



Civil Resolution Tribunal

Date Issued: January 26, 2022

File: SC-2021-004307

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Reilly v. Martin*, 2022 BCCRT 98

BETWEEN:

JAMES REILLY and VICTORIA MARIE REILLY

APPLICANTS

AND:

ORPHEE MARTIN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute about a water leak from a washing machine.
2. The applicant, Victoria Marie Reilly, owns a strata lot (unit 206) situated directly below the respondent Orphee Martin's strata lot (unit 306) in a strata corporation building.

James Reilly is Ms. Reilly's brother and power of attorney. He represents both applicants in this dispute.

3. Mr. Reilly says that water escaped from Ms. Martin's washing machine on January 10, 2021 and damaged unit 206. Mr. Reilly says Ms. Martin knew her washing machine was occasionally leaking and she failed to fix it. He says Ms. Martin was therefore negligent and is responsible for the damages.
4. The Reillys claim a total of \$2,880.53 as reimbursement for the emergency and abatement services performed by "Canstar Fire & Flood" (Canstar) in unit 206.
5. Ms. Martin, who is self-represented, agrees her washing machine leaked into unit 206. However, she says it was a "one time event" and she was not negligent. She also says the washing machine uses very little water and could not have caused the damage in unit 206. She says she is not responsible for the damage.
6. For the reasons that follow, I find Ms. Martin find must pay the Reillys \$2,880.53 in damages.

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 aspects of this dispute require me to assess the parties' credibility. A person's credibility, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or CRT proceeding appears

to be the most truthful. I note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me and the parties did not request an oral hearing. Given this, and bearing in mind the CRT's mandate, I find that an oral hearing is not necessary in the interests of justice. I therefore decided to hear this dispute through written submissions.

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 Issues

Late Evidence and Request to Amend Claim

11. After the CRT's deadline for the parties to submit evidence, Mr. Reilly asked to submit an additional Canstar invoice dated February 4, 2021 for \$1,351.37 for repairs. In his reply submissions, he says he only became aware of this additional invoice in October 2021 and asks to include it in his claim. I infer Mr. Reilly is asking to amend his claim to increase his requested remedy by \$1,351.37, for a total claim of \$4,231.90. There is no Amended Dispute Notice reflecting this higher claim value.
12. A basic principle of administrative fairness is that a party have an opportunity to respond to the case against them. I find would be unfairly prejudicial to Ms. Martin to allow Mr. Reilly to increase his claim late in this proceeding. Accordingly, I decline to admit the additional invoice and amend the claim. I have decided this dispute on the \$2,880.53 claimed in the Dispute Notice.

13. Ms. Martin also asked to submit late evidence, which are photographs of a vent repair in her unit 306 attic. Ms. Martin says the photographs support her view that the unit 206 damage was due to a roof leak. She says she did not submit the photographs on time because she needed a flashlight and had a hard time accessing the attic. Mr. Reilly objects to Ms. Martin's late evidence and says it shows nothing but conjecture.
14. I find Ms. Martin did not provide a reasonable explanation for not getting access to her attic earlier to take photographs so she could submit them within the CRT's evidence deadline. I find the Reillys also did not have an adequate opportunity to review and respond to this late evidence. I also find the photographs have little evidentiary value because they just show an attic vent repair in unit 306 and, as I discuss below, there is no evidence of a roof or vent leak through unit 306 or into unit 206. For these reasons, I have not allowed Ms. Martin's late evidence. I find the unfairness to the Reillys outweighs any prejudice to Ms. Martin in not admitting the late evidence.

Standing

15. As mentioned, Ms. Reilly owns or owned unit 206 and Mr. Reilly is her power of attorney. The receipts in evidence show that Mr. Reilly personally paid the Canstar invoices. In the circumstances, I find both Mr. Reilly and Ms. Reilly have standing to bring this action against Ms. Martin for the alleged water damage.

ISSUE

16. The issue in this dispute is whether Ms. Martin was negligent and if so, did her negligence cause the water leak and damages in unit 206.

EVIDENCE AND ANALYSIS

17. In a civil proceeding like this one, as the applicants the Reillys must prove their claims on a balance of probabilities (which means "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.

18. The parties agree that on January 10, 2021 water escaped from Ms. Martin's front load washing machine in unit 306 and leaked into Ms. Reilly's unit 206, directly below. As noted, she says it was only a minor leak and did not cause the claimed damage.
19. Ms. Martin says she was running a "light duty" cycle on January 10, 2021 and the spin cycle forced water at high pressure "out the door crack". She says the door either was not properly closed or a small amount of clothing was stuck in the door seal. She says that normally front load washers have a failsafe to ensure they will not start if the door is not properly closed. She says she did not know this safety feature could fail and cause a significant leak. Ms. Martin says she had not seen the water on the floor until a strata council member "AG" knocked on her door, at which point she turned the machine off, "mopped up the floor", and cleaned up the water in 10 minutes.
20. Mr. Reilly had hired AG to paint unit 206 and AG was in the unit on January 10, 2021 at the time of the leak. As set out in AG's September 15, 2021 statement, she heard the sound of running water and unit 306's washing machine above, she went into the foyer and she saw water "pouring out the light fixture". AG described the foyer floor as flooded, with water flowing towards the door and into the common hallway. AG quickly found a bucket and put it under the leak and made a video, which I reviewed. I find it shows good sized drops falling through the light fixture.
21. The strata corporation called out Canstar to investigate and attend to the incident. Canstar's January 11, 2021 "Emergency Site Inspection Report" states that it responded to a water escape incident from unit 306 "affecting" the entry (or foyer) and laundry room of unit 206. It described structural damage in 206 from by the water escape incident. The listed damaged areas include the ceiling drywall and insulation, "newly painted wall" and entry light fixture. It also wrote that there is rust and mould in the light fixture and it "looks like a water leak that happens periodically". I note

Canstar's report included photographs of the damages, including "infrared photographs" showing moisture in the ceilings.

