Civil Resolution Tribunal

Date Issued: November 23, 2020

File: SC-2020-005343

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gerlich v. Brighter Mechanical Ltd.*, 2020 BCCRT 1318

B E T W E E N :

IWONA GERLICH and CAMERON MCROBBIE

APPLICANTS

A N D :

BRIGHTER MECHANICAL LIMITED

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Sherelle Goodwin

INTRODUCTION

1. The applicants, Iwona Gerlich and Cameron McRobbie, lived in an apartment building which needed its pipes replaced. The building's strata corporation (strata) hired the respondent, Brighter Mechanical Limited, to replace the pipes, including those in the applicants' apartment, between December 2019 and February 2020. The strata is not a party to this dispute.

2. The applicants had to move out of their apartment in November 2019, due to a flood. They say the respondent refused to complete the pipe replacement work in their apartment before the applicants moved back in on January 17, 2020. The applicants also say that the respondent caused noise and banging which interfered with the applicants' ability to work from home and caused stress, pain and suffering. The applicants claim $3,500 in damages.

3. The respondent says it never agreed to complete the repair work while the applicants were out of their apartment. It also says it could not complete the applicants' apartment in the time frame requested, due to the schedule set in 2019 and the nature of the repairs. The respondent also says other trades were working in and around the applicants' apartment at the same time that contributed to the noise. It asks that the claim be dismissed.

4. Ms. Gerlich represents the applicants. The respondent is represented by RH, who I infer is an owner or employee.

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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.

6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

7. Section 42 of the CRTA says 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 whether the respondent was negligent for failing to reschedule and complete the pipe replacement work in the applicants' apartment before January 17, 2020 and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this the applicants must prove their claims on a balance of probabilities. Although I have reviewed all the evidence and submissions provided, I only refer to what is necessary to explain my decision.

11. The parties agree that the strata hired the respondent to complete piping work in all 54 units in the applicants' building. They also agree there is no contract between the parties. So, I find the applicant's claim cannot be based on breach of contract.

12. In order to establish a claim in negligence, the applicants must show that the respondent owed them a duty of care and that the respondent's conduct breached the standard of care owed. They must also show that the respondent's breach of the standard of care caused the applicants' damages or loss (see *Mustapha v. Culligan of Canada Ltd.,* 2008 SCC 27).

13. I find the respondent, as a contractor working in the applicants' apartment and building, owed a duty of care to the applicants. I find the applicable standard of care is that of a reasonable contractor, working in someone's home.

14. The applicants say that, in refusing to reschedule the piping work, the respondent did not consider the applicants' circumstances of having moved out of their apartment between November 2019 and January 17, 2020 due to an unrelated flood, and in experiencing a sudden death in the family on January 31, 2020. I infer the applicants allege that the respondent did not meet the expected standard of care of a reasonable contractor.

15. The parties agree that the respondent provided the strata with a work schedule in the second week of November 2019. It is unclear whether the applicants received that schedule before, or after, their apartment flooded. Based on that schedule, I find the respondent scheduled the pipe replacement to start in various apartments at different times. The respondent scheduled to start in the applicants' apartment on January 30, 2020. The schedule noted that work in each apartment would take 17 to 20 business days to complete and explained that access to the inside of each apartment would vary within those 17 to 20 days.

16. The respondent says it posted the schedule in the apartment building. As the applicants do not dispute this statement, I accept it to be true. I find the respondent provided warning and notice to the residents, including the applicants, of the work schedule.

17. The applicants say that they asked the respondent's foreman, G, to complete the piping work in their apartment before they moved back in on January 17, 2020. They did not provide any statements or evidence explaining who spoke to G, what was said, or when the request was made. So, I cannot determine when the applicants asked G to reschedule the work in their apartment.

18. I find the strata manager asked the respondent to reschedule the work in the applicants' apartment to a date before January 17, 2020, in a December 23, 2019 email at 9:45 am. The respondent says their office was closed between December 21, 2019 and January 6, 2020 and so it did not receive that email until January 6, 2020. This is supported by the posted schedule, which shows no work done during that time, and supported by the respondent's January 6, 2020 email response to the

strata at 7:00 a.m. So, I find it likely that the respondent only received the applicants' request to reschedule their piping work on January 6, 2020. I further find that, if the respondent received the request when it was emailed on December 23, 2019, it could not have rescheduled the work, or started the work any sooner, as work on the job site was shut down between December 21, 2019 and January 6, 2020, according to the posted schedule.

