



Civil Resolution Tribunal

Date Issued: December 23, 2021

File: SC-2021-003846

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McGill vs. Singh*, 2021 BCCRT 1336

B E T W E E N :

CLAYTON MCGILL

APPLICANT

A N D :

MANJEET SINGH

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about responsibility for water damage in a strata corporation (strata).
2. The applicant, Clayton McGill, owns a strata lot (unit 105) directly below a strata lot (unit 205) previously owned by the respondent, Manjeet Singh.

3. Mr. McGill says that on April 5, 2021 water leaked from Mr. Singh's unit 205 and flowed into unit 105, damaging Mr. McGill's ceiling. Mr. McGill says Mr. Singh negligently failed to "upkeep" the kitchen plumbing fixtures and is liable for the damage. He seeks \$813.75 for the ceiling repairs.
4. Mr. Singh says unit 205 was tenanted at the time, but on April 5, 2021 the tenants were out of town and the kitchen fixtures were not in use. Mr. Singh says after he learned the kitchen faucet had a drip when cold water was in use, he immediately repaired it. He denies the drip caused Mr. McGill's ceiling damage and says he is not responsible for the repairs.
5. The parties are each self-represented.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.

9. 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.
10. As a preliminary issue, Mr. McGill submitted a second copy of his ceiling repair quote evidence after the CRT's deadline to submit evidence. His first copy had omitted the contractor's name. Mr. Singh did not object to this late evidence though he had the opportunity to do so. Considering the CRT's mandate for a flexible process, I accepted Mr. McGill's late evidence as I find it is relevant. I find no prejudice to Mr. Singh in accepting it.

ISSUE

11. The issue in this dispute is whether Mr. Singh is responsible for Mr. McGill's ceiling damage.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant Mr. McGill must prove his claims on a balance of probabilities (which means "more likely than not").
13. 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. For example, I have not summarized the parties' evidence about alleged harassment as I find it irrelevant to the disputed issues.

Background Facts

14. Mr. McGill says that on April 5, 2021 he left his suite at 6 am for work and returned at 6 pm to discover water leaking from his kitchen ceiling.

15. Mr. McGill undisputedly called the strata's after-hours emergency line at about 6:10 pm. As stated in an affidavit from council member "JP", they responded to the emergency call within minutes. JP stated that they monitored the ceiling water leak in suite 105 and saw it was slowly expanding. They then shut off the main water valve, stopping the water flow in suite 205 and 3 other suites and the dripping almost stopped. Based on JP's affidavit with photographs, I accept there was a leak in suite 105 on April 5, 2021 that damaged its ceiling.
16. Mr. McGill contacted Mr. Singh, who gave JP access to unit 205 that same night. JP stated that they saw water "pooled in the cupboard under the sink". JP did not say whether they also saw any water dripping from the pipes or connections under the sink. JP submitted a photograph of unit 205's sink cupboard that shows no pooling water but what looks like wet paper towel lining the cupboard. A cardboard box is seen as well in the photograph with no visible water damage on its bottom. The photographs also show no water on the floor immediately in front of the cupboard. Based on this evidence, I find any water that had accumulated under the sink to moisten the paper towel must have been fairly new or it would have damaged the cardboard. I find it also suggests the water was not deep.
17. Mr. Singh immediately hired a plumber from "GURU" to inspect the kitchen plumbing. The plumber's invoice says he changed the faucet on April 6, 2021 and "Cold/Water minor dripping when cold water in use". I note GURU's invoice says nothing about a leak in the pipes or the connections to the faucet under the sink or exactly where the faucet drip was located.
18. Mr. Singh's former tenants provided a joint signed statement about the leak. They stated that they left suite 205 in the morning and were 4 hours out of town when Mr. Singh called them about the leak that evening. They said all their faucets, the dishwasher and the laundry machine were off. They said when they returned to the suite, they saw no leakage or damage in suite 205, which is supported by a video of the suite taken that evening. The April 5, 2021 video shows no water damage on the cupboard's white bottom panel. It also shows no water on, or damage to, any of the

floors. They stated that they spoke with the plumber who told them the faucet only dripped when in use.

