



Civil Resolution Tribunal

Date Issued: July 22, 2020

File: SC-2020-001724

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Loreth v. Good Grade Plumbing & Gas Company Ltd.*, 2020 BCCRT 813

B E T W E E N :

JOEL LORETH and CRYSTAL LORETH

APPLICANTS

A N D :

GOOD GRADE PLUMBING & GAS COMPANY LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. The applicants, Joel Loreth and Crystal Loreth, claim damages from a basement flood in 2020. The respondent, Good Grade Plumbing & Gas Company Ltd. (Good Grade) performed some plumbing work for the Loreths and it admittedly failed to cap an old water pipe. The Loreths claim reimbursement of \$3,968.01 for remediation and repair of the water damage, which includes \$1,094.67 for a replacement carpet.

They also claim \$700.00 in lost rent and \$278.78 for their tenant's Airbnb live-out expenses. The Loreths' total claim is \$4,946.79.

2. Good Grade accepts that it caused the flood and agrees to pay the "majority of the claim". However, Good Grade says it is not responsible for the cost of a new carpet. It also says that the Loreths caused delay and increased the repair costs by their choice in contractor and by not having an insurance adjuster oversee the work.
3. The Loreths are self-represented and Good Grade is represented by an employee or officer.
4. For the reasons that follow, I find that Good Grade is liable for the claimed \$4,946.79.

JURISDICTION AND PROCEDURE

5. 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.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
7. 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.

8. 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.

ISSUE

9. The issue in this dispute is to what extent must Good Grade reimburse the Loreths the claimed \$4,946.79 in damages?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the Loreths bear the burden of proving their claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. The Loreths renovated their basement suite in 2019 and added a new water line to their house. Good Grade performed the plumbing work under contract with the Loreths' general contractor. The parties had no direct contract. Therefore, I find the Loreths' claim is in negligence.
12. The Loreths' basement suite was tenanted. After heavy rains on January 7, 2020, the Loreths' tenant told them that the basement suite was flooded. The Loreths say they immediately called their insurance company who sent out a restoration company, "Pro Pacific DKI". It is undisputed that Pro Pacific DKI discovered that the old water line behind the kitchen cabinet wall was uncapped and groundwater was pouring out of it and into the basement suite.
13. The Loreths, or their contractor, immediately contacted Good Grade about the water pipe. Good Grade came to the Loreths' home and capped the water pipe. Good Grade admitted that it had failed to cap the water pipe in 2019 when it disconnected the old water line to install the new one.

14. The Loreths decided not to pursue a claim under their insurance policy and dealt directly with Pro Pacific DKI. The approved estimate shows that the work included water extraction, material removal and disposal, drywall and carpet replacement, and finishing work. The receipts in evidence show that the Loreths paid Pro Pacific DKI \$3,968.01 for the remediation work. The renovations were undisputedly finished by the end of January 2020.
15. The Loreths say that since the exterior walls were cut out, and the carpet was pulled up, the tenant had to live in the living room on a couch for most of the month. The Loreths' correspondence with its tenants shows she normally paid \$1,400 rent and the Loreths reimbursed half her rent due to the renovation disruption. I accept, based on the tenant's text message in evidence, that she also moved out early and had to stay elsewhere because she found the basement suite uninhabitable. The Loreths paid \$278.78 for their tenant's alternative accommodation for 3 nights at an Airbnb.
16. As mentioned, Good Grade accepts liability for the flood but disputes that it caused all the claimed damages. Good Grade says the main issue is the replacement carpet. The Loreths say the carpet was flooded by groundwater, potentially contained unknown contaminants, and it required replacement. Good Grade says the Loreths should have tested the original carpet for contaminants and tried cleaning it instead.
17. The parties agree that the Institute of Inspection, Cleaning and Restoration Certifications (IICRC) standard apply to assessing the carpet. The IICRC is a non-profit certified body for the cleaning and restoration industry. The IICRC standards in evidence classify categories of water intrusion based on potential contamination levels. In the remediation estimate, Pro Pacific DKI classified the Loreths' basement flood water as category 3. The IICRC document states that category 3 includes water entering or affecting an indoor environment from weather-related events. It states that the water can carry trace levels of regulated or hazardous materials (e.g. pesticides, or toxic organic substances). The IICRC standards state that the carpet

and carpet “cushion” should be removed and replaced after a category 3 water intrusion.

