



Civil Resolution Tribunal

Date Issued: January 28, 2021

File: SC-2020-007009

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lui v. Cardinoza*, 2021 BCCRT 101

BETWEEN:

KING LUI

APPLICANT

AND:

RONALD CARDINOZA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about property damage. The applicant, King Lui, and the respondent, Ronald Cardinoza, are neighbours. Mr. Lui says that on a windy day, Mr. Cardinoza's

pergola blew over the fence separating their properties and damaged Mr. Lui's deck. Mr. Lui claims \$547.92 for his deck damage.

2. Mr. Lui denies that his pergola damaged Mr. Lui's deck. He says the deck damage was caused by Mr. Lui's deck railing and skirting not being properly secured.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. 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, and I find that there are no significant issues of credibility or other reasons that might require an oral hearing. 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.
6. 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.
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 Mr. Cardinoza is responsible for the damage to Mr. Lui's deck, and if so, whether he must pay Mr. Lui \$547.92 for his deck repairs.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Mr. Lui bears the burden of proof on a balance of probabilities. I have read all of the parties' evidence and submissions, but I have only addressed the evidence and argument to the extent necessary to explain my decision. I note that Mr. Cardinoza did not make any submissions, though CRT staff reminded him of the opportunity to do so.
10. The parties agree that February 23, 2020 was a windy day. Mr. Lui claims that the wind blew a portion of Mr. Cardinoza's pergola off, and it damaged the railing and upper skirts on his deck. Mr. Lui also says that Mr. Cardinoza built the pergola himself, which Mr. Cardinoza did not particularly dispute.
11. Mr. Lui filed photographs taken from his deck of the broken pergola roof. The photographs show the pergola roof resting against Mr. Lui's house, directly below the damaged deck. The photographs also show Mr. Lui's deck railing is detached from his house, and some skirting panels are missing. I find the photographs support Mr. Lui's claim that the pergola caused the damage to his deck.
12. As noted above, Mr. Cardinoza did not make any submissions. He admits in his Dispute Response that the wind dislodged a portion of his pergola but says it landed 8 feet away from Mr. Lui's house and did not damage the deck. Mr. Cardinoza says the wind alone was responsible for Mr. Lui's deck damage, and he has pictures showing his pergola did not touch the deck skirting and that the deck railing was never attached to Mr. Lui's house. However, the only photograph Mr. Cardinoza submitted as evidence was a duplicate of one Mr. Lui submitted. I find it does not support Mr. Cardinoza's allegation that the pergola landed 8 feet from Mr. Lui's house.

13. While parties are under no obligation to provide evidence or submissions during the CRT decision process, failing to do so can lead to the CRT making an adverse inference. In particular, the courts have said that an adverse inference can be drawn against a party where, without sufficient explanation, they fail to produce evidence or call a witness expected to provide supporting evidence (see *Port Coquitlam Building Supplies Ltd. v. 494743 B.C. Ltd.*, 2018 BCSC 2146).
14. Here, I find it is appropriate to draw an adverse inference against Mr. Cardinoza for his failure to provide the photographs he claimed to have proving his pergola did not cause Mr. Lui's deck damage. On balance, I find that Mr. Cardinoza did not sufficiently secure his pergola and that a portion of it blew off and hit Mr. Lui's deck, causing it damage.
15. I find both the law of nuisance and the law of negligence apply to this dispute. The general principle underlying the law of nuisance is that people are entitled to use and enjoy their land without substantial and unreasonable interference. When there is physical damage, such as the deck damage in this case, there is a strong indication that the interference is not reasonable (see *Murray v. Langley (Township)*, 2010 BCSC 102, paragraph 37). If a property owner did not actively create the nuisance, they will not be found liable unless they knew or ought to have known of the facts constituting the nuisance (*Lee v. Shalom Branch #178*, 2001 BCSC 1760 at paragraphs 17 to 22).
16. Here, I find Mr. Cardinoza knew or ought to have known that failing to secure his pergola could cause it to take flight in a strong wind and cause damage. I find Mr. Lui's deck damage from the pergola constitutes a substantial and unreasonable interference in his use and enjoyment of his property. Therefore, I find Mr. Cardinoza is responsible for Mr. Lui's deck damage under the law of nuisance.
17. Given I have found Mr. Cardinoza liable in nuisance, I do not have to also consider whether he was negligent.

18. Turning to damages, Mr. Lui submitted an August 21, 2020 invoice for the repairs to his deck railing, showing he paid \$547.92. I order Mr. Cardinoza to reimburse Mr. Lui the claimed \$547.92.
19. The *Court Order Interest Act* applies to the CRT. Mr. Lui is entitled to pre-judgment interest on the \$547.92 from August 21, 2020, the invoice date, to the date of this decision. This equals \$1.08.
20. 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 find Mr. Lui is entitled to reimbursement of the \$125 he paid in CRT fees. He did not claim any dispute-related expenses.

ORDERS

21. Within 30 days of the date of this decision, I order the respondent, Ronald Cardinoza to pay the applicant, King Lui, a total of \$674, broken down as follows:
 - a. \$547.92 in damages for deck repairs,
 - b. \$1.08 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
22. Mr. Lui is entitled to post-judgment interest, as applicable.
23. 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.

24. 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.

Kristin Gardner, Tribunal Member