Is Mr. Singh responsible for Mr. McGill's ceiling damage?

19. I find that expert evidence from someone qualified to assess the leak's source is normally needed because such an assessment is technical and outside the knowledge of an ordinary person: *Bergen v. Guliker*, 2015 BCCA 283. There is no expert opinion that the kitchen faucet drip caused the leak into suite 105. However, I find I do not need to decide if the faucet issue actually caused the leak. This is because as I discuss below, I find Mr. McGill has not proven that Mr. Singh was negligent or otherwise liable in nuisance for the ceiling damage repairs.
20. For Mr. Singh to be liable in negligence for the repairs, Mr. McGill must show that (1) Mr. Singh owed him a duty of care; (2) Mr. Singh breached the applicable standard of care; and (3) that the breach caused foreseeable loss or damage. The burden to prove negligence is on Mr. McGill, on a balance of probabilities: see *Fontaine v. British Columbia*, [1998] 1 S.C.R. 424 (SCC).
21. There is no dispute that Mr. Singh owed a duty of care to Mr. McGill to reasonably maintain his strata lot so that it did not cause damage to Mr. McGill's suite below. I find the standard of care is that of a reasonable strata lot owner in the circumstances.
22. Mr. McGill says that "placing paper towel to stop the water damage" did not meet the standard of care. Mr. McGill relies on *Westsea Construction Ltd. v. Billedeau*, 2010 BCPC 109 and argues that I should draw an adverse inference that Mr. Singh was negligent because he or his tenants were in exclusive control of the suite.
23. In *Westsea* water had noticeably overflowed from the defendant's upper suite into the claimant's lower suite over a period of time. The defendant's tenant was present while the water overflowed from their suite and yet neither the tenant, nor the defendant, testified at trial to explain the reason for the flooding. The court held that the defendant or their tenant was in exclusive control and concluded there was a "prima facie" case of negligence. *Prima Facie* means a case that appears on its face to have merit. Since

the defendant provided no explanation for the escaped water and the tenant was present at the time, the court inferred the flood was caused by their negligence.

24. An adverse inference may be appropriate when a party fails to provide relevant evidence from a witness without a good explanation after establishing a *prima facie* case. However, I find that is not the case here. Unlike *Westsea* there was no obvious water overflow from unit 205 and Mr. Singh and the tenants provided evidence about the faucet issue and the surrounding circumstances as discussed above. Given the relevant plumbing evidence and explanations, I find no basis to draw an adverse inference of negligence.
25. Even if I accept the leak was caused by unit 205's faucet, there is no evidence to suggest Mr. Singh's tenants told him about the dripping faucet or that he knew or should have known about the drip. There is also no indication that Mr. Singh knew or should have known the faucet required maintenance until he was notified about it on April 5, 2021. I find Mr. Singh immediately responded by hiring a plumber, who fixed the faucet the next day. For these reasons, I find the evidence does not establish that Mr. Singh breached the standard of care and so, I find he is not negligent.
26. I note that Mr. McGill does not argue that Mr. Singh is liable in nuisance and for the reasons that follow, I find he is not. Nuisance occurs when a person substantially and unreasonably interferes with a property owner's use or enjoyment of their property. Where there is a water leak, if the person is not aware of the leak, and had no reason to know of the problem, they will not be liable because this means they did not act unreasonably: *Sadowick v. British Columbia*, 2019 BCSC 1249. I find Mr. Singh did not know about the dripping faucet or the leak until he was notified about it on April 5, 2021. I find he then took immediate action to address it. So, I find Mr. Singh is not liable for this isolated leak event even if it was caused by the faucet drip.
27. For the above reasons, I find Mr. Singh is not responsible for Mr. McGill's ceiling damage and I dismiss Mr. McGill's claims on this basis.

28. 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 unsuccessful party, I find Mr. McGill is not entitled to any reimbursement.

ORDER

29. I dismiss Mr. McGill's claims and this dispute.

Trisha Apland, Tribunal Member