



Civil Resolution Tribunal

Date Issued: November 5, 2021

File: SC-2021-000787

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Adkins v. Feng*, 2021 BCCRT 1172

B E T W E E N :

FREDERIC ADKINS

APPLICANT

A N D :

HAI YAN FENG and CITY OF NANAIMO

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This is a dispute about branch and debris removal costs. The applicant, Frederic Adkins, says that his neighbour, the respondent Hai Yan Feng, let blackberry bushes and tree branches encroach onto his property, contrary to municipal bylaws. Mr. Adkins say he complained to the respondent City of Nanaimo (Nanaimo), who allegedly negligently failed to resolve his complaints about Ms. Feng. Mr. Adkins says

he had to pay contractors \$330.75 to remove the branches and debris, and asks that Ms. Feng and Nanaimo each pay half of his claimed costs.

2. Ms. Feng says she has removed all debris and encroaching plants, in compliance with Nanaimo's bylaws. She says Mr. Adkins' claimed costs are for removing overgrown blackberry bushes from his own property to comply with Nanaimo's bylaws, which she is not responsible for.
3. Nanaimo says that it requested both Ms. Feng and Mr. Adkins' remove blackberry bushes from their respective yards. Nanaimo also says enforcing the bylaw is discretionary and it is not responsible for any costs Mr. Adkins incurred to remove plants and debris from his property.
4. Mr. Adkins is self-represented. Ms. Feng is represented by her daughter. Nanaimo is represented by a lawyer, Jordan Hauschildt.

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.

Preliminary Issues

9. After the parties provided their evidence, Mr. Adkins asked the CRT for a production order requiring Nanaimo to produce additional letters to Ms. Feng, as well as a work order. Nanaimo said it had already provided copies of all the responsive documents in its possession. On June 11, 2021, a CRT member made a preliminary decision denying Mr. Adkins' production order request. In Mr. Adkins submissions, he asks me to reconsider his request and order Nanaimo to produce the above-noted documents. Although the preliminary decision is not binding on me, I agree with the CRT member's reasoning. Mr. Adkins has not proved the additional letters or a work order exist, and Nanaimo denies they do, so I find Mr. Adkins has not proved the requested documents are in Nanaimo's possession or control. I decline to order Nanaimo to produce the requested documents.
10. In the Dispute Notice, Mr. Adkins alleges that Ms. Feng has been on a "deliberate campaign of harassment, intimidation, vandalism, violence and provocation". However, Mr. Adkins did not claim any remedy for this alleged harassment. In any event, I do not have jurisdiction to order Ms. Feng not to engage in certain behaviour in the future, and there is no recognized tort of harassment in BC. My jurisdiction is limited to the claim before me, which is whether Ms. Feng or Nanaimo must pay Mr. Adkins \$330.75 for branch and debris removal.

11. I note Mr. Adkins says Ms. Feng left a toilet bowl near their shared property line. It is unclear if the toilet is still there, but as Mr. Adkins claims no remedy for the toilet, I make no findings about it.

ISSUE

12. The issue in this dispute is whether Ms. Feng or Nanaimo must pay Mr. Adkins \$330.75 for branch and debris removal.

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, as the applicant Mr. Adkins must prove his 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.

Background

14. Mr. Adkins complained to Nanaimo about Ms. Feng’s blackberry bushes and tree branches encroaching over their shared property line in August 2020, which he says was contrary to Nanaimo’s bylaws.

15. Nanaimo Bylaw 7242 says, in part, that every owner or occupier of real property will remove from their entire property all brush or overgrowth which becomes a nuisance. In enforcing Bylaw 7242, Nanaimo can direct the owner to remove the overgrowth to comply with the bylaw. If an owner fails to comply with Nanaimo’s directions, Nanaimo can enter onto the property to complete the work, and bill the owner for it.

16. A Nanaimo employee attended at Ms. Feng and Mr. Adkins’ properties to assess Mr. Adkins’ complaints.

17. On August 26, 2020, Nanaimo sent Ms. Feng a letter asking her to remove the accumulation of blackberry bushes from her property by September 18, 2020. The

letter also warned that if she failed to do so, Nanaimo would complete the work and bill her for it.

