Civil Resolution Tribunal

Date Issued: May 18, 2021

File: SC-2020-009564

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wilson v. Rothwell*, 2021 BCCRT 532

B E T W E E N :

BRIANNE WILSON

APPLICANT

A N D :

CARLY ROTHWELL and KGZ DEVELOPMENT CORP.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Chad McCarthy

INTRODUCTION

1. This small claims dispute is about alleged flood damage. The respondent, Carly Rothwell, had a washing machine that leaked into the commercial unit below that was leased by the applicant, Brianne Wilson. Ms. Wilson says this damaged the

consignment clothing in her store, and caused her cleanup costs. She also says that her and Ms. Rothwell's landlord, the respondent, KGZ Development Corp. (KGZ), was negligent because it failed to ensure Ms. Wilson had removed the washing machine after an earlier leak. Ms. Wilson claims $1,757.57 from the respondents.

2. Ms. Rothwell admits that some water leaked from her washing machine into Ms. Wilson's unit, but says it did not cause Ms. Wilson the claimed damages or costs. Ms. Rothwell paid Ms. Wilson $1,000, which she says was to settle the matter. Ms. Rothwell says she owes nothing further. KGZ did not respond to Ms. Wilson's Dispute Notice, and is in default as discussed further below.

3. Ms. Wilson and Ms. Rothwell are self-represented in this dispute.

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. 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, and that an oral hearing is not necessary in the interests of justice. 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. 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.

8. I note I was initially unable to view 2 documents submitted by Ms. Wilson, containing emails between the parties. Through CRT staff, Ms. Wilson re-submitted them in a different format, and Ms. Rothwell had an opportunity to comment on the new files.

ISSUE

9. Whether the respondents are responsible for the claimed flood damage and related costs, and if so, do they owe Ms. Wilson an additional $1,757.57 or another amount?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Ms. Wilson must prove her claims on a balance of probabilities. I have read and weighed all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.

11. Ms. Rothwell has a portable, apartment-sized washing machine that drains into her kitchen sink. She admits that the drain tube came out of the sink and caused a water leak in June 2020. Ms. Rothwell says that although she was more careful after that point, the drain tube came out of the sink again in August 2020 and 1-2 gallons of water spilled onto her floor. This later August 2020 leak is the subject of this dispute. Ms. Rothwell does not directly deny that some water from the spill entered Ms. Wilson's unit below.

12. Ms. Wilson operated a clothing consignment business from her unit, which sold clothing owned by others. She says that water from Ms. Rothwell's unit dripped

through the ceiling and ruined many items of clothing, and caused her cleanup costs. Ms. Wilson says that the spill is Ms. Rothwell's fault for causing the leak, and KGZ's fault because it did not verify that Ms. Rothwell had removed her washing machine after allegedly telling her to do so following the first leak. Ms. Wilson also suggests that KGZ may be liable under a lease agreement, but there is no lease agreement in evidence, and I place no weight on the brief excerpts allegedly transcribed by Ms. Wilson. I find the evidence does not support any agreement or building-related rule that required KGZ to ensure Ms. Wilson had removed her washing machine. I further address KGZ's alleged liability later in this decision.

13. I find Ms. Wilson alleges that the respondents were negligent. To prove negligence, Ms. Wilson must prove that the respondents owed her a duty of care, that the respondents failed to meet a reasonable standard of care, and that Ms. Wilson sustained damage actually caused by their failure (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3).

14. First, was Ms. Rothwell negligent? She does not deny that she owed Ms. Wilson a duty of care not to allow water to escape into Ms. Wilson's unit. I find that Ms. Rothwell breached the applicable standard of care by admittedly failing to adequately secure her washing machine drain hose after a first leak, which caused a reasonably foreseeable second water leak into Ms. Wilson's unit. This is not seriously disputed, and the focus of the dispute is on the claimed damages and Mr. Rothwell's $1,000 payment to resolve it.

15. The question remains, did the spill actually cause the claimed damage? The parties agree that Ms. Rothwell paid $1,000 to Ms. Wilson for the August 2020 water leak after Ms. Wilson requested a payment several times. However, I find the evidence before me fails to show that Ms. Rothwell admitted that the leak actually caused any specific clothing damage or extra labour costs.

16. Ms. Wilson provided photos of peeling ceiling paint, a small amount of moisture on wooden flooring, and what appears to be a closeup of an unexplained pail of water, but she claims no damages for those items. Ms. Wilson provided a list of many clothing items allegedly damaged by the water, together with prices for each item. I find she claims the full prices of the items, which totalled $2,301.57. Ms. Wilson submitted another list of 13 clothing items that she felt were "salvageable" and for which she does not claim damages. I find she alleges that the items on the damaged clothing list were completely ruined and are worth nothing, although she says they are bagged and available for Ms. Rothwell to try cleaning if she wishes.

