



Civil Resolution Tribunal

Date Issued: October 20, 2020

File: SC-2020-004368

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bushfield v. Remi Realty Inc.*, 2020 BCCRT 1180

B E T W E E N :

IAN BUSHFIELD

APPLICANT

A N D :

REMI REALTY INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about a bicycle theft from a storage locker on strata corporation (strata) property. The applicant, Ian Bushfield, resides in the strata. The respondent, Remi Realty Inc. (Remi), was the strata's property manager at the time of the theft. Mr. Bushfield says he discovered on July 4, 2019 that thieves had stolen his bicycle from his bike storage locker. Mr. Bushfield says Remi failed to provide reasonable security

at the strata, or to warn him, other residents, or the strata, about previous break-ins. So, Mr. Bushfield says Remi is responsible for the bicycle theft, and he claims \$730.67 in damages for the stolen bicycle.

2. Remi denies Mr. Bushfield's claim, saying that previous security incidents were not break-ins, and that it is not responsible for any theft from Mr. Bushfield's bike locker.
3. Mr. Bushfield is self-represented in this dispute. Remi is represented by its managing partner, Wayne Cau.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT), which 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. Although the parties' submissions each call into question the credibility of the other party in some respects, I find I can properly assess and weigh the written evidence and submissions before me without an oral hearing. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
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.

ISSUE

8. The issue in this dispute is whether Remi's allegedly negligent failure to safeguard the strata led to the theft of Mr. Bushfield's bicycle, and if so, does Remi owe \$730.67 or another amount in damages?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mr. Bushfield, as the applicant, must prove his claims on a balance of probabilities. I have read all the submitted evidence, but I refer only to the relevant evidence needed to provide context for my decision.
10. At the outset, I note that Mr. Bushfield's arguments refer to a CRT decision, *Kozak v. Remi Realty Inc.*, 2020 BCCRT 544, which involved theft from a storage locker in the strata a few days after Mr. Bushfield's bicycle was stolen. Remi submits that it disagrees with the tribunal member's finding in *Kozak* that Remi was negligent in protecting another resident's stored possessions. However, Remi succeeded in that dispute because the resident failed to prove their damages. Mr. Bushfield says that the same facts have already been adjudicated in *Kozak*, and that the CRT should not "reverse its previous decision" in *Kozak*, that Remi was negligent, in this dispute.
11. I also note that in the recent CRT decision *The Owners, Strata Plan EPS5534 v. Remi Realty Inc.*, 2020 BCCRT 1172, the strata claimed against Remi for, among other things, professional negligence in addressing the strata's security around the time Mr. Bushfield's bicycle was stolen. The tribunal member in *The Owners* found that expert evidence was required to establish the standard of care Remi owed to the strata, and there was no expert evidence before him.

12. I find that the claims in *The Owners* are different than those in this dispute. *The Owners* involves the standard of care Remi owed to the strata, and not to a resident whose items were stolen from a storage locker. Further, as discussed below, I find that the British Columbia Supreme Court (BCSC) decision *Robertson v. Stang*, 1997 CanLII 2122, is applicable to this dispute, and confirms that Remi owed Mr. Bushfield, as a resident of the strata, a duty of care to protect his possessions. *The Owners* did not cite *Robertson*, or the *Occupiers Liability Act* (OLA) cited in *Robertson*. Further, unlike this dispute, *The Owners* involves the appropriateness of Remi's actions both before and after Mr. Bushfield's bicycle was stolen on July 4, 2019, as there were further storage locker break-ins after that date. Given *Robertson*, I am satisfied that expert evidence is not required to show the standard of care Remi owed Mr. Bushfield in this dispute. I discuss the required standard of care below.
13. In any event, I am not bound by previous CRT decisions such as *Kozak* and *The Owners*, even if those decisions address similar circumstances to those in this dispute. My decision is based on the evidence and arguments presented in this dispute only, which involves a different claims and different parties than *Kozak* and *The Owners*. I need not make similar findings of fact, or arrive at similar conclusions, as previous CRT decisions, although I am free to do so if I determine the weight of the evidence supports similar findings or conclusions. In particular, Remi's alleged negligence toward Mr. Bushfield is an open issue in this dispute, and neither *Kozak*, *The Owners*, nor any other CRT dispute governs my decision on this issue.
14. Mr. Bushfield says, and Remi does not deny, that on July 4, 2019 he discovered his bicycle had been stolen from his personal bike locker. A photo of the metal cage bike locker shows that its metal padlock bracket had been cut, allowing the padlock to be removed and the locker opened. Mr. Bushfield sent an email to Remi the same day informing it of the break-in and bicycle theft. In the email, Mr. Bushfield said he had spoken to a strata maintenance employee that morning, who informed him that there had been previous break-ins, which Mr. Bushfield says he did not previously know about.

