



Civil Resolution Tribunal

Date Issued: August 10, 2020

File: SC-2020-000280

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nied v. Letondre*, 2020 BCCRT 887

BETWEEN:

ROMAN NIED

APPLICANT

AND:

BETTY LETONDRE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about property damage.
2. The applicant, Roman Nied, says that his garage was damaged by a tree that fell from the respondent, Betty Letondre's, property. Mr. Nied says Ms. Letondre should have known that the tree was dead and posed a hazard and so should have

removed the tree before it fell. He claims \$2,086.25 for the cost of repairing his garage.

3. Ms. Letondre denies that Mr. Nied's garage was damaged by a tree from her property. Ms. Letondre says that, if the tree did come from her property, she was not negligent and therefore not responsible for any damage caused. Ms. Letondre also says that a common neighbor (SM) already repaired Mr. Nied's garage roof. Ms. Letondre asks that the dispute be dismissed.
4. Both parties are self-represented.

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.

ISSUES

9. The issues in this dispute are:
 - a. Is Ms. Letondre responsible for the damage to Mr. Nied's garage?
 - b. Must Ms. Letondre pay to repair Mr. Nied's garage and, if so, how much?

EVIDENCE AND ANALYSIS

10. In a civil claim, such as this one, Mr. Nied must prove his claim on a balance of probabilities. I have reviewed all submissions and evidence, but I will only refer to that which explains and gives context to my decision.
11. It is undisputed that Mr. Nied, Ms. Letondre, and SM are neighbours. Ms. Letondre and SM's properties are beside each other, so they share a property line on one side of their respective yards. Mr. Nied's property is behind that of Ms. Letondre and SM. Based on a property map submitted in evidence by Mr. Nied, I find Mr. Nied shares approximately half his rear property line with Ms. Letondre and the other half with SM.
12. It is undisputed that none of the neighbours have fences on their property lines. The parties agree that Ms. Letondre and her partner created a barrier of piled up dead branches in the approximate area of their rear property line, over many years.
13. Based on Mr. Nied's photos, and his marking on the property map, I find Mr. Nied's garage is located on the half of his backyard which is adjacent to Ms. Letondre's property.
14. Mr. Nied says he discovered damage to his garage roof from a tree, or part of a tree, in January 2018. Based on submitted photos taken by Mr. Nied on January 29, 2018 I find they show a piece of tree embedded in the roof, damage to the roof shingles, and scraped paint on the flashing of the garage roof. Based on an April 6, 2020 email from SM, I find that the flashing had been hanging off the shed, and SM fixed it for Mr. Nied.

15. Mr. Nied submitted photos showing a tall tree trunk lying behind his garage which he says he took on January 29, 2018. The trunk is partially lying on top of broken buckets right beside the garage. The broken end of the trunk lies very close to the rear corner of the garage where the roof has been damaged. Based on the tree's location, the damage to the buckets and the garage, and the break in the tree trunk, I find it more likely than not that the entire tree fell on the garage roof and damaged it, then rolled or slid off the garage onto the buckets and the ground. I note that the tree is angled away from the rear corner of the garage shed, toward the rear middle of Mr. Nied's property.
16. Mr. Nied says the fallen tree's stump is on Ms. Letondre's property. Ms. Letondre says it is not clear where the actual property lines are given that all 3 properties have bushy areas of growth around the accepted and assumed property edges. Ms. Letondre relies on SM's April 6, 2020 statement that when he saw Mr. Nied's damaged garage in January 2018, he could not tell who owned the fallen tree as it sat "between the property lines" and was inaccessible.
17. I find the property lines are clearly identified, with measurements, on the registered property map submitted by Mr. Nied.
18. Based on Mr. Nied's photo, I find he located the surveyor's pin which shows the point where his property line meets both Ms. Letondre's and SM's property lines. I agree with Ms. Letondre that the pin shows an intersection point, and not a property line. However, I accept that Mr. Nied was able to estimate the property line locations based on the surveyor's pin and the registered property map.
19. I accept Mr. Nied's statement that the fallen tree measures 44 feet and that his garage is approximately 24 feet from his rear property line. The measurements are not disputed and appear consistent with Mr. Nied's photos. Based on these measurements I find the fallen tree was too tall to have originated on Mr. Nied's property, even taking into account the angle of the fallen tree behind Mr. Nied's garage.

20. As shown in Mr. Nied's photo, I find he measured the stump of the fallen tree at approximately 10 feet, 9 inches away from the surveyor's pin. Also based on Mr. Nied's photo, I find Mr. Nied measured the tree stump to be 3 feet, 8 inches into Ms. Letondre's side of the property line she shares with SM. I accept that Mr. Nied may have under or overestimated the angle of the property line running from the surveyor's pin, and thus likely approximated where the dividing line was between Ms. Letondre and SM's properties. However, given that the tree stump was over 3 feet into Ms. Letondre's property, I am still satisfied that the tree stump would be on Ms. Letondre's property even if Mr. Nied had misjudged the angle of the property line from the surveyor's pin. I find that the fallen tree came from Ms. Letondre's property.
21. I now turn to whether Ms. Letondre is responsible for the damage caused by the fallen tree.
22. Mr. Nied says that, in January 2018, Ms. Letondre agreed to call her home insurance provider to cover the garage roof repair costs. Ms. Letondre denies agreeing to this.
23. Mr. Nied says he asked Ms. Letondre to pay the repair costs in April 2018. She says that on April 7, 2018, Mr. Nied asked her to cover part of the costs of his insurance deductible and increased premium costs which would result if he claimed the repair costs against his own insurance. While I accept that the parties discussed the matter of costs, I find they did not come to any agreement on payment of either repair costs, or insurance costs.
24. The law of nuisance applies to this type of claim. The focus is on harm suffered, rather than the wrongful conduct. The general principle is that people are entitled to use and enjoy their land without unreasonable interference. If the interference causes physical damage, the court or tribunal will generally find it to be unreasonable (see *Royal Ann Hotel Co. v. Ashcroft*, 1979 CanLII 2776 (BCCA)). In disputes like this, where the property owner did not actively create the nuisance, they will not be found liable unless they knew, or ought to have known, of the

