



Civil Resolution Tribunal

Date Issued: August 9, 2021

File: SC-2021-002344

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Allen v. Wagner (dba Patricks Handyman Services)*, 2021 BCCRT 867

B E T W E E N :

MARY ALLEN

APPLICANT

A N D :

PATRICK WAGNER (Doing Business As PATRICKS HANDYMAN SERVICES)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute over alleged damages from a flood.
2. The applicant, Mary Allen, says the respondent, Patrick Wagner (dba Patricks Handyman Services), improperly installed a shower with a wooden subfloor base (wooden base) in her rental suite bathroom. She says the wooden base failed and

this caused the plumbing system to misalign and flood her bathroom. She says she had to pay to remove Mr. Wagner's work, install a new shower and drainage system, and repair other bathroom damage.

3. Ms. Allen claims a total of \$4,934.55 in damages as follows:
 - a. \$1,242.13 as reimbursement for her original shower (\$600.89), a replacement shower (\$600.89), and caulking (\$40.35),
 - b. \$800 in labour costs to install a new shower,
 - c. \$1,375.79 for a new drainage system,
 - d. \$1,225 for "handyman services for general washroom repairs",
 - e. \$191.63 for a dehumidifier rental, and
 - f. \$100 for a rental discount for her new tenants' inconvenience.
4. Mr. Wagner says he properly installed the wooden base and shower. He denies that his work caused the water damage and says he is not responsible for Ms. Allen's alleged losses.
5. Ms. Allen is self-represented. Mr. Wagner is represented by his spouse.
6. For the reasons that follow, I dismiss Ms. Allen's claim.

JURISDICTION AND PROCEDURE

7. 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.

8. 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. Some of the evidence in this dispute amounts to a “she said, he said” scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT’s process and found that oral hearings are not necessarily required where credibility is an issue.
9. 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.
10. 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.

Preliminary Issue

11. Mr. Wagner and his spouse moved into Ms. Allen’s rental suite on August 1, 2019 after he performed the shower installation. They lived in the suite until May 31, 2020 when the tenancy relationship broke down. Mr. Wagner says Ms. Allen withheld their damage deposit and the parties had 2 Residential Tenancy Branch (RTB) hearings about it. The RTB undisputedly ordered Ms. Allen to return their damage deposit. Mr. Wagner says the RTB already decided that he was not responsible for the leak or water damage and Ms. Allen is bringing these claims to the CRT in retribution. I infer Mr. Wagner is arguing that I should refuse to resolve this dispute.

12. Under CRTA section 11(1), the CRT may refuse to resolve a claim that was already resolved in another legally binding process or is an abuse of process.
13. This claim is over work Mr. Wagner performed for Ms. Allen before he became her tenant. I find it is not a claim over their tenancy and does not involve the *Residential Tenancy Act*. I find Mr. Wagner's claim over the return of a damage deposit is different from this breach of contract claim for the shower installation. So, I find it is appropriate to resolve Ms. Allen's claim here.

ISSUES

14. The issues in this dispute are:
 - a. Did Mr. Wagner improperly install the shower's wooden base and cause a flood in Ms. Allen's bathroom?
 - b. To what extent, if any, must Mr. Wagner reimburse Ms. Allen for her alleged losses?

EVIDENCE AND ANALYSIS

15. In this civil proceeding, Ms. Allen as the applicant must prove her claims on a balance of probabilities (meaning "more likely than not"). 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.
16. In 2019 Ms. Allen was renovating her ground floor suite. She hired Conor Houlihan, a "Red Seal Plumber", to rough in the water for the new shower. I find on Mr. Houlihan's May 12, 2021 statement that he recommended to Ms. Allen that she break into the concrete floor to move and properly align the drainage system so that it would properly connect to the shower. Ms. Allen did not perform this work. Instead, Ms. Allen hired Mr. Wagner, a "handyman", to build a wooden base to raise up the shower basin to allow her to connect the shower to the existing drain without realigning the drainage system.

17. In June 2019, Mr. Wagner built the new wooden base, installed the shower surround and performed some other work in her suite. Ms. Allen paid Mr. Wagner \$450 for his work.
18. As mentioned, Mr. Wagner and his spouse moved into Ms. Allen's rental suite in August 2019 and used the new shower. There is no evidence of any leakage or other problems with the shower or the wooden base during their 9-month tenancy.
19. Ms. Allen says her new tenants were "significantly taller and heavier" than Mr. Wagner and his spouse. She asserts that after a few months of shower use by the new tenants the wooden base Mr. Wagner built "failed" and caused the drainage system to misalign and flood the bathroom. She says water had leaked beneath the existing shower and between the concrete and vinyl flooring. As a result, she says she had to replace the shower, drainage system, and repair other bathroom damage.
20. Ms. Allen seeks a total of \$4,934.55 in damages as summarized above.
21. To succeed with her claims, Ms. Allen must prove that it is more likely than not that Mr. Wagner's work was substandard and that it caused both the flood and the claimed loss or damages (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124 and *Sieb v. Gandy Installations LTD.*, 2019 BCCRT 279). As I explain below, I find Ms. Allen has not done so here.
22. There is little witness evidence about the flood event itself even though it is the subject of this dispute. According to an April 27, 2021 statement from Ms. Allen's new tenants, the bathroom flooded sometime in October 2020. The tenants stated the flood left them without a shower, toilet and sink for a period of time. However, the tenants do not provide any further details about the flood event such as where the water was leaking from or whether they had noticed any issues with the shower or its components before the flood. They also do not say anything about noticing the shower basin shifting or the wooden base "failing" under their weight.
23. Ms. Allen hired Mr. Houlihan to perform plumbing work in October 2020 in response to the flood. Mr. Houlihan's October 30, 2020 invoice includes a descriptive narrative