18. Good Grade agrees that the carpet was flooded by groundwater but says a carpet only required replacement if it was contaminated with black or grey water. It says Pro Pacific DKI never tested the water to conclude it was in fact, a category 3 flood. Good Grade says that under the IICRC standards the flood was category 2 and it only required that the carpet’s cushion or underlay be replaced. However, Good Grade does not say that it has IICRC certification or remediation expertise to assess what was required. So, I find its opinions unpersuasive. It also provided no evidence from a certified IICRC firm that the water intrusion in the Loreths’ basement was a category 2 flood.
19. Pro Pacific DKI’s certificate in evidence shows it is a certified IICRC firm. I prefer its assessment that the flood was a category 3 water intrusion. I also find IICRC category 3 better describes the type of water that flooded the Loreths’ carpet, which was external groundwater entering from outside after a weather-related event (heavy rains). The IICRC category 2 examples only describe indoor water sources, such as from a dishwasher.
20. The Loreths say that testing and cleaning is not recommended as an alternative to carpet replacement for category 3 floods. I accept this to be the case because it is not listed as an alternative option in the IICRC standards. Testing and cleaning was also not recommended by Pro Pacific DKI.
21. In summary, I am satisfied on Pro Pacific DKI’s evidence together with the IICRC standards that the water from the uncapped pipe that soaked the carpets was category 3 and that the carpet required replacement. Good Grade admits liability for the flood, so I find that Good Grade is responsible to reimburse the Loreths \$1,094.67 for the new carpet.
22. As for the remaining remediation expenses, Good Grade argues that the repairs would have cost less and could have been done quicker had they been performed

by a different contractor or overseen by an insurance adjuster. I find Good Grade's opinion is speculative. It is unsupported by any objective evidence of delay or that the work should have been performed or overseen by others. I am satisfied on the evidence that Pro Pacific DKI was qualified as an IICRC professional to carry out the remediation work. I find the remediation work was only required because Good Grade failed to cap the water pipe, which caused the flood and water damage. I find that Good Grade must reimburse the Loreths the remaining \$2,873.34 they paid to remediate their water-damaged basement suite as shown in their payment receipts.

23. The next issue is the Loreths' claim for lost rent and their tenant's live-out expenses. In its dispute response, Good Grade stated that the Loreths' tenant was moving out irrespective of the flood and the rent discount was arbitrary. However, Good Grade did not pursue these arguments in its written submissions.
24. The remediation spanned almost the whole month of January, involved serious repairs including to drywall and flooring. I find on her correspondence with the Loreths the tenant was disrupted by the remediation work. She was undisputedly not able to sleep in her bed or bedroom. I find it was reasonably foreseeable that the Loreths would reduce the rent for the disruption of the remediation work and pay live-out expenses for the days the suite was uninhabitable. I find the Loreths would not have suffered these losses in the absence of the flood. I find that Good Grade must reimburse the Loreths \$700.00 in lost rent and \$278.78 for the Airbnb expense. I find the value of these claims is supported by emails and the Airbnb receipt in evidence.
25. In summary, I am satisfied that Good Grade caused all the claimed damages and must reimburse the Loreths a total of \$4,946.79 in damages.
26. The *Court Order Interest Act* applies to the CRT. The Loreths are entitled to pre-judgment interest on the \$4,946.79 damages. I have calculated the interest from the respective invoice dates for the repair costs and Airbnb receipt and the date of loss for the rent up to the date of this decision. This equals \$39.69.

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. I find the Loreths are entitled to reimbursement of \$175.00 in CRT fees. Neither party claims dispute-related expenses.

ORDERS

28. Within 30 days of the date of this order, I order Good Grade to pay the Loreths a total of \$5,161.48, broken down as follows:

- a. \$4,946.79 in damages,
- b. \$39.69 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175.00 in CRT fees.

29. The Loreths are entitled to post-judgment interest, as applicable.

30. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

31. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Trisha Apland, Tribunal Member