



Civil Resolution Tribunal

Date Issued: July 30, 2021

File: SC-2021-002034

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dong v. Lentsch*, 2021 BCCRT 841

BETWEEN:

YI DONG and YINGSHAN WU

APPLICANTS

AND:

DAWN LENTSCH and MICHAEL LENTSCH

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This small claims dispute is about damages resulting from a water leak in a strata lot. The applicants, Yi Dong and Yingshan Wu, live in the strata lot directly below the strata lot owned by the respondents, Dawn Lentsch and Michael Lentsch. The parties

agree that the respondents' water tank leaked and caused damage to the applicants' ceiling and wall.

2. The applicants say the respondents are responsible for the repair costs because they failed to maintain their hot water tank and caused the leak. The applicants claim \$1,001.93 for the ceiling and wall repair costs. The respondents dispute this. They say that the water tank leak should have been caught by the drain pan, which they say did not drain properly due to a clogged drain in the strata corporation's common property. So, the respondents say the strata corporation (strata) is responsible, not them. The strata is not a party to this dispute.
3. Mr. Dong represents both himself and Yingshan Wu. Mr. Lentsch represents both himself and Dawn Lentsch.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The applicants originally filed their dispute under the CRT's strata jurisdiction, and then withdrew their claim against the strata. This dispute was converted to a small claims dispute.
5. 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. 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.

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. As set out in 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

9. The issue in this dispute is whether the respondents are liable for the water damage, and if so, do they owe the applicants \$1,001.93 for the claimed repair costs?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. As noted above, the applicants say the respondents failed to monitor and maintain their hot water tank, a required by section 2 of the strata's bylaws. I find the applicants alleged the respondents were negligent. The respondents deny they were negligent. As noted above, they say the leak would have been caught by the hot water tank pan if the drain was not blocked. They say the drain's blockage was located within the strata's common property, and the respondents had no knowledge of it.
12. In order for the respondents to be found negligent, the applicants must prove the respondents owed the applicants a duty of care, that they breached the standard of care, and the applicants sustained damage that was caused by their breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).

13. I find that as neighbours and fellow condo owners in a multi-unit building, the respondents owed the applicants a duty of care. The applicable standard of care is reasonableness (see *Burris v. Stone et al*, 2019 BCCRT 886 at paragraph 28).
14. In evidence is a September 10, 2020 letter from the respondents' insurer to the applicant Mr. Dong. The letter indicates that the insurer internally decided there was no evidence the respondents were negligent and so, the respondents' insurer did not cover the applicants' repair costs. I am not bound by the respondents' insurer's liability determination.
15. The respondents say the water tank drain pan is recessed within the concrete subfloor. In evidence is a photograph of the respondents' water tank, which I find shows the bottom of the water tank recessed into the floor, rather than sitting at or above the floor level. The respondents say the leak from the water tank ran down into the drain pan, and the pan overflowed because the drain was unknowingly clogged. They say there was no indication that the drain was clogged before the leak occurred. The respondents say that the plumber who attended to address the leak "snaked approximately 15 feet down the drain stack to clear the blockage". The July 16, 2020 plumber invoice in evidence confirms this. I find the above evidence supports a finding that the blockage was not located within the respondents' strata lot, and that they were not aware of any blockage. In any event, the applicants do not allege the respondents were negligent with respect to the drain pan or drain. Rather, the applicants' main allegation is that the respondents failed to maintain the hot water tank itself.
16. The respondents did not address the applicants' allegation that they failed to maintain their hot water tank. However, as noted above, it is the applicants who bear the burden of proving their claims. Expert evidence is generally required to prove the standard of care (see *Bergen v. Guliker*, 2015 BCCA 283). The applicants did not provide any evidence that the respondents failed to maintain their water tank or any expert evidence to support a finding that any alleged failure to maintain the water tank fell below the standard of care or caused the initial leak. There is no evidence about

what caused the hot water tank to leak into the drain pan in the first place. The applicants did not address the respondents' submissions that the drain pan should have addressed the leak, and it was the blocked drain within the strata's common property that ultimately caused the drain pan to overflow, which then caused the water damage. There is no evidence that without the blocked drain, the hot water tank leak would have caused the water damage.

17. On balance, and considering the available evidence, I find the applicants have not proven that the respondents failed to maintain their hot water tank, or that doing so breached the standard of care or caused the leak. So, I find the applicants' claims must fail.
18. 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 see no reason in this case not to follow that general rule. As the applicants are unsuccessful, I dismiss their fee reimbursement claim. The respondents did not pay any fees or claim any dispute-related expenses, and so I award none.

ORDER

19. I dismiss the applicants' claims and this dispute.

Leah Volkers, Tribunal Member