of the work performed in the bathroom but does not say anything about the flood, investigating or identifying a leak, nor comment on any water damage or the wooden base.

24. According to the October 30, 2020 invoice, Mr. Houlihan attended Ms. Allen's suite and performed work over a 3-day period. When Mr. Houlihan arrived on site, a different contractor had already removed the shower base, doors and shower walls. The invoice states that Mr. Houlihan removed the drywall from behind the shower, cut out the existing shower valve, and reinstalled the shower valve in its "proper place". Mr. Houlihan then tested the valve and determined it had no leaks. He also jackhammered the concrete floor and replaced the underground plumbing pipes with new PVC pipes and moved the drainage pipes to a "proper location for shower pan". He then backfilled the concrete to reinstall the shower.
25. Ms. Allen submitted a May 12, 2021 opinion statement from Mr. Houlihan about the quality of Mr. Wagner's work and the leak source. I accept that Mr. Houlihan is qualified to provide an expert opinion about these issues.
26. In his May 12, 2021 opinion, Mr. Houlihan stated that Ms. Allen called him to do work at the suite because of the flood. He stated that he found "the shower base was mushy and unsupported, the drain itself was leaking due to the shifting of the base and the weight of someone standing on it as designed". He said the wooden base was inadequate to support an inexpensive shower basin that needed 100% support.
27. Mr. Houlihan does not say how or when he assessed the wooden base or its functionality. There is no photograph of the wooden base attached to his opinion. There is also no indication that Mr. Houlihan had inspected the wooden base in October as it is not mentioned in his detailed invoice. The photographs attached to Mr. Houlihan's October invoice show only an exposed concrete area with no wooden base. I find the wooden base was removed by the time Mr. Houlihan arrived on site in October 2020. So, I am not satisfied Mr. Houlihan's opinion is based on his own observations of the wooden base. For this reason, I find Mr. Houlihan's opinion about the wooden base is not persuasive and I have not relied on it.

28. Mr. Wagner submitted a May 2, 2021 statement from plumber Mike Schwienbacher with his opinion about the wooden base. Mr. Schwienbacher is a certified plumber with 30 years' experience in residential and commercial plumbing. His credentials are not disputed. I accept Mr. Schwienbacher is qualified to provide an expert opinion about Mr. Wagner's work.
29. Mr. Schwienbacher stated that on his review of the photographs Mr. Wagner sent him, the wooden base appears "very meticulously built". The photographs he referred to show the wooden base was made by a 2x4 frame with 2x4 bracing. He said in his opinion, the wooden base is sufficient to support the shower basin and will not cause the shower drain to misalign. He also explained, with direct reference to the photographs, how the shower basin was locked into place to prevent it from shifting. While Mr. Schwienbacher's opinion is based only on a review of photographs, I find it is detailed, explained well, and reasonably consistent with what is shown in the attached photographs. I am persuaded by Mr. Schwienbacher's opinion and accept the wooden base was properly built. I also note the shower worked without problem for well over a year and there is no evidence that the wooden base actually collapsed from the tenants' weight.
30. I find the evidence points to another possible source for the flood which Mr. Houlihan does not address in his May 12, 2021 opinion. Specifically, Mr. Houlihan's October 30, 2020 invoice shows he removed drywall and reinstalled a shower valve in response to the flooding event. I infer the drywall was wet. I find this work suggests there might have been a valve leak issue unrelated to the wooden base. This other possible flood source is not explained. I find the flood's cause is inconclusive.
31. Mr. Houlihan also stated in his May 12, 2021 opinion that the drain connections were not appropriate or up to the Building Code standard. He demonstrated with reference to photographs that the drainage system under the concrete floor needed to be replaced, moved and secured with a box embedded in the concrete to properly align it to the shower. To the extent the drainage leaked because this plumbing work was

not done, I find it was not Mr. Wagner's fault. I find Ms. Allen did not hire Mr. Wagner to upgrade or realign the plumbing.

32. On the whole of the evidence, I find Ms. Allen has not proven Mr. Wagner's wooden base was substandard or that his work caused the bathroom flood. So, I find Ms. Allen has not established that Mr. Wagner is responsible for her alleged losses and I dismiss Ms. Allen's claims.

33. 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 Ms. Allen was the unsuccessful party, I find she is not entitled to any reimbursement. Mr. Wagner did not pay any CRT fees nor claim dispute-related expenses.

ORDER

34. I dismiss Ms. Allen's claims and this dispute.

Trisha Apland, Tribunal Member