



Civil Resolution Tribunal

Date Issued: May 25, 2021

File: SC-2020-009540

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hamelin v. Blackwood Partners Management Corporation*,
2021 BCCRT 562

B E T W E E N :

LAILA HAMELIN

APPLICANT

A N D :

BLACKWOOD PARTNERS MANAGEMENT CORPORATION

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, Laila Hamelin, tripped and fell when entering an elevator in an office building owned and maintained by the respondent, Blackwood Partners Management Corporation (Blackwood). She says that she tripped because the elevator was “floating” about 4 inches above the floor. Ms. Hamelin says that she

injured her knee and shin. She claims \$423.30 in lost wages and \$2,500 in non-pecuniary (pain and suffering) damages.

2. Blackwood denies that the elevator malfunctioned. It asks that I dismiss Ms. Hamelin's claims.
3. Ms. Hamelin represents herself. Blackwood is represented by an employee.
4. For the reasons that follow, I dismiss Ms. Hamelin's claims.

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. In some respects, Blackwood challenges the credibility, or truthfulness, of Ms. Hamelin's evidence. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve and credibility issues. I therefore decided to hear this dispute through written submissions.
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 pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.
9. I note that Ms. Hamelin made a Worksafe BC claim, which was denied because Worksafe BC determined that the injury did not arise in the course of her employment. In any event, Blackwood did not argue that Ms. Hamelin injured herself in the course of her employment. So, I find that the CRT has jurisdiction to decide this dispute.
10. I also note that Blackwood's submissions include only 1 substantive sentence, which is that the elevator did not malfunction. Blackwood also says in its submissions that it wants to discuss the case with the CRT "before this step of the process is concluded". It is unclear why Blackwood made this request during submissions, which is the last stage of the process before a decision. Blackwood did not request an oral hearing during the CRT's facilitation process. Blackwood, like all parties, was provided with information about the CRT's adjudication process, including making submissions. I therefore decided not to have the CRT's staff contact Blackwood for further submissions. I find that I can make a fair decision on the evidence and submissions before me. In any event, my decision below, I find that Blackwood is not prejudiced.
11. As a final preliminary matter, Blackwood provided a series of emails from a person it identified as an "elevator consultant", DB. DB expressed opinions about the likelihood that the elevator floated as Ms. Hamelin said it did. I find that these opinions are expert evidence because they are about things beyond the common knowledge of ordinary people. CRT Rule 8.3(2) says that an expert must state their qualifications, but there is no evidence about DB's qualifications. While CRT Rule 1.2(2) gives me discretion to waive the application of a rule, I find that it would not be appropriate to do so here. So, I have not considered DB's opinions in reaching a decision. However, as discussed below, I have considered the emails between

Blackwood and DB as evidence about whether Blackwood knew about any issues with the elevator before the incident.

ISSUES

12. The issues in this dispute are:
 - a. Is Blackwood liable for Ms. Hamelin's injuries?
 - b. If so, what damages are appropriate?

EVIDENCE AND ANALYSIS

13. In a civil claim such as this, Ms. Hamelin as the applicant must prove her case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
14. Ms. Hamelin works in an office tower that Blackwood owns and operates. There is a mall food court underneath the office tower, where Ms. Hamelin ate her lunch on February 18, 2020. She says that on her way back up to her office, she tripped and fell while getting into the elevator.
15. Ms. Hamelin says that after she fell, she looked back and saw that the elevator had moved up and was "floating" about 4 inches above the floor. She says that she hit and scraped her shin on the exposed edge of the elevator and injured her knee. There are no statements from anyone who witnessed the fall. Ms. Hamelin told Blackwood that she was too distraught to think about asking people to be witnesses at that moment. Ms. Hamelin went back to her office on the 4th floor and a colleague called a Blackwood security guard to give first aid.
16. The Blackwood security guard, AB, wrote an incident summary the same day as the incident. AB said that they helped Ms. Hamelin with first aid and observed that her knee was swollen. According to AB, Ms. Hamelin said that the elevator floor was 4-5 inches above the lobby floor when she fell. So, AB said that they contacted the

engineering department, who assessed the elevator and found nothing wrong with it. AB confirmed that there was no security camera footage of the incident.

