Civil Resolution Tribunal

Date Issued: October 15, 2021

File: SC-2021-004215

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Putnam v. Clough*, 2021 BCCRT 1093

B E T W E E N :

JANET PUTNAM

APPLICANT

A N D :

ROY CLOUGH and VERONICA CLOUGH

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. This small claims dispute is about water damage in a strata lot.

2. The applicant, Janet Putnam, owns and resides in unit 116 in a strata building. The strata corporation (strata) is not a party to this dispute. The respondents, Roy and

Veronica Clough, own unit 216, which is above unit 116. Ms. Putnam says on July 9, 2020, water leaked from the Cloughs' washing machine and damaged unit 116. She seeks $694.74 for emergency restoration service costs and $1,098.95 for repair costs, for a total of $1,793.69. Ms. Putnam represents herself.

3. The Cloughs deny liability for the water damage for various reasons. The Cloughs are represented by Mr. Clough.

4. For the reasons that follow, I dismiss Ms. Putnam's claim.

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. 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. 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.

ISSUE

9. The issue in this dispute is whether the Cloughs are liable for the water damage, and if so, do they owe Ms. Putnam $1,793.69 for the claimed repair costs?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil dispute, Ms. Putnam must prove her claim on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.

11. Ms. Putnam lives in unit 116 on the floor below the Cloughs. It is undisputed that at all material times Ms. Putnam lived with GP. GP is not a named party in this dispute, but he discovered the leak.

12. It is undisputed that the Cloughs use unit 216 as a vacation home and do not always occupy it. The strata building has 3 floors.

13. The Cloughs left GP a key to unit 216 in case of an emergency. Ms. Putnam's submissions include some evidence about what GP saw when he discovered the leak. While this is hearsay evidence, it is consistent with GP's contemporaneous emails, and evidence from an independent witness, so I accept it.

14. Ms. Putnam says on July 9, 2020, GP discovered water damage to unit 116's ceilings and walls. The Cloughs were not home, so he went upstairs. He saw water on the Cloughs' laundry room floor, so he turned the water to the washing machine off. He then called the strata council president and began mopping the water.

15. In a written statement, the strata council president, CH, said upon entering unit 216, they observed water on the laundry room floor and at the rear of the washing machine.

They checked the supply lines and confirmed that they had not failed. The source of the leak appeared to be at the connection to, or within, the laundry machine. CH said they checked all the water supply valves in the strata lot, and all of them were on. CH said they turned them all off.

16. Ms. Putnam says it is established law in BC that a strata lot owner is responsible for a flood that starts in their strata lot and flows to another strata lot or strata common property. She refers to 2 cases, *Mari v. Strata Plan LMS 2835*, 2007 BCSC 740, and *Strata Plan KAS 1019 v. Kieran* 2006 BCPC 360 (affirmed in *Wawanesa Mutual Ins. Co. v. Kieran*, 2007 BCSC 727). *Mari* and *Kieran* were cases about an owner's responsibility for a strata's insurance deductible after a water leak originating in the owner's strata lot. Those cases were decided under section 158 of the *Strata Property Act*, which preserves the strata's right to sue a responsible owner to recover the deductible portion of an insurance claim. I find those decisions do not assist Ms. Putnam because this dispute is between 2 strata lot owners and does not involve the strata corporation.

17. I find the applicable law governing responsibility for water damage between owners is as stated in the non-binding but persuasive decision *Zale et al v. Hodgins*, 2019 BCCRT 466. Ms. Putnam must prove that the Cloughs are liable for the damage, either under the law of negligence or the law of private nuisance.

18. A nuisance occurs when a person unreasonably interferes with the use or enjoyment of another person's property. However, if the person is not aware of the problem that causes the interference, and has no reason to know about the problem, they will not be liable because they did not act unreasonably: see *Theberge v. Zittlau*, 2000 BCPC 225.

19. It is undisputed that the Cloughs were away from unit 216 when the leak occurred. There is no evidence that that they were aware or could have been aware of the leak. I find the Cloughs are not liable in nuisance.

20. In order for the Cloughs to be found negligent, Ms. Putnam must prove that the Cloughs owed her a duty of care, that they breached the standard of care, and that she sustained damage caused by their breach: see *Mustapha v. Culligan of Canada Ltd*., 2008 SCC 27.

21. I find that as neighbours in a strata building, the Cloughs owed Ms. Putnam a duty of care. I find the applicable standard of care is reasonableness: see the non-binding but persuasive decision *Burris v. Stone* et al, 2019 BCCRT 886.

22. I infer that Ms. Putnam argues the Cloughs should have shut off their water supply lines when away from unit 216. None of the parties stated how long the Cloughs expected to be away, but the Cloughs' undisputed evidence is that they had been away for a week when the leak occurred. Ms. Putnam did not provide any evidence about the circumstances in which a reasonable person is expected to shut off their water supply lines when away from their strata lot.

23. Ms. Putnam relies on a similar occurrence of a water leak that originated in unit 216 in January 2020. The Cloughs' unchallenged evidence is that the January 2020 incident happened while they were in the strata lot and a small pinhole leak developed in a washing machine supply line. The Cloughs say new water lines were installed in February 2020. They say they have washed many loads of clothes without incident. The Cloughs supplied documentary evidence that confirms the water supply line purchase. I find the Cloughs' action of replacing the water supply lines was a reasonable response to the January 2020 leak.

24. In any event, GP and CH's evidence was that the water leak was coming from inside the Coughs' washing machine and not from the supply lines. The Cloughs say the machine is a heavy duty machine, 11 years old. There is no evidence to the contrary. There is nothing to suggest that the Cloughs failed to reasonably maintain and repair the washing machine. It is undisputed that the leak occurred while they were not in their strata lot and nobody was using the machine. Given the July 2020 leak was not related to the January 2020 leak, I find the Cloughs could not have reasonably anticipated the leak.

25. In *The Owners, Strata Plan BCS 1589 v. Nacht et al*, 2017 BCCRT 88, the CRT member found that a reasonable standard of care did not require owners to shut off their water supply when away from the unit for a weekend. In that case, the strata corporation asserted that it had advised all residents to turn off the water supply to their strata lots when away. There is no such evidence in this dispute. I find the single previous leak, without more, insufficient to establish that the Cloughs should have turned off their water supply when away for a week. Given my conclusion, I do not need to consider the Cloughs' submission that they shut off their water supply before departing and someone tampered with the shut-offs.

26. As noted, Ms. Putnam bears the burden of proving each aspect of her claim, including the breach of the standard of care. I find that she has not shown that the Cloughs were negligent, and I dismiss her claim.

27. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. The Cloughs were successful but did not pay CRT fees or claim expenses. I dismiss Ms. Putnam's claim for reimbursement of CRT fees..

ORDER

28. I dismiss Ms. Putnam's claims and this dispute.

Micah Carmody, Tribunal Member