



# Civil Resolution Tribunal

Date Issued: February 1, 2022

File: SC-2021-004005

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yu v. Yang*, 2022 BCCRT 119

**BETWEEN:**

JOYCE YU

**APPLICANT**

**AND:**

SONG LIN YANG and DAO LING ZHU

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Micah Carmody

## **INTRODUCTION**

1. This small claims dispute is about water damage in a strata building. The applicant, Joyce Yu, lives in unit 901, below the respondents, Song Lin Yang and Dao Ling Zhu, in unit 1001. The strata corporation is not a party to this dispute.

2. The applicant says the respondents' bathtub overflowed, resulting in ceiling water stains and hardwood floor warping in unit 901. The applicant hired a contractor to repair the damage and wants the respondents to reimburse her for the \$892.50 invoice.
3. The respondents say the water damage was from a toilet overflow in their unit but only stained the applicant's ceiling, which they agreed to repaint. They say the applicant admitted damage to the floor was from her own washing machine. They say the claim should be dismissed because they were not given an opportunity to repaint the ceiling, and they did not cause the floor damage.
4. The parties are each represented by a family member who is not a lawyer.

## **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 respondents are responsible for the water damage in unit 901, and if so, what remedy is appropriate?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant 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. The parties agree that in November 2020 a leak originating in unit 1001 stained unit 901's ceiling. They disagree about the source and extent of the leak and whether it also damaged unit 901's floor.
12. The applicant says in November 2020 she noticed large water stains on her ceiling "in front of the bathroom and hallway area." She showed Mr. Yang from unit 1001 the stains. It is undisputed that Mr. Yang offered to repaint the ceiling himself. I discuss the significance of this offer below.
13. The applicant says Mr. Yang told her that clogged hair caused the bathtub to overflow. In contrast, the respondents say there was never a bathtub overflow. They say in November 2020 they discovered a toilet in their second bathroom overflowed due to a worn-out wax ring.
14. In support of her position, the applicant relies on a March 8, 2021 email from the building manager to the strata property manager stating that Mr. Yang's bathtub

overflowed “2 weeks ago.” This email includes photos showing damage in unit 801, as well as a single photo of unit 901’s ceiling. The applicant does not explain if she is alleging a second water leak, a continuous leak, or if the strata was not alerted to the November 2020 leak until 801’s owners discovered it in February 2021. The evidence indicates unit 801 was vacant at the time.

15. The applicant also relies on an estimate sent to the strata from Phoenix Restorations (Phoenix). The estimate says the loss was due to a March 12, 2021 bathtub overflow in unit 1001. I note that although the strata asked for an estimate, it did proceed with repairs as it determined that the damages were well below the strata corporation’s water damage insurance deductible.
16. The respondents say there was a miscommunication between Mr. Yang and the building manager due to Mr. Yang’s language barrier. The respondents provided a statement from a plumber confirming that they replaced a toilet’s wax ring in unit 1001 in February 2021. The respondents say the delay from November 2020 to February 2021 was due to COVID-19 pandemic precautions and because the leak was slow.
17. On balance, I am not persuaded there was a leak from unit 1001’s bathtub, or any ongoing leak from its toilet. I say this in part because an email from Phoenix says the leak “was reported to” Phoenix as a bathtub overflow and it did not have a plumber attend to investigate the leak. I therefore put little weight on Phoenix’s estimate attributing the leak to a bathtub overflow. I note there is no evidence Phoenix or anyone else in March 2021 did water damage mitigation work, such as drying with fans and dehumidifiers. Phoenix’s estimate is simply to repair drywall and flooring, which is equally consistent with a leak that happened in November 2020.
18. As for the damage to unit 801, I find it does not necessarily support the idea that water from unit 1001 pooled in unit 901, damaging the floor, before traveling down to unit 801. Unit 801 had much more extensive water damage, and the applicant does not explain why her floor damage was contained to such a relatively small area.

19. Finally, I note the applicant does not say she observed any active water leak or water pooling on her hardwood floor at any point. She also does not say that the stains on her ceiling increased in size after November 2020. And she does not address the respondents' assertion that she admitted to Mr. Yang that her washing machine leaked and caused her floor to buckle. For these reasons, I find the only proven leak was the toilet leak that started in November 2020 and stained the applicant's ceiling.
20. I find the applicable law governing responsibility for water damage between strata lot owners was accurately stated in the non-binding but persuasive decision *Zale et al v. Hodgins*, 2019 BCCRT 466. That is, I find the applicant must prove the respondents are liable either under the law of negligence or the law of private nuisance.
21. 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 it, they will not be liable because they did not act unreasonably: see *Theberge v. Zittlau*, 2000 BCPC 225.
22. There is no evidence that the leak from the toilet was visible to the respondents. Given that the source was an aged wax ring where the toilet base connects with the floor, I find the water was likely leaking under the floor and not visible. I conclude that the respondents were likely not aware of the leak and had no reason to know about it, so I find the respondents are not liable in nuisance.
23. In order for the respondents to be found negligent, the applicant must prove that the respondents owed her a duty of care, they breached the standard of care, and she sustained damage caused by their breach: see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
24. I find that as neighbours in a strata building, the respondents owed the applicant a duty of care. I find the applicable standard of care is reasonableness: see *Burris v. Stone et al*, 2019 BCCRT 886.
25. The applicant does not say how the respondents acted unreasonably. The applicant does not say, for example, that the respondents should have replaced the toilet's wax

ring sooner. The applicant provided no evidence about how often a reasonable owner in a strata building checks or replaces a toilet's wax ring. Although there was undisputedly a 2018 leak from a toilet in 1001, it is not clear if the same toilet leaked because unit 1001 has 2 bathrooms. There is also no evidence that the wax seal was the issue in the 2018. I cannot conclude that the respondents failed to maintain their toilet to a reasonable standard. I therefore find the respondents were not negligent. This means I do not need to decide whether the leak from unit 1001 caused the applicant's floor damage in addition to the undisputed ceiling damage.

26. That leaves the issue of the respondents' offer to repaint the applicant's ceiling. In submissions, the respondents say they are prepared to reimburse the applicant \$100 to keep their promise to repaint the ceiling. It is undisputed that Mr. Yang offered to repaint the ceiling in November 2020. I accept the respondents' evidence that Mr. Yang delayed repainting at the applicant's request. In April 2021, the applicant had someone else repaint the ceiling and repair her hardwood floor. The applicant says she did not trust Mr. Yang to do a good job. I find the applicant did not give Mr. Yang a reasonable opportunity to make good on his offer to paint the ceiling. With that, I find the respondents are not obligated to pay anything, so I make no order.
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 respondents were successful but did not pay CRT fees or claim expenses. I dismiss the applicant's claim for reimbursement of CRT fees.

## **ORDER**

28. I dismiss the applicant's claim and this dispute.

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Micah Carmody, Tribunal Member