15. Turning to these previous incidents, Mr. Bushfield sent Remi an email on April 18, 2019 saying that the handle and lock of the stairwell door beside the strata's main entrance was broken, and that the door no longer opened. He attached a photo of the door to the email, which showed that the door's combined handle and lock assembly was loose and askew, and that the door was shut. Mr. Bushfield says that although this appeared to be a break-in attempt, the door was jammed shut, so he thought no one had gained entry and the strata remained secure. I accept this undisputed explanation, which I find is consistent with the other evidence.
16. On April 30, 2019, a strata maintenance employee sent Remi an email saying that a storage locker had been broken into the night before. The employee attached a photo of an open, bent, and broken padlock hanging from a storage locker bracket, and said that no other lockers or locks appeared to be damaged.
17. On June 17, 2019, an individual emailed Remi saying that the door handle on a storage room door was very loose, and that there were items scattered on the floor beside one of the storage lockers, whose door was open. Remi responded the same day, saying it had already been informed about the situation, and had dispatched a locksmith.
18. There are two locksmith invoices in evidence, dated April 30, 2019 and June 20, 2019. The April 2019 invoice said that the locksmith replaced a broken ground floor door lever lock, as well as a second storeroom lock on level P4. The locksmith also installed a new lever lock on the bike storage room door. The June 2019 invoice noted instructions from a strata maintenance employee to repair a broken lock on the P4 storage room door, a lock on a P4 storage room locker that had been broken into, and a P1 stairwell door lock that had been broken into. The invoice said that the locksmith repaired the two door locks, and that the storage locker was undamaged apart from having its padlock cut off and only needed a new padlock.
19. Mr. Bushfield alleges that Remi negligently handled these incidents. Mr. Bushfield says that Remi was aware of the previous break-ins on April 30, 2019 and June 17, 2019, but did not inform the strata council or the strata residents, including himself,

about them. He says that Remi had a duty to inform affected residents about these previous incidents, which would have allowed him to take steps to better secure his bicycle stored in his locker. Mr. Bushfield says that Remi's failure resulted in his bicycle's theft. Remi denies owing Mr. Bushfield any duty to protect his belongings, says that it provided adequate security, and says that the previous incidents were not thefts that required reporting.

20. According to *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3, to show Remi was negligent, Mr. Bushfield must prove each of the following on a balance of probabilities:

- a. Remi owed Mr. Bushfield a duty of care,
- b. Remi breached the applicable standard of care,
- c. Mr. Bushfield sustained a loss, and
- d. Remi's breach caused Mr. Bushfield's loss.

21. First, Did Remi owe Mr. Bushfield a duty of care? Section 3(1) of the *Occupiers Liability Act* (OLA) says occupiers have a duty of care to protect possessions on their premises. The OLA says that "occupiers" include persons who have responsibility for and control over the condition of premises, as well as the activities conducted on the premises and the persons allowed to enter those premises. Premises include land or structures or both.

22. So, was Remi an occupier of the strata premises under the OLA? Mr. Bushfield refers to the BCSC *Robertson* decision noted above. *Robertson* found that an apartment building's managers were "occupiers" under the OLA, in circumstances similar to those in this dispute, where thieves stole a tenant's items stored in a building storage room. The court found that under the OLA, the managers had a duty of care to protect the tenant's stored items from being stolen.

23. I find *Robertson* is applicable to this dispute. BC court decisions like *Robertson* are binding on the CRT, and I must follow them. So, I find that because Remi was the

strata's property manager, it was an occupier under the OLA, and owed Mr. Bushfield a duty of care to protect his possessions.