nuisance and failed to take reasonable steps to remedy the nuisance (see *Hayes v. Davis*, 1991 CanLII 5716 (BCCA) and *Lee v. Shalom Branch #1178 Building Society*, 2001 BCSC 1760).

25. Based on his March 5, 2018 statement in evidence, I accept that James Raycraft is qualified to provide an opinion on the nature of the fallen tree, as Mr. Raycraft has 44 years of experience running a tree pruning and removal service in the parties' neighbourhood. I accept Mr. Raycraft's opinion that the fallen tree had been dead for a long time prior to its fall, based on the tree's lack of vegetation, broken limbs and branches, and peeling bark. Mr. Raycraft's description of the tree is consistent with Mr. Nied's photos. I also accept Mr. Raycraft's opinion that the dead tree posed a hazard which would have been apparent to anyone looking at it, and that the tree should have been cut down prior to falling.
26. Based on his undated statement, I also find James Johnston is qualified as an arborist to provide his opinion on the fallen tree. I accept Mr. Johnston's opinion that the fallen tree had been dead for at least one year and likely longer, based on the flaked off bark and holes visible in Mr. Nied's photos. I also accept Mr. Johnston's opinion that a tree in this state would likely collapse due to rot and decay.
27. Mr. Nied says Ms. Letondre ought to have known the tree was hazardous, as it was obviously dead and at risk of falling. Based on the opinions of Mr. Raycraft and Mr. Johnston, and Mr. Nied's photos, I find the tree was likely dead, and obviously so, before it fell on Mr. Nied's garage. I find the dead state of the tree should have been obvious to anyone who saw the tree, given its peeling bark, holes, broken branches and complete lack of leaves or needles. I accept Mr. Raycraft's opinion and find that the dead tree posed an obvious hazard.
28. I acknowledge that Mr. Nied did not previously complain about or report the dead tree to Ms. Letondre but find this is not determinative of whether Ms. Letondre ought to have known of the hazardous nature of the dead tree.

29. Ms. Letondre says she did not notice any issue with a tree in the general area of the tree stump prior to being called over to Mr. Nied's property in January 2018.
30. Mr. Nied says Ms. Letondre must have seen the dead tree as it was less than 15 feet from the dead branch barrier Ms. Letondre created over time at the rear of her property. I find it more likely than not that Ms. Letondre either saw, or should have seen, the completely dead, 44-foot tree prior to it falling on Mr. Nied's garage. I further find that she ought to have known, from the tree's appearance, that it was dead and posed a hazard of falling and causing damage. In reaching this conclusion I rely, in part, on Ms. Letondre's acknowledgment that tree branches, and sometimes whole trees, fell down on her property, particularly during winter windstorms, and that she had previously topped or removed hazardous trees on her property. I find those statements show that Ms. Letondre knew of the generally hazardous nature of dead trees, particularly during winter windstorms.
31. Having found that Ms. Letondre ought to have known of the hazardous nature of the dead tree, I also find that Ms. Letondre took no steps to remedy the hazard. So, I find Ms. Letondre responsible for the falling tree and the resulting damage to Mr. Nied's garage. I turn now to consider damages.
32. Based on a February 13, 2018 estimate from Alpha roofing company, I find it would cost approximately \$1,987, plus GST, to repair the damage to Mr. Nied's garage roof. According to SM's April 6, 2020 statement, he patched the hole in the garage roof for Mr. Nied. I find that a patch is a temporary measure and does not adequately remedy the damage done by the fallen tree. I find that the best estimate of Mr. Nied's damages is the amount it will cost him to fix the garage roof. So, I find Ms. Letondre must pay Mr. Nied \$1,987, plus \$99.35 GST, for a total of \$2,086.35 for garage roof repairs.
33. The *Court Order Interest Act* applies to the CRT. However, Mr. Nied's argument implies that he has not yet paid for the garage roof to be repaired. As the money has not been spent, I find Mr. Nied is not entitled to interest on the repair costs.

34. 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. I find Mr. Nied is entitled to reimbursement of \$150 in CRT fees. Mr. Nied did not claim any dispute-related expenses.

ORDERS

35. Within 30 days of the date of this order, I order Ms. Letondre to pay Mr. Nied a total of \$2,236.35, broken down as follows:

- a. \$2,086.35 in damages for garage roof repairs, and
- b. \$150 in CRT fees.

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

37. 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.

38. 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.

Sherelle Goodwin, Tribunal Member