



Civil Resolution Tribunal

Date Issued: March 19, 2021

File: SC-2020-008413

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cross v. Charlewood*, 2021 BCCRT 312

BETWEEN:

SUZANNE CROSS

APPLICANT

AND:

BARBARA CHARLEWOOD and DALE TJENSVOLD

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about a fence. The applicant, Suzanne Cross, says her neighbours, the respondents Barbara Charlewood and Dale Tjensvold, trespassed on her property and painted a portion of her fence. She asks for an order that the

respondents replace 3 fence panels and stain them to the original colour, which she says will cost \$724. The respondents deny that they did anything to Ms. Cross' fence, or that they are responsible for the damages she claims.

2. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. 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.

ISSUES

7. The issues in this dispute are whether the respondents painted Ms. Cross' fence without permission and, if so, what are the appropriate damages.

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this, an applicant must prove their claims on a balance of probabilities. The parties provided evidence and submissions in support of their positions. I have read all of this information, but will refer to only what I find to be relevant and necessary to provide context to my decision.
9. Ms. Cross says that the fence in question was installed on her side of the property line in May of 2018. According to Ms. Cross, after the respondents moved into the neighbouring property in November of 2018, they indicated that they would like to remove the fence or paint it. Ms. Cross says that she declined to allow the respondents to alter the fence as it is on her own property.
10. In July of 2020, Ms. Cross hired a painter to stain both sides of her fence, including the side that faces the respondents' property. Photos in evidence show that the fence panels facing Ms. Cross' property were a natural cedar colour. There are no photos showing the colour of the panels facing the respondents' property immediately after the staining was completed.
11. In October of 2020, Ms. Cross says that she noticed that some of the fence panels facing the respondents' property were a different colour than the rest. She provided an undated photo that shows 2 of 5 panels in a cedar colour and the remaining 3 panels in a slightly darker colour. Ms. Cross says she believes that the respondents stained a portion of her fence that faces their property in order to have it better match the fence they had installed on the other side of their property.
12. After Ms. Cross discovered the different colour, one of her family members installed plywood on the respondents' side of the fence panels. Ms. Cross says that it will cost \$724 to replace the 3 fence panels, and stain them to the original colour.

13. The respondents deny that they painted or stained the fence, which they agree is within the boundary of Ms. Cross' property. They say that they are aware that they cannot alter Ms. Cross' property without her permission. According to the respondents, the fence is the same colour it was when Ms. Cross' painter stained it in July 2020. They suggest the colour variation may be due to weathering or the type of stain used. The respondents provided a photo of their own fence installed on the other side of their property, which is stained with what appears to be a much darker and more opaque brown colour than the 3 fence panels in question.
14. Ms. Cross says that she does not believe that the 3 panels weathered to their current darker colour as this did not occur on the side that faces her own property. The parties have differing views about whether the 3 darker fence panels had been stained previously, and whether this could make a difference to their colour.
15. Both parties obtained statements from the painter, RW, who confirmed that he applied the same colour of stain to both sides of the fence panels. In the statement obtained by the respondents, RW said that the fence was "unstained, with no stain, paint or colour of any kind" when he started work in July of 2020.
16. While I accept that RW stained the fence in July of 2020, this does not establish why the colour of 3 fence panels differs from the others. The questions about whether the colour is the result of the type of stain chosen by Ms. Cross, weathering, stain being applied to previously untreated wood, the application of another product, or some other factor are all outside ordinary knowledge, and must be answered with expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283).
17. There is no statement from RW or other industry professional about these issues. In the absence of this evidence, I find that I am unable to come to a conclusion about what caused the colour of the 3 fence panels to be different on the side facing the respondents' property.
18. Apart from Ms. Cross' belief that the respondents must be responsible for the colour of her fence, there is no evidence to show that the respondents trespassed on her

property to touch or paint her fence. The fact that the respondents asked about painting the fence in the past is not proof that they did anything to alter it.

19. Keeping in mind that Ms. Cross bears the burden of proof, I find that she has not established that Ms. Charlewood or Mr. Tjensvold are responsible for the difference in colour on the fence panels facing their property. As such, I find that she is not entitled to the damages she claims.

20. Under section 49 of the CRTA and CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Ms. Cross was not successful, I dismiss her claim for reimbursement of CRT fees.

ORDER

21. I dismiss Ms. Cross' claims and this dispute.

Lynn Scrivener, Tribunal Member