17. However, the only direct evidence of potential clothing damage were photos of a white shirt and a white blazer with what appeared to be tan-coloured water marks. Ms. Wilson does not say whether she tried to clean those items. She also does not say how the water allegedly caused irreparable damage to all of the other clothing items listed, which I note included "plain" shirts, a parka, and a pair of hiking boots, among others. I find the evidence before me fails to prove that there was any permanent, unrepairable water damage to any clothing, or that Ms. Wilson was responsible for cleaning the clothing. More on that below.

18. Ms. Wilson also says that the listed values of the allegedly damaged clothing were the consignment prices in her store, which she set at 50% of the original list prices. She provided no other evidence showing the original or consignment prices, or any evidence showing that the consignment prices matched the items' actual market values. I find that the items' values are unproven.

19. Further, I find that Ms. Wilson admits she does not own any of the allegedly damaged clothing. In email correspondence, Ms. Wilson told Ms. Rothwell that Ms. Wilson had to "pay the consignors even though I cannot sell" the clothes because of the alleged flood damage. Ms. Wilson also said she was "still obligated to pay the full amount as described to the consignor." However, I find that in her reply submissions, Ms. Wilson admits that she only possessed the items, and that the consignors continued to own them. Although Ms. Wilson's consignment contracts with the items' owners are not in

evidence, Ms. Wilson also admits that under those contracts, she is "not responsible for loss or damage" of consigned items to their owners. Ms. Wilson says the respondents should still pay her for the allegedly damaged items because it would be unfair to the owners if she enforced the terms of their contracts that limit her responsibility to them.

20. On balance, I find that Ms. Wilson does not own any of the allegedly damaged items, and that under her consignment contracts she is not responsible to their owners for any water damage. I find Ms. Wilson has not met her burden of proving that she has sustained a loss or future loss from clothing damage, because of the admitted contractual terms with the clothing's owners. I note that in the circumstances, Ms. Wilson is not required to waive the consignment contract terms limiting her liability for water damage, and Ms. Rothwell is not liable for any damages resulting from such a voluntary waiver. Overall, I find Ms. Wilson has failed to show she is responsible for alleged water damage to the consignment items, or the value of that damage.

21. Ms. Wilson also submitted a list of alleged staff cleanup work caused by the water entry, including the number of hours "required" of each staff member at their hourly rate. This totalled $456. However, there is no direct evidence, such as pay stubs, bank or accounting documents, or other evidence showing that staff spent the listed time on water damage work. There is also no evidence showing that staff spent additional time beyond their normally scheduled workdays on water cleanup. I also find that the 5 hours of labour costs claimed for documenting the alleged damage and cleanup work are dispute-related expenses, and that parties are generally not compensated for their time spent on a CRT dispute. On balance, I find the evidence fails to prove the amount of any water damage cleanup costs to Ms. Wilson.

22. However, I accept that there was some amount of cleanup work following the water leak, which Ms. Wilson's staff presumably undertook during regular work hours. On a judgment basis I value this work at $100. Even if I had valued this cleanup labour at the full $456 claimed, I note that Ms. Rothwell has already paid Ms. Wilson $1,000. So, I find that Ms. Wilson is owed no further compensation for the claimed cleanup

costs. Overall, I find that Ms. Rothwell is not liable for the claimed $1,757.57 in additional damages for negligence.

23. Turning to KGZ, I am satisfied that KGZ is considered to have received the Dispute Notice mailed to it by the CRT, under CRT rules 2.2 and 2.4. I am also satisfied that KGZ failed to file a Dispute Response, despite being required to do so under CRT rule 3.1. So, I find KGZ is in default.

24. CRT rule 4.3(1) says that the CRT may assume a party in default is liable. I find this rule gives me discretion to decide KGZ is not liable merely because it is in default. This is consistent with the reasons of other non-binding but persuasive CRT decisions that considered an older version of the rule (such as *Bjarnason v. The Owners, Strata Plan VR 584*, 2021 BCCRT 462), which has since been reworded slightly but which I find has the same effect in these circumstances.

25. Using this discretion, I decline to assume that KGZ breached a duty of care to Ms. Wilson, for the following reasons. I find that this negligence claim is for non-debt damages. Under rule 4.3(3), the CRT determines the amounts of non-debt claims for money based on the evidence provided. As noted, the evidence does not support that Ms. Wilson suffered the claimed damages and costs and does not prove their values, other than cleanup costs for which Ms. Wilson has already been fully compensated. So, for the same reasons above that I found Ms. Rothwell is not liable for the additional damages claimed, I also find KGZ is not liable for any clothing damages, which are unproven, or for any additional cleanup costs. Given this, I find it is unnecessary to consider whether KGZ owed a duty of care to Ms. Wilson.

CRT FEES, EXPENSES, AND INTEREST

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. I find the respondents were successful here, but paid no CRT fees and claimed no expenses. So, I order no reimbursements.

ORDER

27. I dismiss Ms. Wilson's claims, and this dispute.

Chad McCarthy, Tribunal Member