Civil Resolution Tribunal

Date Issued: January 27, 2022

File: SC-2021-004150

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Perrett v. Resort Municipality of Whistler*,
2022 BCCRT 106

B E T W E E N :

JON PERRETT

APPLICANT

A N D :

RESORT MUNICIPALITY OF WHISTLER

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Trisha Apland

INTRODUCTION

1. This dispute is about a storage shed on Crown land.

2. The applicant, Jon Perrett, says the respondent, Resort Municipality of Whistler (RMOW), damaged a storage shed a family member built on Crown land. He claims $2,860 in damages for the shed.

3. The RMOW agrees its employees damaged the shed. However, it says the shed is trespassing on Crown land and Mr. Perrett does not own the shed or have authorization to use it. The RMOW says Mr. Perrett has no standing to bring this claim or in the alternative, its says the RMOW was not negligent and Mr. Perrett did not prove his damages. The RMOW denies that it owes Mr. Perrett any compensation for the shed.

4. Mr. Perrett is self-represented. RMOW is represented by its insurer's legal counsel, Steven Gares.

5. For the reasons that follow, I dismiss Mr. Perrett's claim.

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.

ISSUES

10. The issues in this dispute are:

    a. Does Mr. Perrett have any property rights to the shed?

    b. To what extent, if any, does RMOW owe Mr. Perrett the claimed $2,860 for the damaged shed?

EVIDENCE AND ANALYSIS

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

12. The background facts are not disputed. Mr. Perrett's family member, "DP", built the shed in 1995 on Crown land in or near a place called Function Junction in the RMOW. In 2008, DP moved to the Sunshine Coast and Mr. Perrett started using the shed for storage. In 2018, Mr. Perrett sold a water system to the RMOW that consisted of several sheds located in Function Junction. The shed in this dispute was next to the water system's pump house shed and painted the same colour. However, the shed was actually located outside the water system's easements or right-of-ways that Mr. Perrett's company owned and was not part of the sale.

13. After the sale, a RMOW employee went to "decommission" the water system sheds and started to dismantle the shed at issue here. The employee damaged the door, lock and front siding. The employee did not know the shed was excluded from the sale and they never finished dismantling it because they discovered bats inhabiting the shed's roof area. Mr. Perrett says he learned about the damage in November

2019 when he was preparing to relocate the shed. The shed was not then relocated or repaired. These facts are not disputed.

14. On July 22, 2021, the Province of BC sent Mr. Perrett a Trespass Notice that the shed was trespassing on Crown land contrary to section 59 of the *Land Act.* The Notice required Mr. Perrett to cease unauthorized occupation of the shed, remove the shed by August 31, 2021, and restore the Crown land to the natural condition or face a penalty. If Mr. Perrett failed to remove the improvement, the Trespass Notice said the Province may remove the shed at Mr. Perrett's expense and anything seized would become government property.

15. The RMOW says it understands the shed is still on the Crown land, which I accept because Mr. Perrett does not say otherwise although he had the opportunity in reply. Mr. Perrett only says that he had the "intention" to relocate the shed and it is "an easy move". Mr. Perrett does not explain why he never moved the shed after the sale to RMOW or after the Province's Trespass Notice.

16. Mr. Perrett does not clearly set out the legal basis for his claim. He says the RMOW had no authority to enter the shed on Crown land in 2018 or to partially demolish it. He says he invoiced the RMOW for the damages and it refused to pay. He claims RMOW owes him $2,860, based on a local Whistler contractor's repair estimate. I infer he means this is the cost to repair the shed rather than its replacement value. There is no repair estimate or evidence about the shed's value, which I come back to below.

17. I agree with the RMOW that Mr. Perrett must first prove that he has a property interest in the shed and "standing" to bring this claim against RMOW. Standing in a legal dispute like this one, means an applicant's legal right to bring a claim against the named respondent.

18. If Mr. Perrett does have standing and he would then have to prove the RMOW is liable in negligence for the damages. Specifically, Mr. Perrett would need to establish on a balance of probabilities: (a) the RMOW owed him a duty of care, (b) the RMOW

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

19. I turn first to the issue of standing. Mr. Perrett says the Trespass Notice confirms that the shed is his shed. I disagree. The Trespass Notice gave Mr. Perrett the opportunity to remove the shed before the Province imposed penalties for trespass and took steps to remove and seize the shed. Even if Mr. Perrett had some legal right to the shed, I find he likely abandoned that right by not relocating the shed after the Province's Trespass Notice. Also, given that Mr. Perrett did not build the shed, it was undisputedly affixed to Crown land, and he had been using it illegally, I find Mr. Perrett likely never had, nor currently has, a property interest in the shed. So, I find he has no standing to bring this claim against the RMOW.

20. Even if Mr. Perrett has standing, I find Mr. Perrett's claim would fail because he has not established his damages. Based on the Trespass Notice, I find Mr. Perrett had no right to repair the shed while it was situated on and trespassing Crown land. He would have had to remove the shed first, which he never did, and there is no evidence the shed could be removed without damaging it. As noted, Mr. Perrett also did not submit a repair estimate or independent evidence about the shed's value, if any. So, I find Mr. Perrett has not established that he suffered any loss or damage because of RMOW's actions in 2018. Considering this conclusion, I find no need to discuss the other elements necessary to prove negligence.

21. In his reply argument, Mr. Perrett says that some items inside the shed were from an old hotel that his company owned. He alleges they were damaged and impossible to replace. I find the RMOW did not have the opportunity to respond to this claim. However, I find nothing turns on this because Mr. Perrett does not specifically allege it was the RMOW who caused the damage and he submitted no independent evidence about the alleged damaged items or their value. I find Mr. Perrett's own assertion that items were damaged in a shed illegally situated on Crown land is not enough to prove that the RMOW is liable to compensate him for them.

22. For the reasons above, I find Mr. Perrett has not proven that he had any property rights to the shed or that he suffered any loss from the RMOW's damage to the shed in 2018. I dismiss his claim for these reasons.

23. 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. Perrett is the unsuccessful party, I find he is not entitled to any reimbursement. The RMOW did not pay any fees or claim any dispute-related expenses.

ORDER

24. I dismiss Mr. Perrett's claims and this dispute.

Trisha Apland, Tribunal Member