



Civil Resolution Tribunal

Date Issued: February 23, 2021

File: SC-2020-008021

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chyplyk v. Silverhawk Utilities Inc.*, 2021 BCCRT 214

B E T W E E N :

WILLIAM CHYPLYK

APPLICANT

A N D :

SILVERHAWK UTILITIES INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about wastewater utility service charges for a property at Silver Star, a mountain resort community east of Vernon, BC.

2. The applicant, William Chyplyk, owned the property until sometime in 2020. The respondent, Silverhawk Utilities Inc. (Silverhawk), provides sewer utility services to the property.
3. Silverhawk charged Mr. Chyplyk additional fees for 2019 and 2020 because it determined that the property included 2 dwelling units (a single family dwelling and a suite). Mr. Chyplyk says the property did not have a suite. He says when he sold the property he was forced to pay Silverhawk's additional fees in order to close the sale. Mr. Chyplyk seeks a refund of \$1,676.61 for the alleged overcharges.
4. Silverhawk says it correctly determined that the property contained 2 dwelling units because it had 2 kitchens. Silverhawk says Mr. Chyplyk agreed to be bound by Silverhawk's terms and conditions and rate schedule as a condition of receiving the sewer services. Silverhawk asks me to dismiss the dispute.
5. Mr. Chyplyk represents himself. Silverhawk is represented by a person I infer is a principal or employee.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
9. 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.
10. I find that this is a contractual dispute within the CRT's section 118 jurisdiction and not a dispute about rate setting for a utility or the supervision of public utilities. This is because it is uncontested that Silverhawk is a private sewer utility, not a public utility as defined in the *Utilities Commission Act*.

ISSUE

11. The issue in this dispute is whether Mr. Chyplyk's property contained 2 dwelling units for the purposes of his contract with Silverhawk, and if not, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

12. As the applicant in this civil dispute, Mr. Chyplyk must prove his claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
13. Mr. Chyplyk's former property is a half-duplex on 3 levels. The upper level has a living room, kitchen, dining room and a bedroom. The main level includes an entrance and 2 bedrooms with ensuites. The lower level includes another entrance, a bedroom, bathroom, media room, and living room with what Mr. Chyplyk describes as a bar area, which is the subject of this dispute. From the uncontested real estate listing

photos in evidence, I find the bar area had a range, refrigerator, microwave oven, toaster oven, and kitchen-style cabinets.

14. Silverhawk billed Mr. Chyplyk annually in the year after the service year. The July 25, 2020 invoice for 2019 includes a residential fee plus a secondary residential fee for full year of \$835.82 plus tax. Because Mr. Chyplyk sold his home in 2020, Silverhawk provided an October 16, 2020 invoice for 2020 service, which included a secondary residential fee for 9.5 months at \$80.10 per month, totaling \$760.95 plus tax. With 5% GST, the total secondary fees for the 2 invoices is \$1,676.61, which is what Mr. Chyplyk claims in this dispute.
15. On April 7, 2010, Mr. Chyplyk signed a document titled “Terms & Conditions for Use and Connection to the Sewer System”. The terms and conditions in 2010 included 13 clauses. Over time, the terms and conditions have changed and grown. Silverhawk put in evidence a copy of updated terms and conditions that it says is printed on the back of all its invoices. Mr. Chyplyk did not dispute this, so I accept that he received updated terms and conditions with his annual invoices. The courts have held that fresh consideration (something of value given by each party) is not required to enforce a contractual amendment: *Rosas v. Toca*, 2018 BCCA 191. I therefore find the updated terms and conditions applied. As a condition of receiving Silverhawk’s service, Mr. Chyplyk agreed to be bound by the terms and conditions and the “attached Rate Schedule”.
16. Clause 18 of the terms and conditions says Silverhawk will charge an “additional Annual Residential Fixed Fee” to properties with 2 or more “dwelling units.” It says the additional fee will apply regardless of whether or not there is a second water meter on the property.
17. The term “dwelling unit” is not defined in the terms and conditions. Silverhawk relies on its “Sewer Tariff – Terms & Conditions and Rate Schedule for Sewer Service” (Tariff). Mr. Chyplyk had the opportunity to respond to Silverhawk’s Tariff evidence and does not say that the Tariff was not incorporated into his service contract, so I find the Tariff and its definitions applicable.

18. Schedule H of the Tariff defines a dwelling unit as “a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.” It also says a “non-commercial structure, *or portion thereof*” (my emphasis added) will be considered a dwelling unit if it contains a kitchen.
19. Schedule H of the Tariff defines a kitchen as an indoor area used or designed to be used for the preparation or cooking of food, containing one or both of the following:
 - a. Cooking appliances or rough in facilities, including ovens, stoves, grills, microwave ovens or similar appliances, 240 volt electrical outlets or gas lines, or
 - b. A sink and refrigerator of certain specifications.
20. Mr. Chyplyk argues that his home does not contain a suite. None of his evidence about how he used his home is disputed. I accept that Mr. Chyplyk rented the entire home for short term accommodation, mostly during the ski season. I agree with Mr. Chyplyk that it is a single family home with one address that happens to have a bar area for the comfort of guests. I also accept that Mr. Chyplyk uses the lower level entrance area to access his ski storage, and it is closed off to the rest of the home with a locked door. Finally, I accept Mr. Chyplyk’s submission that the range is rarely, if ever, used.
21. This dispute turns on the meaning of the phrase “dwelling unit”, because if Mr. Chyplyk’s property had more than 1 dwelling unit, clause 18 of the terms and conditions entitled Silverhawk to charge the secondary fixed fee. The definition of dwelling unit does not refer to entrances, so the fact that guests could not use the lower floor entrance is not determinative. A dwelling unit requires permanent provisions for living, sleeping, eating, cooking and sanitation – I find the lower floor had those, because it had a bedroom, bathroom, range, sink and fridge. As well, I find the lower floor had a kitchen, because it contained cooking appliances. Importantly, the kitchen does not have to used to prepare or cook food, it only has to

be designed to prepare or cook food. Therefore, it does not matter that the range was rarely, if ever, used.

22. My conclusions are consistent with those in the non-binding recent CRT decision *Shaw v. Silverhawk Utilities Inc.*, 2021 BCCRT 133. In that decision, the tribunal member found that the home's lower level had a kitchen and therefore the home had a second dwelling unit even if the lower kitchen was not used as such.
23. Although I accept Mr. Chyplyk unchallenged evidence that there is only 1 water and sewer meter on the property, clause 18 is clear that the secondary fixed fee applies regardless of the number of meters.
24. I accept Mr. Chyplyk's evidence that his home is only occupied about 45 days per year. He says based on water consumption records it is unrealistic to assume it has an occupied secondary suite. However, clause 18 is not about whether each dwelling unit is occupied but whether the home includes more than 1 dwelling unit.
25. In summary, I find that because Mr. Chyplyk's home had a secondary dwelling, even though it may not have been used as such, Silverhawk was entitled to charge an additional fixed fee.

CRT Fees and Dispute-Related Expenses

26. 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. Chyplyk was unsuccessful, so I dismiss his claim for reimbursement of CRT fees.

ORDER

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

Micah Carmody, Tribunal Member