24. The next question is, did Remi breach the applicable standard of care? OLA section 3(1) says that Remi had a duty to take reasonable care in the circumstances to see that Mr. Bushfield's property was reasonably safe.
25. Remi says that the first break-in was the one that resulted in the theft of Mr. Bushfield's bicycle. Remi says that the previous door and lock damage at the strata did not result from break-ins or attempted break-ins. Remi also says that some strata residents had used the wrong storage lockers, and that the rightful locker users may have cut others' padlocks off their lockers, referring to February 2019 and March 2019 warning letters sent by Remi about this issue. However, there is no evidence showing a disagreement over use of the lockers whose padlocks were cut in April 2019 and June 2019, or that a resident cut those padlocks. Further, I find resident disagreements do not explain the several broken handle and lock mechanisms on doors leading to the storage area in April 2019 and June 2019. So, I find Remi's argument is speculative, and is not persuasive.
26. Given the resident complaints and locksmith invoices noted above, I find the door handle and lock incidents around April 30, 2019 and June 17, 2019 were break-ins, that involved breaking through one or more locked doors and locked storage lockers. In the circumstances, I find that Remi reasonably ought to have concluded that these events were break-ins. The parties agree that Remi promptly arranged to repair the damaged doors and lockers. However, Mr. Bushfield says Remi failed to warn anyone about these incidents.
27. Remi says that it encouraged the strata council to improve security at the strata before the July 4, 2019 break-in and theft, but says the strata declined for budgetary reasons. However, I find the evidence, including strata council meeting minutes before the July 4, 2019 bicycle theft, does not show that Remi advised the strata council to improve security, or that Remi advised the council of the security incidents involving broken

locks and door handles. On the evidence before me, I find that Remi did not alert the strata or its residents of the break-ins.

28. In *Robertson*, the building managers breached their duty of care to the tenant in part by failing to provide adequate storage locks, and failing to inform the tenant of earlier storage area break-ins, despite knowing the tenant's goods were at risk. I find that is the situation here. On balance, I find Remi knew, or should have known, that the April 2019 and June 2019 security incidents were break-ins, and had a duty to warn the strata or its residents about them. I find Remi failed in its duty to Mr. Bushfield by not providing any warnings before the July 4, 2019 theft. Further, the evidence shows that after multiple successful break-ins, Remi did not advise the strata or residents that additional security measures were required to protect their belongings in the storage lockers until after the July 4, 2019 theft, when it recommended using two padlocks per locker and other measures.
29. Turning to whether Remi's breach caused Mr. Bushfield's loss, I acknowledge that Mr. Bushfield knew that a stairwell door handle and lock had been broken and jammed on April 18, 2019. However, I found above that Mr. Bushfield reasonably believed that persons were unable to proceed through the jammed door, and that the area remained secure. More importantly, I find the evidence does not show that Mr. Bushfield knew, or ought to have known, about any successful break-ins, including those around April 30, 2019 and June 17, 2019. So, I find that Remi's failure to inform Mr. Bushfield about previous break-ins, when Remi had a duty to do so, deprived Mr. Bushfield of the opportunity to better secure his bicycle, which resulted in its theft. So, I am satisfied that Remi's breach caused Mr. Bushfield's loss. Overall, I find that Remi was negligent, and is responsible for Mr. Bushfield's bicycle theft.
30. Turning to damages, the parties agree that Mr. Bushfield's bicycle was insured, but he chose not to proceed with an insurance claim because the \$500 deductible approached the bicycle's \$730.67 value. Remi says that it should not be responsible for the value of the bicycle because Mr. Bushfield should have obtained an insurance

payout. I find that Mr. Bushfield was free to choose whether to obtain an insurance payout for the bicycle, and that this does not affect Remi's liability for negligence.

31. Remi also says that the bicycle was used so it had depreciated, and its value was less than the amount Mr. Bushfield claims. The purchase receipts in evidence show that the bicycle was less than 1 year old when it was stolen. The parties do not allege that the bike was damaged. Remi provided no evidence supporting any amount of depreciation. So, I find Mr. Bushfield is entitled to the full purchase price of his bicycle and attached accessories, which equals \$730.67. I allow Mr. Bushfield's claim.

CRT FEES, EXPENSES, AND INTEREST

32. Mr. Bushfield is entitled to pre-judgement interest under the *Court Order Interest Act* on the \$730.67 owing. I find that pre-judgement interest is calculated starting July 4, 2019, the date of the bicycle theft, until the date of this decision. This equals \$15.18.
33. 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. Mr. Bushfield was successful, so Remi must reimburse him \$125 for CRT fees. No CRT dispute-related expenses were claimed.

ORDERS

34. Within 30 days of the date of this order, I order Remi to pay Mr. Bushfield a total of \$870.85, broken down as follows:
- a. \$730.67 in damages,
 - b. \$15.18 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
35. Mr. Bushfield is entitled to post-judgment interest, as applicable.

36. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.
37. 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.

Chad McCarthy, Tribunal Member