19. The respondent says it could not have rescheduled the work in the applicants' apartment in any event. It says that, due to the building's piping system, it had to work on a "bank" of 4 apartments together, to replace the vertical pipes between the apartments. Further, the applicants' bank and their neighbours' bank shared some of the piping system which, I infer, means the respondent would have to work on 8 apartments around the same time to replace the piping. The respondent says working on the applicants' bank of apartments first would delay the other units, and cause disruption to the schedule. The applicants have provided no evidence to the contrary, and so I accept the respondents' explanation that changing the schedule in the middle of the pipe replacement job was unworkable. I find the respondent's decision not to reschedule the pipe replacement job, in the middle of the job, was a reasonable one.

20. Further, I find the respondents would not have been able to complete the pipe replacement work in the applicants' apartment by January 17, 2020, because the respondent did not receive, or could not act on, the applicants' request until January 6, 2020. That did not give the respondent the needed 17 to 20 business days to complete the pipe replacement before January 17, 2020. I find it unreasonable to expect the respondent to complete 17 to 20 days' of work with only 11 days' notice.

21. The applicants say that, despite telling the respondent of a January 31, 2020 death in the family, the respondent continued the pipe replacement project, making loud noise which interfered with the applicants' grieving process. The respondent says it learned of the death on January 31, 2020 and did not return to the applicants' unit until February 12, 2020, having already cut holes in the applicants' drywall, and gained access to the pipes. The applicants disagree and say the respondent returned

to their apartment on February 10, 2020. Regardless of whether the respondent returned to work in the applicants' apartment on February 10 or 12, 2020, I find the respondent acted reasonably in not working inside the applicants' apartment for at least 10 days. I also find the respondent acted reasonably in continuing the pipe replacement project in other apartments and common areas near the applicants' apartment. I do not find the respondent acted unreasonably in continuing the pipe replacement job in the 2 banks, or 8 apartments near the applicants' apartment, given the respondent's contract with the strata to replace the pipes in all the other apartments in the building.

22. The applicants say the respondent acted unreasonably in making loud noise, knocking on their door before the agreed upon time of 8:15 am and not giving the applicants 1-day notice about loud noise. Based on email correspondence between the parties I find the respondent agreed to remind the workers to keep the noise down early in the morning and explained it was not possible to give 1 days' notice of loud noise. I also find the posted work schedule showed when the respondent would be working in apartments close to the applicant and so gave some general idea of when the work would be the noisiest for the applicants. Overall, I find the respondent acted reasonably in addressing the applicants' noise concerns, where it could.

23. On balance, I find the respondent met the standard of care of a reasonable contractor, and considered the applicants' circumstances, as well as the needs of the other residents in the building, in determining its work schedule and addressing noise concerns.

24. Even if I had found the respondent breached its standard of care, I would have found the applicants did not prove that they suffered any damage or loss as a result of the respondent's actions. The applicants have not proven that either of them lost wages as a result of a sudden need to commute to the office, as they allege. They have also not submitted any medical evidence of mental or physical pain and suffering. As discussed in *Eggberry v. Horn et al,* 2018 BCCRT 224, for a negligence claim for stress or mental distress to be successful there must be medical evidence to establish

mental distress. While I accept that the situation may have been stressful and unpleasant for the applicants, that alone is insufficient to prove damage or loss.

25. I dismiss the applicants' $3,500 claim for stress, pain and suffering.

26. As the applicants were unsuccessful in their claim, I find they are not entitled to reimbursement of any CRT fees or any dispute-related expenses under the CRTA and CRT rules. The respondent did not pay any CRT fees and did not seek reimbursement of any dispute-related expenses.

ORDER

27. I dismiss the applicants' claim and this dispute.

Sherelle Goodwin, Tribunal Member