18. It is undisputed that Ms. Feng did not remove the blackberry bushes by September 18, 2020, as requested. Nanaimo says it gave Ms. Feng more time to remove the blackberry bushes after speaking to her daughter.
19. Nanaimo also received a complaint about Mr. Adkins' blackberry bushes encroaching over shared property lines. On October 7, 2020, Nanaimo sent Mr. Adkins a letter asking him to cut back his blackberry bushes from all shared property lines by October 30, 2020, or Nanaimo would complete the work and bill him for the costs of doing so.
20. A signed statement from a Nanaimo bylaw officer, UD. UD says they attended at Ms. Feng's home on October 15, 2020 and observed that Ms. Feng had satisfactorily cut back the blackberry bushes from the fence line, in compliance with the bylaws. UD also attached photographs that show the blackberry bushes have been cut back on Ms. Feng's side of the shared property line.
21. On October 20, 2020, a Nanaimo employee emailed Mr. Adkins to advise him that Ms. Feng had cut back the blackberry bushes to comply with the bylaws.
22. It is undisputed that some of Ms. Feng's blackberry bushes protruded through the shared fence and onto Mr. Adkins' property when a Nanaimo employee attended to assess Mr. Adkins' complaint in August 2020. I find the photographs in evidence show accumulations of blackberry bushes on both Ms. Feng's and Mr. Adkins' properties. More on this below.

Claim against Ms. Feng

23. It is undisputed that Ms. Feng was aware her blackberry bushes were growing over her shared property line with Mr. Adkins, and that she took steps to have the blackberry bushes removed.

24. Mr. Adkins says that he was “compelled” to hire a contractor to cut back Ms. Feng’s encroaching blackberry bushes and tree branches. Mr. Adkins submitted a \$330.75 landscaping invoice in evidence. The invoice lists “blackberry cleanup and removal” work on November 23, 2020 and “trimming trees off fence line and clean up of debris” on November 28, 2020.
25. As noted, it is undisputed that Mr. Adkins was also instructed by Nanaimo to cut back blackberry bushes on his own property. While Mr. Adkins says the \$330.75 invoice was to cut back branches along his shared fence line with Ms. Feng, Mr. Adkins did not provide any independent evidence from the contractor detailing exactly where the work was completed on his property, and whether it was completed on the fence line shared with Ms. Feng, or another fence line. The photographs submitted by Nanaimo show blackberry bushes along more than one of Mr. Adkins’ fence lines. Here, I find Mr. Adkins has not proven that he incurred the \$330.75 expense as a result of Ms. Feng’s blackberry bushes and tree branches, rather than his own. I find it equally likely that Mr. Adkins incurred these costs to bring his own property into compliance with the bylaws.
26. As noted above, Mr. Adkins bears the burden of proof. Here, I find he has not met his burden of proving that he suffered any damage as a result of Ms. Feng’s blackberries. So, I find I do not need to address whether Ms. Feng caused a nuisance with her blackberry bushes. I dismiss Mr. Adkins’ claim against her.

Claim against Nanaimo

27. Mr. Adkins also says Nanaimo was negligent because it repeatedly “appeased” Ms. Feng and failed to “compel her to obey the bylaws thus empowering her to continue with her harassment”. I infer that Mr. Adkins says Nanaimo was negligent in failing to enforce its bylaws against Ms. Feng. As noted above, I do not have jurisdiction to address Mr. Adkins allegations of harassment.
28. To show the City was negligent, Mr. Adkins must prove each of the following on a balance of probabilities: (a) the City owed him a duty of care, (b) the City breached

the standard of care, (c) Mr. Adkins sustained a loss, and (d) the City's breach caused Mr. Adkins' loss (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3).

29. As discussed above, I find Mr. Adkins has not proved that he suffered any damages because he has not proved the \$330.75 expense was incurred to deal with Ms. Feng's blackberries rather than his own. So, I find it is not necessary for me to address the legal basis for Mr. Adkins's claim against Nanaimo and I dismiss his claim against Nanaimo.

CRT fees and expenses

30. 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 Mr. Adkins was unsuccessful, I dismiss his CRT fee claims. Neither of the respondents paid any CRT fees or claimed any dispute-related expenses, and so I award none.

ORDER

31. I dismiss Mr. Adkins' claims and this dispute.

Leah Volkers, Tribunal Member