



Civil Resolution Tribunal

Date Issued: July 28, 2020

File: SC-2020-001257

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Luo v. Ding*, 2020 BCCRT 834

BETWEEN:

PENGFEI LUO

APPLICANT

AND:

LI DING

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This is a tenancy dispute about property damage.
2. The respondent, Li Ding, rented a bedroom and bathroom suite in a townhouse co-owned by the applicant, Penfei Luo. Mr. Luo says Mr. Ding is responsible for

cracking the shower floor and the resulting water damage to the kitchen below. Mr. Luo claims \$2,070 in repair costs.

3. Mr. Ding says the cracked shower floor and kitchen water damage were not his fault and asks that the claim be dismissed.
4. Both parties represent themselves.

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, 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 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 tribunal considers appropriate.
9. Section 4(c) of the *Residential Tenancy Act* (RTA) says that the RTA does not apply to accommodation in which a tenant shares bathroom or kitchen facilities with the

accommodation's owner. In this case, Mr. Luo and his spouse co-own the townhouse where Mr. Ding lived. Mr. Luo says his spouse shares the kitchen with Mr. Ding. As Mr. Ding does not dispute that statement, I accept it as true. I find that the RTA does not apply, and that this is a contract dispute which falls under the CRT's small claims jurisdiction.

ISSUES

10. The issues in this dispute are:

- a. Is Mr. Ding responsible for the cracked shower floor?
- b. Is Mr. Ding responsible for water damage to the kitchen?
- c. If the answer to "a" or "b" is yes, must Mr. Ding pay for repairs, and if so, how much?

EVIDENCE AND ANALYSIS

11. In a civil claim, such as this one, as the applicant Mr. Luo must prove his claim on a balance of probabilities. I have reviewed all the parties' submissions and evidence and refer only to that needed to explain my decision.
12. The suite Mr. Ding rented is directly above the shared kitchen. Mr. Ding inspected the suite on August 31, 2019 and moved in on September 01, 2019. Mr. Ding has since moved out of the suite. Mr. Luo returned Mr. Ding's full rental deposit to him on December 21, 2019. None of this is in dispute.
13. It is also undisputed that Mr. Ding told Mr. Luo that there was water in the kitchen on October 21, 2019.
14. Mr. Luo says a plumber inspected the water damage and found damage to the suite's bathtub. Although Mr. Luo refers to a bathtub, I find the suite had a small

shower with a fiberglass type floor, based on photographs submitted by Mr. Ding. The parties agree that the shower's base was cracked.

15. Mr. Luo says that Mr. Ding is responsible for the shower crack. Mr. Luo says the "repair technician" said that the crack was most likely caused by dropping something heavy or hard on the surface of the shower floor. I infer Mr. Luo means the plumber, who inspected the damage and replaced the shower floor. Mr. Luo submitted into evidence a November 3, 2019 handwritten and signed note from the plumber. However, the plumber does not say anything about how the crack likely developed.
16. Mr. Ding says he used the shower in a normal way. He specifically denies scratching, digging, cutting or jumping in the shower. As there is no supporting evidence, I do not find it likely that the shower floor cracked because something was dropped on it.
17. Both parties made submissions about how old the shower was and whether the crack resulted from reasonable wear and tear. Neither party provided any supporting evidence, such as expert opinion, about the lifespan of a fiberglass shower floor and whether cracks usually develop over time, through reasonable wear and tear. So, I find nothing turns on the shower's age.
18. Mr. Luo says that Mr. Ding must have cracked the shower floor because Mr. Ding was the only person with access to the shower since September 1, 2019. Mr. Luo says, if the shower was cracked before Mr. Ding moved in, it would have leaked much earlier than mid-October 2019. He relies on the November 3, 2019 plumber's note, which says it should only take a couple of days for a cracking shower base to start leaking water. I cannot read the plumber's signature. While the note says the plumber is "ticketed", it does not set out any specific qualifications. Overall, I do not accept the November 3, 2019 note as expert evidence about how long it would take this cracked shower floor to start leaking water into the kitchen below.

19. Mr. Luo also says the crack was not there before Mr. Ding moved in, or Mr. Ding would have seen it during his August 31, 2019 inspection. I disagree. Based on Mr. Ding's photos I see several marks on the textured fiberglass shower floor, including one long jagged mark which I infer is the crack at issue, since it is in a close-up photo. None of the photos show a gap between the edges or the jagged mark, or a raised edge, which would indicate the mark is a crack. The jagged mark does not look any different than other marks on the shower floor and I find it does not show an obvious jagged crack. As I find the crack is not obvious to a reasonable person, I find it was just as likely there before Mr. Ding moved in, as after.
20. On balance, I find Mr. Luo has failed to prove that Mr. Ding did anything to cause the shower floor to crack, or that the crack only developed during Mr. Ding's tenancy.
21. Mr. Luo says, even if Mr. Ding did not cause the crack, he was negligent in failing to report it immediately, which could have prevented the water leaking and damaging the kitchen below. To prove negligence, Mr. Luo must show that Mr. Ding owed him a duty of care, breached the standard of care, and that breach caused damage (see *Mustapha v. Culligan*, 2008 SCC 27).
22. I agree with Mr. Luo that Mr. Ding, as a tenant, owes Mr. Luo a duty of care to report property damage. The applicable standard is that of a reasonable person in the same circumstances. I find that a reasonable person, seeing this particular shower floor, would likely not realize that it was cracked. As noted above, I find the crack on the shower floor looks like other marks on the floor, or a surface scratch. Mr. Ding reported water in the kitchen but not the crack in the shower. Mr. Luo says the plumber discovered the shower crack after investigating the source of the water in the kitchen.
23. I find Mr. Ding acted reasonably in reporting the water in the kitchen. I disagree that Mr. Ding acted unreasonably in failing to report the cracked shower floor immediately, as I find the shower floor crack would not be obvious to a reasonable

person. I find Mr. Luo has not proven that Mr. Ding was negligent in failing to tell Mr. Luo about the cracked floor in a timely manner.

24. As Mr. Luo has failed to prove that Mr. Ding cracked the shower floor, or that he was negligent in failing to report the crack, I dismiss Mr. Luo's claim. So, I do not need to address the amount of damages.
25. Mr. Ding says Mr. Luo failed to provide him with a working bathroom while waiting for, and during, the repairs. However Mr. Ding did not file a counterclaim, although had the opportunity to do so. So, I cannot consider his claim for breach of contract in this dispute.
26. Under section 49 of the CRTA and tribunal rules, the CRT will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. As Mr. Luo was unsuccessful in this dispute, I dismiss his claim for tribunal fees.

ORDER

27. I dismiss Mr. Luo's claims and this dispute.

Sherelle Goodwin, Tribunal Member