17. Ms. Hamelin says that the elevators regularly float up and down like they did on February 18, 2020. Ms. Hamelin provided a statement from a colleague, SP. SP also said that the elevators in the building often floated up and down while stopped. SP did not say how much they floated.
18. Blackwood does not directly say that the incident did not happen as Ms. Hamelin says it did. However, I infer from its internal communications in evidence that it is skeptical of Ms. Hamelin's claim. While I see no reason to doubt Ms. Hamelin's evidence, I find that I do not need to determine whether the incident happened as she described. This is because even the elevator floated up 4 inches as she said it did, her claim would still fail. My reasons follow.
19. Section 3 of the *Occupiers Liability Act* (OLA) requires Blackstone to take reasonable care to ensure people are safe on its property. The standard of care under the OLA is the same standard of care at common law for negligence, which is to protect others from an objectively unreasonable risk of harm.
20. This means that an occupier is not an insurer and does not have to provide perfectly safe premises. Rather, Ms. Hamelin must prove that Blackwood either did something or failed to do something reasonably necessary to prevent an injury. See *Simmons v. Yeager Properties Inc.*, 2013 BCSC 889, at paragraphs 4 to 6.
21. The BC Supreme Court applied the OLA to an elevator malfunction in *Hanna v. M.D. Realty Canada Inc.*, 1996 CanLII 2895 (BC SC). In that case, an elevator door closed on the plaintiff's arm, causing injuries. The court found that the building's manager was not negligent because it had reasonably hired an elevator contractor to maintain the elevator and had told the elevator contractor about any reported issues with the elevator. In other words, the court found that it was reasonable for the building's manager to rely on a contractor to inspect and maintain the elevator

as long as the building's manager made sure that the contractor was aware of any reported issues.

22. As a matter of common sense, I find that a properly functioning elevator should not raise 4 inches above the floor while its doors are open. However, it is not enough to prove that the elevator malfunctioned. Based on the above cases, which are binding on me, I find that Ms. Hamelin must prove that Blackwood knew or should have known that there was something wrong with the elevator before the incident, or failed to reasonably maintain the elevator.
23. There is no evidence that Ms. Hamelin, SP, or anyone else complained to Blackstone about the elevator floating before the incident. I find that if the elevator routinely floated well above the floor level, as Ms. Hamelin and SP both allege, then someone would likely have reported such an obvious and significant problem to Blackwood. According to Blackwood's correspondence with DB, no one had reported a similar incident in the past. This suggests that Blackwood was not aware of any issues with the elevator. So, I do not accept that this was an ongoing issue before the incident.
24. Also, Blackwood had an elevator contractor, Fujitec Canada Inc. (Fujitec), maintain and inspect its elevators monthly. According to Fujitec's records, it inspected and maintained the elevator on February 10, 2020, only 8 days before the incident. There is no indication in these records of any issues with the elevator failing to remain flush with the floor when the doors were open, either before or after the incident. As in *Hanna*, I find that Blackwood acted reasonably by hiring an outside specialized contractor to inspect and maintain the elevators.
25. Therefore, even if I accept that the accident happened as Ms. Hamelin alleged, I find that she has not proven that Blackwood did anything or failed to do anything to prevent the injury. I find that she has not proven that Blackwood did not act reasonably in its maintenance of the elevator. For this reason, I dismiss Ms. Hamelin's claim for damages, and I do not need to discuss those damages in any detail.

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. Ms. Hamelin was unsuccessful, so I dismiss her claim for CRT fees and dispute-related expenses. Blackwood did not claim any dispute-related expenses or pay any CRT fees.

ORDER

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

Eric Regehr, Tribunal Member