22. Ms. Martin agrees that her washing machine door was faulty and leaked into unit 206. However, she denies that this leak caused the damage. She says the leak was a one-time-event, the washer does not use much water and only a small amount of water sprayed out around the catch pan. Ms. Martin says she never repaired her washing machine and continues to wash loads with no leaks but now she "just always double check machine door" (as written). Ms. Martin says the rust and mould around the light fixture suggests the damage was from something else, such as a roof leak through a roof vent or condensation.
23. Ms. Martin submitted photographs of the building's roof showing pooling water. She also submitted the strata corporation's letter to owners that it would repair the roof and vents to avoid "potential" leaks. Ms. Martin submitted no evidence of an actual roof or vent leak into unit 206. There is also no evidence of condensation in unit 206 or that the building has a condensation problem. So, I find Ms. Martin is speculating about these other potential leak sources.
24. The only evidence of a leak is from Ms. Martin's washing machine directly above unit 206 and it is undisputed and documented that water leaked through the light fixture into 206. On my review of the video, Canstar report and AG's description of the leak, I find the January 10, 2021 flood into unit 206 was fairly significant. I do not accept Ms. Martin's assertion that it was small. I also do not accept Ms. Martin's assertion the leak was a one-time-event. I find it inconsistent with her January 11, 2021 email to the strata corporation where she wrote: "I have had minor leakage lately occasionally from washing machine if load was large". I find Ms. Martin wrote that statement immediately after the incident because she had experienced prior leaks from her washing machine. I find she was not referring to minor drips such as when a wet door is opened after a cycle or she would not have mentioned it happened with large loads.

25. Canstar is a professional remediation company and as there is no independent evidence contradicting its assessment, I accept Canstar's January 11, 2021 assessment of the leak source and the damage. I find it more likely than not that the structural damage in unit 206 was from the water that escaped Ms. Martin's washing machine on January 10, 2021. Taking all the evidence together, I find the rust and mould in the light fixture was more likely than not from the prior washing machine leaks Ms. Martin acknowledged in her email.
26. I turn to the applicable law. To prove negligence, the Reillys must show that Ms. Martin owed them a duty of care, Ms. Martin breached the standard of care, the Reillys sustained damage, and the damage was caused by Ms. Martin's breach: see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at par 33.
27. As the upstairs neighbour, I find Ms. Martin owed a duty of care to the owners and occupiers of unit 206 to use and reasonably maintain her washing machine so it did not cause damage. I find the facts here are different from *Spier v. Walton*, 2020 BCCRT 149, a decision relied on by Ms. Martin. In *Spier*, a CRT Vice Chair concluded that an upstairs owner was not negligent when their faucet leaked into the unit below because they did not know the faucet had a leak before the incident. I find on the weight of the evidence that Ms. Martin knew prior to the incident that her washing machine occasionally leaked when she ran it. I find no other reason for her to state so in her January 11, 2021 email to the strata corporation.
28. Even if Ms. Martin did not know the door or seal was faulty, I find Ms. Martin should have known or reasonably known that a leaking washing machine could cause water damage to the unit below. She does not say that she investigated the leak's source and says she never had the washing machine repaired after she experienced leaks. I find Ms. Martin was negligent by failing to investigate and repair a known leak and by continuing to use her occasionally leaking washing machine. On balance, I find Ms. Martin is responsible in negligence for the water ingress into unit 206 on January 10, 2021 and for the cost of Canstar's emergency and abatement services. I find the cost of Canstar's services was \$2,880.53 as set out in its invoices.

29. Because the Reillys did not claim the actual repair costs, I find I do not need to decide if Ms. Martin is also responsible in negligence for all the property damage, such as to the light fixture.
30. Ms. Martin points out that the Reillys were not living in the unit at the time of the incident. However, since AG was in the unit and immediately responded to the January 10, 2021 leak by notifying Ms. Martin, I find no failure to mitigate here.
31. Given it was Ms. Reilly's unit but the receipts show Mr. Reilly personally paid Canstar's invoices, I find they are jointly owed the claimed \$2,880.53. I find Ms. Martin must pay the Reillys a total of \$2,880.53.
32. The *Court Order Interest Act* applies to the CRT. The Reillys are entitled to pre-judgment interest on the \$2,880.53 damages award from dates of the invoice payments to the date of this decision. The interest equals \$12.36.
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. I find the Reillys are entitled to reimbursement of \$125 in CRT fees. They claimed no specific dispute related expenses.

ORDERS

34. Within 30 days of the date of this order, I order Ms. Martin to pay the Reillys a total of \$3,017.89, broken down as follows:
 - a. \$2,880.53 in damages,
 - b. \$12.36 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
35. The Reillys are entitled to post-judgment interest, as applicable.

36. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision.
37. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Trisha Apland, Tribunal Member