



Civil Resolution Tribunal

Date Issued: July 10, 2020

File: SC-2019-010881

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Coombs v. Hoelzley*, 2020 BCCRT 772

BETWEEN:

CONNIE COOMBS

APPLICANT

AND:

LORETTA HOELZLEY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about damage to a garage door. The respondent, Loretta Hoelzley, formerly rented a room from the applicant, Connie Coombs. The parties agree that Ms. Hoelzley backed her car into Ms. Coombs' garage door in June 2017. Ms. Coombs' seeks payment of \$2,196.10 for fixing the door.

2. Ms. Hoelzley acknowledges she “bumped” the garage door but denies she damaged it. She also says Ms. Coombs’ claim is out of time.
3. Ms. Coombs represents herself. Ms. Hoelzley is represented by her sister, CJ.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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 CRT 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 CRT 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 CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

The Residential Tenancy Act

8. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT’s jurisdiction. The *Residential Tenancy Act* (RTA) governs residential tenancies. However, section 4(c) of the RTA says it does not

apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

9. The parties agree that that Ms. Hoelzley rented accommodation from Ms. Coombs at her house. The parties also agree they shared a kitchen and bathroom. Neither party objected to the CRT deciding this dispute.
10. Given the above, I find the exception of RTA section 4(c) applies. The RTA does not apply to this dispute. I will therefore consider the issues in this dispute below.

ISSUES

11. The issues in this dispute are as follows:

- a. Is Ms. Coombs out of time to bring her claim against Ms. Hoelzley?
- b. If not, should Ms. Hoelzley pay Ms. Coombs \$2,196.10 as compensation for damage to her garage door?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, Ms. Coombs bears the burden of proof on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.

Issue #1. Is Ms. Coombs out of time to bring her claim against Ms. Hoelzley?

13. Ms. Hoelzley says the claim is out of time because the garage door accident occurred in June 2017 and Ms. Coombs filed her application for dispute resolution too late. Ms. Coombs disagrees and says this case is about a breach of agreement for Ms. Hoelzley to pay for garage door repairs, and the breach occurred in November 2019. For the reasons that follow, I find that Ms. Coombs' claim for

negligence is out of time. I also find that there was no binding agreement between the parties for the garage door repairs, and therefore no breach of contract.

14. The *Limitation Act* applies to disputes before the CRT. A limitation period is a period within which a person may bring a claim. The basic limitation period under section 6 of the *Limitation Act* is 2 years from the date a claim is discovered. If that period expires, the right to bring the claim ends, even if the claim would have otherwise been successful.
15. Section 8 of the *Limitation Act* provides that a claim is discovered by a person on the first day that person knew, or reasonably ought to have known that:
 - a. injury, loss or damage had occurred;
 - b. the injury, loss or damage was caused by or contributed to by an act or omission;
 - c. the act or omission was that of the person against who the claim is or may be made; and
 - d. having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage.
16. The parties agree that in June 2017, Ms. Hoelzley backed her car into Ms. Coombs' garage door. I find this would potentially provide Ms. Coombs with a negligence claim. Although Ms. Coombs says she is not suing for negligence, I will first consider whether the negligence claim is out of time because it provides important context.
17. I find that Ms. Coombs discovered her negligence claim by June 30, 2017 at the latest. It is undisputed that Ms. Hoelzley advised Ms. Coombs of the accident when she came home, shortly after the accident. Ms. Coombs filed her application for dispute resolution on December 19, 2019. As the limitation period expired on June 30, 2019, I find Ms. Coombs' negligence claim is out of time.

18. Although not argued, I considered whether the limitation period for Ms. Coombs' negligence claim was extended. Section 24 of the *Limitation Act* says that the limitation period is extended if liability is acknowledged in writing or by partial payment, before the expiry of the initial limitation period.
19. On November 11, 2019, Ms. Hoelzley paid Ms. Coombs \$100 towards repairs for the garage door. The transaction is documented in bank records and the parties' text messages. I find this payment was an acknowledgment of liability. However, it occurred after the limitation period had already expired on June 30, 2019. As a result, Ms. Coombs' negligence claim remains out of time.
20. As noted above, Ms. Coombs says that her claim is actually for breach of contract. She says the parties entered into a binding agreement for Ms. Hoelzley to pay for the damage once Ms. Hoelzley received her divorce settlement. She says Ms. Hoelzley repeated her promise to pay in a November 7, 2019 text. Ms. Hoelzley provided the \$100 payment on November 11, 2019, as referenced above. Ms. Coombs says she discovered her claim on November 28, 2019 when Ms. Hoelzley refused to make further payments.
21. Ms. Hoelzley provides a slightly different version of events, though I find nothing turns on this. She says she agreed to pay \$1,500 for a new garage door in November 2019, after she moved out. However, after the November 12, 2019 payment, she stopped making further payments because she felt she was being taken advantage of.
22. On balance, I am not persuaded that the parties entered into a binding agreement or contract for the garage door damage. For a contract to exist, there must be an offer, acceptance of the offer, and consideration, which is something of value given by each party. From the parties' text messages and submissions, I find that Ms. Coombs did not provide any consideration to Ms. Hoelzley. She did not offer, for example, to give a release of her claim, which was out of time in any event. She merely asked for payment from Ms. Hoelzley for an amount she thought she was entitled to, even though I find in law she was not.

23. Ms. Hoelzley initially agreed to pay. However, as no consideration passed from Ms. Coombs to Ms. Hoelzley, the agreement was not legally binding.
24. Ms. Coombs cited *Super Save Disposal Inc. v. Ryan E Townsend dba Timbre Restaurant*, 2018 BCCRT 690, which is a case about determining the discovery date for a breach of contract. Ms. Coombs says that, based on this case, she discovered her claim on November 28, 2019. I do not find the case relevant as there is no contract or breach of contract in this dispute.
25. I acknowledge that Ms. Hoelzley also provided one payment of \$100. In *Di Nicolo v. Greco*, 2015 BCSC 1401 at paragraph 102, the court noted that a person may still make a voluntary payment for a debt that is out of time under the *Limitation Act*. However, the payment has no legal effect on the debt, because the debt has ceased to exist. Similarly, I find that Ms. Hoelzley made a voluntary payment, meaning a payment that in law she was not bound to pay. As stated in *Di Nicolo*, the payment has no legal effect.
26. In summary, I conclude that Ms. Coombs' claim in negligence is out of time and Ms. Hoelzley did not breach the terms of any contract between the parties. I dismiss Ms. Coombs' claim.
27. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Ms. Hoelzley is the successful party. As she paid no tribunal fees and claimed no dispute-related expenses, I do not award them to any party.

ORDER

28. I dismiss Ms. Coombs' claims and this dispute.

