) that the breach caused L.D.'s loss or damage. The damage caused must also have been foreseeable.
24. I find the strata owed L.D. a duty of care. The standard of care is based on what would be expected of an ordinary, reasonable and prudent person in the same circumstances, which includes an examination of the likelihood of foreseeable harm and the gravity of the harm, the burden of the cost to prevent injury, and external factors such as custom and industry practice or regulatory standards (see *Ryan v. Victoria (City)*, [1999] 1 SCR 201 (SCC); *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41).
25. The strata says L.D. has not proved the standard was breached. I agree.
26. Based on the strata's undisputed submissions and the maintenance records, I find that the strata performed regular maintenance of the garage doors. I find that the strata's retention of OD to provide semi-annual service and maintain the garage doors was a reasonable system to prevent accidents, and there is no evidence before me to the contrary.
27. I agree with strata that if it took reasonable measures to prevent damage, L.D. cannot establish negligence even if the damage occurred (see *Laursen v. Bemister*, 1999 CanLII 6059 (BCSC)). In that case, the plaintiffs paid the defendant to store their belongings in his barn for the winter. A month or two later, the barn roof collapsed due to snow, damaging the plaintiffs' property. The court found that the

defendant had taken reasonable steps to address the risk of snow collapse, and bore in mind there had been no problems previously. I find this is similar to the situation before me as, based on my above findings, the strata has taken reasonable measures to maintain their garage doors.

28. In addition, I find that L.D. has not proved that the strata's alleged negligence caused the damage. OD's undisputed service records show they inspected the garage doors on June 27, 2019, shortly after the alleged incident, and the strata's garage doors did not have any deficiencies. Although L.D. has provided photographs showing damage to the vehicle, he has not provided any evidence proving that the strata's failure to maintain the garage doors caused the incident.
29. In addition, L.D. did not sufficiently prove that the garage door caused the damage to the vehicle. L.D. did not provide a statement from J.D., the only witness, confirming that the incident occurred and describing how the incident occurred.
30. Based upon the undisputed service records and the lack of compelling evidence, I find that L.D. has not proved that the strata's garage doors malfunctioned and caused the claimed damage.
31. For these reasons, I find that L.D. has not proved negligence and his claims are dismissed.

### ***Contributory Negligence of J.D.***

32. Given my conclusion that the strata was not negligent, it is not necessary to make findings about the strata's third party claim against J.D. As such, I dismiss that claim.
33. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As L.D. was not successful in this dispute, I deny his claim for reimbursement of tribunal fees.

34. The strata seeks reimbursement of \$150 it spent to file the third party claim against L.D.. The strata was the successful party in this dispute. In accordance with the Act and the tribunal's rules, I find L.D. must reimburse the strata for \$150 in tribunal fees. I have exercised my discretion in this way because L.D. was unsuccessful in his claim against the strata, and the strata's third party claim against J.D. only arose because of L.D.'s claim.

## **ORDERS**

35. Within 14 days of the date of this order, I order L.D. to pay the strata the sum of \$150 in tribunal fees.

36. The strata is entitled to post-judgment interest, as applicable.

37. 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.

38. 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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Richard McAndrew, Tribunal Member